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

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 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

FACTUM OF THE APPLICANTS

May 11, 2012

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PART I – OVERVIEW

1. By this motion, PCAS Patient Care Automation Services Inc. ("**PCAS**") and 2163279 Ontario Inc. ("**Touchpoint**" and, together with PCAS, the "**Applicants**") seek an order, among other things:

(a) approving the Fifth Report of PricewaterhouseCoopers Inc. ("**PwC**"), in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated May 11, 2012 (the "**Fifth Report**") and approving the actions of the Monitor described therein;

(b) increasing the amount the Applicants are currently authorized to borrow under a credit facility (the "**DIP Facility**") from 2320714 Ontario Inc. (the "**DIP Lender**") from $5,350,000 to $6,000,000; and

(c) approving the sale and investor solicitation process described in the Affidavit of Loreto Grimaldi, dated May 11, 2012 (the "**May 11 Affidavit**") and in the Fifth Report (the "**SISP**").

PART II – FACTS

Background

2. On March 23, 2012, the Applicants made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") seeking court protection from their creditors, which was granted pursuant to the Initial Order.

May 11 Affidavit, Motion Record of the Applicants ("Motion Record"), Tab 3, pg. 2, para. 3

The DIP Facility

3. Pursuant to paragraph 31 of the Initial Order of the Honourable Mr. Justice Morawetz granted on March 23, 2012 in these proceedings (the "**Initial Order**"), as amended by the Order of the Honourable Justice Brown made on May 7, 2012 (the "**May 7 Order**"), the Applicants were authorized and empowered to obtain and borrow under the DIP Facility from 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 did not exceed the principal amount of $5,350,000 unless permitted by further Order of this Court.

May 11 Affidavit, Motion Record, Tab 3, pg. 2, para. 6

4. Pursuant to the May 7 Order, the DIP Facility is to be on the terms and subject to the conditions set forth in the Second Amended and Restated DIP Loan Agreement between the Applicants and the DIP Lender (the "**Second Amended and Restated DIP Loan Agreement**").

May 11 Affidavit, Motion Record, Tab 3, pg. 2, para. 7

5. The Applicants' thirteen-week cash flow projections and the Second Amended and Restated DIP Loan Agreement both contemplate a DIP Facility as high as $10,000,000, should the DIP Lender raise sufficient amounts to fund such facility.

May 11 Affidavit, Motion Record, Tab 3, pg. 2, para. 7

6. The DIP Lender has advised that, since the date of the May 7 Order, it has received commitments and/or funding sufficient to increase the DIP Facility by an additional $10,000. The DIP Lender has also requested that the authorized borrowing under the DIP Facility be raised by a further $640,000 to account for fees and expenses of counsel to the DIP Lender ("**Lender's Counsel**") payable pursuant to the terms of the DIP Facility, which fees and expenses Lender's Counsel have agreed to contribute to the funding of the DIP Lender rather than requirement payment that would impact the Applicants' cash flows. The Applicants are therefore seeking to have their authorized borrowing under the DIP Facility increased to $600,000 in the aggregate. The Lender's Counsel's account to date have been submitted to and reviewed by the Monitor.

May 11 Affidavit, Motion Record, Tab 3, pg. 3, para. 8

7. Increasing the amount of the DIP Facility $6,000,000 is favourable to the Applicants having regard to the circumstances and the increase in the amount of the DIP Facility is necessary and reasonable in the circumstances to ensure that the Applicants have a prudent and

responsible level of liquidity so that they can meet post-filing obligations as they become due for the current Stay Period and beyond.

May 11 Affidavit, Motion Record, Tab 3, pg. 3, para. 9

The SISP

8. The Monitor and the DIP Lender all agree that there was sufficient funding under the DIP Facility to initiate the SISP, and that the SISP therefore should be initiated as soon as possible.

May 11 Affidavit, Motion Record, Tab 3, pg. 3, para. 10

9. Applicants have developed the SISP in conjunction with the Monitor, the Monitor's agent, PricewaterhouseCoopers Corporate Finance Inc. ("**PWCCF**") and the DIP Lender. The SISP is intended to maximize stakeholder value through either (a) a going concern sale with respect to the Applicants' business and assets or (b) new investment and a plan of compromise or arrangement.

