



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-25-03268936-0031  
BK-25-03268942-0031  
BK-25-03268971-0031

DATE: September 9, 2025

NO. ON LIST: 01-03

TITLE OF PROCEEDING: IOVATE HEALTH SCIENCES INTERNATIONAL INC. v. KSV  
RESTRUCTURING INC.

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff:**

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton, Danish Afroz Chaitons LLP	Lawyers for the Iovate Entities	harvey@chaitons.com dafroz@chaitons.com

**For Defendant:**

Name of Person Appearing	Name of Party	Contact Info
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**Other:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE J. DIETRICH:**

**Introduction**

- [1] Iovate Health Sciences International Inc. ("**Iovate International**"), Iovate Health Sciences U.S.A. Inc. ("**Iovate USA**") and Northern Innovations Holding Corp. ("**Northern Innovations**" and together with Iovate International and Iovate USA, the "**Iovate Entities**") seek an order:
- a. approving an administrative consolidation of the proposal proceedings commenced by Iovate International, Iovate USA and Northern Innovations (collectively, the "**Proposal Proceedings**");
  - b. granting a charge on the assets, undertakings and properties of the Iovate Entities to a maximum amount of \$750,000 (the "**Administrative Professionals Charge**") to secure payment of the fees and disbursements of KSV Restructuring Inc., in its capacity as proposal trustee of the Iovate Entities (the "**Proposal Trustee**"), counsel to the Proposal Trustee, and Canadian and U.S. counsel to the Iovate Entities (collectively, the "**Administrative Professionals**");
  - c. authorizing and empowering Iovate International to act as a foreign representative of the Proposal Proceedings (the "**Foreign Representative**") for the purpose of having the Proposal Proceedings recognized in a jurisdiction outside of Canada; and
  - d. authorizing and empowering Iovate International, as Foreign Representative, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended.
- [2] On September 5, 2025, the Iovate Entities each filed a Notice of Intention to File a Proposal ("**NOI**") pursuant to section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). KSV was appointed as the Proposal Trustee in each of the Proposal Proceedings.
- [3] No opposition to the relief sought by the Iovate Entities was raised today. Further, KSV Restructuring Inc. As proposal trustee of the Iovate Entities has filed its First Report dated September 8, 2025 and advises that it supports all of the relief sought by the Iovate Entities.
- [4] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Iovate Entities filed for use on this hearing.

## **Background**

- [5] The Iovate Entities are part of a group of companies (the "**Iovate Group**") engaged in the development, production and sale of health and nutrition products in Canada, the United States, and elsewhere. The Iovate Group's key brands include MuscleTech™, Hydroxycut™, Six Star®, and Purely Inspired®, which are sold in over 90 countries worldwide.

- [6] The Iovate Group manufactures and distributes its products through third-party co manufacturers and a network of international distribution partners. Its products are shipped from facilities in Canada, the United States, Belgium, and Australia, and sold through retail, online, and distributor channels globally. The Iovate Group leases its head office at 381 North Service Road West, Oakville, Ontario (the "**Oakville Head Office**"), which serves as the base of its executive management.
- [7] Iovate International was continued under the *Business Corporations Act*, RSO 1990, c B.16 (the "**OBCA**") on April 13, 2021. It serves as the principal Canadian operating entity of the Iovate Group. Iovate International employs approximately 165 people in Canada and 2 people in the United Kingdom.
- [8] Iovate USA is incorporated under the laws of Delaware. It conducts the Iovate Group's U.S. operations and wholly owns certain Delaware limited liability companies. Iovate USA maintains customer relationships in the United States and is responsible for overseeing third-party logistics operations relating to the storage, fulfillment, and distribution of the Iovate Group's products in that market.<sup>8</sup> Iovate USA employs approximately 11 people in the United States.
- [9] Northern Innovations was incorporated under the OBCA on April 1, 2021. It holds the Iovate Group's intellectual property portfolio, including trademarks and patents associated with each of the Iovate Group's key brands, and licenses the rights to use those trademarks to Iovate International and Iovate USA. It does not have any employees.
- [10] The Iovate Group members are in default under their syndicated credit agreement, with approximately USD \$115,785,488 owing to their lenders (the "**Lenders**") as of August 31, 2025.
- [11] Iovate International and Iovate USA are jointly and severally liable under a judgement in favour of Orgain, Inc. ("**Orgain**") in the amount of USD \$12.5 million (the "**Judgment**"), which Orgain has sought to enforce through garnishments against major customers including Walmart Inc. The garnishments have impacted payments to the Iovate Group.
- [12] On August 25, 2025, Iovate International and Iovate USA were unsuccessful in obtaining an order of the Circuit Court of Benton County, Arkansas quashing Orgain's writ of garnishment issued to Walmart Inc. On August 27, 2025, the Lenders issued demand letters requiring immediate repayment and delivered notices of intention to enforce security, citing prejudice to their collateral as a result of Orgain's enforcement efforts.
- [13] In the circumstances, the Iovate Entities determined that it was necessary to commence the Proposal Proceedings under the BIA to obtain a stay of proceedings against the Iovate Entities and their property in order stabilize operations and pursue an orderly

