

CITATION: Paladin Labs Canadian Holding Inc., 2024 ONSC 539
COURT FILE NO.: CV-22-00685631-00CL
DATE: 2024-01-26

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: *Bradley Wiffen, Andrew Harmes and Erik Axell*, for Paladin Labs Canadian Holdings Inc. and Paladin Labs Inc.

Sean Zweig and Joshua Foster, for KSV Restructuring Inc.

Joseph Reynaud and Nathalie Nouvet, for Ad Hoc First Lien Group

Caitlin McIntyre, for Janssen Inc.

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

Natalie Renner, for McKesson Canada Corp.

**HEARD and
DETERMINED:** January 24, 2024

REASONS: January 26, 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, including Paladin and Paladin Labs Canadian Holding Inc. (together with Paladin, the "Canadian Debtors"), under chapter 11 of the United States Code (the "Chapter 11 Cases"), brought this motion for an order (the "Fifth Supplemental Order"), recognizing and enforcing pursuant to Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA"), the Order:

- (I) Scheduling a Combined Hearing for Approval of the Disclosure Statement and Confirmation of the Plan;
- (II) Conditionally Approving the adequacy of the Disclosure Statement;
- (III) Approving:
 - (A) Procedures for Solicitation;
 - (B) Forms of Ballots and Notices;
 - (C) Procedures for Tabulation of Votes, and
 - (D) Procedures for Objections; and
- (IV) Granting Related Relief (the “Disclosure Statement Order”) entered by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on January 12, 2024.

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

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

[4] There was no opposition to the motion.

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

[6] On August 19, 2022, an Initial Recognition Order (Foreign Main Proceeding) was granted, recognizing Paladin as the “foreign representative” and the Chapter 11 Cases as a “foreign main proceeding” as defined in section 45 of the CCAA; and a Supplemental Order (Foreign Main Proceeding), among other things, (i) ordering a stay of proceedings in respect of the Canadian Debtors, and (ii) appointing KSV Restructuring Inc. as Information Officer

[7] The court has since recognized additional orders granted by the Bankruptcy Court pursuant to a Second Supplemental Order dated October 13, 2022, a Third Supplemental Order dated November 29, 2022, and a Fourth Supplemental Order dated April 25, 2023

[8] The Fourth Supplemental Order recognized the Bidding Procedures Order and Bar Date Order entered by the Bankruptcy Court. The Bidding Procedures Order approved the marketing and sale process for the Debtors’ business and assets (the “Sale Process”) underpinned by a stalking horse bid (the “Stalking Horse Bid”) by an entity formed by an *ad hoc* group of holders of first lien indebtedness of the Debtors (the “Ad Hoc First Lien Group”). The Bar Date Order approved the procedures and deadlines for the submission of claims against the Debtors and

procedures for providing notice of the claims submission process to known and unknown creditors of the Debtors.

[9] After extensive negotiations resulting from a mediation process ordered by the Bankruptcy Court (the "Mediation"), the Debtors reached resolutions with key stakeholders and on December 19, 2023, the Debtors filed with the Bankruptcy Court their Joint Chapter 11 Plan of Reorganization (the "Plan") and a related disclosure statement (the "Disclosure Statement").

[10] The Debtors Plan seeks to:

- (a) give effect to the resolutions reached in the Mediation;
- (b) effect distributions to secured and unsecured creditors;
- (c) release and discharge claims against the Debtors; and
- (d) achieve a comprehensive restructuring of the Debtors and the continuation of their global business on a going concern basis.

[11] The Plan contemplates the implementation of a Plan Transaction, pursuant to which substantially all of the business and assets of the Endo Group (including the Canadian Debtors) will be sold and transferred to applicable purchaser entities (as defined in the Plan, the "Purchaser Entities"), free and clear of claims and encumbrances other than assumed liabilities and permitted encumbrances.

[12] If implemented, the Plan will provide a recovery for various groups of unsecured creditors, including opioid-related claims, and claims asserted by governmental entities in the United States and Canada.

[13] The Plan also contains consensual third-party releases which each creditor has the option to grant, or not to grant. The Plan provides that holders of certain Trust Channeled Claims that grant the applicable releases are entitled to an additional payment from the applicable trust in exchange for granting the releases.

