

THE KING'S BENCH
WINNIPEG CENTRE

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "**Applicants**")

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

NOTICE OF MOTION
(STAY EXTENSION, INTERIM DISTRIBUTION, AND OTHER RELIEF)
DATE OF HEARING: FRIDAY, FEBRUARY 9, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 568954.1

THE KING'S BENCH
WINNIPEG CENTRE

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 MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC HOLDING CO. LTD.

(the "**Applicants**")

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

NOTICE OF MOTION
(STAY EXTENSION, INTERIM DISTRIBUTION, AND OTHER RELIEF)

Alvarez & Marsal Canada Inc. (the "**Monitor**"), the court appointed monitor of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. ("**Realco**") (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Chartier on Friday, the 9th day of February, 2024 at 10:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion (the "**Stay Extension Order**"):
 - (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on February 9, 2023 at 10:00 a.m., and dispensing with further service thereof;
 - (b) extending the Stay Period (as defined in the Amended and Restated Initial Order of the Honourable Justice Kroft dated December 1, 2022 (the "**ARIO**")) from February 12, 2024 to May 3, 2024;

- (c) authorizing and directing the Monitor to make an interim distribution to Canadian Imperial Bank of Commerce ("**CIBC**") from the net proceeds of the Medco and Realco Transactions in the amount \$35,849,000;
 - (d) approving the Seventh Report of the Monitor dated February 6, 2023 (the "**Seventh Report**") and the Monitor's activities, actions, and conduct described therein;
 - (e) approving the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Seventh Report; and
 - (f) such further and other relief as counsel may advise and this Honourable Court may permit.
2. An Order in substantially the form attached hereto as Schedule "B" to this Notice of Motion (the "**D&O Release Order**"):
- (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on February 9, 2023 at 10:00 a.m., and dispensing with further service thereof;
 - (b) releasing the Applicants' directors and officers (collectively, the "**Directors and Officers**") from any and all claims that any Person (as defined in the ARIQ) may have against the Directors and Officers (the "**Released Claims**") in their capacities as directors and officers of the Applicants arising on or after November 30, 2022 (the "**Filing Date**");
 - (c) providing that:
 - (i) in the event any Person objects to the Directors' and Officers' release from the Released Claims (a "**Disputed Claim**"), that Person must file and serve a sworn affidavit setting out the particulars of the Disputed Claim (with any relevant documents appended thereto as exhibits, where applicable,) (the "**Claimant's Affidavit**") on the Monitor and members of the Service List on or before March 9, 2024 (the "**Claims Bar Date**"), failing which the Directors and Officers shall be released from the Disputed Claim; and
 - (ii) if a Claimant's Affidavit is delivered to the Monitor on or before the Claims Bar Date, the Disputed Claim shall be unaffected by the D&O Release Order pending further agreement between that Person and the Monitor or further Order of the Court; and

- (iii) the Monitor, in consultation with the CIBC and the applicable Directors and Officers, as the case may be, may attempt to resolve and settle any Disputed Claim;
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 3. For the purposes of this motion, the Monitor relies on:
 - (a) section 11, 11.02, and 12 of the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**");
 - (b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.

INTERPRETATION

- 4. Unless otherwise defined, capitalized terms will have the meanings given to them in the ARIO and Seventh Report.

SERVICE

- 5. The Monitor's notice of motion, the Seventh Report, and brief of law were served by email and facsimile on the members of the Service List established in these proceedings, as contemplated by paragraph 47 of the ARIO.

STAY EXTENSION

- 6. The Stay Period is scheduled to expire on February 12, 2024.
- 7. The Monitor is seeking an extension of the Stay Period until May 3, 2024 for the following reasons:

- (a) the Monitor anticipates that the extension will provide sufficient time for the Monitor to finalize the administration of the *CCAA* Proceedings, including any claims against the Directors' Charge;
- (b) the Applicants are forecast to have sufficient liquidity to meet their obligations during the requested Stay Extension;
- (c) the Monitor is unaware of any creditors that will be prejudiced by the Stay Extension; and
- (d) the Monitor is of a view that the Applicants have acted with good faith and due diligence throughout the *CCAA* Proceedings.

INTERIM DISTRIBUTION

8. The Monitor has received an independent security opinion confirming the validity and enforceability of CIBC's loan agreement and associated security.

9. The Monitor is not aware of any claimant that may have priority over CIBC in respect of the net proceeds of the Medco and Realco Transactions and is therefore seeking authorization to make an interim distribution to CIBC in the amount of \$35,849,000.

10. The Monitor will retain a \$1 million holdback from the net proceeds to make any future disbursements relating to:

- (a) the completion of Medco's year-end accounting;
- (b) indemnity claims against the Directors' Charge;
- (c) professional fees; and
- (d) any unforeseen expenses incidental to the administration of the estate.

