Court File No.: [•]

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD., CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS BIOPHARMA CORPORATION

Applicants

FACTUM OF THE APPLICANTS
(CCAA Application)

July 25, 2022

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FACTUM OF THE APPLICANTS

PART I: INTRODUCTION

1. MPX International Corporation ("**MPXI**"), BioCannabis Products Ltd. ("**BioCannabis**"), Canveda Inc. ("**Canveda**"), The CinG-X Corporation ("**CinG-X**"), Spartan Wellness Corporation ("**Spartan**"), MPXI Alberta Corporation ("**MPXI Alberta**"), MCLN Inc. ("**MCLN**"), and Salus BioPharma Corporation ("**Salus BioPharma**") (each individually, an "**Applicant**", and collectively, the "**Applicants**") seek urgent relief pursuant to an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. MPXI is a reporting issuer listed on the Canadian Securities Exchange. It wholly-owns each of the other Applicants, and wholly-owns or has an interest in several other non-Applicant affiliates[1] (each subsidiary of MPXI individually a "**Subsidiary**" and together the "**Subsidiaries**", and collectively with MPXI, the "**Company**"). Through its Subsidiaries, it is involved in cannabis production and resale, management consulting for cannabis companies, and cannabis education.

3. The Applicants are in a dire liquidity crisis and are not able to meet their obligations as they become due. Absent the approval of the interim financing proposed to be made available under the DIP Loan (as defined below), the Company will not be able to fund its next payroll (which is paid in arrears) scheduled to be paid on or around July 29, 2022. Accordingly, the Applicants believe that this CCAA proceeding is in the best interests of their stakeholders. A proceeding under the CCAA presents the only possible means of providing the Applicants with

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[1] The non-Applicant affiliates are: MPX Australia Pty Ltd.; MPXI UK Limited; MPXI Lesotho (Pty) Ltd.; Highland Farms (Pty) Ltd.; MPXI Malta Operations Limited; MPXI Malta Property Limited; Alphafarma Operations Limited; MPXI Malta Holding Limited; MPXI SA Pty Ltd.; First Growth Holding Pty Ltd.; Salus Bioceutical (Thailand) Co., Ltd.; Salus International Management Ltd.; Holyworld SA; and MPXI Labs SA (collectively, the "**Non-Applicant Stay Parties**"). MPXI also has a minority interest in Prime Pharmaceutical Corporation, which in turn controls Primapharm Funding Corporation. MPXI is not involved in the day to day operations of either of these companies, and neither are Applicants or Non-Applicant Stay Parties.

the breathing space required to develop and oversee an orderly sale process, while maintaining operations in the ordinary course and in compliance with the cannabis regulatory regime, with a view to benefitting all stakeholders.

4. The relief sought in the Initial Order is limited to what is reasonably necessary to allow the Applicants to maintain the *status quo* and continue operations in the ordinary course during the initial 10-day stay of proceedings (the "**Stay of Proceedings**"). The Applicants intend to return to this Court for additional relief necessary to advance the CCAA proceedings at a hearing to be scheduled prior to the expiration of the Stay of Proceedings (the "**Comeback Hearing**").

PART II: FACTS

5. The facts underlying this Application are more fully set out in the affidavit of Jeremy Blumer, sworn July 25, 2022 (the "**Initial Affidavit**").[2] All capitalized terms used but not defined herein have the meanings ascribed to them in the Initial Affidavit.

A. The Applicants

6. All of the Applicants are Canadian companies. MPXI is the ultimate parent company, and all of the other Applicants are wholly-owned by MPXI. Each of the Applicants was incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (Ontario) (the "**OBCA**"), the *Business Corporations Act* (Alberta), RSA 2000, c B-9 (the "**ABCA**") or the *Canada Business Corporations Act,* RSC 1985, c C-44 (the "**CBCA**").[3]

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[2] Affidavit of Jeremy Blumer sworn on July 25, 2022 [Initial Affidavit], Application Record at Tab 2[Application Record].
[3] Initial Affidavit, supra note 2 at paras 14-24, Application Record at Tab 2.

7. MPXI was incorporated under the OBCA by articles of incorporation dated October 17, 2018.[4] At the time of its incorporation, MPXI was a subsidiary of MPX Bioceutical Corporation ("**MPX Bio**"). It was incorporated in order to effect a plan of arrangement (the "**Arrangement**") among MPXI, MPX Bio and iAnthus Capital Holdings Inc. under the *Business Corporations Act* (British Columbia), SBC 2002, c 57.[5]

8. The Canadian cannabis "plant-touching" operations of the Company are conducted through Canveda, which was incorporated under the CBCA. Canveda is a licensed cultivator, processor, and seller under the Cannabis Act, and maintains a fully constructed 12,000 square foot facility located in Peterborough, Ontario (the "**Canveda Facility**").[6]

9. Spartan, a CBCA company, and MCLN, an OBCA company, are both in the business of telehealth and cannabis education. Other than MPXI Alberta, which was incorporated under the ABCA, all of the remaining Applicants (BioCannabis, CinG-X, and Salus Biopharma) were incorporated under the OBCA. None of these Applicants currently have any material business, assets, or operations.

