

CITATION: Paladin Labs Canadian Holding Inc., 2024 ONSC 219
COURT FILE NO.: 22-00685631-00CL
DATE: 2024-01-17

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 and Erik Axell*, for Paladin Labs Canadian
holdings Inc. and Paladin Labs Inc.

Guneer Bhinder, for Mylan Pharmaceuticals ULC and BGP Pharma ULC

Viktor Nikolov, for Sanis Health Inc., Shoppers Drug Mart Inc. and Loblaw
Companies Limited

Joseph Reynaud and Guy Martel, for Ad Hoc First Lien Group

Joshua Foster and Sean Zweig, for KSV Restructuring Inc.

Natalie Renner, for McKesson Canada Corp.

Margo Siminovitch and Avram Fishman, CCAA Counsel

HEARD: December 4, 2023

DETERMINED: December 6, 2023

REASONS: January 17, 2024

ENDORSEMENT

[1] This motion was heard on December 4, 2023.

[2] On December 6, 2023, the motion was dismissed with reasons to follow. These are the
reasons.

[3] Counsel for the plaintiff in Québec Superior Court File No. 500-06-001004-197 (the Québec Opioid Class Action”), Jean-François Bourassa (the “Québec Plaintiff”) brought a motion for:

1. A CCAA Representation Order, among other things:
 - (a) appointing the Québec Plaintiff (the “CCAA Representative”) to represent the interests of all Canadian Personal Injury Claimants in the Foreign Recognition Proceedings, initiated by Paladin Labs Inc. (“Paladin Labs”), as foreign representative, in this proceeding and, as necessary, in the related Chapter 11 proceedings;
 - (b) appointing the law firms of Fishman Flanz Meland Paquin LLP and Trudel Johnston & Lespérance (“CCAA Representative Counsel”) as co-counsel to the Canadian Personal Injury Claimants in these proceedings and, as necessary, in the Chapter 11 proceedings; and
 - (c) ordering that the reasonable fees and disbursements of the CCAA Representative Counsel be borne by the Canadian Debtors;

[4] The evidence filed in support of the motion consists of the Affidavit of Margo Siminovitch sworn October 16, 2023 (the “Siminovitch Affidavit”) and the Supplemental Affidavit of Margo Siminovitch sworn November 17, 2023 (the “Supplemental Siminovitch Affidavit”).

[5] The motion was opposed by Paladin Labs Inc. (“Paladin Labs”), as Foreign Representative, by KSV Restructuring Inc., as Information Officer of Paladin Labs, Paladin Labs Canadian Holding Inc. (Paladin Labs and Paladin Labs Canadian Holdings Inc., are collectively referred to as the “Canadian Debtors”) and by the *Ad Hoc* First Lien Group.

[6] The evidence filed by the opposing parties consists of the Affidavit of Daniel Vas sworn August 17, 2022 (the “First Vas Affidavit”), the Affidavit of Daniel Vas sworn April 18, 2023 (the “Third Vas Affidavit”), and the Affidavit of Erik Axell sworn November 27, 2023.

[7] Reports have also been filed by the Information Officer.

ISSUES

[8] The Québec Plaintiff states that the issues are as follows:

- (i) Are the interests of the Canadian Personal Injury Claimants represented in the CCAA proceedings and in the Chapter 11 proceedings?
- (ii) Is it appropriate for this court to appoint the Québec Plaintiff as CCAA Representative plaintiff and to appoint the proposed CCAA Representative Counsel to represent the Canadian Personal Injury Claimants in the CCAA proceedings, and, as necessary in the Chapter 11 proceedings?

- (iii) In the circumstances, should the fees of the CCAA Representative be paid by the Canadian Debtors?

[9] On these issues, I conclude as follows:

- (i) the interests of the Canadian Personal Injury Claimants are represented in the CCAA proceedings and in the Chapter 11 proceedings;
- (ii) it is not necessary or appropriate to appoint the Québec Plaintiff as CCAA Representative and to appoint the proposed CCAA Representative Counsel to represent the Canadian Personal Injury Claimants in the CCAA proceedings and, as necessary, in the Chapter 11 proceedings; and
- (iii) the fees of the CCAA Representative Counsel should not be paid by the Canadian Debtors.

BACKGROUND

[10] The Endo Group operates a global specialty pharmaceutical business that develops, manufactures and sells branded and generic products to customers.

