Court File No: BK-25-03268936-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Court No.: 31-3268936
Estate No.: 31-3268936

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE HEALTH SCIENCES INTERNATIONAL INC.

Court No.: 31-3268942
Estate No.: 31-3268942

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE HEALTH SCIENCES U.S.A. INC.

Court No.: 31-3268971
Estate No.: 31-3268971

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NORTHERN INNOVATIONS HOLDING CORP.

FACTUM OF IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., AND NORTHERN INNOVATIONS HOLDING CORP.

October 15, 2025

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PART I - NATURE OF THE MOTION

1. On September 5, 2025, 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 "**NOI Applicants**") each filed a Notice of Intention to Make a Proposal (each an "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), commencing the "**NOI Proceedings**". KSV Restructuring Inc. was appointed as the NOI Applicants' proposal trustee (the "**Proposal Trustee**").

2. As part of the NOI Applicants' restructuring efforts during these NOI Proceedings, the NOI Applicants and Proposal Trustee have engaged in extensive negotiations with Kenco Logistic Services LLC ("**Kenco**"), a third-party logistics provider, to resolve issues concerning a Warehousing & Logistics Services Agreement dated April 27, 2023 between Kenco and Iovate USA (the "**Kenco Agreement**"). These efforts culminated in a settlement agreement on the terms set out in the letter from Kenco dated October 8, 2025 (the "**Settlement Agreement**").

3. The NOI Applicants now seek an order (the "**Settlement Approval Order**") approving the Settlement Agreement and the Releases (as defined below). The Settlement Agreement is fair and reasonable in the circumstances. It would alleviate disruption to Iovate USA's operations and eliminate the cost and uncertainty of protracted litigation, to the benefit of the NOI Applicants and their stakeholders. Granting the Settlement Approval Order would permit the NOI Applicants to devote their time and resources to continue pursuing a successful restructuring.

PART II - THE FACTS

A. Background to the NOI Proceedings

4. The NOI Applicants are part of a group of companies engaged in the development, production, and sale of health and nutrition products in Canada, the United States, and internationally.[1] Following the NOI Applicants' receipt of demand letters from their secured creditors under a syndicated credit agreement (the "**Lenders**") and loss of access to working capital due to a writ of garnishment against a major customer, the NOI Applicants determined that it was in the best interests of their stakeholders to commence the NOI Proceedings.[2]

5. On September 5, 2025, the NOI Applicants each filed an NOI pursuant to section 50.4 of the BIA, with the principal purpose of creating a stabilized environment in which they could pursue an orderly restructuring of their business. [3]

6. On September 9, 2025, this Court granted an order: (a) approving the administrative consolidation of the NOI Proceedings under one title of proceedings; (b) granting a charge over the assets, undertakings, and properties of the NOI Applicants to secure payment of the fees and disbursements of certain administrative professionals; (c) authorizing Iovate International to act as foreign representative for the purpose of having the NOI Proceedings recognized in a jurisdiction outside of Canada; and (d) authorizing Iovate International, as foreign representative, to apply for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*.[4]

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[1] Affidavit of Wesley Parris sworn September 6, 2025 (the "**September 6 Parris Affidavit**") at para 4.

[2] September 6 Parris Affidavit at paras. 26-36.

[3] Affidavit of Wesley Parris sworn October 11, 2025 (the "**October 11 Parris Affidavit**") at para. 4.

[4] October 11 Parris Affidavit at para. 6.

7. On September 10, 2025, the United States Bankruptcy Court for the Southern District of New York (the "**New York Court**") entered an order (the "**Provisional Order**") provisionally recognizing Iovate International as foreign representative of the NOI Applicants with full authority to administer their assets and affairs in the United States (the "**Chapter 15 Proceedings**"). The Provisional Order also provided that section 362 of the *United States Bankruptcy Code* applies with respect to the NOI Applicants and the property of each NOI Applicant that is within the territorial jurisdiction of the United States. The Provisional Order was extended pursuant to an order granted by the New York Court on September 19, 2025.[5]

8. On October 3, 2025, this Court granted an order extending the time for the NOI Applicants to file a proposal in the NOI Proceedings to and including November 4, 2025.[6]

B. The Kenco Agreement

9. In September 2023, Iovate USA moved its United States distribution operations from its in-house facility to Kenco, a third-party logistics provider. Iovate USA and Kenco entered into the Kenco Agreement, which appointed Kenco as the exclusive provider of certain warehousing services through the term of the Kenco Agreement.[7]

10. Iovate USA's initial optimism that this transition would streamline its distribution operations did not last, however, and the Kenco Agreement ultimately proved to be unfavourable to Iovate USA.[8] By mid-2024, Iovate USA's direct and ancillary third-party logistics costs had

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[5] October 11 Parris Affidavit at para. 7.