B. The Non-Applicant Stay Parties

10. Aside from the Applicants, MPXI has partial interests in certain Canadian entities. MPXI holds approximately 50% of the common shares and warrants of Salus International Management Ltd. ("**Salus International**"), an OBCA company.[7] Salus International controls voting shares representing over 97% of the votes of a Thai corporation, Salus Bioceutical (Thailand) Co., Ltd.

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[4] Initial Affidavit, supra note 2 at para 14, Application Record at Tab 2.
[5] Initial Affidavit, supra note 2 at para 15, Application Record at Tab 2.
[6] Initial Affidavit, supra note 2 at para 37, Application Record at Tab 2.
[7] Initial Affidavit, supra note 2 at para 25, Application Record at Tab 2.

("**Salus Bioceutical**").[8] As explained below, Salus Bioceutical is a key and valuable asset for MPXI, and its continued operations will be important for the Applicants to successfully restructure their affairs and maximize value for their stakeholders.

11. MPXI also holds a minority interest in Prime Pharmaceutical Corporation, which controls another subsidiary.[9] Because MPXI is not involved in the business or operations of these companies, neither are Applicants or Non-Applicant Stay Parties.

12. The other Non-Applicant Stay Parties are registered in Australia, Lesotho, Malta, Switzerland, South Africa, Thailand, and the United Kingdom. The key business segments of the Non-Applicant Stay Parties are discussed below. Notwithstanding that these parties are not Applicants, the Applicants believe that it is critical to the best interests of the Applicants and their stakeholders to extend the benefits of the Stay of Proceedings to the Non-Applicant Stay Parties.

C. Business of the Company

1. The Applicants

13. MPXI is a multinational diversified cannabis company in the business of developing and operating assets across the international cannabis industry with an emphasis on cultivating, manufacturing and marketing products which include cannabinoids as their primary active ingredient.

14. As discussed above, Canveda is licensed to produce, sell, and export cannabis. The Canveda Facility produces high quality cannabis flower, and Canveda holds the following licenses:

[8] Initial Affidavit, supra note 2 at para 26, Application Record at Tab 2.
[9] Initial Affidavit, supra note 2 at para 27, Application Record at Tab 2.

(a) a license issued by Health Canada to produce, sell, and export all categories of authorized Canadian cannabis products, including topicals, extracts and edibles;

(b) a license issued by the Canada Revenue Agency authorizing Canveda to purchase excise stamps for the purposes of collecting and remitting excise duty on cannabis products;

(c) a license issued by the Alberta Gaming, Liquor & Cannabis Commission authorizing Canveda to market cannabis products in Alberta; and

(d) a license issued by the Saskatchewan Liquor and Gaming Authority authorizing Canveda to supply cannabis to Saskatchewan from its Peterborough location.[10]

15. MPXI owns several recognized medicinal and recreational cannabis brands and products that are produced and distributed by Canveda across the Provinces of Alberta, British Columbia, Ontario, and Saskatchewan.[11]

16. Two of MPXI's Subsidiaries – Spartan and MCLN – focus on telehealth and cannabis education. Spartan's business is focused on helping veterans suffering from various ailments.[12] MCLN operates the "Medical Cannabis Learning Network" platform which, among other things, functions as a private on-line educational platform providing information on the use of medical cannabis.[13]

17. The remainder of the Applicants do not have material assets or operations.

2. The Non-Applicant Stay Parties

[10] Initial Affidavit, supra note 2 at para 39, Application Record at Tab 2.
[11] Initial Affidavit, supra note 2 at para 38, Application Record at Tab 2.
[12] Initial Affidavit, supra note 2 at para 40, Application Record at Tab 2.
[13] Initial Affidavit, supra note 2 at para 41, Application Record at Tab 2.

18. Aside from the Applicants, the Company has material assets, including certain facilities and licenses, through the following businesses:

(a) *Operations in Thailand*

19. Salus International, which is registered under the OBCA, provides design, planning, financing, training, and on-going operational support to cannabis initiatives, partnerships, and joint ventures in southeast Asia. Its revenue is generated primarily from fees charged for the supply of management services, and it receives at least 90% of the net income of Salus Bioceutical pursuant to a management services agreement.[14]

20. Salus Bioceutical is a joint venture between Salus International and certain Thai investors, and as noted above, Salus International controls over 97% of the votes of Salus Bioceutical. Salus Bioceutical is involved in the cultivation, processing and distribution of high-quality, EU-GMP compliant, medical-grade cannabis products such as CBD distillate, isolate powder, and water-soluble isolate for the medical community in Thailand.[15] It holds several licenses and certificates allowing it to produce cannabis-related products, and it recently opened a large cannabis/hemp production plant, which it leases in Thailand.[16]

21. Salus Bioceutical is an important Subsidiary with material assets and operations into which the Company has invested significant financial and other resources. Accordingly, it is critical for the Company that Salus Bioceutical be able to continue its operations without disruption. To do

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[14] Initial Affidavit, supra note 2 at para 45, Application Record at Tab 2.
[15] Initial Affidavit, supra note 2 at para 46, Application Record at Tab 2.
[16] Initial Affidavit, supra note 2 at para 48, Application Record at Tab 2.

this, Salus Bioceutical will need to be able to immediately access funds advanced pursuant to the DIP Loan, and to receive the benefit of the Stay of Proceedings.