[11] Endo Parent is headquartered in Ireland. The majority of Endo Group's business is conducted in the United States.

[12] The Canadian Debtors are members of the Endo Group. Paladin Labs, the Canadian operating company, sells products that it owns, licences or distributes to a variety of customers.

[13] The Endo Group states that the Chapter 11 Cases were necessitated by a number of factors, including a highly leveraged capital structure that became unsustainable due to declining financial performance. The Endo Group also sought to obtain a stay of thousands of lawsuits relating to the Endo Group's marketing and sale of opioid products.

[14] The Endo Group's capital structure consists of funded debt obligations in the principal amount of US\$8.15 billion, which obligations are guaranteed by the Canadian Debtors. The debt obligations includes US\$5.9 billion in Prepetition First Lien Indebtedness and US\$941 million in Prepetition Second Lien Note Indebtedness. The Prepetition First Lien Indebtedness and Prepetition Second Lien Note Indebtedness are secured against substantially all of the Endo Group's assets, including the asset of the Canadian Debtors.

[15] The complaints of the Québec Plaintiff are as follows:

- (i) issues with respect to the conduct of Endo Parent and certain of its affiliates at a time when they were exposed to a number of lawsuits related to their opioid products. The Québec Plaintiff contends that the filing for bankruptcy protection was deliberately delayed until August 2022 in order to implement a strategic plan whereby inter-company transactions were effected to insulate the Endo Group from opioid-related claims and to intentionally reduce the assets available to Opioid Claimants. The CCAA

Initial Recognition Application alleged that the Canadian Debtors are guarantors of the US\$8.15 billion of funded indebtedness of certain members of the Endo Group. The Québec Plaintiff contends that it appears that the intercompany transactions with the Canadian Debtors were structured and had the same *modus operandi* as the alleged fraudulent transactions described in the OCC (defined below) proceeding;

- (ii) two directors of the Canadian Debtors awarded themselves prepaid executive bonuses in contemplation of the filing for bankruptcy protection;
- (iii) despite the allegations of wrongdoing, in March 2023, an agreement was reached with the Debtors (the “OCC Agreement”). By entering into the OCC Agreement, the OCC’s investigation into the Debtors’ affairs ended without pursuing the issues referenced in (i) above;
- (iv) issues with the Bidding Procedure Order and the Bar Date Order. On April 25, 2023, Paladin Labs, in its capacity as Foreign Representative, requested recognition of the Bidding Procedure Order and the Bar Date Order (the “Fourth Motion”). The Québec Plaintiff contends that counsel for the Québec Plaintiff were advised by the OCC on July 24, 2023 that the proof of claim filed by the Québec Plaintiff will not be accepted. Individual claims had to be filed. In addition, in order to participate in the trust and receive any recovery, opioid victims must opt in and provide contractual releases of their claims in favour of, *inter alia*, the Stalking Horse Bidder, the Endo Group and its directors and officers; and
- (v) even assuming that their claims are accepted, the projected recovery pursuant to this claims process for Canadian Personal Injury Claimants is negligible. Of the maximum amount of US\$119.2 million available to fund the trust being established for personal injury claimants, in July 2, 2023, counsel to the OCC advised that only half of the trust funds will be distributed among direct personal injury victims (i.e. a little less than US\$60 million). The projected recovery for each personal injury victim and is less than US\$700 each. This is in comparison to the amounts sought in the Québec opioid class action of damages of Cdn. \$30,000 to be paid to each class member as well as the amount of Cdn. \$25 million in punitive damages.

[16] In order to address these complaints, it is necessary to consider the status of the Chapter 11 proceedings in the United States and the recognition proceedings in Canada.

[17] On August 16, 2022, Endo International PLC (“Endo Parent”) and certain of its affiliates (collectively, the “Debtors”), including Paladin Labs, commenced voluntary cases under Chapter 11 of the United States Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

[18] Paladin Labs, in its capacity as Foreign Representative of the Chapter 11 Cases (the “Foreign Representative”), then brought an application seeking recognition of the Chapter 11 Cases in proceedings under Part IV of the CCAA.

[19] The Initial Recognition Order was granted by this court on August 19, 2022, and recognized Paladin Labs as the Foreign Representative and the Chapter 11 Cases as a “Foreign Main Proceeding”. A Supplemental Order (Foreign Main Proceeding), among other things, appointed KSV Restructuring Inc. as the Information Officer (the “Information Officer”).