DIRECTORS' AND OFFICERS' RELEASE

11. Paragraph 18 of the ARIO creates a \$350,000 Directors' Charge on the Applicants' Property as security for the Applicants' obligation to indemnify its directors and officers

against obligations and liabilities they may incur while acting as directors and officers of the Applicants after the Filing Date, except to the extent the obligation or liability was incurred as a result of the directors' or officers' gross negligence or willful misconduct.

12. The Directors' Charge is a third ranking charge against the Property and the nature and extent of any indemnity claims must be determined before the *CCAA* Proceedings can be concluded.

13. The Monitor is presently unaware of any existing or threatened claims against the directors and officers for which they would be entitled to be indemnified by the Applicants. In an effort to minimize costs and bring the *CCAA* Proceedings to a conclusion in the coming months, the Monitor is seeking the D&O Release Order as an alternative to running a directors' and officers' claims process.

14. The Monitor is of the view that the release of the Applicants' directors and officers in accordance with the D&O Release Order is fair and reasonable in the circumstances for the following reasons:

- (a) the directors and officers were directly involved in the continued operation of the Companies and their restructuring efforts to date, and have therefore meaningfully contributed to the restructuring;
- (b) the proposed releases will allow for the eventual termination of the Directors' Charge and an additional \$350,000 to be distributed in accordance with the pre-existing priorities;
- (c) the motion is being made on notice to the Service List and the Seventh Report details the nature and effect of the releases sought;
- (d) any Person (as defined in the ARIO) who objects to the directors' and officers' release from a Disputed Claim has the opportunity and a mechanism to oppose the same; and
- (e) the releases are fair, reasonable, and not overly broad, as they do not release the directors and officers from the Excluded Claims.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. the Amended and Restated Initial Order signed December 2, 2022 and other Orders of the Court granted in the *CCAA* proceedings;
2. the Affidavit of Keith McConnell sworn November 28, 2022.
3. the Pre-Filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022.
4. the First Report of the Monitor dated January 20, 2023.
5. the Second Report dated April 18, 2023;
6. the Third Report of the Monitor dated July 31, 2023;
7. the Fourth Report of the Monitor dated September 22, 2023;
8. the Fifth Report of the Monitor dated October 27, 2023;
9. the Sixth Report of the Monitor dated November 24, 2023 and Confidential Supplement thereto;
10. the Seventh Report of the Monitor dated February 6, 2024;
11. the Affidavit of Service, to be filed;
12. the Monitor's Brief of Law, to be filed; and
13. such further and other documentation as counsel may advise and this Honourable Court may permit.

February 6, 2023

McDOUGALL GAULEY LLP

500 616 Main Street, Saskatoon SK S7J 0H6

Ian A. Sutherland, K.C. / Craig Frith

PHONE: (306) 665-5417 / (306) 665-5432

FAX: (306) 664-4431

SCHEDULE "A"

File No. CI 22-01-38613

**THE KING'S BENCH
WINNIPEG CENTRE**

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "**Applicants**")

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

ORDER
(STAY EXTENSION, INTERIM DISTRIBUTION, AND OTHER RELIEF)
DATE OF HEARING: FRIDAY, FEBRUARY 9, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 568954.1

THE KING'S BENCH WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE CHARTIER) Friday, the 9th day of February, 2024

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "Applicants")

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

ORDER
(STAY EXTENSION, INTERIM DISTRIBUTION, AND OTHER RELIEF)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as the court-appointed monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation and The Manitoba Clinic Holding Co. Ltd. (collectively, the "**Applicants**") for an order: (i) abridging the time for service of the Monitor's notice of motion (and all other materials filed in support of the same); (ii) extending the stay of proceedings to **[date]**; (iii) authorizing the Monitor to make an interim distribution to Canadian Imperial Bank of Commerce ("**CIBC**"); and (iv) other relief, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Seventh Report of the Monitor dated February 6, 2024 (the "**Seventh Report**"), and on hearing the submissions of counsel for the Monitor, the Applicants, and CIBC, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Shelby Braun affirmed February 6, 2024; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order of the Honourable Justice Kroft dated December 1, 2022 (the "ARIO")) is hereby extended until May 3, 2024.

INTERIM DISTRIBUTION

3. THIS COURT ORDERS that the Monitor is hereby authorized and directed to make an interim distribution to CIBC from the net proceeds of the Medco Transaction and the Realco Transaction (as those terms are respectively defined in the Approval and Vesting Order – 1439573 B.C. Ltd. and Approval and Vesting Order – HSCF Property Inc. of the Honourable Justice Chartier dated November 24, 2023) in the amount of \$35,849,000.

APPROVALS

4. THIS COURT ORDERS that the Seventh report and the Monitor's activities, actions, and conduct described therein are hereby approved.