(b) *Other International Operations*

22. The Company also has operations in Switzerland, South Africa, and Malta. In Switzerland, Holyworld SA is a wholly-owned Subsidiary that leases a laboratory that can produce up to 30kg of high-quality distillate per month. Holyworld SA has struggled with cash flow resulting in material unpaid liabilities.[17]

23. In South Africa, MPXI indirectly holds an 80% interest through another Subsidiary in First Growth Holdings (Pty) Ltd. ("**First Growth**"). First Growth is licensed to cultivate and export cannabis at a facility it leases, and it is expected that the biomass produced from the First Growth Facility will primarily support the Company's operations in Malta.[18]

24. The Company's operations in Malta are conducted mainly through MPXI Malta Operations Ltd. ("**Malta Operations**"), a company in which MPXI holds at least 75% of the voting shares, and Alphafarma Operations Ltd. ("**Alphafarma**"), a company wholly-owned by Malta Operations through MPXI Malta Property Limited.[19] Alphafarma recently obtained EU-GMP Certification, as well as a License for the Production of Cannabis for Medicinal and Research Purposes.[20]

D. Assets and Liabilities

[17] Initial Affidavit, supra note 2 at para 51, Application Record at Tab 2.
[18] Initial Affidavit, supra note 2 at para 52-53, Application Record at Tab 2.
[19] Initial Affidavit, supra note 2 at para 55, Application Record at Tab 2.
[20] Initial Affidavit, supra note 2 at para 56, Application Record at Tab 2.

25. As at March 31, 2022, the Company had total consolidated assets with a book value of approximately $47,133,302, and liabilities with a book value of approximately $37,244,120.[21] The Applicants expect to have only approximately $169,196 cash on hand at the close of business today, and are facing an urgent liquidity crisis.

1. Secured Obligations

26. MPXI has closed multiple tranches of a private placement offering (the "**Offering**") of units (the "**Units**") of MPXI. Each Unit consists of one 12% secured convertible debenture of MPXI (the "**Debentures**", and the holders of the Debentures the "**Debentureholders**") in the principal amount of US$1,000, as well as certain common share purchase warrants.[22]

27. MPXI has struggled to make interest payments under the Debenture Indenture. MPXI failed to make interest payments on the Coupon Date on: March 31, 2021; September 30, 2021; December 31, 2021; and March 31, 2022. After each of these dates, waivers of the event of default provision related to the payment of interest were granted by Debentureholders.[23] In other cases, MPXI has satisfied the payment of interest through the issuance of additional Units.[24]

28. MPXI has also obtained short-term financing pursuant to a series of loans (the "**Bridge Loans**") through which the lenders converted the principal owing into Units in the Offering on terms favourable to the lenders.[25] As of July 21, 2022, the total face value of the principal of outstanding convertible debentures is US$19,281,000.[26] There are no outstanding Bridge Loans because they were all converted to Units.

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[21] Initial Affidavit, supra note 2 at paras 79-80, Application Record at Tab 2.
[22] Initial Affidavit, supra note 2 at para 82, Application Record at Tab 2.
[23] Initial Affidavit, supra note 2 at para 87, Application Record at Tab 2.
[24] Initial Affidavit, supra note 2 at para 87, Application Record at Tab 2.
[25] Initial Affidavit, supra note 2 at para 88, Application Record at Tab 2.
[26] Initial Affidavit, supra note 2 at para 81, Application Record at Tab 2.

29. MPXI's obligations in respect of the Debentures are secured by the following:

(a) a general security agreement dated June 30, 2020 securing all of the present and after-acquired property of MPXI; and

(b) a pledge agreement dated June 30, 2020 by MPXI pledging all of the shares it holds of BioCannabis, Canveda, Holyworld SA, MCLN, MPX Australia Pty. Ltd., MPXI Alberta, MPXI Malta Holding Limited, MPXI Malta Operations Limited, MPXI UK Limited, Salus BioPharma, Spartan, CinG-X. MPXI also later deposited its shares in Salus International with the trustee of the Debenture Indenture.[27]

30. The Debenture Indenture is guaranteed by BioCannabis, Canveda, Holyworld SA, MCLN, MPX Australia Pty Ltd, MPXI Alberta, MPXI UK, MPXI Malta Operations Limited, Salus BioPharma, Spartan and CinG-X pursuant to a guarantee agreement dated June 30, 2020, as well as MPXI Malta Holding Limited pursuant to a separate guarantee agreement with the same date.[28] Each of these parties other than Holyworld SA executed general security agreements in favour of the trustee of the Debenture Indenture.[29]

31. In addition to the obligations owing in relation to the Debentures, Canveda has also assigned a term deposit as security in favour of Alterna Savings and Credit Union Ltd. ("**Alterna**") in the amount of $40,000, which amount relates to a letter of credit issued by Alterna.[30]

2. Unsecured Obligations and Claims

32. The Applicants rely on a number of vendors and third party service providers and, as such, are party to a number of agreements for the provision of certain essential services.[31] As of July 20,

[27] Initial Affidavit, supra note 2 at para 89, Application Record at Tab 2.
[28] Initial Affidavit, supra note 2 at para 90, Application Record at Tab 2.
[29] Initial Affidavit, supra note 2 at para 90, Application Record at Tab 2.
[30] Initial Affidavit, supra note 2 at para 91, Application Record at Tab 2.
[31] Initial Affidavit, supra note 2 at para 70, Application Record at Tab 2.