[20] The Initial Recognition Order and the Supplemental Order were granted pursuant to the provisions of sections 47 – 50 of the CCAA.

[21] The granting of the Initial Recognition Order has the effect of triggering s. 52(1) of the CCAA which provides:

52(1) if an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the Foreign Representative and the foreign court involved in the foreign proceeding.

[22] On September 2, 2022, the US Trustee appointed the Official Committee of Opioid Claimants (the “OCC”), a statutory committee, as fiduciary for all holders of current claims arising from alleged harm suffered due to the Debtors’ opioid products and practices, regardless of where they reside (the “Opioid Claimants”). The Canadian Personal Injury Claimants form part of the constituency of the OCC.

[23] On October 27, 2022, the Bankruptcy Court entered the Cash Collateral Order. The Cash Collateral Order was recognized by this Court on November 29, 2022 pursuant to the Third Supplemental Order.

[24] The Cash Collateral Order contains certain “Debtors’ Stipulations” relating to the Prepetition First Liens – which are liens over the assets of the Debtors (including the Canadian Debtors) securing the Prepetition First Lien Indebtedness – including the following:

- (a) “the Prepetition First Liens are valid, binding, properly perfected, enforceable, non-avoidable liens on and security interests in the Prepetition Collateral”;
- (b) “the Prepetition First Liens were granted... for fair consideration and reasonably equivalent value”; and
- (c) no portion of the Prepetition First Liens or Prepetition First Lien Indebtedness is subject to any challenge, cause of action, or defence, including... re-characterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defence, counterclaim... pursuant to the Bankruptcy Code or nonbankruptcy law.”

[25] Section 19(a) of the Cash Collateral Order provides that the Debtors’ Stipulations are binding upon all parties in interest unless and to the extent that a party in interest has timely and properly filed an adversary proceeding or contested matter under the bankruptcy rules by the

“Challenge Period”. For all parties in interest other than the Committees and the FCR, the challenge period was 75 calendar days after entry of the Cash Collateral Order (i.e. January 10, 2023).

[26] Section 19(b) of the Cash Collateral Order states that, upon the expiry of the challenge period without the filing of a Challenge (or if any such Challenge is filed and overruled), *inter alia*:

- (a) “any and all such Challenges by any party... shall be deemed to be forever barred”;
- (b) “the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured liens, not subject to recharacterization...”; and
- (c) “all of the Debtors’ stipulations and admissions contained in this [Cash Collateral Order], including the Debtors’ Stipulations... and all other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests contained in this [Cash Collateral Order] shall be in full force and effect and forever binding upon the Debtors, the Debtors’ estates, and all creditors, interest holders, and other parties in interest.”

[27] The Québec Plaintiff did not object to the Cash Collateral Order in the Chapter 11 Cases or to the recognition of the Cash Collateral Order in the Canadian Recognition Proceedings.

[28] The Québec Plaintiff did not file any objection to the Debtors’ Stipulations (including those relating to the Prepetition First Liens granted by the Canadian Debtors) before the Challenge Period. The Québec Plaintiff has never challenged the Debtors’ Stipulations in the Chapter 11 Cases.

[29] On January 27, 2023, the Bankruptcy Court entered the Mediation Order ordering the Debtors and certain of their key stakeholders to participate in the Mediation to attempt to resolve objections to the Debtors’ Sale Process and issues relating to the Joint Standing Motion. The mediation was conducted by the Honorable Shelley C. Chapman, a retired judge of the Bankruptcy Court. Ultimately the Committees reached a resolution with the *Ad Hoc* First Lien Group in March 2023 as memorialized in the Resolution Stipulation. Further details of the Resolution Stipulation are discussed below.

[30] On April 3, 2023, the Bankruptcy Court entered (a) the Bidding Procedures Order, authorizing the Debtors to conduct the Sale Process; and (b) the Bar Date Order, establishing a process and procedures for the filing of claims against the Debtors and setting related deadlines. The Bidding Procedures Order and the Bar Date Order were recognized by this Court pursuant to the Fourth Supplemental Order on April 25, 2023.

[31] The Bidding Procedure Order provided that all of the Debtors' assets would be sold to the successful bidder and the Bar Date Order, *inter alia*, authorized the procedures for filing proofs of claim, the forms and the notice plan.

[32] The Third Vas Affidavit, filed in support of the request for the Fourth Supplemental Order states that on March 3, 2023, the U.S. Bankruptcy Court was informed that agreements in principle had been reached between the Debtors and various stakeholders, including the OCC.

