

Court File No. CV-12-9656-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE BROWN)

MONDAY, THE 16TH DAY
OF APRIL, 2012

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
PCAS PATIENT CARE AUTOMATION SERVICES INC.
AND 2163279 ONTARIO INC. (the "Applicants")**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

ORDER

THIS MOTION, made by the Applicants, for an order, *inter alia*: (a) approving the First Report of PricewaterhouseCoopers Inc. ("PwC"), in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated April 15, 2012 (the "**First Report**") and the Report of PwC in its capacity as proposed Monitor dated March 21, 2012 (the "**Proposed Monitor's Report**"), and approving the actions of the Monitor described in each; (b) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Morawetz granted on March 23, 2012 in these proceedings (the "**Initial Order**")) to April 23, 2012; (c) approving the Amended and Restated DIP Loan Agreement between PCAS Patient Care Automation Services Inc. and 2320714 Ontario Inc. (the "**DIP Lender**") dated on or about April 16, 2012, filed (the "**Amended and Restated DIP Loan Agreement**"); (d) increasing the amount the Applicants are currently authorized to borrow under the credit facility (the "**DIP Facility**") from the DIP Lender from \$2,800,000 to ~~\$10,000,000~~; (e) approving the KERP, granting the KERP Charge (both as defined below) and permitting PCAS to raise wages to retain employees; and (f) sealing Confidential Appendix "B" to the First Report until further order of this Honourable Court, was heard this day at 330 University Avenue, Toronto, Ontario.

~~\$10,000,000~~
\$3,800,000 JS

ON READING the affidavit of Loreto Grimaldi, sworn April 13, 2012 and the exhibits thereto (the "**Grimaldi Affidavit**"), the affidavit of Tom Fenton, sworn April 16, 2012 and the First Report, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the DIP Lender, counsel for Castcan Investments Inc., counsel for Royal Bank of Canada and no one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Baltkois sworn April 13, 2012, filed, and the affidavit of Suzy Moniz sworn April 16, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Proposed Monitor's Report and the First Report be and are each hereby approved and the actions of the Monitor described in each be and are hereby approved.

3. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 13 of the Initial Order, be and is hereby extended to and including April 23, 2012. JS

4. **THIS COURT ORDERS** that paragraph 31 of the Initial Order be and is hereby amended to provide as follows:

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from 2320714 Ontario Inc. (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of ~~\$10,000,000~~ unless permitted by further Order of this Court.

\$3,800,000 JS

5. **THIS COURT ORDERS** that the credit facility described in paragraph 31 of the Initial Order shall be on the terms and subject to the conditions set forth in the Amended and Restated DIP Loan Agreement.

6. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver the Amended and Restated DIP Loan Agreement in substantially the form appended to the Grimaldi Affidavit, the Pari Passu Priorities Agreement (as defined in the Grimaldi Affidavit) in substantially the form appended to the Grimaldi Affidavit, and such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Amended and Restated DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Amended and Restated Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

7. **THIS COURT ORDERS** that paragraph 34 of the Initial Order be and is hereby amended to provide as follows:

34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of, and is hereby granted, a charge on the Property (the “DIP Lender’s Charge”) to secure all indebtedness, liabilities and obligations owing or accruing under the Loan Agreement (as the same may be amended, supplemented, restated or replaced from time to time with approval of this Court), which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.

8. **THIS COURT ORDERS** that that the Applicants’ key employee retention plan (the “**KERP**”) as described in the Grimaldi Affidavit and as appended to the First Report in unredacted form as Confidential Appendix “B” be and is hereby approved and the Applicants be and are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the KERP.

9. **THIS COURT ORDERS** that the employees of the Applicants subject to the KERP shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property (as defined in the Initial Order), which charge shall not exceed an aggregate amount of

\$500,000, to secure amounts owing to such employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 13 and 14 hereof.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the KERP Charge shall not be required, and that the KERP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that the KERP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the KERP Charge shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances (as defined below), contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the KERP Charge shall not create or be deemed to constitute a breach by either of the Applicants of any Agreement to which it is a party;
- (b) the KERP Charge beneficiaries shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the KERP Charge; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the KERP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

12. **THIS COURT ORDERS** that the KERP Charge created by this Order over leases of real property in Canada shall only be a charge in the Applicants' interest in such real property leases.

13. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge and the Directors' Charge, as first established in paragraph 38 of the Initial Order, and the KERP Charge (collectively, the "**Charges**"), as among them, shall from this date forth be as follows:

- (a) First – the Administration Charge (to the maximum amount of \$500,000);
- (b) Second – the DIP Lender's Charge;
- (c) Third – Directors' Charge (to the maximum amount of \$1,500,000); and
- (d) Fourth – the KERP Charge (to the maximum amount of \$500,000).

14. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and:

- (a) the DIP Lender's Charge, the Directors' Charge and the KERP Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person with the exception of valid, enforceable and perfected Encumbrances existing as at the date of the Initial Order; and
- (b) the Administration Charge shall rank in priority to all other Encumbrances in favour of any Person.

15. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges.

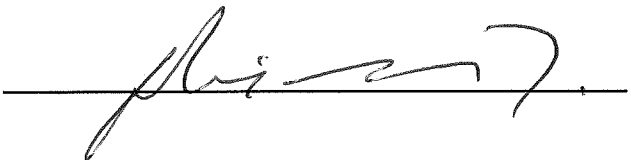
16. **THIS COURT ORDERS** that, subject to further order of this Court, Confidential Appendix "B" to the First Report shall be sealed, kept confidential and not form part of the

public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of this Court.

~~17. **THIS COURT ORDERS** that subparagraph 5(a) of the Initial Order be and is hereby amended to provide as follows:~~

~~(a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, provided that wages of key, non-management employees may be increased at the discretion of management and with consent of the Monitor where, and only to the extent that, savings have been created by the resignation of other employees;~~

18. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may bring a motion to this Court to vary or amend this Order (provided that the beneficiary of any Charge shall be entitled to rely on the Charges up to and including the day on which such Charge or the priority granted to such Charge may be varied or amended), which motion must be returnable by no later than April 23, 2012 or such later date as the parties affected may agree, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to be "M. Smith", written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 16 2012

MB

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Court File No. CV-12-9656-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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Lawyers for the Applicants

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

PCAS Patient Care (CCAA)

Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:
S. Babe + I. Averca	Applicant	
M. Wasserman	PWC, Monitor	
R. Thornton; A. Shepherd	DIP Lender	
D. Bulas	Castro	
R. Slattery	RBC	

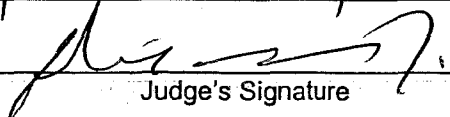
- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

PCAS applies for ① an increase in its DIP facility to \$10M,
 ② approval of a KERP plan ③ approval of allocation of payroll
 savings to increase the salaries of non-KERP employees and
 ④ extension of the stay.

The Monitor was not able to serve its Report until last night.
 As per the description in the endorsement of Monwety J. released
 April 13/12, this company is in a pre-revenue start-up phase.
 It has exhausted the approved DIP Facility. It needs more
 money to meet payroll on Wed, April 18. There is no doubt it
 is working hard and in good faith to find more DIP financing.

April 16/12
Date


Judge's Signature

Superior Court of Justice
Commercial List

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Judges Endorsement Continued

Given the need for more interim financing, the applicants have not been able to focus on either a marketing plan or a restructuring proposal.

The evidence discloses that by the middle of this week the applicants will have a much better understanding of the further availability of interim financing. Accordingly, I think it best to wait until week's end to consider the applicants' larger request to increase the DIP Facility to \$10M. Today I am prepared to consider their need for an increase to get through this week.

As to the request to increase the DIP Facility by \$1M on the awarded DIP terms set out in the materials, the evidence supports approval of such an increase pursuant to CCAA 11.2. The affected secured creditors have been given notice. Neither RBC nor CIBC are opposed. The applicants need the increase to meet payroll and they are working in good faith towards a viable plan or sale. It is clear that without the awarded DIP terms the additional \$1M will not be

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Judges Endorsement Continued

forthcoming. Although the precise cost of the additional financing, cannot be ascertained at this time due to conversion rights, there is no doubt that this will be expensive financing, but the only financing available at this time. The Monitor supports the financing. Having taken into account the factors set out in CCAA 11.2(4), I approve the increase in the DIP Facility by \$1M on the amended terms proposed.

As to the proposed KERP, the applicants have set out the guiding principles in paras. 38 to 43 of the Factors, including those in the Great Forest Products case. I have considered the evidence in light of those principles. It is clear that for this start-up company to have a realistic chance of making a proposal for a plan or a sale, it must retain the services of the identified employees. I have reviewed the confidential schedule in the Monitor's Report. The Monitor supports the proposed KERP plan. I conclude that the proposed plan is both necessary and reasonable and I approve it. The Confidential KERP Schedule shall remain sealed: Sierra Club.

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsement Continued

The applicants shall return before me this Friday, April 20, with any necessary additional evidence, to seek approval of ① increase in DIP Facility to \$10M, ② allocation of payroll savings to certain non-KEIP employees to increase their base salary and ③ a further extension of the stay.

Order to go in accordance with draft filed which I have signed.