

**FILED SEP 20 2023**

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**

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**NOTICE OF MOTION  
(STAY EXTENSION AND OTHER RELIEF)  
DATE OF HEARING: TUESDAY, SEPTEMBER 26, 2023 at 2:00 PM  
THE HONOURABLE MR. JUSTICE CHARTIER**

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Client File No. 1102-154

**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)**

The Applicants will make a motion before the Honourable Mr. Justice Chartier on Tuesday, the 26<sup>th</sup> day of September, 2023 at 2:00 o'clock in the afternoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule 1 to this Notice of Motion which provides, *inter alia*:

- a) An Order that this matter be heard on short notice;
- b) An Order abridging the time for service and/or otherwise validating service of the Notice of Motion such that the motion is properly returnable Tuesday, September 26, 2023 and dispensing with further service thereof;

- c) An Order extending the stay period ("**Stay Period**") as defined in paragraph 10 of the Amended and Restated Initial Order of the Honourable Mr. Justice Kroft dated December 2, 2022 ("**Initial Order**") until January 26, 2024;
- d) An Order approving the Fourth Report of the Monitor ("**Fourth Report**") provided by Alvarez & Marsal Canada Inc. in its capacity as monitor of the Applicants ("**Monitor**") and the Monitor's activities, actions, and conduct as described therein;
- e) An Order approving the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Fourth Report;
- f) An Order approving the Applicants' execution of an amendment to the DIP Financing Commitment Letter to extend the maturity date of the facility;
- g) An Order amending the Order of Justice Kroft signed on August 9, 2023, replacing the reference to the Affidavit of Service of Michelle Loftus, affirmed August 2, 2023, with a reference to the Affidavit of Service of Craig Frith, affirmed August 4, 2023; and
- h) Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), ss. 11 and 11.02.
2. King's Bench Rules 1.04, 2.01, 2.03, 3.02(1), 16.04, 16.08, 37.08(2) and 59.06(1).
3. On November 30, 2022 this Court granted an Initial Order under the CCAA which included a stay of proceedings against the Applicants (as defined in the Initial Order) until December 9, 2022, the appointment of a Monitor and collateral initial relief.
4. On December 1, 2022 this Court amended and restated the Initial Order which, *inter alia*:

- a) extended the Stay Period until February 24, 2023;
  - b) provided the balance of the restructuring tools contemplated under the Model Order;
  - c) provided Debtor in Possession Financing ("**DIP Financing**"), enhanced the Monitor's powers, authorized a Key Employee Retention Program and provided authorization to the Applicants with the approval of the Monitor to make certain True-Up Payments.
5. On January 25, 2023, this Court granted an Order which, *inter alia*:
- a) extended the Stay Period until April 28, 2023; and
  - b) authorized and empowered the Monitor, with the consent of CIBC, to convey, transfer, lease or assign any part or parts of the Property (as defined in the Initial Order) out of the ordinary course of business without further approval of this Court in respect of any transaction not exceeding \$50,000 and provided that the aggregate consideration for all such transactions does not exceed \$350,000.
6. On April 21, 2023, this Court granted two Orders which, *inter alia*:
- a) extended the Stay Period until August 31, 2023;
  - b) approved the Physicians Retention Payment Plan as detailed in the Monitor's Second Report dated April 18, 2023 and authorized and directed the Applicants to make payments in accordance with the terms thereof;
  - c) authorized and empowered the Applicants to sign an Amendment to the Commitment Letter incorporating a Revised Budget to be agreed to by the Applicants, CIBC and Monitor;
  - d) approved the Sale and Investment Solicitation Process (the "**SISP**"); and
  - e) authorized and directed the Monitor and the Marketing Agent to implement the SISP and do all things as are reasonably necessary to conduct and give full effect to the SISP.
7. On August 9, 2023, this Court granted an Order which, *inter alia*:
- a) extended the Stay Period until and including October 2, 2023;

- b) approved the Third Report of the Monitor dated July 31, 2023 and the activities, actions, and conduct as described therein;
- c) approved the professional fees and disbursements of the Monitor, its legal counsel, and the Applicants' legal counsel;
- d) approved the extension of the maturity date of the Interim Financing Facility and authorized the Applicants to execute the Second Amendment to the Commitment Letter.

8. The Applicants have acted in good faith and with due diligence since the granting of the Initial Order. With the Monitor's assistance, the Applicants have stabilized their business operations and implemented a restructuring plan to allow for the implementation of the SISP, which is now nearly completed.

#### Extension of the Stay Period

9. At this time, the Applicants are returning to Court with the Monitor to provide an update on their restructuring efforts and seek an extension of the Stay Period until January 26, 2024. An extension of the Stay Period until that date is necessary and appropriate in the circumstances, in particular, to allow the Applicants and Monitor to continue the restructuring efforts, complete the SISP, and apply to Court to approve any proposed transaction(s) resulting from the SISP.

#### Extension of the DIP Financing

10. The Applicants have sufficient liquidity with the DIP Financing in place to be able to continue operating in the ordinary course during the requested Stay Period subject to the DIP lender agreeing to extend the Maturity Date in accordance with the Interim Financing Sheet.