[33] The Québec Plaintiff complains that the Bar Date Order does not permit the Québec Plaintiff to file a proof of claim on a class basis.

[34] The Québec Plaintiff did not object to, or seek a modification, of the Bar Date Order in the Chapter 11 Cases, nor did it raise any issues when the Bidding Procedures Order and the Bar Date Order were recognized by this Court.

[35] The Bidding Procedures Order and the Bar Date Order approved a plan for providing notice to known and unknown claimants and parties in the interest (the "Notice Plan") of (a) the proposed sale of substantially all of the Debtors' assets and critical dates related thereto; and (b) deadlines for all entities and persons to file a proof of claim against any of the Debtors.

[36] In Canada, the Notice Plan included notices in English and French-language magazines and newspapers, online display advertising, social media advertising and press releases.

[37] Pursuant to the Bidding Procedures Order, objections to the Sale were required to be filed by July 14, 2023. The Québec Plaintiff did not file an objection to the Sale in the Chapter 11 Cases.

[38] Commencing in April 2023, the Debtors conducted extensive sale process (the "Sale Process"), and any sale identified therein, (a "Sale") pursuant to the Bidding Procedures Order, underpinned by a stalking horse bid by the *Ad Hoc* First Lien Group (the "Stalking Horse Bid") pursuant to which Tensor Limited (the "Buyer"), an entity formed by the *Ad Hoc* First Lien Group, would acquire substantially all of the Debtors' assets in exchange for a credit bid of the Prepetition First Lien Indebtedness and certain additional cash and non-cash consideration. As noted above, the Prepetition First Lien Indebtedness is guaranteed by, and secured against the assets of, the Canadian Debtors. The Sale Process did not identify any superior bids, which would be capable of repaying in full the US\$5.9 billion principal amount of the Prepetition First Lien Indebtedness.

[39] The Foreign Representative points out that the Sale is supported by key unsecured stakeholder groups of the Debtors, including the OCC, the Official Committee of Unsecured Creditors (the "UCC"), the representative for future claimants appointed by the Bankruptcy Court (the "FCR"), and his Majesty the King in Right of the Province of British Columbia in each of the other Canadian provinces and territories (collectively the "Canadian Governments").

[40] The Debtor has since adjourned the Sale Hearing several times while it attempts to resolve a limited number of objections

[41] The Foreign Representative points out that the OCC has served as a fiduciary for the interests of all Opioid Claimants, including the Canadian Personal Injury Claimants, throughout the Chapter 11 Cases. In January 2023, the OCC and the UCC (collectively, the "Committees")

jointly filed the Joint Standing Motion seeking standing to commence and prosecute for complaints, certain of which related to the validity and extent of the lien securing the Prepetition First Lien Indebtedness. The Joint Standing Motion was the culmination of efforts by the Committees since their September 2022 appointment to investigate “the Debtors’ prepetition conduct, capital structure, secured debt obligations and asset base to determine whether certain of the Debtors’ assets are unencumbered and whether causes of action exist that may serve to return value to the Debtors’ estates and provide a recovery for unsecured creditors.”

[42] As noted at [30] above, after much negotiation, a resolution was reached as memorialized in the Resolution Stipulation.

[43] Pursuant to the Resolution Stipulation and the accompanying OCC Resolution Term Sheet, the *Ad Hoc* First Lien Group agreed to, *inter alia*, establish a trust for the benefit of present private opioid claimants (the “PPOC Trust”) on closing of the Sale and fund it with aggregate cash consideration of US\$119.2 million. In exchange, the Committees agree to hold in abeyance their prosecution of the Joint Standing Motion and to withdraw their objection to the Proposed Sale.

[44] The Foreign Representative points out that if implemented, the PPOC Trust will deliver a significant recovery for Opioid Claimants who voluntarily elect to participate in the trust exchange by providing a consensual, contractual release of the Debtors, the Buyer and other interested parties. The individual Opioid Claimants will receive a recovery on their unsecured claims – despite the Sale Process not identifying any bid sufficient to pay in full the US\$5.9 billion in Prepetition First Lien Indebtedness.

[45] Further, Canadian Personal Injury Claimants who have timely filed a proof of claim are entitled to participate in the sub-trust of the PPOC Trust (the “Personal Injury Sub-Trust”), subject to its terms and approval by the Bankruptcy Court. The Foreign Representative points out that the Canadian Personal Injury Claimants are expected to be treated exactly the same as similarly situated Opioid Claimants in the United States.