[6] October 11 Parris Affidavit at para. 8.

[7] October 11 Parris Affidavit at para. 9.

[8] October 11 Parris Affidavit at para. 10.

significantly exceeded budget and historical levels.[9] As a result of these issues, in December 2024, Iovate USA decided to transition its customer procurement and fulfillment operations from Kenco to RJW Logistics Group ("**RJW**"), another third-party logistics provider, even though the term of the Kenco Agreement had not yet expired.[10]

11. During the summer of 2025, the parties began negotiating the terms under which Iovate USA would terminate the Kenco Agreement prior to its expiration. The parties were close to finalizing an agreement when the NOI Proceedings were commenced. The potential arrangement under discussion contemplated, among other things, that the Kenco Agreement would be terminated at the end of October 2025 and that, during the transition period prior to the termination of the Kenco Agreement, Iovate USA would continue paying Kenco for services in accordance with the Kenco Agreement, including approximately $900,000 per month for ongoing services, approximately $1.5 million in arrears outstanding as at the date of filing, and a transition fee of approximately $3.7 million.[11]

12. In September 2025, Kenco brought an emergency motion in the Chapter 15 Proceedings seeking relief from the automatic stay or, in the alternative, adequate protection of its secured claim (the "**Emergency Motion**"). In its motion materials, Kenco asserted a general warehouseman's lien over the NOI Applicants' products in its possession and submitted that the NOI Applicants' termination-related obligations to Kenco exceeded $8.5 million.[12] The New York Court denied

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9 October 11 Parris Affidavit at para. 10.

10 October 11 Parris Affidavit at para. 11. All references to monetary amounts in this factum are in United States dollars unless noted otherwise.

11 October 11 Parris Affidavit at para. 12.

12 October 11 Parris Affidavit at para. 13.

Kenco's request for expedited treatment of the Emergency Motion and, as of October 11, 2025, has yet to schedule or hear the Emergency Motion.[13]

13. Iovate USA has not completed its transition to RJW for its customer procurement and fulfillment operations and continues to require Kenco's services until approximately the end of October 2025. [14]

14. As of the beginning of October 2025, Kenco was storing approximately $18 million worth of Iovate USA's inventory in its facility. It is anticipated that the inventory will have been substantially transitioned to RJW and to customers by the return of this motion.[15]

C. The Settlement Agreement

15. Since the commencement of the NOI Proceedings, Kenco, the Proposal Trustee, and the NOI Applicants have engaged in extensive negotiations to reach a consensual resolution of the issues concerning the Kenco Agreement while maintaining continuity of distribution operations.[16]

16. These negotiations proved fruitful. On October 8, 2025, Iovate USA and Kenco entered into the Settlement Agreement, pursuant to which:[17]

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[13] October 11 Parris Affidavit at para. 14.

[14] October 11 Parris Affidavit at para. 15.

[15] October 11 Parris Affidavit at para. 15.

[16] October 11 Parris Affidavit at para. 16.

[17] October 11 Parris Affidavit at paras. 17-18. The key terms of the Settlement Agreement are summarized in detail in the October 11 Parris Affidavit at para. 17.

(a) Iovate USA shall pay to the Proposal Trustee the sum of $2.8 million to be held in escrow (the "**Settlement Funds**"),[18] which the Proposal Trustee shall immediately disburse to Kenco following approval of the Settlement Agreement by Lenders, the Proposal Trustee, and associated bankruptcy court(s);[19]

(b) Iovate USA shall pay Kenco's invoices for services rendered post-petition (the "**Post-Petition Services**") within seven days of receipt of any such invoice, which shall be issued by Kenco to Iovate USA by close of business on October 10, 2025;[20]

(c) Kenco shall issue an invoice for the estimated costs of services to be rendered during October 2025 by close of business on October 10, 2025, which Iovate USA shall pay within seven days of receipt;[21]

(d) Kenco will support the NOI Applicants' orderly restructuring process;[22] and

(e) Kenco will continue to provide services to Iovate USA pursuant to the Kenco Agreement until Iovate USA's goods are no longer located at Kenco's facility.[23]

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18 The Settlement Funds have now been paid to the Proposal Trustee: October 11 Parris Affidavit at para. 17(a).

