

**THE QUEEN'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: Certain proceedings taken in the United
States Bankruptcy Court for the District of
Delaware with respect to IMRIS Inc.,
IMRIS, Inc. and NeuroArm Surgical Ltd.,
(Collectively, the "Chapter 11 Debtors")

Application of IMRIS, Inc. ("Applicant") under section 46 of the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

**AFFIDAVIT OF R. CRAIG MARTIN
(Sworn on June 10, 2015)**

**Date of Hearing: Thursday, June 11, 2015 at 2:00 p.m.
Before: The Honourable Justice Dewar**

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**AFFIDAVIT OF R. CRAIG MARTIN
(Sworn on June 10, 2015)**

I, R. Craig Martin, of the City of Wilmington, in the State of Delaware, MAKE OATH AND SAY:

1. I am a partner at DLA Piper LLP (US), US counsel to IMRIS Inc. ("**IMRIS Canada**"), and its direct subsidiaries IMRIS, Inc. ("**IMRIS US**" or "**Foreign Representative**"), and NeuroArm Surgical Ltd. ("**NASL**", and collectively with IMRIS Canada and IMRIS US, the "**Chapter 11 Debtors**"). As such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my

own personal knowledge, I have identified the source and the basis for my information and believe it to be true.

2. This Affidavit is filed in support of the Applicant's motion to remove FTI Consulting Canada Inc. ("**FTI Canada**") as Information Officer and to appoint Alvarez & Marsal Canada Inc. ("**A&M Canada**") in its place.

The Chapter 11 Proceeding

3. On May 25, 2015 the Chapter 11 Debtors commenced cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Chapter 11 Proceeding**") by each filing a voluntary petition for relief in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**").

4. On May 27, 2015, the U.S. Court in the Chapter 11 Proceeding made various "**First Day Orders**". The First Day Orders included the following:

- (a) Joint Administration Order;
- (b) Foreign Representative Order;
- (c) Claims Agent Order;
- (d) Pre-petition Wages Order;
- (e) Prepetition Shipping Order;
- (f) Customer Obligation Order;

- (g) Post-Petition Operations Order;
- (h) Insurance Order;
- (i) Interim Prepetition Taxes Order;
- (j) Interim Cash Management Order; and
- (k) Interim DIP Facility Order.

5. On June 3rd, 2015, IMRIS US made an application under section 46 of the *Companies' Creditors Arrangement Act* for the recognition of the Chapter 11 Proceeding (the "**Canadian Proceeding**"). On that appearance, this Court granted an Initial Recognition Order (Foreign Main Proceeding) and a Supplemental Order (Foreign Main Proceeding) which, *inter alia*, recognized IMRIS US as a foreign representative of the Chapter 11 Debtors, recognized the First Day Orders, and granted ancillary relief, including the appointment of FTI Canada as information officer with the powers and duties set forth mainly in the Supplemental Order (Foreign Main Proceeding).

Appointment of CRO in the United States

6. Each of the Chapter 11 Debtors now intends to apply under 11 U.S.C. § 363(b) in the US Proceeding for an order appointing Andrew Hinkelman of

FTI Consulting, Inc. (“**FTI US**”) as their Chief Restructuring Officer (the “**CRO**”).

7. The United States Trustee is an officer of the Department of Justice in the United States and is responsible for, among other things, oversight and administration of most bankruptcy cases in the United States. The Acting United States Trustee responsible for Region 3, which includes Delaware, is the officer responsible for overseeing the Chapter 11 Proceeding (the “**US Trustee**”).

8. It is my experience that the retention of a CRO is generally permitted under section 363(b) as contemplated by a policy of the US Trustee known as the “J. Alix Protocol”. Attached as Exhibit “**A**” to my affidavit is a copy of the J. Alix Protocol, which I downloaded off of the US Trustee web page for Region 2, which is publicly available at :

http://www.justice.gov/ust/r02/docs/chapter11/manhattan_retention/jay_alix_protocol.doc.

9. Under the J. Alix Protocol, a proposed CRO generally does not have to satisfy the provisions of section 327(a) of the Bankruptcy Code, which requires that a CRO not hold or represent an interest adverse to the estate,

and that a CRO be a disinterested person. Attached as Exhibit “B” to my affidavit is a copy of section 327 (a) of the Bankruptcy Code.

10. I have been advised by the trial attorney that represents the US Trustee in the Chapter 11 Proceeding, that the US Trustee believes that the appointment of FTI Canada as Information Officer in the Canadian Proceeding is inconsistent with the "J. Alix Protocol". Based on this belief, the trial attorney has indicated that she will object to the Chapter 11 Debtors' application to retain FTI US and Mr. Hinkleman as CRO to the Chapter 11 Debtors if FTI Canada continues to act as the Information Officer.