11. The Monitor and CIBC are supportive of the requested extension of the Stay Period and CIBC is expected to extend the Maturity Date of the DIP Financing to accommodate completion of the SISP.

12. For the reasons set out above, the Applicants are seeking the Court's authorization to enter into a Third Amendment to the Interim Financing Sheet (the "**Third Amendment**") with CIBC to extend the maturity date. The balance of the terms of the Interim Financing Sheet remain the same.

Amendment of the Order of Justice Kroft Signed on August 9, 2023

13. The Order of Justice Kroft signed on August 9, 2023 (the "**August Order**") contains an error arising from an accidental slip or omission in the second paragraph of the preamble on page 2.

14. On the date the August Order was pronounced, evidence was presented to Justice Kroft that an individual, Dr. Gill, from the Service List had been served separate from the other parties on the Service List by email by counsel for the Monitor, Craig Frith. The parties undertook to file an affidavit of service setting out the service of that remaining party and provide a proposed form of Order for Justice Kroft's review and execution.

15. A copy of the proposed Order, was sent by email to Justice Kroft on August 4, 2023 along with a copy of the Affidavit of Michelle Loftus, affirmed August 2, 2023 (the "**Loftus Affidavit**") which purported to give evidence of the service of Dr. Gill. Justice Kroft was advised that the Loftus Affidavit was being concurrently sent for filing.

16. The Court registry rejected the Loftus Affidavit on the basis that Ms. Loftus could not submit an Affidavit of Service describing service effected by another individual. Accordingly, Craig Frith affirmed an affidavit of service on August 4, 2023 (the "**Frith Affidavit**") giving evidence of service of Dr. Gill. This affidavit was filed on August 11, 2023.

17. Both affidavits provide the same evidence of the service of Dr. Gill.

18. However, before the Frith Affidavit was filed and an amended proposed form of Order was provided to Justice Kroft, his Lordship granted the August Order which referenced the Loftus Affidavit.

19. The Applicants submit that an amendment to the second paragraph of the preamble to the August Order in the following manner (with the underlined and bold text to be added and the struck out text to be removed) is the most expeditious and least costly way to ensure this error is corrected:

ON READING the Affidavit of Keith McConnell sworn November 28, 2022, the Pre-Filing Report of A&M dated November 29, 2022, the First Report of A&M dated January 20, 2023, the Second Report dated April 18, 2023, the Second Confidential Supplement, the Third Report dated July 31, 2023, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce ("CIBC"), no one appearing for any other party although duly served as appears from the Affidavit of Service of Michelle Loftus affirmed August 1, 2023, the ~~Affidavit of Service of Michelle Loftus affirmed August 2, 2023~~ **Affidavit of Service of Craig Frith affirmed August 4, 2023** and the Affidavit of Service of Craig Frith sworn August 1, 2023:

20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Affidavit of Keith McConnell sworn November 28, 2022;
2. The Pre-Filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022;
3. The First Report of the Monitor, dated January 20, 2023;
4. The Amended and Restated Initial Order signed December 2, 2022;
5. The Second Report of the Monitor, dated April 18, 2023;
6. The Third Report of the Monitor, dated July 31, 2023;
8. The Fourth Report of the Monitor, to be filed;
9. The Affidavit of Service of Craig Frith, dated August 4, 2023;
10. The Affidavit of Michelle Loftus affirmed September 12, 2023; and
11. Such further and other documentation as counsel may advise and this Honourable Court may permit.

Date: September 20, 2023

**TAYLOR McCaffrey LLP**  
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David R.M. Jackson/Ph. (204) 988-0375  
Charles Roy/Ph. (204) 988-0472

TO: SERVICE LIST ATTACHED

## **SCHEDULE 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  
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**(the "Applicants")**

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

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**ORDER  
(STAY EXTENSION AND OTHER RELIEF)**

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**TAYLOR McCaffrey LLP  
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2200 – 201 Portage Avenue  
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**Client File No. 1102-154**

**THE KING'S BENCH  
WINNIPEG CENTRE**

THE HONOURABLE )  
MR. JUSTICE CHARTIER ) Tuesday, the 26th day of September, 2023

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  
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(the "Applicants")

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

**ORDER  
(STAY EXTENSION AND OTHER RELIEF)**

THIS MOTION made by the Applicants for an Order, *inter alia*: (i) extending the Stay Period as defined in paragraph 10 of the Amended and Restated Initial Order entered December 2, 2022 ("Initial Order") to and including January 26, 2024; (ii) approving the Fourth Report of the Monitor, Alvarez & Marsal Canada Inc. ("A&M"), ("Fourth Report") in its capacity as Monitor of the Applicants ("Monitor") and the activities, actions, and conduct described therein; (iii) approving the professional fees of the Monitor, the Monitor's legal counsel and Applicants' legal counsel, as set out in the Fourth Report; (iv) authorizing the Applicants to execute the Third Amendment to the Interim Financing Sheet (the "Third Amendment"); (v) granting the amendment of the Order of Justice Kroft signed on August 9, 2023; and (vi) such further and other relief as

to this Honourable Court may deem just was heard this day at Winnipeg, in the Province of Manitoba.