19 October 11 Parris Affidavit at para. 17(a)-(b).

20 October 11 Parris Affidavit at para. 17(c).

21 October 11 Parris Affidavit at para. 17(d)-(f). As Iovate USA will be pre-paying Kenco for services to be rendered during October 2025, any overpayment will be credited back to Iovate USA within thirty days of payment.

22 October 11 Parris Affidavit at para. 17(g).

23 October 11 Parris Affidavit at para. 17(h).

17. The NOI Applicants are projected to have sufficient funding to fulfill the obligations under the Settlement Agreement.[24]

18. As part of the settlement between Iovate USA and Kenco, the NOI Applicants are also seeking approval of a mutual release in the Settlement Approval Order, which will provide a full and final resolution to the dispute between Kenco and Iovate USA in respect of the Kenco Agreement (the "**Releases**").[25]

PART III - THE ISSUES

19. The issue to be determined on this motion is whether this Court should grant the Settlement Approval Order.

PART IV - THE LAW

20. It is well-established that courts have the jurisdiction to approve settlements entered into by debtors during proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**").[26] Similar relief has been granted in proposal proceedings under the BIA.[27] Just as a CCAA court may approve a settlement agreement under its "broad statutory jurisdiction"

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[24] October 11 Parris Affidavit at para. 23.

[25] October 11 Parris Affidavit at para. 20.

[26] *Robertson v. ProQuest Information & Learning Co.*, 2011 ONSC 1647 at para. 22.

[27] See, *e.g.*, *Athabasca Minerals Inc. et al (Re)* (19 April 2024), Calgary 25-3009380 (ABKB) (Order: Approval of Settlement Agreement, Settlement Payment & Sealing Order) at para. 3; *YG Limited Partnership et al (Re)* (24 May 2022), Toronto BK-21-02734090-0031 (ONSC) (Settlement Approval Order) at para. 2; *Tartan Completion Systems Inc. (Re)* (24 April 2020), Calgary 25-2618433 (ABQB) (Order) at paras. 3-4; *Tron Construction & Mining Inc. et al (Re)* (14 April 2023), Saskatoon BKY-RG-00143-2022 (SKQB) (Order Approving Settlement) at paras. 3-4.

under section 11 of the CCAA,[28] section 183(1) of the BIA provides this Court with jurisdiction to approve settlement agreements in proposal proceedings.

21. The factors developed in the CCAA case law remain relevant in determining whether to approve the Settlement Agreement in these NOI Proceedings, consistent with the trend toward harmonizing insolvency law to the extent possible.[29] These factors include: (a) whether the settlement is fair and reasonable; (b) whether the settlement provides substantial benefits to stakeholders; and (c) whether the settlement is consistent with the purpose and spirit of the CCAA,[30] which shares the "same remedial purpose" as proposals under the BIA.[31]

22. In assessing whether the proposed settlement is fair and reasonable, CCAA courts can consider "the settlement's balancing of the interests of all parties, equitable treatment of the parties, including the creditors who are not signatories to the agreement, and its benefit to the petitioners and its stakeholders generally."[32] CCAA courts have frequently approved settlement agreements "where a settlement avoids complex and costly legal contests and which contribute to advancing the restructuring on a timely and efficient basis."[33]

23. The above factors are satisfied here. The Settlement Agreement is fair and reasonable. Its terms are the result of extensive good-faith negotiations between Kenco, the Proposal Trustee, and

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28 *1057863 B.C. Ltd. (Re)*, 2024 BCSC 1111 at para. 13 [*Northern Pulp*].

29 See *Kitchener Frame Limited (Re)*, 2012 ONSC 234 at para. 70 [*Kitchener Frame*]; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 24 [*Century Services*].

30 *Northern Pulp* at para. 15.

31 Century Services at para. 15.

32 *Northern Pulp* at para. 16.