2022, Canveda had non-current accounts payable of $789,565.86, Spartan had non-current accounts payable of $126,409.49, and MPXI had non-current accounts payable of $799,635.98.

33. The Applicants also have employee liabilities. The aggregate payroll for the Company is:

(a) MPXI – approximately $90,000/month;

(b) Canveda – approximately $92,000/month;

(c) Spartan – approximately $79,000/month; and

(d) International (Non-Applicant Stay Parties) – approximately $155,150/month.[32]

34. In addition, the Applicants are parties to several leases, including in respect of the head office of the Company in Toronto, an operational office in Ottawa, and the Canveda Facility, certain of which are not current.[33]

35. The Applicants are also in arrears in respect of certain tax obligations, including approximately $503,302 in excise tax arrears.[34]

36. The Company also engages in intercompany borrowing, through which parent companies lend funds to their subsidiaries, and MPXI has advanced unsecured loans to several of its Subsidiaries.[35] Certain Non-Applicant Stay Parties have other material unsecured liabilities. This includes a promissory note pursuant to which First Growth is a borrower in the amount of up to US$500,000. This loan is now payable and has been put to MPXI, as permitted by its terms.[36] Finally, certain of the Applicants are also defendants in ongoing litigation.[37]

[32] Initial Affidavit, supra note 2 at para 59, Application Record at Tab 2.
[33] Initial Affidavit, supra note 2 at paras 63-68, Application Record at Tab 2.
[34] Initial Affidavit, supra note 2 at para 72, Application Record at Tab 2.
[35] Initial Affidavit, supra note 2 at para 96, Application Record at Tab 2.
[36] Initial Affidavit, supra note 2 at para 95, Application Record at Tab 2.
[37] Initial Affidavit, supra note 2 at para 93, Application Record at Tab 2.

E. Issues Leading to the CCAA Filing

37. The Applicants have struggled with cash flow since the onset of the COVID-19 pandemic, and their cash position is currently not sufficient to meet their obligations as they come due. The urgency of this application stems from the need for the Applicants to access financing to meet their ongoing and future payroll obligations and maintain business operations in order to preserve and maximize value while preventing enforcement action by certain contractual counterparties.

F. Proposed DIP Financing

38. Pursuant to a term sheet executed July 25, 2022 (the "**DIP Term Sheet**"), certain of the Debentureholders holding approximately 52% of the outstanding Debentures have agreed to provide the Applicants, as borrowers, with a super-priority, non-revolving credit facility up to a maximum principal amount of $2.67 million (the "**DIP Loan**").[38] The DIP Loan will bear interest at 12% per annum, and also includes a commitment fee equal to 2% of the overall value of the DIP Loan.[39] The funds will be advanced by certain initial Debentureholders listed on Schedule D of the DIP Term Sheet, and all Debentureholders will have an opportunity to participate in the DIP Loan based on their pro-rata share of Debentures held (the Debentureholders that participate in the DIP Loan, the "**DIP Lenders**"). The DIP Loan will be guaranteed by many of the Non-Applicant Stay Parties.[40]

39. The DIP Loan is conditional, among other things, upon the granting of a priority charge in the amount of $1.2 million over the Property in favour of the DIP Lenders to secure the amounts

[38] Initial Affidavit, supra note 2 at para 97, Application Record at Tab 2.
[39] Initial Affidavit, supra note 2 at paras 99-100, Application Record at Tab 2.
[40] Initial Affidavit, supra note 2 at para 97, Application Record at Tab 2.

borrowed under the DIP Loan.[41] In accordance with the DIP Term Sheet, the DIP Loan is to be used to fund the Applicants' working capital needs during these CCAA proceedings.

40. The amount of the DIP Loan to be funded during the Stay of Proceedings (up to $1.2 million) is only that portion that is necessary to ensure the continued operation of the Applicants' business in the ordinary course for the next 10 days. Proceeds of $696,000 are necessary for the Applicants to meet their immediate payroll obligations (approximately $192,000) and to pay certain ordinary course operating disbursements including inventory purchases, insurance, rent and utilities (approximately $504,000).[42]

41. The rest of the DIP Loan is made up of US$500,000 that will be loaned by the Applicants to Salus International to fund the immediate operational needs of Salus Bioceutical.[43] These proceeds are immediately necessary to ensure Salus Bioceutical's continued operations and will provide urgently required working capital to be used to pay for employee salaries, supplies, and raw goods for processing. Absent this funding, Salus Bioceutical would likely need to immediately shut down operations, which would destroy the value of MPXI's most significant investment.

42. It is a condition precedent to the first advance under the DIP Loan that all head office staff be terminated with the exception of those employee(s) who are retained with the DIP Lenders' consent on such terms as the DIP Lenders' consent to.[44] The DIP Loan is subject to other customary covenants, conditions precedent, and representations and warranties made by the Applicants.

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[41] Initial Affidavit, supra note 2 at para 101, Application Record at Tab 2.
[42] Initial Affidavit, supra note 2 at para 103, Application Record at Tab 2.
[43] Initial Affidavit, supra note 2 at para 104, Application Record at Tab 2.
[44] Initial Affidavit, supra note 2 at para 102, Application Record at Tab 2.

