

**CITATION:** Paladin Labs Canadian Holding Inc., 2024 ONSC 2224  
**COURT FILE NO.:** CV-22-00685631-00CL  
**DATE:** 2024-04-17

**SUPERIOR COURT OF JUSTICE - ONTARIO**

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

**AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND  
PALADIN LABS INC.**

**APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED**

**BEFORE:** Chief Justice Geoffrey B. Morawetz

**COUNSEL:** *Robert J. Chadwick, Bradley Wiffen, David Conklin and Erik Axell*, for Paladin  
Labs Canadian Holdings Inc. and Paladin Labs Inc.

*Sean Zweig and Joshua Foster*, for KSV Restructuring Inc.

*Natalie Nouvet and Joseph Reynaud*, for Ad Hoc First Lien Group

*Mary Paterson*, for Sanis Health Inc., Shoppers Drug Mart Inc. and Loblaw  
Companies Limited

*Grant Moffat and Reidar Mogerman*, for His Majesty the King in Right of British  
Columbia

*Natalie Renner*, for McKesson Canada Corp.

**HEARD:** April 16, 2024

### **ENDORSEMENT**

[1] Paladin Labs Inc. ("Paladin"), in its capacity as the foreign representative (the "Foreign Representative") in respect of the proceedings commenced by Endo International plc ("Endo Parent") and certain of its affiliates (collectively, the "Debtors") before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under chapter 11 of the United States Code (the "Chapter 11 Cases"), brings this motion for an order (the "Plan Recognition Order"):

- (a) recognizing enforcing in Canada the *Findings of Fact, Conclusions of Law, and Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Reorganization of Endo International plc and its Affiliated Debtors and (II)*

- Approving the Disclosure Statement with Respect Thereto* entered by the Bankruptcy Court on March 22, 2024 (the “Confirmation Order”);
- (b) ordering that the *Fourth Amended Joint Chapter 11 Plan of Reorganization of Endo International plc and its Affiliated Debtors* (the “Plan”) and the Plan Supplement (collectively, the “Confirmed Plan”), the PSA, the Plan Transaction and the Plan Administrator Agreement (each as defined in the Confirmation Order) are recognized and given full force and effect in all provinces and territories of Canada;
  - (c) authorizing Paladin and Paladin Labs Canadian Holding Inc. (collectively, the “Canadian Debtors”) and the Plan Administrator to take all steps and actions, and to do all things, necessary or appropriate to implement the Confirmed Plan and the PSA in accordance with their terms;
  - (d) effective as of the Effective Date of the Plan, discharging and dismissing, without costs, the Canadian Litigation as against the Debtors and any other Debtor that is a defendant in the Canadian Litigation;
  - (e) containing certain “bar order” protections in favour of non-settling defendants in the Canadian Provinces Class Action and the Canadian Provinces McKinsey Action (each as defined in the Plan);
  - (f) approving certain reports of KSV Restructuring Inc. (“KSV”), in its capacity as information officer in respect of these Canadian recognition proceedings (the “Information Officer”), including the Sixth Report of the Information Officer (the “Sixth Report”), to be filed, and the activities of the Information Officer referred to in such reports; and
  - (g) approving the fees and disbursements of the Information Officer and its counsel as described in the Sixth Report, and the affidavits attached thereto.

[2] The evidence in support of this motion is set out in the Fifth Affidavit of Daniel Vas and the Sixth Report of the Information Officer.

[3] The motion was not opposed.

[4] Capitalized terms are set out in the Notice of Motion.

[5] The history of these proceedings has been previously described in *Paladin Labs Holding Inc.*, 2022 ONSC 4748, 2022 ONSC 5810, 2022 ONSC 6716, 2023 ONSC 2516, 2024 ONSC 219 and 2024 ONSC 539 and need not be repeated in detail in this endorsement.

[6] The Debtors achieved nearly unanimous stakeholder consensus for their restructuring as a result of the mediation process ordered by the Bankruptcy Court in January 2023 (the “Mediation”), which continued into 2024 and ultimately resulted in negotiated resolutions with a broad cross-section of the Debtors’ secured and unsecured creditors. These resolutions enabled the

Debtors to proceed with a restructuring pursuant to a chapter 11 plan of reorganization (the “Plan”). The Plan is supported by the Debtors’ voting creditors. All 21 classes of voting creditors voted to approve the Plan, with over 99.9% of voting parties by both amount and value voting in favour of the Plan. Following a hearing on March 19, 2024, the Bankruptcy Court granted the Confirmation Order approving the Plan, the Plan Settlements and the Plan Transaction.