ON READING the Affidavit of Keith McConnell sworn November 28, 2022, the Pre-Filing Report of A&M dated November 29, 2022, the First Report of A&M dated January 20, 2023, the Second Report dated April 18, 2023, the Second Confidential Supplement, the Third Report dated July 31, 2023, the Fourth Report; and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce (“CIBC”), no one appearing for any other party although duly served as appears from the Affidavit of Service of \_\_\_\_\_ affirmed September 21, 2023, and the Affidavit of Service of \_\_\_\_\_ affirmed September \_\_\_, 2023:

**Service**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the 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 is hereby extended until and including January 26, 2023.

**Monitor's Activities and Related Matters**

3. THIS COURT ORDERS that the Fourth Report and the activities, actions, and conduct as described therein are hereby approved.
4. THIS COURT ORDERS that the professional fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and Applicants' legal counsel, Taylor McCaffrey LLP, as set out in the Fourth Report, are hereby approved.
5. THIS COURT ORDERS that the extension of the maturity date of the Interim Financing Facility is approved and the Applicants are authorized to execute the Third Amendment.
6. THIS COURT ORDERS the Order of Justice Kroft signed on August 9, 2023 be amended as follows (with the underlined and bold text to be added and the struck out text to be removed):

ON READING the Affidavit of Keith McConnell sworn November 28, 2022, the Pre-Filing Report of A&M dated November 29, 2022, the First Report of A&M dated January 20, 2023, the Second Report dated April 18, 2023, the Second Confidential Supplement, the Third Report dated July 31, 2023, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce ("CIBC"), no one appearing for any other party although duly served as appears from the Affidavit of Service of Michelle Loftus affirmed August 1, 2023, the ~~Affidavit of Service of Michelle Loftus affirmed August 2, 2023~~ **Affidavit of Service of Craig Frith affirmed August 4, 2023** and the Affidavit of Service of Craig Frith sworn August 1, 2023:

Date:

\_\_\_\_\_  
Chartier, J.

I, CHARLES ROY, of the firm of Taylor McCaffrey LLP, hereby certify  
that I have received the consents as to form of the following parties:

J.J. Burnell of MLT Aikins LLP, counsel for CIBC  
Ian Sutherland, K.C. of McDougall Gauley LLP, counsel for the Monitor

As directed by the Honourable Mr. Justice Chartier.

## **SCHEDULE 2**



**THE KING'S BENCH  
WINNIPEG CENTRE**

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

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**SERVICE LIST  
AS AT SEPTEMBER 6, 2023**

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**TAYLOR McCaffrey LLP**  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., c. C-36, AS AMENDED

**SERVICE LIST**

| <b>Party/Counsel</b>   | <b>Telephone</b>   | <b>Facsimile</b> | <b>Party<br/>Represented</b>     |
|--|--|------------------|----------------------------------|
| <b>THE MANITOBA CLINIC<br/>MEDICAL CORPORATION</b><br><br><b>THE MANITOBA CLINIC<br/>HOLDING CO. LTD.</b><br>790 Sherbrook Street<br>Winnipeg, Manitoba, R3A 1M3<br><br><b>Keith McConnell</b><br>E-Mail: <a href="mailto:kmccconnell@manitobaclinic.ca">kmccconnell@manitobaclinic.ca</a>   | 204-788-5525   |                  | Applicants                       |
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| Party/Counsel   | Telephone      | Facsimile      | Party Represented  |
|---|----------------|----------------|--|
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| <b>Party/Counsel</b>   | <b>Telephone</b>                                   | <b>Facsimile</b>                    | <b>Party Represented</b>                       |
|--|--|-------------------------------------|--|
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| <b>NORTON ROSE FULBRIGHT</b><br>1, Place Ville Marie, Bureau 2500<br>Montreal, QC H3B 1R1<br><br><b>Arad Mojtahedi</b><br>E-Mail:<br><a href="mailto:arad.mojtahedi@nortonrosefulbright.com">arad.mojtahedi@nortonrosefulbright.com</a><br><br><b>Paul Prosterman</b><br>E-Mail:<br><a href="mailto:paul.prosterman@nortonrosefulbright.com">paul.prosterman@nortonrosefulbright.com</a> | Arad - (514) 847-4582<br><br>Paul – (514) 847-4481 | Arad - (514) 286-5474<br><br>Paul - | Counsel for<br>Dale Syndicate<br>Services Ltd. |
| <b>STIKEMAN ELLIOTT LLP</b><br>1155 René-Lévesque Blvd W, FI 40<br>Montreal, Quebec, H3B 3V2<br><br><b>Joseph Reynaud</b><br>E-Mail: <a href="mailto:jreynaud@stikeman.com">jreynaud@stikeman.com</a>  | 1-514-397-3019                                     |                                     |  |

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|---|--|--|--|