G. Proposed Monitor

43. It is proposed that KSV Restructuring Inc. will act as Monitor in these CCAA Proceedings (in such capacity, the "**Proposed Monitor**").

PART III: ISSUES

44. The issue to be considered on this application is whether to grant the proposed form of Initial Order. The issues addressed in this factum are whether:

(a) each of the Applicants is a "debtor company" to which the CCAA applies;

(b) the Stay of Proceedings should be granted in favour of the Applicants;

(c) the Stay of Proceedings should be extended to the Non-Applicant Stay Parties;

(d) the Court should approve the proposed DIP Loan and grant the DIP Lenders' Charge (as defined below);

(e) the Administration Charge (as defined below) should be granted;

(f) the Directors' Charge (as defined below) should be granted;

(g) the Applicants should be entitled to make certain pre-filing payments with the consent of the Monitor and the DIP Lenders; and

(h) MPXI should be relieved of any obligation to call and hold its annual general meeting of shareholders (the "**AGM**") until further Order of this Court.

B. The Applicants are "debtor companies" to which the CCAA applies

45. The CCAA applies in respect of a "debtor company or affiliated debtor companies" whose liabilities exceed $5 million.[45] The term "debtor company" is defined as "any company that: (a) is

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[45] *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, s 3(1) [CCAA].

bankrupt or insolvent […]", and the term "company" is defined as "any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province […]".[46] The CCAA also specifies companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company.[47] Each of the Applicants is a "company" within the meaning of the CCAA as each was incorporated under Canadian provincial or federal laws. All of the Applicants other than MPXI are direct subsidiaries of MPXI, and the Applicants are therefore affiliated companies.

46. Each of the Applicants is a "debtor company" as defined in the CCAA. The insolvency of a debtor company is assessed as of the time of filing the CCAA application.[48] Courts have taken guidance from the definition of "insolvent person" in subsection 2(1) of the *Bankruptcy and Insolvency Act*, which, in relevant part, provides that an "insolvent person" is a person:

(a) who is for any reason unable to meet his obligations as they generally become due;

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[49]

47. A company is also insolvent for the purposes of the CCAA "if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring".[50]

[46] CCAA, supra note 45 at s 2(1).
[47] CCAA, supra note 45 at s 3(2)(a).
[48] *Re Stelco Inc (2004)*, 48 C.B.R. (4th) 299 (Ont. Sup. Ct. J.) [Commercial List]) at para 4 [*Stelco*].
[49] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 2.
[50] *Stelco*, supra note 48 at paras 26, 40.

48. The Applicants collectively have over $5 million in debt. As of July 21, 2022, MPXI had indebtedness of approximately US$19,281,000 pursuant to the Debentures, and this debt is guaranteed by each of the other Applicants.

49. As discussed above, the Applicants have struggled to meet their obligations as they come due for months, and several of the Applicants are behind on their accounts payable. The Applicants collectively have only approximately $169,196 of cash on hand. Absent the Stay of Proceedings and the approval of the DIP Loan, the Applicants will be unable to meet their obligations as they come due. As such, the Applicants are affiliated debtor companies to which the CCAA applies.

C. The Stay of Proceedings Should be Granted

1. The Stay of Proceedings should be granted in favour of the Applicants

50. Section 11.02 of the CCAA provides the Court with the power to impose a stay of proceedings if it is satisfied that circumstances exist that make the order appropriate.[51] A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.[52] Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.[53] This 10-day period "allows for a stabilization of operations and a negotiating window".[54] The Initial Order is in accordance with the above requirement.

51. The Applicants require the Stay of Proceedings to prevent potential enforcement action by certain contractual counterparties. It would be significantly detrimental to the Applicants' business

[51] CCAA, supra note 45 at s 11.02.
[52] *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14; *Target Canada Co*, 2015 ONSC 303 at para 8 [*Target*].
[53] CCAA, supra note 45 s 11.001; *Lydian International Limited (Re)*, 2019 ONSC 7473 at para 26 [*Lydian*].
[54] *Ibid* at para 30.

and ongoing operations if proceedings were commenced or continued, or rights and remedies were executed against them; therefore, without the Stay of Proceedings, the Applicants are unable to continue operations in the ordinary course of business. The Stay of Proceedings will stabilize and preserve the value of the Applicants' business and provide the Applicants with breathing space to develop and oversee an orderly sale and investor solicitation process, while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime.[55]

52. The Applicants submit that granting the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, meets the statutory requirements, and is appropriate.