[7] The Plan and the related Plan Transaction will achieve a comprehensive restructuring of the Endo Group and result in the acquisition of substantially all of the business and assets of the Endo Group by its first lien lenders. The Plan will address the Debtors’ capital structure and reduce the funded indebtedness of the restructured business by approximately US\$5.5 billion. The Plan will also provide the business with a fresh start through the resolution of thousands of lawsuits affecting the Endo Group.

[8] The Plan will give effect to the Mediation resolutions and provide recoveries for various groups of unsecured creditors, including, among others, holders of deficiency claims in respect of the Debtors’ second lien secured indebtedness and unsecured notes, opioid-related claims, claims relating to certain of the Debtors’ other products, unsecured claims asserted by governmental entities in the United States and Canada, and other general unsecured claims.

[9] The Canadian Debtors are subject to the Plan. The Foreign Representative submits that recognition of the Confirmation Order and the other relief sought pursuant to the proposed Plan Recognition Order is appropriate in the circumstances and in the best interests of the Canadian Debtors and their stakeholders. The implementation of the Plan will achieve a comprehensive restructuring of the Debtors, facilitate the continued operation of the Canadian Business as an integrated part of the Endo Group’s restructured global business, and provide recoveries to Canadian creditors with claims against the Debtors in the same manner as other similarly-situated non-Canadian creditors.

[10] The Bankruptcy Court granted the Confirmation Order confirming the Plan at the conclusion of a hearing held on March 19, 2024 (the “Confirmation Hearing”). The Bankruptcy Court overruled objections from certain individual equity holders and opioid claimants, as well as an objection from Jean-François Bourassa (the “Quebec Plaintiff”), the plaintiff in a class action before the Quebec Superior Court.

[11] In the Confirmation Order, the Bankruptcy Court found that the Plan is the result of good faith negotiations between the Debtors and their stakeholders; the Plan Settlements are fair, equitable and in the best interests of the Debtors and their stakeholders; and that the consummation of the Plan Transaction is necessary for the Debtors to maximize the value of their estates for the benefit of creditors.

[12] The Plan gives effect to the Plan Settlements reached by the Debtors and/or the Ad Hoc First Lien Group with various creditor groups during the Chapter 11 Cases, effectuates distributions to creditors, and implements certain releases and injunctions.

[13] Individual Canadians with Allowed PI Opioid Claims (being personal injury claims relating to exposure to the Debtors’ opioid products) will have their claims channeled to the PI

Trust, which will receive approximately 44.5% of the US\$89.7 of PPOC Trust Consideration to be paid on the Effective Date of the Plan. Holders of Allowed PI Opioid Claims will be entitled to receive a pro rata distribution from the PI Trust in accordance with the PI Trust Distribution Procedures. All holders of Allowed PI Opioid Claims – whether residing in the United States, Canada or elsewhere – will receive the same treatment under the Plan.

[14] The Canadian Provinces will be entitled to receive their proportionate share of Canadian Provinces Consideration of US\$4.3 million to be paid on the Effective Date of the Plan in accordance with the terms of the Canadian Provinces Term Sheet negotiated in the Mediation.

[15] Canadian First Nations and Canadian Municipalities with Allowed Other Opioid Claims will have their claims channelled to the Other Opioid Claims Trust, which will be funded in accordance with the Other Opioid Claims Trust Documents with aggregate consideration of up to US\$200,000. Consistent with the treatment of the claims of municipalities in the United States under Class 6(B) of the Plan, Canadian Municipalities will not receive any cash distribution under the Plan but will retain all of their rights to receive distributions under applicable governmental programs in relation to opioid harm and abatement.

[16] The Canadian DMPs, which are part of the broader group of distributors, manufacturers and pharmacies (the “DMPs”) formed in the Chapter 11 Cases, will have the benefit of the resolutions reached with the Debtors in the Chapter 11 Cases that are embodied in the DMP Stipulation and incorporated into the Plan.

[17] The Plan Recognition Order includes a bar order that provides certain protections to the non-settling defendants in two proposed class action proceedings commenced on behalf of the Canadian Provinces.

[18] The Foreign Representative has indicated that the terms of the bar order and its inclusion in the Plan Recognition Order are acceptable to the Canadian Provinces solely in the particular context of the Endo Group and its Chapter 11 Cases, including that the Canadian Provinces reached a global resolution with the entire Endo Group and will receive a direct monetary recovery under the Plan, which monetary recovery is not available to the DMPs.

[19] The bar order achieves a consensual resolution in the particular context of this case and is without prejudice to the rights or positions of any party in any other case.