DISCUSSION

[46] For the following reasons, I find that the complaints referenced by the Québec Plaintiff in [15] above have been fully addressed in the Chapter 11 Cases and through the recognition proceedings in this Court.

[47] The Chapter 11 Cases are being administered in the Bankruptcy Court. The U.S. Court is the forum for the Foreign Main Proceeding and the primary forum for the restructuring of the Debtors, including the Canadian Debtors. The role of this Court is significantly different from the Bankruptcy Court.

[48] In this proceeding, the foreign representative applied to this Court and received recognition of the foreign proceeding as a Foreign Main Proceeding. This order was not challenged and remains in effect.

[49] In CCAA recognition proceedings, such as this proceeding, it is not the role of this Court to second guess or to conduct an initial assessment of the merits. Rather, the appropriate inquiry

is to consider whether the orders made in the Chapter 11 Cases should be recognized. This issue was considered and the orders in question have been recognized in this CCAA Part IV proceeding.

[50] A number of long-standing orders have been granted by the Bankruptcy Court – which contain important processes and deadlines and the Debtors and all of their stakeholders have observed these orders in the course of advancing the Chapter 11 Cases.

[51] Section 52(1) of the CCAA requires this Court to cooperate, to the maximum extent possible, with the foreign representative and the Bankruptcy Court. This has occurred as evidenced by the number and scope of the orders of the Bankruptcy Court that have been recognized by this Court.

[52] The relief sought by the Québec Plaintiff, if granted, would have a significant impact on many stakeholders and a number of matters already addressed in the Chapter 11 Cases.

[53] The OCC has advanced the interest of Opioid Claimants. They have been involved during all stages of this restructuring. This is to be contrasted with the participation of the Québec Plaintiff and Plaintiff's Counsel. Plaintiff's Counsel was advised of the commencement of the Chapter 11 Cases and the Canadian Recognition Proceedings on August 23, 2022. The Québec Plaintiff did not raise any objections in the Chapter 11 Cases or the Canadian Recognition Proceedings until the filing of this motion. In particular,

- (a) the Québec Plaintiff did not challenge the appointment of the OCC to represent the interests of all Opioid Claimants, including the interests of Canadian Personal Injury Claimants;
- (b) the Québec Plaintiff has not brought a motion before the Bankruptcy Court for its appointment as a class representative;
- (c) although the Québec Plaintiff states that the purported absence of representation of Canadian Personal Injury Claimants “only started to become apparent after late July 2023” when the Joint Standing Motion was provided to Plaintiff's Counsel by counsel to the OCC, the Joint Standing Motion was filed in the Chapter 11 Cases on January 23, 2023 and described in the Third Vas Affidavit filed by the Foreign Representative in these proceedings in April 2023 and in the Third Report of the Information Officer dated April 20, 2023;
- (d) the Québec Plaintiff did not raise any objection to the Bar Date Order entered by the Bankruptcy Court on April 3, 2023 or to its recognition by this Court pursuant to the Fourth Supplemental Order dated April 25, 2023;
- (e) the Québec Plaintiff did not challenge the lien securing the Prepetition First Lien Indebtedness or the prepetition Second Lien Notes Indebtedness prior to January 10, 2023 as required pursuant to the Cash Collateral Order. This addresses the complaints of the Québec Plaintiff outlined at [15](i) above;

- (f) the Québec Plaintiff did not request to participate in the Mediation, which commenced in January 2023 and resulted in the resolution of the Joint Standing Motion; and
- (g) the Québec Plaintiff did not file any objection to the Sale in the Chapter 11 Cases by the July 14, 2023 deadline.

[54] The Québec Plaintiff's motion suffers from a lack of timeliness. The case started in August 2022. The OCC has acted as a fiduciary for all Opioid Claimants throughout the proceedings. The OCC investigated the lien securing the Prepetition First Lien Indebtedness and engaged in the Mediation on behalf of its constituents, which include the Canadian Personal Injury Claimants. The Québec Plaintiff references allegations raised by the OCC in its investigation of the Prepetition First Lien Indebtedness. These allegations were never tested in court and were subsequently resolved through a settlement. The OCC was part of the settlement. The Mediation resulted in a resolution in March 2023 that will enable Present Private Opioid Claimants, including Canadian Personal Injury Claimants, who filed timely proofs of claim, to obtain a recovery on their unsecured claims despite the significant deficiency on the Prepetition First Lien Indebtedness. The Québec Plaintiff and the Canadian Personal Injury Claimants will receive the same treatment in the Chapter 11 Cases as other like claimants in the Chapter 11 Cases.