restructuring under Court supervision and to seek recognition thereof in the United States.

## Issues

- [14] The issues to be determined are whether the Court should (i) administratively consolidate the Proposal Proceedings of the Iovate Entities; (ii) grant the Administrative Professionals Charge in favour of the Administrative Professionals; and (iii) authorize Iovate International to act as Foreign Representative of the Proposal Proceedings.

## Analysis

- [15] The Iovate Entities seek an order administratively consolidating the Proposal Proceedings under a joint title of proceedings to avoid multiplicity of proceedings and the associated costs. Procedural or administrative consolidation does not involve the substantive merger or consolidation of the bankruptcy estates, merely their procedural treatment together by the Court. Courts have granted similar orders to the one being requested herein in furtherance of the general principle that the litigation process should secure the just, most expeditious and least expensive determination of every proceeding on its merits: see *Electro Sonic Inc (Re)*, 2014 ONSC 942 at para 4.
- [16] In the circumstances the administrative consolidation relief requested by the Iovate Entities is appropriate and is approved.
- [17] In order to protect the fees and expenses of the Administrative Professionals with respect and incidental to the Proposal Proceedings, the Iovate Entities seek a charge in the maximum amount of \$750,000 on the assets, undertakings and properties of the Iovate Entities, ranking in priority to all security interests, trusts, liens, charges and encumbrances in favour of any Person, provided that the Administrative Professionals Charge shall rank behind encumbrances in favour of any Persons that have not been served with notice of the motion by the Iovate Entities.
- [18] Section 64.2 of the BIA provides for the granting of a charge to secure the fees and expenses of such parties. Courts have considered the following non-exhaustive factors in determining whether an administrative charge is appropriate: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is any unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors is likely to be affected by the charge; and (f) the position of the court officer: see *Canwest Publishing Inc*, 2010 ONSC 222 at para 54.
- [19] The Iovate Entities require the expertise and involvement of Administrative Professionals to advance the Iovate Entities' complex restructuring process for the benefit of their creditors and stakeholders. The amount of the Administrative

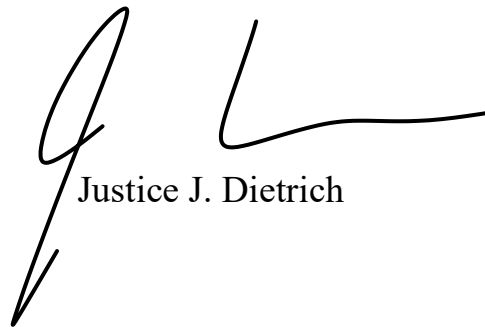
Professionals Charge, was determined in consultation with the Proposal Trustee and the Lenders who both support such charge. As noted, the proposed charge does not prime any Person not provided with the notice. In the circumstances, the Administrative Professionals Charge is appropriate and is approved.

- [20] Pursuant to s. 279 of the BIA, the Court may authorize any person or body to act as a representative in respect of any proceedings under the BIA for the purpose of having them recognized in a jurisdiction outside of Canada. Iovate International is an appropriate entity to act as Foreign Representative in respect of the Proposal Proceedings because it is one of the entities that has filed a notice of intention to make a proposal and it serves as the principal Canadian operating entity of the Iovate Group. Authorizing Iovate International to act as Foreign Representative and to seek recognition of the Proposal Proceedings in the United States is consistent with established principles of comity and cooperation between courts in cross-border insolvencies and is expected to facilitate the restructuring of the Iovate Entities on a cross-border basis. The relief sought by the Iovate Entities in this regard is appropriate and is approved.

### **Disposition**

- [21] Order to go in the form signed by me this day.

September 9, 2025



Justice J. Dietrich