2. The Stay of Proceedings Should be Extended to the Non-Applicant Stay Parties

53. This Court has authority to extend the Stay of Proceedings to the Non-Applicant Stay Parties pursuant to s. 11 and 11.02(1) of the CCAA, which allow it to make an initial order on any terms that the court may impose. In doing so, courts have looked at factors including whether the subsidiaries of the CCAA applicants had guaranteed the applicants' secured loans; whether the non-applicants were deeply integrated into the applicants' business operations; and whether the claims against the non-applicants are derivative of the primary liability of the applicants.[56]

54. In this case, these factors weigh in favour of extending the Stay of Proceedings to the Non-Applicant Stay Parties. Many of the Non-Applicant Stay Parties are guarantors for the Debentures, the primary debt of the Applicants. Further, the Non-Applicant Stay Parties are highly integrated into the business of the Company, and are all either wholly-owned or controlled by the ultimate parent company, MPXI. In addition, an extension of the stay to the Non-Applicant Stay Parties

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[55] Initial Affidavit, supra note 2 at para 105, Application Record at Tab 2.
[56] *Lydian,* supra note 53 at para 39; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 at paras 5, 18, and 31; *Canwest Global Communications Corp. (Re),* [2009] OJ No 4286 (Ont. Sup. Ct. J.) [Commercial List] [*Canwest Global*] at paras 28-29; and *Target,* supra note 52 at paras 49-50.

will prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions, and thereby prevent immediate loss of value for the Applicants' stakeholders. Therefore, it is just and reasonable in this case to extend the Stay of Proceedings to the Non-Applicant Stay Parties.

55. The Applicants intend to seek approval of a sales and investment solicitation process (the "**SISP**") at the Comeback Hearing. The extension of the Stay of Proceedings to the Non-Applicant Stay Parties, which the Applicants believe hold material value, is required in order to give comfort to potential bidders in the SISP that enforcement actions against the Non-Applicant Stay Parties will be stayed and that value in these entities will be preserved during the period in which the SISP is conducted. Without the benefit of the Stay of Proceedings, the Applicants' ability to market and sell their interests in the Non-Applicant Stay Parties and their respective assets would be compromised given the lack of stability that would exist.

D. The Proposed DIP Financing Should be Approved

1. The Proposed DIP Financing Satisfies Subsection 11.2(5) of the CCAA

56. Subsection 11.2(5) requires that this Court be satisfied, after considering all of the facts and circumstances in the case before it, that the interim financing sought to be approved is "reasonably necessary" for continued operations in such circumstances. What is "reasonably necessary" in each case is a question of fact based on the circumstances before the court.[57]

57. In line with the prior case law holding that DIP financing should be restricted to what is "reasonably necessary" to meet the debtor's needs, courts have approved DIP financing where it

[57] *Re: Mobilicity Group*, 2013 ONSC 6167 at para 30 [*Mobilicity*].

would provide stability to the debtor's business, ensure liquidity, prevent customers from going elsewhere, and ensure the day-to-day operations of the debtor's business.[58] The British Columbia Supreme Court has found that subsection 11.2(5) was satisfied as the interim financing was necessary to permit the applicants to maintain the value of the enterprise while they pursued a restructuring.[59]

58. Absent the proposed DIP Loan, the Applicants would be unable to maintain continued business operations in the ordinary course for the next 10 days. As discussed above, the DIP Loan is urgently needed to fund the immediate payroll obligations of the Applicants, and to pay ordinary course operating disbursements. In addition, a portion of the DIP Loan will be used to fund the immediate operational needs of Salus Bioceutical, a key asset of the Company that urgently needs the capital to pay for employee salaries, supplies, and the cost of raw goods for processing.

59. The DIP Loan is limited to what is strictly necessary for the continued operations of the Applicants until the Comeback Hearing; the requirement in subsection 11.2(5) is satisfied.[60] Much of the total DIP Loan must be used during the 10 days before the Comeback Hearing. These amounts have been carefully scrutinized by the Proposed Monitor and the DIP Lenders, each of which agree that these amounts are required.

2. The Proposed DIP Financing Satisfies the Criteria in Subsections 11.2(1), (4)

60. Subsection 11.2(1) expressly provides the Court with the statutory jurisdiction to grant a DIP financing charge "on notice to the secured creditors who are likely to be affected by the security or charge – in an amount that the court considers appropriate…having regard to [the

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[58] *Mobilicity*, supra note 57 at paras 30-31.
[59] *Miniso International Hong Kong Limited v. Migu Investments Inc,* 2019 BCSC 1234 at paras 86, 88.
[60] Initial Affidavit, supra note 2 at para 103, Application Record at Tab 2.

debtors'] cash-flow statement. The security or charge may not secure an obligation that exists before the order is made". In the Initial Order, the Applicants are seeking a DIP lenders' charge up to a maximum of $1.2 million (the "**DIP Lenders' Charge**") that will rank subordinate to the Administration Charge but have priority over the Directors' Charge.[61]

61. The DIP Lenders' Charge will not secure obligations incurred prior to the CCAA Proceedings, and the amount proposed to be funded is limited to the amount necessary to continue ordinary course operations prior to the Comeback Hearing. The DIP Lenders' Charge sought on this application is only for the amount to be accrued in the 10-day period preceding the Comeback Hearing.[62] The secured creditors will be served and have notice.

62. The non-exhaustive factors for a Court to consider in deciding whether to create a DIP financing charge are set out in subsection 11.2(4) of the CCAA. These factors include: the period during which the company is expected to be subject to CCAA proceedings; how the company's affairs are to be managed during the proceedings; whether the company's management has the confidence of its major creditors; whether the loan would enhance the prospects of a viable compromise or arrangement; the nature and value of the company's property; whether any creditor would be materially prejudiced; and the monitor's report.

