

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 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**

Applicant

**FACTUM OF THE APPLICANT
(Application for Interim Order, Initial Recognition Order and Supplemental Order)**

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PART I – INTRODUCTION

1. This factum is filed in support of an application under Part IV of the CCAA by Paladin Labs Inc. (“**Paladin**”) as the proposed foreign representative of itself and Paladin Labs Canadian Holding Inc. (“**Holdings**” and, together with Paladin, the “**Canadian Debtors**”) for recognition of chapter 11 proceedings commenced by Endo International plc (“**Endo Parent**”) and certain of its affiliates (collectively, the “**Debtors**”), including the Canadian Debtors, in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).¹

2. The Canadian Debtors are part of a global specialty pharmaceutical group (“**Endo**” or the “**Company**”) that produces and sells both generic and branded products. Endo Parent, the ultimate parent of Endo’s global enterprise, is an Irish publicly-traded company headquartered in Dublin, Ireland. Endo Parent trades on the NASDAQ under the ticker “ENDP”.²

3. While Endo’s global headquarters is in Ireland, the majority of its business is conducted in the United States. In 2021, Endo earned approximately 97% of its total consolidated revenue from customers in the United States. Endo’s senior leadership located in the United States exercises overarching strategic management and control of the entire corporate group, including the Canadian Debtors.³

4. The Canadian Debtors are integrated members of the broader Endo corporate group. Paladin is Endo’s Canadian operating company. Paladin sells specialty pharmaceutical products that it owns, licenses or distributes to a variety of customers across Canada. Holdings is a holding company that owns all of the shares of Paladin. Both Paladin and Holdings are incorporated pursuant to the *Canada Business Corporations Act*.⁴

¹ Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Daniel Vas sworn August 17, 2022 (the “**Vas Affidavit**”).

² Vas Affidavit at para 3.

³ Vas Affidavit at para 4.

⁴ Vas Affidavit at para 5.

5. On August 16, 2022 (the “**Petition Date**”), the Debtors, including the Canadian Debtors, filed voluntary petitions for relief (the “**Petitions**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the Bankruptcy Court.⁵

6. A confluence of factors facing the Company has necessitated the initiation of the Debtors’ cases under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). Endo’s recent financial performance has deteriorated significantly, largely due to a 55% year-over-year decline in the first half of 2022 from sales of Vasostriect, a branded pharmaceutical that has been one of the Company’s leading revenue generators over the last several years. Endo’s highly leveraged capital structure – which consists of funded debt obligations in the aggregate principal amount of approximately US\$8.15 billion, which obligations are guaranteed by the Canadian Debtors – has become unsustainable as a result of the Company’s declining financial performance. The Company is also under significant financial pressure due to onerous litigation expenses incurred from defending more than 3,500 lawsuits in the United States and other foreign jurisdictions, including Canada, largely relating to the marketing and sale of prescription opioids.⁶

7. On this application, Paladin, as the proposed foreign representative of the Chapter 11 Cases (the “**Foreign Representative**”), seeks the following relief pursuant to Part IV of the CCAA:

- (a) an order (the “**Interim Order**”), among other things, granting a stay of proceedings (the “**Interim Stay**”) in respect of the Canadian Debtors and certain affiliates that are named as defendants in litigation proceedings in Canada (the “**Canadian Litigation Defendants**”), pending the First Day Hearing of the Bankruptcy Court and a subsequent hearing of this Court for the granting of the Initial Recognition Order and the Supplemental Order;
- (b) an order (the “**Initial Recognition Order**”), among other things:
 - (i) recognizing Paladin as the Foreign Representative in respect of the Chapter 11 Cases; and

⁵ Vas Affidavit at para 9.

⁶ Vas Affidavit at paras 8, 85, 89, 91, 92 and 94.

- (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors; and
- (c) an order (the “**Supplemental Order**”), among other things:
 - (i) recognizing certain First Day Orders issued by the Bankruptcy Court in the Chapter 11 Cases;
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants;
 - (iii) appointing KSV Restructuring Inc. (“**KSV**”) as the information officer in respect of these proceedings (the “**Information Officer**”); and
 - (iv) granting an Administration Charge in the amount of CDN\$200,000 over the assets and property of the Canadian Debtors in favour of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer.

8. Paladin’s application is proposed to proceed in stages. At the initial return date, Paladin will seek (a) the Interim Order, and (b) the scheduling of the hearing for the Initial Recognition Order and the Supplemental Order following the Bankruptcy Court’s First Day Hearing.

PART II– SUMMARY OF THE FACTS

A. ENDO’S BUSINESS

9. Endo is a global specialty pharmaceutical group that develops, manufactures, and sells life-enhancing branded and generic products to customers in a wide range of medical fields, including endocrinology, orthopedics, urology, oncology, neurology, and other specialty areas. Collectively, the Debtors have operations in the United States, Canada, Ireland, the United Kingdom and Luxembourg. Endo’s non-debtor affiliates also have operations in India.⁷

10. The vast majority of Endo’s sales are to three wholesale distributors in the United States. Sales to these three wholesalers account for approximately 90% of Endo’s revenues. In 2021,

⁷ Vas Affidavit at paras 3, 19 and 20.

Endo generated approximately 3% of its total revenue from customers outside of the United States.⁸

11. As of the Petition Date, the Debtors had approximately 1,560 employees in the United States. The Debtors also employ approximately 190 people outside of the United States.⁹

B. THE CANADIAN BUSINESS

12. Paladin operates a specialty pharmaceutical business in Canada (the “**Canadian Business**”) that is focused on the sale of branded pharmaceuticals to Canadian customers. Paladin has a portfolio of approximately 50 pharmaceutical branded products. Paladin is the owner of many of the branded products sold by the Canadian Business. The remainder of the products sold are either distributed by Paladin on behalf of other Endo entities, or licenced by Paladin from third party pharmaceutical companies.¹⁰

13. Paladin sells pharmaceutical products to a range of customers that act as intermediaries for end consumers. Paladin’s customers include wholesalers, hospitals and hospital buying groups, governmental entities, pharmacies, and other purchasers. Ontario is Paladin’s largest market based on both revenue and number of customers.¹¹

14. Paladin does not manufacture the pharmaceutical products sold by the Canadian Business. Paladin has business relationships with a range of vendors who provide products, materials and services necessary for the operation of the Canadian Business.¹²

15. The registered head office of the Canadian Debtors is located at leased premises in Montreal, Quebec. Paladin has 98 employees in Canada, 77 of whom are office workers and 21 of whom are sales representatives and field employees. None of Paladin’s employees are unionized.¹³

⁸ Vas Affidavit at paras 27.