[55] It is also apparent that the Québec Plaintiff is precluded by several orders entered by both the Bankruptcy Court and this Court from undertaking its stated objectives if it is appointed CCAA Representative – namely to investigate and invalidate the guarantees and lands granted by the Canadian Debtors; to file a class wide proof of claim; and to petition this Court to revoke recognition of the Chapter 11 Cases as the Foreign Main Proceeding . The investigation to invalidate the guarantees and liens is precluded pursuant to the terms of the Cash Collateral Order. Issues relating to a class wide proof of claim have been addressed and are not permitted under the Bar Date Order.

[56] Further, any attempt to revoke recognition of the Chapter 11 Cases as the Foreign Main Proceeding is nothing more than a collateral attack on this Court's Initial Recognition Order.

[57] In addition, I am satisfied that there are no public policy issues that would engage s. 61(2) of the CCAA.

[58] In my view, it would be unfair and prejudicial to the Debtors and their stakeholders if the Québec Plaintiff could, at this point, ignore the existing process and timelines in the Chapter 11 Cases and bring this motion and obtain the requested relief in its attempt to reopen settled matters in the Chapter 11 Cases.

[59] The Québec Plaintiff takes issue with the projected recovery for Canadian Personal Injury Claimants negotiated by the OCC. The Québec Plaintiff may question the projected recovery, but the projected recovery for Canadian Personal Injury Claimants is expected to be exactly the same as Opioid Personal Injury Claimants in the United States. There will be a recovery, notwithstanding that there is insufficient value to repay in full the Prepetition First Lien Indebtedness or any value to repay the prepetition second lien notes indebtedness. Both liens rank in priority to the unsecured claims of Opioid Claimants.

[60] At all times, it is important to remember that these Chapter 11 Cases have been recognized by this Court as a Foreign Main Proceeding . The primary proceedings are being adjudicated in the Chapter 11 Cases. It was open to the Québec Plaintiff to seek relief from the Bankruptcy Court and/or to object to the Bankruptcy Court approval of the Debtors' restructuring in the Chapter 11 Cases. The Québec Plaintiff declined to get involved. The attempt to obtain such relief in this Court is not appropriate in the circumstances.

[61] The same conclusion was reached in *Re Voyager Digital Ltd.*, CV-22-00683820-00CL, August 11, 2022, where Cavanagh J. stated:

The U.S. Proceeding has been recognized as the foreign main proceedings and it is the plenary proceeding. The U.S. Bankruptcy Court is the forum in which the restructuring of VDL and the other debtors will take place. The requested order, even if it were granted, would still require a motion to the U.S. Bankruptcy Court for the appointment of representative counsel to represent the interests of the VDL shareholders in relation to the U.S. Proceeding, including any restructuring plan, so any efficiencies in having this motion heard in this Court are limited.

In my view, given that the U.S. Bankruptcy Court is presiding over the plenary proceeding, and this Court has recognized the U.S. Proceeding as the foreign main proceedings under Part IV of the CCAA, the requested order to appoint representative counsel should be sought from the U.S. Bankruptcy court and not from this Court. This is consistent with the scheme of Part IV of the CCAA. It is open to the U.S. Bankruptcy Court to seek the assistance and cooperation of this Court in respect of any such request, including recognition of any Order made in the U.S. Proceeding and a request for consideration of any ancillary Order in the Canadian proceeding that may be needed to give effect in Canada to such an Order.

[62] The same analysis and conclusion is applicable in this case.

DISPOSITION

[63] The relief sought herein should have been brought in the Chapter 11 Cases.

[64] It is also open to the Québec Plaintiff to oppose any future recognition of the Debtors restructuring in these proceedings. However, I have not been persuaded that the Québec Plaintiff needs to be appointed CCAA Representative on behalf of all Canadian Personal Injury Claimants in order to advance their arguments. It follows that the appointment of CCAA Representative Counsel is not required nor should an order be made to pay the fees of Representative Counsel.

[65] The motion is dismissed.


Chief Justice Geoffrey B. Morawetz

Date: January 17, 2024