May 11 Affidavit, Motion Record, Tab 3, pg. 3, para. 10

10. The SISP will include broad marketing to all potential investors and bidders, including those that have already engaged in talks with the Applicants, the DIP Lender and/or the Monitor. It will be a fair and transparent process overseen by the Monitor.

May 11 Affidavit, Motion Record, Tab 3, pgs. 3 to 4, para. 11

11. The SISP is expected to generate value sufficient to benefit all creditors, and even equity holders, as well as generate an outcome that will have other economic and social benefits including, without limitation, the preservation of jobs for the Applicants' present employees and, possibly, the revival jobs for terminated employees, and by ensuring the technology itself, with all its benefits, gets brought to market on a large scale.

May 11 Affidavit, Motion Record, Tab 3, pg. 4, para. 12

12. The SISP will accommodate various forms of offers, whether they be bids for the assets of the Applicants or proposals for new debt and/or equity investment in the Applicants. The SISP will therefore potentially benefit all economic stakeholders in the Applicants, and no creditors or other stakeholders should have any bona fide objection to the SISP.

May 11 Affidavit, Motion Record, Tab 3, pgs. 3, 4 and 5, paras. 11 and 16

13. The funding available under the DIP Facility dictates that the SISP be conducted over a compressed timeframe of ten days (not including the week of work already done by the Applicants and PWCCF since the May 7 Order), and DIP Lender does not believe it could raise the funding that would be required to run a longer process. The short process is justifed by the extensive marketing of the Applicants and their business both domestically and internationally by the Applicants, their prior investment bankers and the DIP Lender. In connection with recent private placements, the Applicants' investment bankers have contacted approximately 176 parties, obtained 36 signed non-disclosure agreements and gave 18 presentations with PCAS management. PCAS itself has contacted approximately 50 parties over the past 24 months, with some of whom PCAS is still in various stages of discussion. PCAS and PWCCF have also identified another 110 parties to contact in the SISP and PWCCF has joined PCAS in initial discussions with a number of parties over the past week since its appointment by the Monitor.

May 11 Affidavit, Motion Record, Tab 3, pg. 4, paras. 13 and 15

14. The SISP is structured so that the DIP Lender will purchase the business and assets of the Applicants, by bidding the value of the debt under the DIP Facility (the "**DIP Facility Debt**"), if and only if there are no superior qualified bids. The DIP Lender will not be permitted to bid in excess of the DIP Facility Debt.

May 11 Affidavit, Motion Record, Tab 3, pg. 5, para. 16

15. The Applicants cannot continue to operate without initiating a structured investment and sale process, and no other such process would accommodate as broad a range of possible positive outcomes as the SISP.

May 11 Affidavit, Motion Record, Tab 3, pg. 5, para. 17

16. The Monitor has advised that it approves of SISP.

May 11 Affidavit, Motion Record, Tab 3, pg. 5, para. 18

PART III – ISSUES

17. The primary issues to be determined on this motion are whether this Honourable Court should:

(a) increase the amount the Applicants are currently authorized to borrow under the DIP Facility from the DIP Lender from $5,350,000 to $6,000,000; and

(b) approve the SISP, in the absence of a formal plan of arrangement and a creditor vote.

PART IV – LAW AND ARGUMENT

A. THE DIP FACILITY SHOULD BE INCREASED

18. The Applicants are seeking approval of an increase in the authorized borrowing under the DIP Facility to the maximum principal amount of $6,000,000.

19. Section 11.2 of the CCAA provides this Court with the statutory jurisdiction to grant the DIP Charge. It provides:

> 11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.
>
> 11.2 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> ***CCAA*, s. 11.2**

20. This Court has stressed the importance of meeting the criteria set out in subsection 11.2(1) of the CCAA being:

(a) the DIP Charge does not purport to prime any secured party who has not received notice of this application;

(b) the amount to be advanced under the DIP facility is appropriate and required, having regard to the debtor's cash-flow statement; and

(c) the charge does not secure an obligation that existed before the Order was made.

> ***Canwest Publishing Inc. (Re)* (2010), 63 C.B.R. (5th) 115 at paras. 42-45 (Ont. S.C.J. [Comm. List]) ["*Canwest Publishing*"], Commercial List Authorities Book, Tab 4**
>
> ***Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 at paras. 31-35 (Ont. S.C.J. [Comm. List]) ["*Canwest Global*"], Applicants' Book of Authorities, Tab 2**

21. The amount of the increased DIP Facility is supported by the Applicants' cash flow projections. The financing will be used to provide time for the management of the Applicants, with their advisors and in consultation with the Monitor and PWCF to conduct the SISP.

22. The amount of the increased DIP is necessary to accommodate the fees and expenses of the Lender's Counsel, payable under the terms of the Second Amended and Restated DIP Loan Agreement, which fees and expenses have and are being contributed by Lender's Counsel to the funding of the DIP Lender. This has freed up significant cash flow for the Applicants.

23. Subsection 11.2(4) of the CCAA sets out a number of factors to be considered by the Court in determining if it is appropriate to grant a DIP Charge. It states:

> 11.2(4) In deciding whether to make an order, the court is to consider, among other things,
>
> (a) the period during which the company is expected to be subject to proceedings under this Act;
>
> (b) how the company's business and financial affairs are to be managed during the proceedings;
>
> (c) whether the company's management has the confidence of its major creditors;
>
> (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> (e) the nature and value of the company's property;
>
> (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> (g) the monitor's report referred to in paragraph 23(1)(b), if any.
>
> ***CCAA*, s. 11.2(4)**

24. In the present case, the following, when considered in relation to the above noted factors, support the granting of approval of an increase to the DIP Facility (and thereby of the indebtedness subject to the DIP Charge):

(a) *Period during which the Applicants are expected to be subject to the CCAA.* The Applicants are optimistic that CCAA protection will enable them to negotiate a going concern sale.

(b) *The DIP Facility would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants.* Absent the funding provided for by the increased DIP Facility, the Applicants have no liquidity and will not be able to continue to meet its payroll obligations, even at a reduced level, or have the opportunity to work with the Monitor and PWCF to effect a going concern sale.

(c) *Material prejudice to any creditor as a result of the security or charge.* The increased DIP Charge does not purport to prime any secured party who has not received notice of this application.

(d) *The Monitor.* The Monitor supports the granting of the increased DIP Charge.

25. Accordingly, the Applicants respectfully request that the Court grant an Order approving an increase borrowing limit under the DIP Facility to the maximum principal amount of $6,000,000.

B. THE SALE AND INVESTOR SOLICITATION PROCESS SHOULD BE APPROVED

26. The Applicants are seeking an order approving the SISP, which has been developed in conjunction with the Monitor, the DIP Lender and PWCF. Although the Applicants continue to operate and are hopeful that the SISP will allow them to put a plan of arragement or compromise to a vote of creditors, there is no plan or creditor vote scheduled or in existence at this time.

Whether the SISP results in a sale of the Applicants' business or in sufficient financing to allow the Applicants to continue with the business themselves, the business would, in either case, be preserved as a going concern.

27. To the extent the SISP may result in a sale of the Applicants' business as a going concern, such a sale would be consistent with the objectives of the CCAA, and the Court therefore has the jurisdiction to authorize such a sale under the CCAA even in the absence of a plan of arrangement or compromise.

> ***Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197 (Ont. C.A.), at paras. 5 and 9, Applicants' Book of Authorities, Tab 6**

28. As Justice Morawetz has stated:

> [40] ... The value of equity in an insolvent debtor is dubious, at best, and, in my view, it follows that the determining factor should not be whether the business continues under the debtor's stewardship or under a structure that recognizes a new equity structure. An equally important factor to consider is whether the case can be made to continue the business as a going concern.
>
> . . .
>
> [47] . . . The CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives and a sale by the debtor which preserves its business as a going concern is, in my view, consistent with those objectives.
>
> [48] I therefore conclude that the court does have the jursidiction to authorize a sale under the CCAA in the absence of a plan.
>
> > ***Nortel Networks Corp., Re* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]) ["*Nortel*"], at paras. 40, 47 and 48, Applicants' Book of Authorities, Tab 7**

29. In *Nortel*, Justice Morawetz accepted the submission of counsel to the applicants that the court should consider the following factors when reviewing a proposed SISP under the CCAA in the absence of a plan (collectively, the "**Nortel Criteria**"):

(a) Is a sale transaction warranted at this time?

(b) Will the sale benefit the whole "economic community"?