11. While a bankruptcy court in the Southern District of New York has found that a professional retained under section 327(a) of the Bankruptcy Code does not have an adverse interest when that same professional serves as Information Officer, the issue has not been ruled on by the Delaware courts to date. Thus, litigating the issue with the US Trustee in the Chapter 11 Proceeding would result in unnecessary costs and expenses and if the US Trustee prevailed on the objection, Mr. Hinkelman might not be approved as CRO.

12. Mr. Hinkelman has been involved in assisting the Chapter 11 Debtors with their on-going restructuring and losing his institutional knowledge and

expertise regarding the Chapter 11 Debtors would be prejudicial to the Debtors because it would disrupt their restructuring and likely result in the accrual of additional fees and expenses in bringing on another CRO.

13. The trial counsel for the US Trustee has agreed that if the Chapter 11 Debtors are able to replace FTI Canada with an alternate Information Officer in the Canadian Proceeding, the temporary service of FTI Canada will not be a reason to disqualify FTI US from serving as CRO in the US Proceeding.

14. I have been advised by Bruce Darlington, a partner at DLA Piper (Canada) LLP and Canadian counsel to the Chapter 11 Debtors, that FTI Canada has consented to its removal as information officer and that A&M Canada has agreed to act in its place.

15. I am further advised by Bruce Darlington that the lawyers for Deerfield Management Company, L.P., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P., affiliated entities who hold primary security as well as a super-priority debtor-in-possession security over the Canadian and US assets of the Chapter 11 Debtors, also consent to the removal of FTI Canada

as Information Officer and the appointment of A&M Canada as Information Officer in its place.

16. I do not believe that the removal of FTI Canada as Information Officer and the appointment of A&M Canada as Information Officer in its place will prejudice any of the parties with an interest in the Canadian Proceeding or their security. Rather, the Chapter 11 Debtors have acted as quickly and as efficiently as possible in order to minimize the cost of resolving the issue of FTI Canada continuing to act as information officer.

17. I swear this Affidavit in support of the relief requested in the Applicant's Notice of Motion dated June 10, 2015 and for no other or improper purpose.

SWORN BEFORE ME at the City of
Wilmington in the State of Delaware on June
10, 2015

Renee R. Johnson

Commissioner for Taking Affidavits

R. Craig Martin

R. CRAIG MARTIN

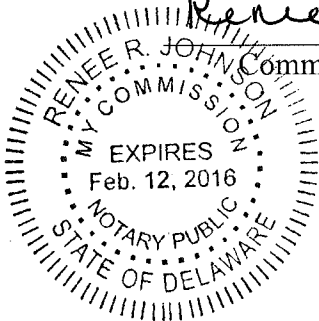


Exhibit "A" to the affidavit of R. Craig
Martin, sworn June 10, 2015



Renee R Johnson

Commissioner for Taking Affidavits

Protocol for Engagement of Jay Alix & Associates and Affiliates

I. Retention Guidelines

- A. Jay Alix & Associates ("JA&A") is a firm that provides turnaround and crisis management services, financial advisory services, management consulting services, information systems services and claims management services. In some cases the firm provides these services as advisors to management, in other cases one or more of its staff serve as corporate officers and other of its staff fill positions as full time or part time temporary employees ("crisis manager"), and in still other cases the firm may serve as a claims administrator as an agent of the Bankruptcy Court. JA&A and its affiliates¹ will not act in more than one of the following capacities in any single bankruptcy case: (i) crisis manager retained under Sec. 363, (ii) financial advisor retained under Sec. 327, (iii) claims agent/claims administrator appointed pursuant to 28 U.S.C. § 156(c) and any applicable local rules or (iv) investor/acquirer; and upon confirmation of a Plan may only continue to serve in a similar capacity. Further, once JA&A or one of its affiliates is retained under one of the foregoing categories it may not switch to a different retention capacity in the same case. However, with respect to subsequent investments by Questor this prohibition is subject to the time limitations set forth in IV.B below.
- B. Engagements involving the furnishing of interim executive officers^{s2} whether prepetition or postpetition (hereinafter "crisis management" engagements) shall be provided through JA&A Services LLC ("JAS").
- C. JAS shall seek retention under section 363 of the Bankruptcy Code. The application of JAS shall disclose the individuals identified for executive officer positions as well as the names and proposed functions of any additional staff to be furnished by JAS. In the event the Debtor or JAS seeks to assume additional or different executive officer positions, or to modify materially the functions of the persons engaged, a motion to modify the retention shall be filed. It is often not possible for JAS to know the extent to which full time or part time temporary employees will be required when beginning an engagement. In part this is because the extent

¹ Affiliates of JA&A presently are System Advisory Group (an organization that provides information services), JA&A Services LLC (an entity that provides temporary employees), Questor Management Company LLC, an organization that manages Questor Partners Fund, Questor Partners Fund II, and various Side-by-Side entities, which are limited partnerships that invest in underperforming and troubled companies, and ACT Two (an entity that owns and operates a private airplane). Future affiliates of JA&A, if any, will be subject to the limitations set forth herein.