⁹ Vas Affidavit at para 28.

¹⁰ Vas Affidavit at paras 34 and 35

¹¹ Vas Affidavit at para 36.

¹² Vas Affidavit at para 37.

¹³ Vas Affidavit at paras 42 and 43.

16. For the year ended December 31, 2021, Paladin generated aggregate net revenue of approximately CDN\$106 million. As of June 30, 2022, Paladin had total assets of approximately CDN\$491 million and total liabilities of approximately CDN\$667 million, excluding its obligations as a guarantor of Endo’s approximately US\$8.15 billion of funded indebtedness.¹⁴

C. ENDO’S CAPITAL STRUCTURE

17. The funded debt obligations of the Company as of the Petition Date are summarized in the table below and described in detail in the Vas Affidavit and the First Day Declaration:¹⁵

Debt Instrument (as defined herein)	Facility Type/Notes Series	Maturity Date	Approximate Outstanding Principal Amount (in US\$ millions)
Revolving Credit Facility	Revolver	Various	\$277.2
Term Loan Facility	Term loan	Mar. 2028	\$1,975.0
First Lien Notes	5.875% Senior Secured Notes due 2024	Oct. 2024	\$300.0
	7.500% Senior Secured Notes due 2027	Apr. 2027	\$2,015.5
	6.125% Senior Secured Notes due 2029	Apr. 2029	\$1,295.0
Second Lien Notes	9.500% Senior Secured Second Lien Notes due 2027	July 2027	\$940.6
Unsecured Notes	5.375% Senior Notes due 2023	Jan. 2023	\$6.1
	6.00% Senior Notes due 2028	June 2028	\$1,260.4
	6.00% Senior Notes due 2025	Feb. 2025	\$21.6
	6.00% Senior Notes due 2023	July 2023	\$56.4
Total:			\$8,147.8

18. The Canadian Debtors are guarantors of, and have granted security interests in their present and future property and assets to secure, the obligations under the Credit Facilities, the First Lien Notes and the Second Lien Notes. The Canadian Debtors are also guarantors, on an unsecured basis, of the obligations under the Unsecured Notes.¹⁶

¹⁴ Vas Affidavit at para 58.

¹⁵ Vas Affidavit at para 65.

¹⁶ Vas Affidavit at para 69.

D. ENDO'S FINANCIAL CHALLENGES

19. A confluence of factors has put downward pressure on the Company's financial performance and necessitated the initiation of the Chapter 11 Cases and corresponding CCAA recognition proceedings. An adverse litigation outcome relating to Endo's Vasostrict product has resulted in the early termination of federal patent protection for the product and a corresponding increase in generic competition. This in turn has resulted in a more than 50% year-over-year decline in sales of Vasostrict in the first half of 2022 and expectations that Vasostrict sales will continue to fall moving forward. Vasostrict was Endo's single largest product by revenue in 2021.¹⁷

20. In light of its declining financial performance, Endo's existing capital structure and US\$8.15 billion in funded debt obligations have become unsustainable. The Company's US\$550 million in annual cash interest expenses constrain its free cash flow and ability to reinvest in its business. In addition, a sizeable portion of the Company's indebtedness is tied to floating interest rates, causing further financial strain in an environment of rising interest rates.¹⁸

21. Endo is also under significant financial pressure due to the litigation overhang on the Company from having been named as a defendant in over 3,500 lawsuits, primarily in the United States, relating to the marketing and sale of FDA-approved prescription opioids (the "**Opioid Lawsuits**"). In the aggregate, Endo spends approximately US\$21 million on litigation-related fees and expenses per month.¹⁹

22. Paladin, along with the Canadian Litigation Defendants who are affiliated entities in the Endo corporate group, are subject to various litigation claims in Canada (the "**Canadian Litigation**"). The Canadian Litigation consists principally of eight proposed class action lawsuits initiated in various provinces across Canada relating to the manufacturing, distribution and marketing of opioid products (the "**Canadian Opioid Lawsuits**") and one proposed class action lawsuit initiated in Federal Court alleging a price-fixing scheme relating to generic drugs.²⁰

¹⁷ Vas Affidavit at paras 86, 87, 88 and 89.

¹⁸ Vas Affidavit at paras 91 and 92.

¹⁹ Vas Affidavit at para 94 and 106.

²⁰ Vas Affidavit at para 107.

E. RESTRUCTURING PATH AND NEED FOR RELIEF

23. Over the last few years, the Company has engaged legal and financial advisors to address its financial circumstances and explore various strategic alternatives. Since 2019, the Company has at various times been actively negotiating with certain opioid plaintiffs to attempt a broad-based resolution of the Opioid Lawsuits. Despite extensive efforts by all sides, the parties have been unable to reach an agreement on a potential settlement.²¹

24. The Company has at various times since 2019 been actively negotiating with the Opioid Committees to attempt a broad-based resolution of the Opioid Claims; however, the parties have been unable to reach agreement on a settlement. As the Company's financial condition deteriorated and little headway was made towards a comprehensive resolution with the governmental Opioid Plaintiffs, the Company more actively started exploring strategic alternatives to its capital structure and other contingent liabilities.