5. THIS COURT ORDERS that the fees and disbursements of the Monitor, the Monitor's legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, Taylor McCaffrey LLP, as set out in the Seventh Report, are hereby approved.

GENERAL MATTERS

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

February __, 2024

CHARTIER, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

SCHEDULE "B"

File No. CI 22-01-38613

**THE KING'S BENCH
WINNIPEG CENTRE**

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "**Applicants**")

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

**ORDER
(DIRECTORS' AND OFFICERS RELEASE)
DATE OF HEARING: FRIDAY, FEBRUARY 9, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER**

**McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6**

**IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 568954.1**

THE KING'S BENCH WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE CHARTIER) Friday, the 9th day of February, 2024

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "Applicants")

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

**ORDER
(DIRECTORS' AND OFFICERS' RELEASE)**

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as the court-appointed monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation and The Manitoba Clinic Holding Co. Ltd. (collectively, the "**Applicants**") for an order: (i) abridging the time for service of the Monitor's notice of motion (and all other materials filed in support of the same); and (ii) releasing the Applicants' directors and officers from any and all claims that any person may have against them in their capacities as directors and officers of the Applicants arising on or after November 30, 2022, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Seventh Report of the Monitor dated **February 6, 2024**, and on hearing the submissions of counsel for the Monitor, the Applicants, and Canadian Imperial Bank of Commerce ("**CIBC**"), no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Shelby Braun affirmed **February 6, 2024**; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

INTERPRETATION

2. THIS COURT ORDERS that all capitalized terms used and not otherwise defined in this Order shall have the meanings given to them in the Amended and Restated Initial Order of the Honourable Justice Kroft dated December 1, 2022 (the "**ARIO**").

3. THIS COURT ORDERS that for the purposes of this Order:

- (a) "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada);
- (b) "**CCAA Proceedings**" means the court proceedings commenced by the Applicants in Court File No. CI 22-01-38613;
- (c) "**Claims Bar Date**" means 4:00 p.m. CST on **March 4, 2024**;
- (d) "**Court**" means the Court of King's Bench of Manitoba;
- (e) "**Directors and Officers**" means any one or more of the Applicants' directors and officers who held those positions on or after the Filing Date;
- (f) "**Excluded Claims**" means claims:
 - (i) arising before the Filing Date;
 - (ii) enumerated in sections 5.1(2) and 19(2) of the *CCAA*; and
 - (iii) claims arising from the Directors' and Officers' gross negligence or willful misconduct;
- (g) "**Filing Date**" means November 30, 2022; and
- (h) "**Released Claim**" shall exclude an Excluded Claim (as defined herein) but shall include any other claim, cause of action, or demand of any nature or

kind whatsoever of any Person against any Director and Officer arising on or after the Filing Date, whether or not such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown with respect to any matter, action, cause, or chose in action, whether existing at present or arising or commenced in the future, for which any Director and Officer is alleged to be by statute, law, equity, or otherwise liable to pay in his or her capacity as a Director and Officer.

DIRECTORS' AND OFFICERS' RELEASE

4. THIS COURT ORDERS that, subject to paragraphs 5 - 7 of this Order, the Directors and Officers shall be and are hereby released and discharged from any and all Released Claims, and the Released Claims are hereby released, stayed, extinguished, and forever barred effective as of the Claims Bar Date without further Order of the Court.

DISPUTED CLAIMS

5. THIS COURT ORDERS that, if any Person objects to the Directors' and Officers' release from a Released Claim (hereafter, a "**Disputed Claim**"), that Person shall file and serve a sworn affidavit setting out the particulars of the Disputed Claim (with any relevant documents appended thereto as exhibits, where applicable,) (the "**Claimant's Affidavit**") on counsel for the Monitor and the members of the Service List on or before the Claims Bar Date, failing which the Directors' and Officers' release from the Disputed Claim will be effective in accordance with paragraph 4 of this Order.

6. THIS COURT ORDERS that, if a Claimant's Affidavit is delivered to the Monitor on or before the Claims Bar Date, the applicable Directors' and Officers' release from the Disputed Claim shall be unaffected by paragraph 4 of this Order pending further agreement between that Person and the Monitor or further Order of the Court in the *CCAA* Proceedings.

7. THIS COURT ORDERS that the Monitor, in consultation with CIBC and the applicable Directors and Officers, as the case may be, may attempt to resolve and settle any Disputed Claim.

GENERAL PROVISIONS

8. THIS COURT ORDERS that the Applicants, the Directors and Officers, their respective agents and representatives, and any other Person given notice of this Order shall fully cooperate with the Monitor in the discharge of its duties and obligations under this Order.

9. THIS COURT ORDERS that, in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the *CCAA*, *ARIO*, and other Orders of the Court in the *CCAA* Proceedings, including the stay of proceedings in its favour.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

February __, 2024

CHARTIER, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties: