

COURT FILE NUMBER 2401-09688

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDING

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DELTA 9 CANNABIS INC., DELTA 9  
LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9  
LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS  
STORE INC.

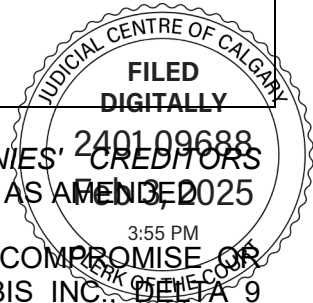
DOCUMENT

**BRIEF OF LAW – DISTRIBUTION ORDER**

ADDRESS FOR SERVICE  
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**Hearing via Webex before the Honourable Justice C.D. Simard  
on the Commercial List, on February 11, 2025, commencing at 2:00PM.**

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## I. INTRODUCTION AND OVERVIEW

1. This Brief is submitted on behalf of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor (the "**Monitor**") of Delta 9 Cannabis Inc. ("**D9 Parent**"), Delta 9 Logistics Inc. ("**Logistics**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**"), and Delta 9 Cannabis Store Inc. ("**Store**", and collectively with Logistics, Bio-Tech, and Lifestyle, the "**Debtors**" or "**Delta 9**") in support of its application for an Order (the "**Distribution Order**"):
  - (a) authorizing the Monitor to make the distributions as set forth in the Monitor's Seventh Report dated February 3, 2025 (the "**Seventh Report**"); and
  - (b) such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.
2. On January 29, 2025, the Honourable Justice M.A. Marion granted a series of orders in these CCAA Proceedings which, among other things:<sup>1</sup>
  - (a) approved the plan sanction order proposed by the Debtors;
  - (b) approved the sale approval and vesting order ("**SAVO**") in respect of an asset purchase agreement between Bio-Tech and 6599362 Canada Ltd. (the "**659 Transaction**") and the transaction contemplated therein; and
  - (c) approved the sale approval and reverse vesting order ("**ARVO**") in respect of a Share Purchase Agreement between Delta Parent, Bio-Tech and Simply Solventless Concentrates Ltd. (the "**Simply Transaction**", and together with the 659 Transaction, collectively, the "**Transactions**") and the transaction contemplated therein.
3. Following the closing of the Transactions, the Monitor proposes to distribute funds arising from the Transactions to SNDL, the first secured creditor in respect of the Debtors.

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<sup>1</sup> Seventh Report at para 6.

## II. FACTUAL BACKGROUND

2. The facts in support of the application are set forth in the Monitor's Seventh Report and are summarized below.<sup>2</sup>
3. On July 15, 2024, the Honourable Justice D.R. Mah granted an Initial Order pursuant to the CCAA (the "**Initial Order**") which, among other things, appointed A&M as the Monitor of the Debtors.<sup>3</sup>
4. On July 24, 2024, the Honourable Associate Chief K.G. Nielsen granted the Amended and Restated Initial Order (the "**ARIO**") which, among other things, extended the initial stay period (as extended from time to time, the "**Stay Period**") until September 15, 2024 and approved a sales investment and solicitation process (the "**SISP**") in respect of the business and/or assets of Bio-Tech and a claims procedure order.<sup>4</sup>
4. Since the granting of the ARIO, the Debtors have sought and obtained various orders from this Honourable Court approving a number of extensions to the Stay Period.<sup>5</sup>
5. On January 29, 2025, the Honourable Justice M.A. Marion granted a series of orders:<sup>6</sup>
  - (a) extending the Stay up to and including February 28, 2025;
  - (b) approving the Plan Sanction Order proposed by the Debtors;
  - (c) approving the SAVO in respect of the 659 Transaction; and
  - (d) approving the ARVO in respect of the Simply Transaction.
6. SNDL is the senior secured creditor of the Debtors. The Monitor's counsel has conducted a review of the security held by SNDL, and expressed to the Monitor that, subject to the customary qualifications and assumptions, SNDL's security is enforceable in accordance with its terms.<sup>7</sup>

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meaning set forth in Seventh Report.