25. The Company began discussions with advisors to the Ad Hoc Cross-Holder Group in September 2021 and with advisors to the Ad Hoc First Lien Group in April 2022. As a result of the discussions with the Ad Hoc Groups and in light of Endo's deteriorating financial circumstances, the Company ultimately determined to pursue a sale of its business and assets under section 363 of the Bankruptcy Code with a restructuring support agreement with members of the Ad Hoc First Lien Group (the "**RSA**").²²

26. The RSA contemplates a stalking horse bid by a company formed in a manner acceptable to Ad Hoc First Lien Group (the "**Stalking Horse Bid**"). The Stalking Horse Bid includes an offer to purchase substantially all of the Debtors' assets for an aggregate purchase price composed of (a) a credit bid in full satisfaction of the Prepetition First Lien Indebtedness (approximately US\$5.9 billion), (b) US\$5 million in cash on account of unencumbered transferred assets, (c) US\$122 million to wind-down the Company's operations following the sale closing date, (d) pre-closing professional fees, and (e) the assumption of certain liabilities.²³

²¹ Vas Affidavit at paras 121.

²² Vas Affidavit at para 123, 124, and 125.

²³ Vas Affidavit at para 128.

27. To ensure that the Stalking Horse Bid is the highest or otherwise best offer for the Company's assets, the Debtors have developed bidding and auction procedures that will facilitate a competitive marketing process for the Company's assets in the Chapter 11 cases. The Ad Hoc First Lien Group, the Ad Hoc Cross-Holder Group and other secured party representatives have consented to the Debtors' use of Cash Collateral in accordance with an agreed form of order, which will facilitate the Debtors' Chapter 11 Cases and lay the groundwork for a robust marketing and sale process.²⁴

PART III– ISSUES AND THE LAW

28. The issues to be considered on this application are:

- (a) whether Ontario is a proper jurisdiction for these recognition proceedings;
- (b) whether this Court should grant the Interim Order providing for the Interim Stay and other ancillary relief, including a stay of proceedings in respect of the Canadian Litigation Defendants, pending the determination of Paladin's application for the Initial Recognition Order and the Supplemental Order;
- (c) whether this Court should grant the Initial Recognition Order, among other things, recognizing the Chapter 11 Cases as a "foreign main proceeding" in respect of the Canadian Debtors pursuant to Part IV of the CCAA; and
- (d) whether this Court should grant the relief sought in the Supplemental Order, including:
 - (i) recognition of certain First Day Orders issued by the Bankruptcy Court;
 - (ii) a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants;
 - (iii) appoint KSV as Information Officer; and
 - (iv) grant the Administration Charge on the Property of the Canadian Debtors.

29. For the reasons set out below, Paladin submits that it is necessary and appropriate for this Court to grant the relief sought on this application to give effect to the Chapter 11 Cases in

²⁴ Vas Affidavit at para 129 and 132.

Canada and to preserve the value of the Canadian Debtors and the Canadian Business while the Company pursues its restructuring efforts in the Chapter 11 Cases.

A. ONTARIO IS A PROPER JURISDICTION

30. Paladin submits that Ontario is a proper jurisdiction for these recognition proceedings in Canada. Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular court to hear a recognition application. Paladin submits that it is appropriate for this Court to take jurisdiction with respect to this recognition application given the Canadian Debtors' substantial connection to Ontario, including the following:

- (a) despite having its registered head office in Quebec, Paladin has a significant and predominant business presence in Ontario. Ontario is Paladin's largest market based on both revenue and number of customers and approximately 50% of Paladin's Canadian purchases (by total dollar value) are from Ontario vendors;
- (b) substantially all of the products sold in the Canadian Business are received in and shipped from Ontario;
- (c) pursuant to Ontario law governed documents, the Canadian Debtors granted liens on all of their present and after acquired property to secure the obligations under the Credit Agreement, the First Lien Notes and the Second Lien Notes. Pursuant to the Canadian Pledge and Security Agreement dated April 27, 2017 and the Second Lien Canadian Pledge and Security Agreement dated June 16, 2020, the Canadian Debtors unconditionally submitted to the exclusive jurisdiction of the Ontario courts in any action or proceeding pertaining to the applicable security agreement or any related action, proceeding or claim; and
- (d) the Foreign Representative Order, if granted, will specifically authorize Paladin to make an application for recognition of the Chapter 11 Cases before the Ontario Superior Court of Justice (Commercial List).

B. THE INTERIM ORDER

(a) An Interim Stay is Appropriate

31. The Debtors commenced the Chapter 11 Cases in the Bankruptcy Court by filing the Petitions. However, the order recognizing Paladin as the foreign representative of the Chapter 11 Cases (the '**Foreign Representative Order**'), if granted, will not be issued by the Bankruptcy Court until the First Day Hearing has occurred. As such, there will be a period of time between

the commencement of the Chapter 11 Cases and the time when Paladin is able to file the certified materials contemplated by subsection 46(2) of the CCAA and return to this Court as the formally-appointed Foreign Representative seeking the relief in the Initial Recognition Order and the Supplemental Order.

32. The Interim Stay provides a stay of proceedings in favour of the Canadian Debtors, the Canadian Litigation Defendants and their respective directors and officers. It is a temporary measure necessary to give effect to the automatic stay of proceedings arising automatically under the Bankruptcy Code upon the filing of the Petitions and to protect the value and operations of the Canadian Business pending the return of the balance of Paladin's application.

33. Since the Canadian Business is conducted primarily in Canada with counterparties located in Canada, it is important for the Canadian Debtors to be immediately protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order. Many of Paladin's contracts and agreements contain "*ipso facto*" clauses that purport to provide the counterparty with a termination right in the event of a bankruptcy or insolvency involving Paladin or its affiliates. The termination of critical agreements would impair Paladin's ability to carry on the Canadian Business in the ordinary course and impair the value of the Canadian Business.