(c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?

(d) Is there a better viable alternative?

***Nortel* at para. 49, Applicants' Book of Authorities, Tab 7**

30. The Nortel Criteria were developed prior to the enactment of Section 36 of the CCAA, which now sets out the factors a CCAA court must consider when approving a sale out of the ordinary course of business. Subsection 36(3) states:

> 36.(3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

***CCAA*, s. 36(3)**

31. In a CCAA proceeding commenced shortly after the enactment of Section 36, Justice Morawetz again approved a sale process in the absence of a plan. Justice Morawetz held that a distinction had to be drawn between the approval of a sale process, in which the Nortel Criteria should be considered, and the approval of a sale, in which the factors enumerated in Subsection 36(3) of the CCAA need be considered. The Section 36 factors include considerations (such as whether the process was conducted fairly) that arise only once a sale process has been completed and approval of a sale is sought. Justice Morawetz did, however, hold that the Section 36 factors should be applied indirectly when applying the Nortel Criteria.

> ***Brainhunter Inc., Re* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J. [Comm. List]), at paras. 14 to 17, Applicants' Book of Authorities, Tab 1**
>
> **CCAA, s. 36**

32. Rather than a sale, the SISP might result in sufficient debt or equity financing to allow the Applicants to continue in business, which would in turn allow the Applicants to put a viable plan to a vote of creditors. Approval of the SISP, *qua* investor solicitation process, could engage a different set of considerations from the Nortel Criteria (indirectly infused with the Section 36 factors).

33. In approving an investment (rather than an investor solicitation process), Justice Pepall held that the appropriate test to be applied by a CCAA court is not simply the "fair and reasonable" test the court would apply in approving an agreement, nor (for reasons discussed below) is it the Nortel Criteria, but rather the appropriate test is a combination of:

(a) the Section 36 consideration of whether the Monitor supports the transaction; and

(b) the principles enunciated by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.*, namely:

(i) whether the CCAA company has made sufficent effort to get the best price and has not acted improvidently;

(ii) the interests of all parties;

(iii) the efficacy and integrity of the process by which offers are obtained; and

(iv) whether there has been unfairness in the working out of the process.

***Canwest Global Communications Corp., Re* (2010), 64 C.B.R. (5th) 221 (Ont. S.C.J. [Comm. List]) ["*Canwest*"], at paras. 33 to 36, Applicants' Book of Authorities, Tab 3**

***Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1 (Ont. C.A.)) ["*Soundair*"], at para. 16, Applicants' Book of Authorities, Tab 8**

34. In *Canwest* Justice Pepall declined to apply the Nortel Criteria because they were either subsumed by the *Soundair* principles, or were not helpful when approving a transaction rather than a process aimed at generating a transaction. The possibility is therefore left open that Nortel Criteria could, at least in part, be relevant in approving an investment solicitation process (as opposed to a particular investment).

35. Setting aside for the moment the question of whether the Nortel Criteria should be applied in approving the SISP, *qua* investor solicitation process, there is precedent for adapting the Soundair principles for approval of a sale process rather than a sale. In the context of a motion for approval of a sale process in a receivership, Justice Brown held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver ought to be assessed in light of the *Soundair* principles that a court would take into account when considering the approval of a sale. In adapting the *Soundair* principle for a receivership sale process, Justice Brown held that the court should assess:

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,

(c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

***CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, (2012) 2012 ONSC 1750 (Ont. S.C.J. [Comm. List]) ["*blutip Power*"], at para. 6, Applicants' Book of Authorities, Tab 5**

36. If these adapted *Soundair* principles from *blutip Power* are substituted into the *Canwest* test, we arrive at the following set of principles to be considered for approval of an investor solicitation process in a CCAA proceeding (collectively, the "**Investment Process Criteria**"):

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the company;

(c) whether the investor solicitation process will optimize the chances, in the particular circumstances, of securing the best possible price for the equity rights being offered or credit being obtained; and

(d) whether the Monitor has approved the process.

37. As stated above, *Canwest* did leave open the possibility that the Nortel Criteria might apply to approval of an investor solicition process (as opposed to approval of a particular investment transaction), but we need not be concerned about the nuances of how the Nortel

Criteria might apply since, in the present instance, the Nortel Criteria will already be applied in evaluating the SISP *qua* sale process. Although it might be possible to create some more elegant amalgam of the Nortel Criteria and the above-developed Investment Process Criteria for application to a sale and investor solicitation process, that exercise is not necessary for present purposes; we can simply apply both.