63. The following factors support approval of the DIP Loan and the DIP Lenders' Charge:

(a) the Applicants are facing an urgent liquidity crisis. The Company will be unable to fund its next payroll or meet its commitments to its suppliers. The only way in which these obligations can be met is through the proposed DIP Loan. Any loss of important contracts or employees would be devastating to the Applicants' business;

[61] Initial Affidavit, supra note 2 at para 118, Application Record at Tab 2.
[62] Initial Affidavit, supra note 2 at para 120, Application Record at Tab 2.

(b) the proposed DIP Loan is necessary to maintain the ongoing business and operations of the Applicants;

(c) the proposed DIP Loan will preserve the value and going concern operations of the Company's business by ensuring the continued operations of the key business segments, which is in the best interests of the Applicants and their stakeholders;

(d) the DIP Lenders require the DIP Lenders' Charge to provide the DIP Loan;

(e) the amount of the proposed DIP Loan is appropriate having regard to the Applicants' cash-flow statement and the amount that is proposed to be funded prior to the Comeback Hearing is only the portion necessary to keep the Applicants operating in the ordinary course of business during that time;

(f) the cash flow projections demonstrate that debtor-in-possession financing is urgently required to provide the Applicants with the required liquidity for continued business operations in the ordinary course;

(g) the Proposed Monitor believes the economic terms of the DIP Loan are consistent with comparable CCAA proceedings; and

(h) the Proposed Monitor is supportive of the proposed DIP Loan and creditors of the Applicants will not be prejudiced as a result of its approval.[63]

64. The Applicants submit that approval of the proposed DIP Loan and the DIP Lenders' Charge is appropriate in the circumstances, consistent with the terms of the CCAA, reasonably necessary in order to enable the continued operation of the Applicants' business in the ordinary course, and in the best interests of the Applicants and their stakeholders – including the employees of the Applicants who are intended to be paid in the ordinary course from the proposed DIP Loan.

E. The Administration Charge Should be Granted

[63] Initial Affidavit, supra note 2 at paras 103-104, 127, Application Record at Tab 2; Pre-Filing Report of the Proposed Monitor at section 5.1.

65. The Applicants are seeking an Administration Charge in the amount of $300,000 (the "**Administration Charge**") to secure the professional fees and disbursements of the Proposed Monitor, along with its counsel and the Applicants' counsel, incurred prior to, on, or subsequent to the date of the Initial Order, incurred at their standard rates and charges.[64]

66. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge includes: the size and complexity of the business being restructured; the proposed role of the beneficiaries of the charge; whether there is unwarranted duplication of roles; whether the quantum of the proposed charge appears to be fair and reasonable; the position of the secured creditors likely to be affected by the charge; and the position of the monitor.[65]

67. The Applicants submit that it is appropriate for this Court to exercise its jurisdiction and grant the Administration Charge, given that:

(a) the Applicants' business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;

(b) the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have, and will continue to, contribute to these CCAA Proceedings and assist the Applicants with their business;

(c) each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles;

(d) the proposed beneficiaries of the Administration Charge have no retainers, either because none was ever provided or the small retainers have been exhausted;

[64] Initial Affidavit, supra note 2 at para 115, Application Record at Tab 2.
[65] *Canwest Publishing Inc*, 2010 ONSC 222 at para 54.

(e) no amounts from the initial advance under the DIP Loan will be used to pay the proposed beneficiaries of the Administration Charge;

(f) the quantum of the proposed Administration Charge is fair and reasonable;

(g) the proposed DIP Lenders support the Administration Charge; and

(h) the Proposed Monitor is supportive of the Administration Charge.[66]

F. The Directors' Charge Should be Granted

68. The Applicants are seeking a Directors' Charge in the amount of $145,000 (the "**Directors' Charge**") to secure the indemnity of their directors and officers for liabilities they may incur during the CCAA Proceedings.[67]

69. Section 11.51 of the CCAA affords the Court the jurisdiction to grant the Directors' Charge. This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.[68] A court may not make the order if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost", and the court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer "if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct".[69]

70. The Applicants submit it is appropriate in these circumstances for this Court to exercise its jurisdiction and grant the Directors' Charge, given that:

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[66] Initial Affidavit, supra note 2 at paras 115-117, Application Record at Tab 2.
[67] Initial Affidavit, supra note 2 at para 124, Application Record at Tab 2.
[68] *Canwest Global*, supra note 56 at paras 46-48.
[69] CCAA, supra note 45 at s 11.51(3)-(4).

(a) the directors and officers have indicated their continued service and involvement in these CCAA Proceedings is conditional upon the granting of the Directors' Charge;

(b) applicable insurance policies available to the Directors and Officers may provide insufficient coverage, and is contemplated to be cancelled in any event in order to conserve cash;

(c) the Directors' Charge applies only to the extent that the directors and officers do not have coverage under another directors and officers' insurance policy;

(d) the Directors' Charge would only cover obligations and liabilities that the Directors and Officers may incur after the commencement of the CCAA Proceedings and does not cover wilful misconduct or gross negligence;

(e) the Applicants require the active and committed involvement of certain directors and officers in order to continue business operations in the ordinary course;

(f) the amount of the Directors' Charge is reasonable in the circumstances and is limited to the potential exposure during the initial 10-day period; and

(g) the Proposed Monitor is supportive of the Directors' Charge.[70]

G. The Court Should Allow the Applicants to Make Certain Pre-Filing Payments

71. To preserve normal course business operations, the Applicants are seeking authorization in the Initial Order to make certain pre-filing payments, including payments for pre-filing goods or services supplied to the Applicants if, with the consent of the Proposed Monitor and the DIP Lenders, such expenses were incurred in the ordinary course of business and consistent with existing policies and procedures.[71] This will ensure that the Applicants' business continues uninterrupted throughout these proceedings to preserve maximum value for the benefit of the Applicants' stakeholders.