34. For that reason, and consistent with this Court's practice in other Part IV recognition proceedings, Paladin is seeking the Interim Stay until the Foreign Representative Order has been issued in the Chapter 11 Cases and Paladin is in a position to return to this Court to seek the Initial Recognition Order and the Supplemental Order.

35. This Court frequently grants interim orders providing for a temporary stay of proceedings in Canada following the initiation of chapter 11 proceedings in recognition of the fact that such a

stay is necessary to protect the assets of the debtors and to enable them to implement a coordinated cross-border restructuring through the Chapter 11 process.²⁵

36. Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “CJA”) states: “A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.”²⁶

37. As recognized by Justice Cavanagh in *Knotel*, the Court has the jurisdiction to grant an interim stay in the context of a pending recognition application pursuant to section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction.²⁷

38. Accordingly, the granting of the Interim Stay and the other relief in the proposed Interim Order is in accordance with the principles of cooperation and comity, within the Court’s jurisdiction, consistent with this Court’s practice in recent Part IV recognition proceedings, and important for the preservation of the value of the Canadian Business and Endo’s broader restructuring efforts.

(b) *The Stay of Proceedings should be extended to the Canadian Litigation Defendants*

39. In addition to the stay of proceedings in respect of the Canadian Debtors, the proposed Interim Order and proposed Supplemental Order provides for a stay of proceedings in Canada in favour of affiliates of the Canadian Debtors that are subject to litigation in Canada. The seven current Canadian Litigation Defendants that would be protected by the stay are (a) affiliates of Endo Parent and/or the Canadian Debtors, (b) Debtors in the Chapter 11 Cases, and (c) named defendants in various litigation commenced in Canada.

40. The proposed stay in favour of the Canadian Litigation Defendants is intended to give effect in Canada to the Bankruptcy Code stay of proceedings and to enable the Company to focus

²⁵ [GNC Holdings, Inc. Re \(24 June 2020\), Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Endorsement of Koehnen J at paras 3 and 4\); Lightsquared LP, Re, 2012 ONSC 2994 at para 3 \[Lightsquared\]; Sungard Availability Services \(Canada\) Ltd, Re \(11 April 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00679628-00CL \(Endorsement of Conway J\) and Knotel Canada, Inc. Re \(9 March 2021\), Toronto, Ont Sup Ct J \[Commercial List\] CV-21-00658434-00CL \(Endorsement of Cavanagh J\) \[Knotel Interim Stay Endorsement\].](#)

²⁶ CJA, s 106.

²⁷ [Knotel Interim Stay Endorsement at para 3.](#)

on its restructuring efforts rather than incurring time and resources to defend itself in the Canadian Litigation. The Canadian Litigation consists principally of eight proposed class action proceedings commenced against a broad range of pharmaceutical industry participants, including Paladin and the Canadian Litigation Defendants. None of the proposed class actions have been certified.

41. For timeliness and structural purposes, Paladin is only seeking to have the Chapter 11 Cases recognized in Canada with respect to the Canadian Debtors. At this time, it is not necessary for this Court to grant broad-ranging orders or exercise jurisdiction with respect to the Canadian Litigation Defendants, who are not Canadian entities and have no material connection to Canada other than having been named as defendants in the Canadian Litigation. However, a stay of proceedings of Canadian litigation against affiliates of the Canadian Debtors is necessary in the circumstances having regard to the purpose of the Chapter 11 Cases. Paladin reserves the right to seek full Canadian recognition in respect of other Debtors if such recognition becomes necessary in the context of the Chapter 11 Cases.

42. This Court has the jurisdiction to grant a stay with respect to non-applicant debtor companies and frequently does so, both in the context of Part IV proceedings and in plenary CCAA proceedings. In the context of a recognition proceeding, the Court's jurisdiction arises from its authority under subsection 49(1) of the CCAA and pursuant to section 106 of the CJA. A stay of proceedings is also consistent with the principles of comity and cooperation embodied in section 52 of the CCAA, as it gives effect in Canada to the stay of proceedings in respect of the Canadian Litigation Defendants granted by the Bankruptcy Court in the Chapter 11 Cases.

43. This Court has regularly exercised its jurisdiction to impose a stay of proceedings in insolvency proceedings to non-applicant third-parties "where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so"²⁸, including in class

²⁸ [Tamerlane Ventures Inc. Re, 2013 ONSC 5461 at para 21](#); [Pacific Exploration & Production Corp. Re, 2016 ONSC 5429 at para 26](#).

action litigation to allow a global resolution of claims and promote the maximization of value for the debtor company's stakeholders.²⁹

44. Courts have articulated various factors in determining whether to extend a stay of proceedings to non-applicant third parties, including the following factors relevant to this case:

- (a) extending the stay to the third party would help maintain stability and value during the restructuring process;
- (b) not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
- (c) if the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant; and
- (d) the balance of convenience favours extending the stay to the third party.³⁰

45. In the recent Part IV recognition proceedings of *Sungard Canada*, this Court exercised its jurisdiction to impose a stay in favour of affiliates of the Canadian debtor who were guarantors of certain of the Canadian debtor's obligations. The affiliates were Chapter 11 debtors but not otherwise subject to the Canadian recognition proceedings.³¹ Paladin seeks similar relief in the instant case.

46. Furthermore, this Court has stayed opioid litigation similar to the Canadian Opioid Lawsuits in connection with recent Part IV recognition proceedings, even with respect to third parties that were entirely outside of the chapter 11 filings. In *Purdue*, this Court extended a stay of proceedings to the applicants' non-debtor co-defendants in various opioid litigation.³² The Court found that if the stay was not granted, "Canadian creditors will have an advantage over U.S. creditors by continuing to pursue their actions against [the non-debtor third parties] here

²⁹ [JTI-Macdonald Corp., Re](#), 2019 ONSC 1625 at para 14 [*JTI*]; [Imperial Tobacco Canada Limited, et al, Re](#), 2019 ONSC 1684 at paras 11-12.

³⁰ [JTI](#) at para 15.