33 *Northern Pulp* at para. 14.

the NOI Applicants.[34] The Settlement Agreement reduces the over $8.5 million potential liability arising from the Emergency Motion (plus the litigation costs required to defend it) to the more certain Settlement Funds amount of $2.8 million, which is also less than the approximately $1.5 million in arrears and $3.7 million transition fee contemplated by the settlement framework that was being negotiated prior to the commencement of the NOI Proceedings.[35]

24. Further, the NOI Applicants are not aware of any creditors that would be materially prejudiced if the Settlement Agreement and the Releases are approved. The NOI Applicants have been engaging in discussions with stakeholders throughout these NOI Proceedings and are not aware of any opposition to the proposed Settlement Agreement or the Releases.[36] In fact, the Lenders, as the NOI Applicants' primary secured creditors, as well as the Proposal Trustee, are supportive of the Settlement Agreement and the Releases.[37]

25. The Settlement Agreement provides significant benefits to the NOI Applicants and their stakeholders, including: [38]

(a) avoiding or mitigating disruption to Iovate USA's distribution operations, as the Post-Petition Services contemplated under the Settlement Agreement continue to be required while Iovate USA transitions its customer procurement and fulfillment operations to RJW;

[34] October 11 Parris Affidavit at para. 16.

[35] October 11 Parris Affidavit at paras. 12-13, 17(a).

[36] October 11 Parris Affidavit at para. 21.

[37] October 11 Parris Affidavit at para. 22.

[38] October 11 Parris Affidavit at paras. 18-19.

(b) providing a clear and cost-effective approach to handling Iovate USA's inventory currently located at the Kenco facility;

(c) eliminating the uncertainty and cost associated with protracted litigation with Kenco both in Canada and the United States; and

(d) providing a full and final resolution to the issues as between the parties relating to the Kenco Agreement.

26. The Releases will also allow the NOI Proceedings to proceed in an efficient and cost-effective manner to maximize realizations for the NOI Applicants' creditors and stakeholders.[39]

27. Finally, approving the Settlement Agreement also is consistent with the purpose of proposal proceedings under the BIA, namely to "permit the debtor to restructure its business and, where possible, avoid the social and economic costs of liquidating its assets."[40] By lessening disruption to Iovate USA's operations and removing the potential costly distraction of protracted cross-border litigation, the Settlement Agreement would help provide the NOI Applicants and Proposal Trustee with the time and resources necessary to pursue a successful restructuring for the benefit of all stakeholders.

28. The Proposal Trustee, as the court appointed officer, is supportive of the Settlement Agreement and Releases, and believes the Settlement Agreement is in the best interest of the NOI Applicants and their stakeholders.[41]

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[39] October 11 Parris Affidavit at para. 20.

[40] *Kitchener Frame* at para. 70.

[41] October 11 Parris Affidavit at para. 22.

PART V - RELIEF REQUESTED

29. The NOI Applicants request that this Court grant the Settlement Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of October, 2025.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *1057863 B.C. Ltd. (Re)*, 2024 BCSC 1111
2. *Athabasca Minerals Inc. et al (Re)* (19 April 2024), Calgary 25-3009380 (ABKB) (Order: Approval of Settlement Agreement, Settlement Payment & Sealing Order)
3. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
4. *Kitchener Frame Limited (Re)*, 2012 ONSC 234
5. *Robertson v. ProQuest Information & Learning Co*., 2011 ONSC 1647
6. *Tartan Completion Systems Inc. (Re)* (24 April 2020), Calgary 25-2618433 (ABQB) (Order)
7. *Tron Construction & Mining Inc. et al (Re)* (14 April 2023), Saskatoon BKY-RG-00143-2022 (SKQB) (Order Approving Settlement)
8. *YG Limited Partnership et al (Re)* (24 May 2022), Toronto BK-21-02734090-0031 (ONSC) (Settlement Approval Order)

I certify that I am satisfied as to the authenticity of every authority.

Date October 15, 2025

Signature

SCHEDULE “B”

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

> **(a)** the insolvent person’s intention to make a proposal,
>
> **(b)** the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
>
> **(c)** the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

> **(a)** a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
>
> **(b)** a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
>
> **(c)** a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

> **(a)** such release would unduly prejudice the insolvent person; and
>
> **(b)** non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person’s reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

> **(a)** shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;
>
> **(b)** shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —
>
> > **(i)** with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and
> >
> > **(ii)** with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and
>
> **(c)** shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

> **(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
>
> **(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
>
> **(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
>
> **(c)** the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

> **(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;
>
> **(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time
(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal
(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
(b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Courts vested with jurisdiction
183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;
(b) [Repealed, 2001, c. 4, s. 33]
(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
(e) in the Province of Prince Edward Island, the Supreme Court of the Province;
(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

General power of court
11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this

Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE HEALTH SCIENCES INTERNATIONAL INC.

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FACTUM OF THE IOVATE ENTITIES

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