[70] Initial Affidavit, supra note 2 at paras 122-125, Application Record at Tab 2.
[71] Initial Affidavit, supra note 2 at para 112, Application Record at Tab 2.

72. In exercising its jurisdiction to authorize the payment of pre-filing obligations, courts have considered factors including whether the goods and services were integral to the business of the applicants; the debtors' need for the uninterrupted supply of the goods or services; the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities were appropriate; and the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.[72]

73. In consideration of the above, the Applicants require the continued supply of integral goods and services from their key vendors and service providers during these CCAA proceedings to maintain ordinary course operations. The Applicants' ability to operate their business in the normal course is dependent on their ability to obtain an uninterrupted supply of goods and services.[73] As noted, the Applicants will require the consent of the Proposed Monitor and the DIP Lenders in connection with any payments on account of pre-filing obligations. Both the Proposed Monitor and the DIP Lenders are supportive of the relief. In these circumstances, the Applicants believe the authority to make pre-filing payments under the Initial Order is appropriate and reasonable. This flexibility to pay pre-filing obligations is particularly important in a regulated industry such as the cannabis industry where continued access to critical services must be maintained.

H. MPXI should be relieved of its obligation to call its AGM until further Order of this Court

74. MPXI's AGM was recently rescheduled to July 29, 2022, which is the last date that MPXI is permitted to hold the AGM under applicable corporate and securities laws. In the circumstances, it is not in the best interests of the restructuring for the Applicants to hold the AGM as scheduled.

[72] *Cinram International Inc. (Re),* 2012 ONSC 3767 at para 68 of Schedule C.
[73] Initial Affidavit, supra note 2 at para 113, Application Record at Tab 2.

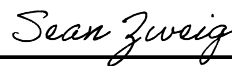
75. This Court has the jurisdiction to order that an annual meeting need not be called until further order of the Court, and Courts have frequently exercised their broad jurisdiction under the CCAA to permit public debtor companies to postpone their annual meeting pending further order of the Court.[74] This has included cases in which it was found that preparations for calling and holding the meeting would distract the debtor company's key personnel at a time when they need to focus on the restructuring, or where the shareholders had no economic interest in the insolvent company.[75] In this case, it would be an unnecessary distraction and unwarranted expense for MPXI to hold an AGM in the circumstances where it is insolvent and the equity value of MPXI is suspect at best.[76]

76. The postponement of the AGM will not prejudice any stakeholder. Key goals of the AGM will still be met – the incumbent directors will be able to continue to serve, and financial information will continue to be placed before shareholders throughout these proceedings. Therefore, it is just and appropriate to allow for the postponement of MPXI's AGM.

PART IV: RELIEF REQUESTED

77. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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[74] *Sears Canada Inc. et al*, Initial Order, Court File No. CV-17-11846-00CL, July 22, 2017 at para 54; *Canwest Global,* supra note 56*; Cline Mining Corporation (Re),* 2014 ONSC 6998 [*Cline Mining*].
[75] *Canwest Global,* supra note 56 at paras 53, 54; *Cline Mining*, *ibid* at paras 53 to 55.
[76] Initial Affidavit, supra note 2 at para 129, Application Record at Tab 2.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 (Ont. Sup. Ct. J.) [Commercial List]
2. *Canwest Publishing Inc, Re*, 2010 ONSC 222
3. *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60
4. *Cinram International Inc. (Re),* 2012 ONSC 3767
5. *Cline Mining Corporation (Re),* 2014 ONSC 6998
6. *Lydian International Limited (Re),* 2019 ONSC 7473
7. *Miniso International Hong Kong Limited v Migu Investments Inc*, 2019 BCSC 1234
8. *Re: Mobilicity Group,* 2013 ONSC 6167
9. *Re Stelco Inc*, (2004) 48 CBR (4th) 299 (Ont. Sup. Ct. J.) [Commercial List]
10. *Sears Canada Inc., et al.,* Initial Order, Court File No. CV-17-11846-00CL
11. *Sino-Forest Corporation (Re),* 2012 ONSC 2063
12. *Target Canada Co*, 2015 ONSC 303

SCHEDULE B – STATUTES RELIED ON

***Bankruptcy and Insolvency Act*, RSC 1985, c. B-3**

Section 2, "Insolvent Person"

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Section 2(1), "Company"

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies

Section 2(1), "Debtor Company"

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

Section 3

Application
(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Affiliated companies
(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled
(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary
(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

Section 11

General power of court
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.

Section 11.001

Relief reasonably necessary
An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application
(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application
(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application
(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction
(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders
(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered
(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor’s report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application
(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.51

Security or charge relating to director’s indemnification
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance
(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault
(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct or, in Quebec, the director’s or officer’s gross or intentional fault.

Section 11.52

Court may order security or charge to cover certain costs
(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,* AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD., CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS BIOPHARMA CORPORATION

Court File No.: [•]

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

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