[14] If the Plan receives requisite creditor approvals, the Debtors intend to seek a Confirmation Order of the Bankruptcy Court approving the Disclosure Statement on a final basis and confirming the Plan pursuant to section 1129 of the Bankruptcy Code. The Bankruptcy Court has scheduled the combined hearing for this purpose on March 9, 2024.

[15] Implementation of the Plan is conditional on, among other things, the Bankruptcy Court having entered the Confirmation Order. In addition, the implementation of the Plan in respect of the Canadian Debtors is conditional on this Court having granted an order recognizing and giving full force and effect in Canada to the Confirmation Order and the Plan.

[16] On January 9, 2024, the Bankruptcy Court heard the Debtors' motion for the entry of the Disclosure Statement Order. The motion was unopposed. The Bankruptcy Court granted the

Debtors motion at the hearing and the Disclosure Statement Order was entered on January 12, 2024.

[17] The Disclosure Statement Order conditionally approves the Disclosure Statement as providing holders of claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan.

[18] The Disclosure Statement also, among other things:

- (a) approves procedures for
 - (i) soliciting, receiving and tabulating votes to accept or reject the Plan;
 - (ii) voting to accept or reject the Plan; and
 - (iii) filing objections to the Plan;
- (b) approves the form of ballots and procedures;
- (c) approves the form of methods of distribution of solicitation packages; and
- (d) approves the manner and form of notice of the combined hearing for confirmation of the Plan and final approval of the Disclosure Statement.

[19] The issue for consideration is whether the Court should grant the Fifth Supplemental Order.

[20] 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.

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

[22] 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.)

[23] The Disclosure Statement Order does not approve or confirm the Plan. If the Plan receives requisite creditor approvals, the Debtors intend to seek the Confirmation Order, which is a condition precedent to the implementation of the Plan. Further, the implementation of the Plan in respect of the Canadian Debtors is conditioned on this Court having granted an order recognizing and giving full force and effect in Canada to the Confirmation Order and the Plan.

[24] The Foreign Representative submits that a consideration of the *Xerium* factors supports the Court's recognition of the Disclosure Statement Order pursuant to the Fifth Supplemental Order.

[25] The Foreign Representative also points out that the Plan Transaction, if consummated, is expected to result in the transfer of substantially all of the business and assets of the Canadian Debtors to the Canadian Purchaser. Other key features, as they relate to the Canadian Debtors and Canadian creditors include the following:

- (a) Employee Transition: All or substantially all of the employees of the Canadian Debtors are contemplated to be transferred to the Canadian Purchaser; and
- (b) Unsecured creditors holding Allowed Claims will be eligible to obtain recoveries in accordance with the terms of the Plan.

[26] The Information Officer is of the view that the proposed Fifth Supplemental Order is reasonable and appropriate for a number of reasons, including:

- (a) the granting of the proposed Fifth Supplemental Order would be consistent with the integrated nature of the Debtors' operations in the US and Canada and the principles of comity;
- (b) the Debtors have made extensive efforts to achieve resolutions with their stakeholders within the Chapter 11 Cases and the Mediation;
- (c) the US Court has yet to approve the Plan Transaction and no relief is sought by the Foreign Representative under the proposed Fifth Supplemental Order in connection therewith. Rather, the relief is limited to recognition and enforcement of the Disclosure Statement Order, which conditionally approves a comprehensive solicitation process that will enable Canadian creditors and other stakeholders to receive notice of, and make an informed decision as to whether to vote to accept or reject the Plan; and
- (d) the Information Officer is not aware of any objection having been filed in the Chapter 11 Cases by a Canadian stakeholder in respect of the Disclosure Statement Order.

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

[28] It should be noted, however, the Fifth Supplemental Order recognizing the Disclosure Statement Order of the Bankruptcy Court is procedural in nature. Matters relating to the content of the proposed Plan, and the terms and conditions of any requested recognition order in respect of such Plan, will be addressed at a future hearing before this Court.

[29] The motion is granted and the order has been signed in the form submitted.



Chief Justice Geoffrey B. Morawetz

Date: January 26, 2024