³¹ [Sungard Availability Services \(Canada\) Ltd, Re](#) (14 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Supplemental Order (Foreign Main Proceeding)) at para 6 [*Sungard Supplemental Order*].

³² [Purdue Pharma LP, Re](#), 2019 ONSC 7042 [*Purdue*].

while U.S. claimants are at a standstill.”³³ Similarly in *Mallinckrodt*, a stay was granted with respect to opioid litigation in favour of the applicants’ non-debtor co-defendants.³⁴

47. The stays in *Purdue* and *Mallinckrodt* applied to non-debtor entities entirely outside of the applicable chapter 11 proceeding. While the proposed stay in favour of the Canadian Litigation Defendants would apply to any affiliate of the Canadian Debtors, whether or not a Debtor in the Chapter 11 Cases, each of the seven current Canadian Litigation Defendants is a Debtor in the Chapter 11 Cases. Accordingly, the relief sought by Paladin is more akin to the scope of relief granted in *Sungard Canada*.

48. Paladin is a defendant in each of the Canadian Opioid Lawsuits and it would be prejudicial and inefficient to permit the Canadian Litigation to continue against the Canadian Litigation Defendants when the underlying claims against such entities are closely related to the claims against Paladin. The granting of a stay in favour of the Canadian Litigation Defendants is complimentary to and in furtherance of the stay of proceedings in favour of the Canadian Litigation Defendants as Debtors in the Chapter 11 Cases.

49. As set out in the First Day Declaration, one of the factors that led to the initiation of the Chapter 11 Cases was the extensive and unsustainable litigation that has weighed on the Company. The Chapter 11 Cases were initiated, in part, to put a hold on that litigation while the Company pursues a restructuring.

50. The balance of convenience favours granting the stay of proceedings in favour of the Canadian Litigation Defendants, as there is no evidence of any material harm or prejudice to plaintiffs in the Canadian Litigation. None of the proposed class actions have been certified and many of the lawsuits are inactive. The plaintiffs in the Canadian Litigation will have the opportunity to advance their claims as part of the Chapter 11 Cases.

51. Accordingly, Paladin submits that an extension of the stay of proceedings to prevent the continuation of the Canadian Litigation against the Canadian Litigation Defendants during the

³³ [Purdue at para 24.](#)

³⁴ [Mallinckrodt Canada ULC, Re \(24 February 2021\), Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00649441-00CL \(Endorsement of Hainey J\).](#)

pendency of the Chapter 11 Cases is within the jurisdiction of the Court; consistent with recent precedent in Part IV recognition proceedings (including those involving opioid class actions); and necessary to preserve the value of the Company, ensure a level playing field among all creditors, reduce the ongoing costs incurred by the Company in defending the Canadian Litigation, and enable the company to focus its resources on pursuing a comprehensive restructuring in the Chapter 11 Cases.

C. THE CHAPTER 11 CASES ARE A “FOREIGN MAIN PROCEEDING”

(a) The Chapter 11 Cases are a “foreign proceeding” and Paladin is the foreign representative in respect of the Chapter 11 Cases

52. Pursuant to subsection 46(1) of the CCAA, a person who is a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative.³⁵ Two requirements must be met for an order recognizing a foreign proceeding:

- (a) the proceeding is a “foreign proceeding”; and
- (b) the applicant is a “foreign representative” in respect of that foreign proceeding.³⁶

53. Subsection 45(1) of the CCAA defines a “foreign proceeding” as:

a judicial or administrative proceeding in a jurisdiction outside of Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.³⁷

54. Proceedings pursuant to chapter 11 of the Bankruptcy Code under the supervision of a U.S. bankruptcy court satisfy this definition and are consistently recognized by Canadian courts to be a “foreign proceeding” under the CCAA.³⁸

³⁵ CCAA, s 46(1).

³⁶ CCAA, s 47(1).

³⁷ CCAA, s 45(1).

³⁸ [Lightsquared at para 18](#); [Hollander Sleep Products, LLC et al., Re, 2019 ONSC 3238 at para 27 \[Hollander\]](#); [Payless Holdings LLC, Re, 2017 ONSC 2242 at para 22](#); [Horsehead Holding Corp., Re, 2016 ONSC 958 at para 20 \[Horsehead\]](#); [Revlon, Inc. Re \(20 June 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00682880-00CL](#)

55. The second requirement under subsection 47(1) of the CCAA is that the applicant is a “foreign representative” in respect of the foreign proceeding. Subsection 45(1) of the CCAA defines a “foreign representative” as:

a person or body, including one appointed on an interim basis, who is authorized in a foreign proceeding in respect of a debtor company, to (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding.³⁹

56. The Debtors are seeking the issuance of the Foreign Representative Order appointing Paladin as the foreign representative of the Chapter 11 Cases in connection with the First Day Motions. Subject to and upon the issuance of the Foreign Representative Order, Paladin will be a foreign representative within the meaning of subsection 45(1) of the CCAA.

57. It is expected that certified copies of the Canadian Debtors’ Petitions and the Foreign Representative Order, as contemplated under subsection 46(2) of the CCAA, will be available shortly following the First Day Hearing. Certified copies of these documents will be filed with this Court when they become available. In the interim, the Vas Affidavit attaches filed copies of the Canadian Debtors’ Petitions and a subsequent affidavit will be filed containing the filed copy of the Foreign Representative Order, if issued. Pursuant to subsection 46(4) of the CCAA, the Court may accept any evidence of the existence of the foreign proceeding and of the foreign representative’s authority that it considers appropriate.⁴⁰

58. Accordingly, upon the granting of the Foreign Representative Order and the filing of certified copies of the Foreign Representative Order and the Canadian Debtors’ Petitions with this Court, all of the requirements for recognizing Paladin as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” within the meaning of subsection 47(1) of the CCAA will be satisfied.

[\(Endorsement of Conway J\); *Sungard Availability Services \(Canada\) Ltd, Re \(14 April 2022\)*, Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00679628-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\) \[Sungard Initial Recognition Order\]](#).