38. In the present case, the following, when considered in relation to the Nortel Criteria and, indirectly, the Section 36(3) factors, support the granting of approval of the SISP, *qua* sale process:

(a) *A sale transaction is warranted at this time.* Given the Applicants' lack of liquidity, a sale may be the most efficient means to preserve the business as a going concern, which consideration should, in these circumstances, outweigh concerns about continuing the business under the Applicants' stewardship or the Applicants' ability to bring a viable plan or compromise or arrangement.

(b) *The sale will benefit the whole "economic community".* Given the Applicants lack of liquidity, a sale may be the best way to maximize economic and social benefits, including, among other things, by preserving and even reviving jobs, and by ensuring the technology itself, with all its benefits, gets brought to market on a large scale.

(c) *No creditor has a bona fide reason to object to a sale of the business.* To the Applicants' knowledge, no creditor objects to the preservation of the business as a going concern through a sale.

(d) *There is no better viable alternative*. The Applicants have struggled, ultimately unsucessfully, to raise sufficient DIP financing to fund the more fulsome sale and investor solicitation process that was originally intented. As sale by the Applicants will preserve more value than a sale by a receiver or a liquidation in bankruptcy. If there is a better viable alternative than a sale, the SISP will uncover it.

(e) *The Monitor*. The Monitor supports the approval of the SISP in full recognition that it might result in a sale.

39. The following, when considered in relation to the Investment Process Criteria, support the granting of approval of the SISP, *qua* investor solicitation process:

(a) *The fairness, transparency and integrity of the proposed process*. The SISP will be overseen by the Monitor with the assistance of PWCCF and the DIP Lender is only able to bid to provide a floor price for the SISP.

(b) *The commercial efficacy of the proposed process in light of the specific circumstances facing the company*. Given the limit to the DIP Facility, and given the extensive marketing already done, the SISP is both the best option, and a very effective option for preserving the business as a going concern.

(c) *Whether the investor solicitation process will optimize the chances, in the particular circumstances, of securing the best possible price for the equity rights being offered or credit being obtained.* The SISP will widely market the investment opportunity in the Applicants, and build on the extensive marketing

already done by PCAS and its investment bankers. By providing a bidding process, the SISP will reveal the best of any investment offers available.

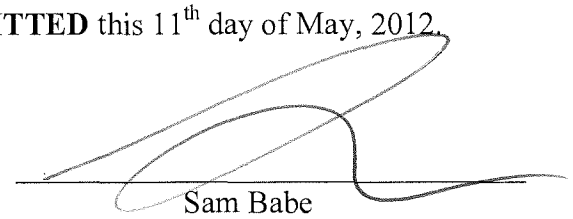
(d) *Whether the Monitor has approved the process.* The Monitor supports the approval of the SISP.

40. Accordingly, the Applicants respectfully request that the Court grant an Order approving the SISP.

PART V – RELIEF REQUESTED

41. The Applicants respectfully request that this Honourable Court grant an Order substantially in the form of the draft Initial Order attached as Tab 2 to the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of May, 2012.



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TAB A

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Brainhunter Inc., Re*, (2009) 62 C.B.R. (5th) 41 (Ont. S.C.J. [Comm. List])

2. *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J. [Comm. List])

3. *Canwest Global Communications Corp., Re*, (2010) 64 C.B.R. (5th) 221 (Ont. S.C.J. [Comm. List])

4. *Canwest Publishing Inc. (Re)* (2010), 63 C.B.R. (5th) 115 (Ont. S.C.J. [Comm. List])

5. *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, (2012) 2012 ONSC 1750 (Ont. S.C.J. [Comm. List])

6. *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197 (Ont. C.A.)

7. *Nortel Networks Corp., Re*, (2009) 55 C.B.R. (5th) 229 Ont. S.C.J. [Comm. List])

8. *Royal Bank v. Soundair Corp.*, (1991) 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1 (Ont. C.A.))

TAB B

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the 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 company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or

part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

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

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

36.(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Courts of Justice Act, R.S.O. 1990, c. C-34

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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")

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

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