² "Executive officers" shall include but is not necessarily limited to Chief Executive Officer, President, Chief Operating Officer, Treasurer, Chief Financial Officer, Chief Restructuring Officer, Chief Information Officer, and any other officers having similar roles, power or authority, as well as any other officers provided for in the company's bylaws.

of the tasks that need to be accomplished is not fully known and in part it is because JAS is not yet knowledgeable about the capability and depth of the client's existing staff. Accordingly, JAS shall file with the Court with copies to the UST and all official committees a report of staffing on the engagement for the previous month. Such report shall include the names and functions filled of individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.

- D. Persons furnished by JAS for executive officer positions shall be retained in such positions upon the express approval thereof by an independent Board of Directors whose members are performing their duties and obligations as required under applicable law ("Board"), and will act under the direction, control and guidance of the Board and shall serve at the Board's pleasure (*i.e.* may be removed by majority vote of the Board).
- E. The application to retain JAS shall make all appropriate disclosures of any and all facts that may have a bearing on whether JAS, its affiliates, and/or the individuals working on the engagement have any conflict of interest or material adverse interest, including but not necessarily limited to the following:
 - 1. Connection, relationship or affiliation with secured creditors, postpetition lenders, significant unsecured lenders, equity holders, current or former officers and directors, prospective buyers, or investors.
 - 2. Involvement as a creditor, service provider or professional of any entity with which JA&A or any affiliate has an alliance agreement, marketing agreement, joint venture, referral arrangement or similar agreement.
 - 3. Any prepetition role as officer, director, employee or consultant,³ but service as a pre-petition officer will not *per se* cause disqualification.
 - 4. Any prepetition involvement in voting on the decision to engage JA&A or JAS in the bankruptcy case, and/or any prepetition role

³ In no case shall any principal, employee or independent contractor of JA&A, JAS and affiliates serve as a director of any entity while JA&A, JAS or any affiliate is rendering services in a bankruptcy proceeding, and JA&A, JAS and their affiliates shall not seek to be retained in any capacity in a bankruptcy proceeding for an entity where any principal, employee or independent contractor of JA&A, JAS and affiliates serves or has previously served as a director of the entity or an affiliate thereof within two years prior to the petition date. During such two year period, neither JA&A, JAS or affiliates shall have provided any professional services to the entity nor shall any individuals associated with JA&A, JAS and affiliates have served as an Executive Officer.

carrying the authority to decide unilaterally to engage JA&A or JAS.

5. Information regarding the size, membership and structure of the Board so as to enable the UST and other interested parties to determine that the Board is independent.
 6. Whether the executive officers and other staff for the engagement are expected to be engaged on a full time or part time basis, and if part-time whether any simultaneous or prospective engagement exists that may be pertinent to the question of conflict or adverse interest.
 7. The existence of any unpaid balances for prepetition services.
 8. The existence of any asserted or threatened claims against JA&A, JAS or any person furnished by JA&A/JAS arising from any act or omission in the course of a prepetition engagement.
- F. Disclosures shall be supplemented on a timely basis as needed throughout the engagement.
- G. Where JA&A does not act as a crisis manager its retention will be sought as a financial advisor under section 327 of the Code or as a Court appointed claims representative.

II. Compensation

- A. Compensation in crisis management engagements shall be paid to JAS.
- B. The application to retain JAS shall disclose the compensation terms including hourly rates and the terms under which any success fee or back-end fee may be requested.
- C. JAS shall file with the Court, and provide notice to the UST and all official committees, reports of compensation earned and expenses incurred on at least a quarterly basis. Such reports shall summarize the services provided, identify the compensation earned by each executive officer and staff employee provided, and itemize the expenses incurred. The notice shall provide a time period for objections. All compensation shall be subject to review by the Court in the event an objection is filed (*i.e.*, a "negative notice" procedure).
- D. Success fees or other back-end fees shall be approved by the Court at the conclusion of the case on a reasonableness standard and shall not be pre-approved under section 328(a). No success fee or back-end fee shall

be sought upon conversion of the case, dismissal of the case for cause or appointment of a trustee.

III. Indemnification

- A. Debtor is permitted to indemnify those persons serving as executive officers on the same terms as provided to the debtor's other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the debtor's D&O policy.
- B. There shall be no other indemnification of JA&A, JAS or affiliates.

IV. Subsequent Engagements

- A. Pursuant to the "one hat" policy as stated above, after accepting an engagement in one capacity, JA&A and affiliates shall not accept another engagement for the same or affiliated debtors in another capacity.
- B. For a period of three years after the conclusion of the engagement, Questor shall not make any investments in the debtor or reorganized debtor where JA&A, JAS or another affiliate has been engaged.

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Exhibit "B" to the affidavit of R. Craig
Martin, sworn June 10, 2015



Renee R Johnson

Commissioner for Taking Affidavits

11 U.S. Code § 327 - Employment of professional persons

- (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.
- (b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.
- (c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.
- (d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.
- (e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.
- (f) The trustee may not employ a person that has served as an examiner in the case.