³⁹ CCAA, s 45(1).

⁴⁰ CCAA, s 46(4).

(b) The Chapter 11 Cases are a “foreign main proceeding”

59. Once the Court recognizes a foreign proceeding, the Court is required to specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”⁴¹ Subsection 45(1) of the CCAA defines a “foreign main proceeding” to be a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

60. While the CCAA does not define what constitutes a debtor’s COMI, subsection 45(2) provides that, absent evidence to the contrary, a debtor’s COMI is deemed to be the location of its registered office. The wording of subsection 45(2) and case law interpreting it establishes that this presumption can be rebutted with evidence demonstrating that a debtor company’s COMI is located in a jurisdiction other than the location of its registered office. Case law establishes that the determination of COMI is substantive, rather than technical, and that the integration of a specific debtor with a larger enterprise is a significant factor.⁴²

61. The following principal factors set out in *Lightsquared*, considered as a whole, are relevant to a determination of whether the location in which the foreign proceeding has been filed is the debtor’s COMI. The factors are:

- (a) the location is readily ascertainable by creditors;
- (b) the location is one in which the debtor’s principal assets or operations are found; and
- (c) the location is where the management of the debtor takes place.⁴³

62. Canadian courts have looked to the following factors, among others, to supplement their analysis of a debtor company’s COMI:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company’s marketing and communication functions;

⁴¹ CCAA, s 47(2).

⁴² [CHC Group Ltd \(Re\)](#), 2016 BCSC 2623 at para 9.

⁴³ [Lightsquared](#) at para 25; [Horsehead](#) at para 22.

- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;
- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.⁴⁴

63. In appropriate cases, this Court has determined that a Canadian debtor with significant business operations in Canada nevertheless had its COMI in the United States as a result of being an integrated member of the broader corporate group.⁴⁵ In *Elephant and Castle*, for instance, the Court determined that the COMI of the Canadian debtors was in the United States notwithstanding that Canada accounted for nearly one-half of the corporate group's operating locations and approximately 43% of its employees.⁴⁶

64. Since its acquisition by the Company in 2014, Paladin has become an integrated member of the broader Endo corporate group. While day-to-day business operations are generally conducted in Canada, the Canadian Debtors are managed from an overall strategic and financial perspective on a consolidated basis with the rest of the Company.

65. The following elements of the Canadian Debtors and Canadian Business, among others, are integrated with the Endo corporate group:

- (a) the Canadian Debtors are indirect, wholly-owned subsidiaries of Endo Parent, which is a public company listed on NASDAQ;

⁴⁴ [Angiotech Pharmaceuticals Inc. Re, 2011 BCSC 115 at para 7; Massachusetts Elephant & Castle Group Inc. Re, 2011 ONSC 4201 at para 26 \[Massachusetts Elephant\]](#).

⁴⁵ [Hollander at paras 8, 9 and 35; Massachusetts Elephant at paras 25 and 32.](#)

⁴⁶ [Massachusetts Elephant at para 25.](#)

- (b) Endo's senior leadership located in the United States exercises overarching strategic management and control of the entire corporate group, including the Canadian Debtors;
- (c) in 2021, the Canadian Business accounted for approximately 3% of the Company's consolidated worldwide revenue. The Company generated approximately 97% of its consolidated revenue from customers in the United States;
- (d) the Canadian Business employs approximately 5% of the Debtors' workforce;
- (e) the Company's overall capital structure, including its publicly-listed common shares and its funded indebtedness, is centrally managed by the Company;
- (f) the Canadian Debtors are guarantors of the Company's US\$8.15 billion in principal amount of funded indebtedness and have granted liens on all of their assets and property to secure the payment of the Company's secured indebtedness;
- (g) the Company's overall financial position is managed on a consolidated basis from Endo's corporate office in the United States. For financial reporting purposes, Endo reports the financial results of the entire corporate group, including the Canadian Debtors, on a consolidated basis. Other than unaudited financial statements for tax reporting purposes, the Canadian Debtors do not prepare standalone financial statements;
- (h) the Canadian Debtors are integrated into the Company's system of Intercompany Loans and Intercompany Transactions to allocate cash resources and ensure tax efficiency within the entire corporate group. As at June 30, 2022, Holdings owed approximately CDN\$599 million to its immediate parent company, Endo Luxembourg, in connection with such Intercompany Loans;
- (i) Paladin's cash management system is integrated with the Company's Cash Management System, and Endo exercises oversight of Paladin's cash collections and disbursements from its United States headquarters. Payments to vendors of the Canadian Business are processed by Endo in the United States;
- (j) Paladin utilizes Endo's enterprise resource planning (ERP) software in the operation of the Canadian Business, including utilizing shared services for the management and processing of accounts payable and accounts receivable;
- (k) Paladin participates in the Company's short-term and long-term incentive plans, which are centrally managed by the Company in the United States;

- (l) Paladin distributes products in the Canadian market on behalf of other Endo entities. Such products are provided to Paladin by the Company. Corporate decisions with respect to the licensing of Endo products to Paladin are made centrally by the Company; and
- (m) the Company centrally manages all aspects of litigation involving Endo entities, including the Canadian Litigation involving Paladin and the Canadian Litigation Defendants.⁴⁷

66. Moreover, the fact that the Canadian Debtors are guarantors of all of the Company's funded indebtedness is an important factor for purposes of the COMI analysis. As Endo's secured creditors are a critical stakeholder group and have security over substantially all of the assets of the Company, including the assets of the Canadian Debtors, there is a commonality of key creditors across the entire corporate group. The Chapter 11 Cases will be the primary forum in which the Company will seek to complete a global restructuring of its funded indebtedness and the sale of the Debtors' business and assets on a consolidated basis. Since the Chapter 11 Cases have been commenced in the United States, the United States is, in the context of the *Lightsquared* factors, the "location that is readily ascertainable by creditors" as the jurisdiction in which to complete a comprehensive restructuring of all of the Debtors, including the Canadian Debtors.