[20] Article X of the Plan contains certain releases and injunctions, including: (a) a release and discharge of all Claims, Interests and Causes of Action against the Debtors; (b) the “Debtor Releases”, pursuant to which the Debtors and their estates release and discharge each Debtor Released Party; and (c) consensual third party releases in the form of the GUC Releases and the Non-GUC Releases, which release the Debtors, each Prepetition Secured Party, the Ad Hoc First Lien Group, the Ad Hoc Cross-Holder Group, the OCC, the UCC, the FCR, the Multi-State EC and the officers and directors of the Debtors (subject to certain limited exceptions).

[21] The Confirmation Order contains the Bankruptcy Court’s determinations that: (a) the Sale Process provided a full, fair and reasonable opportunity for any person to make a higher or

otherwise better offer; (b) no other person has offered to purchase the PSA Assets for greater overall value than the Buyers; (c) the consideration under the PSA is fair and reasonable and is the highest or otherwise best offer for the PSA Assets; and (d) consummation of the Plan Transaction is necessary for the Debtors to maximize the value of their estates.

[22] After considering and overruling objections to the Plan, the Bankruptcy Court determined in the Confirmation Order that: (a) the Plan has been proposed in good faith; (b) the Plan is the result of good faith, arm's length negotiations between the Debtors and the various parties in interest in the Chapter 11 Cases; (c) the Plan satisfies the requirements for confirmation under the Bankruptcy Code; (d) the Plan Settlements are fair, equitable, and in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and (e) the Plan provides for the same treatment of each Claim or Interest in each respective Class except to the extent that a holder of a particular Claim or Interest has agreed to accept less favourable treatment.

[23] The issue to be considered on this motion is whether the Court should grant the Plan Recognition Order recognizing and giving effect in Canada to the Confirmation Order and the Confirmed Plan under Part IV of the CCAA.

[24] Where the proceeding has been recognized under Part IV of the CCAA, ss. 49(1) provides the court with jurisdiction to grant any order that it considers appropriate if the court is satisfied that it is necessary for the protection of the debtor companies' property or the interests of creditors.

[25] I am satisfied that the court has jurisdiction to grant recognition of the Disclosure Statement Order.

[26] In considering whether to recognize a foreign order, a court should consider, among other things:

- (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;
- (b) the need to respect foreign bankruptcy and insolvency legislation;
- (c) the equitable treatment of stakeholders, and, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside; and
- (d) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise.

(See: *Xerium Technologies Inc., Re*, 2010 ONSC 3974 at paras. 26 – 27.)

[27] Canadian courts have exercised their jurisdiction to recognize Chapter 11 plans that contain releases that are similar to the releases in the Confirmed Plan. In *Mallinckrodt Canada ULC et al.* (22 August 2022), Toronto, Ont. Sup. Ct. [Commercial List] CV-20-00649441-00CL, this Court granted recognition to a Chapter 11 plan that contained broad releases, including releases of personal injury opioid claims against the Debtors and third party releases. Dietrich J. noted that the

releases satisfied the prevailing test for granting third party releases in a CCAA plan, as set out in the decision of the Court of Appeal for Ontario in *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587 at para. 61, leave to appeal ref'd 2008 CanLII 46997 (S.C.C.).

[28] The Confirmation Order contains findings that: (a) the Releases contained in Article X of the Plan are an essential component of the Plan and appropriate based on the facts and circumstances of the Chapter 11 Cases; (b) the third party releases contained in the Plan are consensual; and (c) all parties to be bound by such releases have been given due and adequate notice of such releases, and sufficient opportunity and instruction to elect to opt in or opt out of such releases, as applicable.

[29] I am satisfied that the releases in the Plan are appropriate in the circumstances and consistent with the scope of releases granted in the context of CCAA plans

[30] Counsel to the Canadian Debtors advised that the Quebec Plaintiff informed the Foreign Representative that the Quebec Plaintiff has decided not to object to the Foreign Representative's motion for recognition of the Confirmation Order.

[31] Counsel for the Ad Hoc First Lien Holders expressed support for the position of the Canadian Debtors.

[32] Counsel to the Information Officer confirmed that, in his view, the recognition of the Confirmation Plan is not contrary to Canadian public policy. The Information Officer supports the position of the Canadian Debtors.

[33] I am satisfied, having reviewed the facts and having considered the factors set out in *Xerium*, it is appropriate to recognize the Confirmation Order.

[34] In addition, the Information Officer requested approval of the activities of the Information Officer as set out in the Sixth Report. Counsel to the Information Officer advised that no adverse comment has been received with respect content of the Sixth Report.

[35] I am satisfied that it is appropriate to approve the activities of the Information Officer as set out in the Sixth Report.

[36] The Information Officer also seeks approval of its fees and disbursements, as well as those of its counsel. The usual fee affidavits have been filed. I am satisfied that these requests are reasonable in the circumstances and they are approved.

[37] The motion is granted and the order has been signed.



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Chief Justice Geoffrey B. Morawetz

Date: April 17, 2024