<sup>3</sup> Seventh Report at para 1.

<sup>4</sup> Seventh Report at paras 2-3.

<sup>5</sup> Seventh Report at para 4.

<sup>6</sup> Seventh Report at para 6.

<sup>7</sup> Seventh Report at paras 16-23 and 33.

7. Following the closing of the Transactions, the Monitor will hold in excess of \$13 million in its bank account (collectively, the "**Bio-Tech Proceeds**").<sup>8</sup>
8. Pursuant to the SAVO and ARVO, the Monitor is not permitted to distribute the Bio-Tech Proceeds without further order from this Honourable Court. Accordingly, the Monitor is seeking approval to distribute approximately \$13.8 million to SNDL as a partial paydown of the indebtedness to SNDL.<sup>9</sup>

### III. LAW AND ARGUMENT

#### A. The Distribution Should be Approved

5. Courts often permit interim distributions in the context of insolvency proceedings. As discussed in *AbitibiBowater Inc (Arrangement relatif à)*:

it is neither unusual nor unheard of to proceed with an interim distribution of net proceeds in the context of a sale of assets in a CCAA reorganization. Nothing in the CCAA prevents similar interim distribution of monies. There are several examples of such distributions having been authorized by Courts in Canada.<sup>10</sup> [emphasis added.]

6. As most recently set out in *First Source Financial Management v. Chacon Strawberry Fields Inc.*:

The court routinely grants orders authorizing interim distributions in insolvency proceeding...

In determining whether it is appropriate to authorize an interim distribution the court may consider: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed interim distribution amount; and (c) whether the proposed interim distribution would result in interest savings...<sup>11</sup> [citations omitted]

7. In *SemCanada Crude Co.*, Justice Romaine acknowledged that interim distributions are not without precedent, but consideration should be given to any stakeholders that may be prejudiced by the distribution.<sup>12</sup>

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<sup>8</sup> Seventh Report at para 32.

<sup>9</sup> Seventh Report at para 34.

<sup>10</sup> 2009 QCCS 6461 [*Abitibi*] at para 71, [TAB 1].

<sup>11</sup> 2024 ONSC 7229 at paras 44-45 [TAB 2], citing *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 at paras [TAB 3] and *Abitibi* at paras 70-75 [TAB 2]; [TAB 1].

<sup>12</sup> 2009 ABQB 90 at para 27 [TAB 4].

8. As set forth above, SNDL has a valid secured claim against the Debtors, and the Monitor proposes an interim distribution in an amount that does not exceed the SNDL claim amount.<sup>13</sup>
9. The Monitor is not aware of any other claimant that ranks in priority to the SNDL Security, apart from the beneficiaries under the Administration Charge, which will be satisfied as against the Plan Entities upon Plan Implementation.<sup>14</sup> As a result, no stakeholder is unfairly prejudiced by the interim distribution.
10. Accordingly, the Monitor submits that the proposed distribution is fair and reasonable, and respectfully requests that this Honourable Court grant the Distribution Order.

#### **IV. CONCLUSION**

11. For the reasons set forth above the Monitor seeks the Distribution Order, substantially in the form appended as Schedule "A" to the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2025.**

**BURNET, DUCKWORTH & PALMER LLP**

Per: 

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David LeGeyt  
Solicitor for the Monitor

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<sup>13</sup> Seventh Report at para 33.

<sup>14</sup> Seventh Report at para 35.

## LIST OF AUTHORITIES

TAB	DOCUMENT
1.	<a href="#"><i>AbitibiBowater Inc (Arrangement relatif à)</i>, 2009 QCCS 6461</a>
2.	<a href="#"><i>First Source Financial Management v Chacon Strawberry Fields Inc.</i> 2024 ONSC 7229</a>
3.	<a href="#"><i>Ontario Securities Commission v. Bridging Income Fund L.P.</i>, 2022 ONSC 4472</a>
4.	<a href="#"><i>Re SemCanada Crude Company (Companies' Creditors Arrangement Act)</i>, 2009 ABQB 90</a>