67. In summary, while the Canadian Debtors' registered head offices are in Canada, they are integrated members of the broader Endo corporate group that is centrally managed from a strategic and financial perspective by Endo's senior leadership located in the United States. The United States is the jurisdiction in which Endo, with the support of the Ad Hoc First Lien Group, is pursuing a comprehensive restructuring and sale of the Debtors' business and assets on a consolidated basis. As such, Paladin submits that the COMI of each of the Canadian Debtors is in the United States.

68. Accordingly, the Chapter 11 Cases should be recognized as a "foreign main proceeding" in respect of the Canadian Debtors pursuant to subsection 47(2) of the CCAA.

⁴⁷ Vas Affidavit at para 63.

D. THE INITIAL RECOGNITION ORDER SHOULD BE GRANTED

69. Once the Court has recognized a foreign proceeding as a foreign main proceeding, subsection 48(1) of the CCAA requires the Court to grant an order, subject to any terms and conditions it considers appropriate:

- (a) staying, until otherwise ordered by the Court, for any period that the Court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;
- (c) prohibiting, until otherwise ordered by the Court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.⁴⁸

70. Accordingly, Paladin is seeking an Initial Recognition Order in substantially the form of the Ontario model order for foreign main proceedings. The primary effect of the proposed Initial Recognition Order is to recognize the Chapter 11 Cases as a foreign main proceeding and to make the order required pursuant to subsection 48(1) of the CCAA. Consistent with the Ontario model order and the Court's jurisdiction under subsection 48(1) to grant a stay "for any period that the court considers necessary", the proposed Initial Recognition Order provides that the stay will remain effective until otherwise ordered by the Court. Ontario courts regularly grant initial recognition orders with indefinite stay periods in Part IV proceedings.⁴⁹ Accordingly, Paladin submits that the granting of the Initial Recognition Order in the form sought is necessary and appropriate and within the jurisdiction of the Court.

⁴⁸ CCAA, s 48(1).

⁴⁹ [Reylon, Inc. Re \(20 June 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00682880-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\)](#); [Sungard Initial Recognition Order](#); [Purdue Pharma LP, Re. \(19 September 2019\), Toronto, Ont Sup Ct J \[Commercial List\] CV-19-627656-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\)](#).

E. THE SUPPLEMENTAL ORDER SHOULD BE GRANTED

(a) *Stay of Proceedings against the Canadian Debtors and the Canadian Litigation Defendants*

71. The proposed Supplemental Order provides for a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants and their respective directors and officers.

72. For the reasons set forth in paragraphs 31 to 51 above with respect to the Interim Stay, Paladin submits that a stay of proceedings in respect of the Canadian Debtors and the Canadian Litigation Defendants is appropriate to give effect to the stay of proceedings in the Chapter 11 Cases and to preserve and protect the value of the Canadian Business. It is important for the Canadian Debtors to be protected pursuant to a Canadian court order from the exercise of rights or remedies to preserve the value of the Canadian Business and for the Canadian Litigation Defendants to be protected by a stay of proceedings in Canada while the Company pursues its restructuring efforts in the Chapter 11 Cases.

73. Consistent with the Ontario model order and the Court's subsection 49(1) jurisdiction to make any order that it considers appropriate, the proposed Supplemental Order provides for a more expansive stay of proceedings in favour of the Canadian Debtors and Canadian Litigation Defendants that goes beyond the more limited stay of proceedings provided for in subsection 48(1) of the CCAA. In that regard, the proposed Supplemental Order prohibits the exercise of rights or remedies against the Canadian Debtors, the Canadian Litigation Defendants or the Canadian Business; prohibits the discontinuance or termination of contracts with the Canadian Debtors; and stays all proceedings in respect of directors and officers of the Canadian Debtors and the Canadian Litigation Defendants.

(b) *Recognition of the First Day Orders*

74. Paladin is seeking recognition of certain First Days Orders, if granted by the Bankruptcy Court at the First Day Hearing. The list of proposed First Day Orders for which Paladin intends to seek recognition is set out in the Vas Affidavit. The First Day Orders include certain administrative motions with respect to the Chapter 11 Cases and certain operational motions pertaining to the conduct of the Debtors' business during the Chapter 11 Cases.

75. The First Day Orders are in the best interests of the Canadian Debtors' key stakeholders, insofar as they are expected to authorize Paladin to continue to operate the Canadian Business in the ordinary course, including to, among other things: (a) continue using the Cash Management System, (b) pay certain prepetition amounts owing to vendors; (c) pay prepetition employee wages, salaries, benefits and other compensation and to continue employee benefits programs in the ordinary course; and (d) continue customer programs in the ordinary course of business and to honour certain prepetition obligations owed to customers.

76. As detailed above, subsection 49(1) of the CCAA provide the Court with broad jurisdiction to grant "any order that it considers appropriate" with respect to foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors. Subsection 52(1) of the CCAA requires that the Court "cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding."⁵⁰

77. In the context of Part IV recognition proceedings, this Court commonly grants orders recognizing first day orders granted in Chapter 11 proceedings.⁵¹

78. Paladin submits that it is appropriate for this Court to recognize the First Day Orders because:

- (a) the Bankruptcy Court has assumed jurisdiction over the Chapter 11 Cases and comity will be furthered by this Court's recognition of orders granted by the Bankruptcy Court in those proceedings;
- (b) as Endo operates a global business with a significant presence in the United States, it is appropriate for the Chapter 11 Cases overseen by the Bankruptcy Court to be the primary forum for the Company's restructuring proceedings; and
- (c) the First Day Orders are being sought by the Debtors to enable them to carry on their business in the ordinary course, minimize the adverse effects of the Chapter 11 Cases on their overall business, and to preserve value for the benefit of stakeholders.

⁵⁰ CCAA, s 52(1).

⁵¹ [Hollander at paras 41 to 43](#); [Lightsquared at para 25](#); [Horsehead at para 42](#).

79. Paladin submits that recognition of the First Day Orders is necessary for the protection of the Canadian Debtors and is in the best interests of the stakeholders of the Canadian Debtors, who stand to benefit from the continued operation of the Canadian Business without disruption during the Chapter 11 Cases.

(c) Appointment of the Information Officer

80. Paladin seeks the appointment of KSV as the Information Officer in this proceeding.

81. Although the CCAA does not require that an information officer be appointed, it has become common practice in proceedings under Part IV of the CCAA for the Court to appoint an information officer pursuant to the Court's broad discretionary powers under sections 49 and 50 of the CCAA.⁵² The Ontario model Supplemental Order includes the appointment of an information officer. The information officer's role is to help facilitate cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep the Court apprised of the status of the foreign proceeding and to act as a point of contact to respond to inquiries from interested parties in Canada.

82. The terms of the Supplemental Order relating to the appointment, role and protections of the Information Officer are based on the terms of the Ontario model order and are consistent with the terms of orders granted in other recent Part IV recognition proceedings.

(d) The Administration Charge

83. The proposed Supplemental Order provides that Goodmans LLP, as Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer will be granted a charge in the maximum amount of CDN\$200,000 (the "**Administration Charge**") over the assets and property of the Canadian Debtors in Canada to secure the fees and disbursements of such professionals incurred in respect of these proceedings. For certainty, the proposed Administration Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors.

⁵² CCAA, s 49 and 50.

84. While not directly applicable in the context of a Part IV recognition proceeding, it is instructive that section 11.52 of the CCAA expressly provides that the Court has the jurisdiction to grant an administration charge.⁵³ In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel.⁵⁴

85. Paladin submits that the amount of the proposed Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Canadian Debtors and the proposed Information Officer and its counsel. Accordingly, Paladin submits that the granting of the proposed Administration Charge is appropriate in the circumstances.

PART IV – RELIEF REQUESTED

86. Paladin requests that the Court grant (a) the Interim Order on an urgent basis, and (b) the Initial Recognition Order and the Supplemental Order following the First Day Hearing of the Bankruptcy Court and a subsequent hearing of this Court, in each case substantially in the form attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of August, 2022.

GOODMANS LLP

Goodmans LLP

⁵³ CCAA, s 11.52.

⁵⁴ [Lightsquared at para 37](#); [Hollander at para 54](#); [Sungard Supplemental Order at para 6](#); [Revlon, Inc, Re \(20 June 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00682880-00CL \(Supplemental Order \(Foreign Main Proceeding\)\) at para 21\(a\)](#).

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<u>GNC Holdings, Inc, Re (24 June 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Endorsement of Koehnen J)</u>
2.	<u>Lightsquared LP, Re, 2012 ONSC 2994</u>
3.	<u>Sungard Availability Services (Canada) Ltd, Re (11 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Endorsement of Conway J)</u>
4.	<u>Knotel Canada, Inc, Re (9 March 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00658434-00CL (Endorsement of Cavanagh J)</u>
5.	<u>Tamerlane Ventures Inc, Re, 2013 ONSC 5461</u>
6.	<u>Pacific Exploration & Production Corp, Re, 2016 ONSC 5429</u>
7.	<u>JTI-Macdonald Corp, Re, 2019 ONSC 1625</u>
8.	<u>Imperial Tobacco Canada Limited, et al, Re, 2019 ONSC 1684</u>
9.	<u>Sungard Availability Services (Canada) Ltd, Re (14 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Supplemental Order (Foreign Main Proceeding))</u>
10.	<u>Purdue Pharma LP, Re, 2019 ONSC 7042</u>
11.	<u>Mallinckrodt Canada ULC, Re (24 February 2021), Toronto, Ont Sup Ct J [Commercial List] CV-20-00649441-00CL (Endorsement of Hainey J)</u>
12.	<u>Hollander Sleep Products, LLC et al, Re, 2019 ONSC 3238</u>
13.	<u>Payless Holdings Inc LLC, Re, 2017 ONSC 2242</u>
14.	<u>Horsehead Holding Corp, Re, 2016 ONSC 958</u>
15.	<u>Revlon, Inc, Re (20 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682880-00CL (Endorsement of Conway J)</u>
16.	<u>Sungard Availability Services (Canada) Ltd, Re (14 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Initial Recognition Order (Foreign Main Proceeding))</u>
17.	<u>CHC Group Ltd (Re), 2016 BCSC 2623</u>
18.	<u>Angiotech Pharmaceuticals Inc, Re, 2011 BCSC 115</u>
19.	<u>Massachusetts Elephant & Castle Group Inc, Re, 2011 ONSC 4201</u>
20.	<u>Revlon, Inc, Re (20 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682880-00CL (Initial Recognition Order (Foreign Main Proceeding))</u>

Tab	Description
21.	<u><i>Purdue Pharma LP, Re</i>, (19 September 2019), Toronto, Ont Sup Ct J [Commercial List] CV-19-627656-00CL (Initial Recognition Order (Foreign Main Proceeding))</u>
22.	<u><i>Revlon, Inc, Re</i> (20 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682880-00CL (Supplemental Order (Foreign Main Proceeding))</u>

SCHEDULE B
STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

s. 11.52(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.

s. 11.52(2)

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

s. 45(1) ("**Foreign Main Proceeding**")

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

s. 45(1) ("**Foreign Proceeding**")

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

s. 45(1) ("**Foreign Representative**")

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding.

s. 45(2)

For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

s. 46(1)

A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

s. 46(2)

Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

s. 46(3)

The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

s. 46(4)

In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

s. 47(1)

If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

s. 47(2)

The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

s. 48(1)

Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

s. 49(1)

If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

s. 50

An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

s. 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.

COURTS OF JUSTICE ACT
R.S.O. 1990, c. C.43, as amended

s. 106

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

Court File No. _____

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
(Application Returnable August 17, 2022)**

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