

Court File No.: CV-22-00678884-00CL

**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 THE COMPROMISE OR ARRANGEMENT OF EVE & CO
INCORPORATED, NATURAL MEDCO LTD., and EVE & CO INTERNATIONAL
HOLDINGS LTD.

Applicants

**FACTUM OF THE APPLICANTS
(Comeback Motion)**

March 30, 2022

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TO: SERVICE LIST

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I. INTRODUCTION

1. On March 25, 2022, Eve & Co Incorporated (“**Eve & Co**”), Natural Medco Ltd. (“**NMC**”) and Eve & Co International Holdings Ltd. (“**Eve International**”, collectively, the “**Eve Group**” or the “**Applicants**”) obtained an initial order (“**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) granting the Eve Group protection from its creditors.

2. In accordance with the CCAA, the relief granted in the Initial Order was limited to relief that was reasonably necessary for the ordinary course continued operations of the Applicants during the initial ten day stay of proceedings (“**Initial Stay Period**”).

3. The Applicants now bring this “comeback motion” for, among other things, (i) an order approving a sale and investment solicitation process for all or part of the assets, shares, or business operations of the Applicants or any one of the Applicants (“**Sale Process**”); and (ii) an order approving an extension of the Initial Stay Period to August 26, 2022 (“**Extended Stay Period**”), an increase in the authority to borrow under the DIP Loan (defined below), and an increase in the DIP Lender’s Charge and the Administration Charge (both as defined below).

4. The primary objective of these CCAA proceedings is to obtain a stay of proceedings so that the Eve Group can use the proposed Sale Process to effect a transaction to maximize realizations for the Applicants’ stakeholders. As such, the Applicants seek an extension of the Initial Stay Period to implement the Sale Process.

II. FACTS

A. Background

5. The facts underlying this Application are fully set out in the affidavits of Melinda Rombouts (“**Rombouts**”) sworn March 23, 2022 (“**First Rombouts Affidavit**”), and

March 29, 2022. Rombouts is President and Chief Executive Officer of Eve & Co, and a member of the board of directors. She is also the CEO and a member of the board of directors of both NMC and Eve International.¹

6. The Eve Group is a licenced producer and distributor of cannabis flower, cannabis plants, and cannabis products, located in Strathroy, Ontario.²

7. The Applicants applied for and were granted urgent relief under the CCAA on March 25, 2022, because they were insolvent and did not have sufficient liquidity to fund operations thereafter.³

B. Initial Stay Period

8. Since the Initial Order was granted, the Applicants have continued to operate the business in the ordinary course.⁴

9. The Applicants have worked with the Monitor to stabilize operations and develop the Sale Process.⁵ Among other things, the Eve Group has communicated with stakeholders regarding the CCAA proceedings, and met with the Monitor to review the Applicants' cash flow requirements and discuss cash flow efficiencies.⁶

10. Further, after the Initial Order was granted, Deans Knight Private Credit GP Inc., as General Partner of Deans Knight Private Credit Limited Partnership, and DK Strategic Yield U.S. GP LLC, as General Partner of DK Strategic Yield Master Trust Limited Partnership, in their capacity as "**DIP Lender**", advanced \$1,200,000 to the Applicants

¹ Affidavit of Melinda Rombouts, sworn March 29, 2022 ("**Second Rombouts Affidavit**") at paras 1-2, Applicants' Motion Record, returnable April 1, 2022 ("**Applicants' MR**"), Tab 2, p 9.

² Second Rombouts Affidavit at para 9, Applicants' MR, Tab 2, p 12.

³ Second Rombouts Affidavit at para 6, Applicants' MR, Tab 2, p 11.

⁴ Second Rombouts Affidavit at para 8, Applicants' MR, Tab 2, p 11.

⁵ Second Rombouts Affidavit at para 9, Applicants' MR, Tab 2, p 12.

⁶ Second Rombouts Affidavit at para 9, Applicants' MR, Tab 2, p 12.

pursuant to the Debtor-in-Possession Term Sheet (“**DIP Term Sheet**”), dated March 22, 2022, between the Applicants and the DIP Lender.⁷

C. Sale Process

11. The Applicants have also worked with the Monitor to develop the Sale Process, which is designed to solicit offers for and an investment in the Eve Group’s business.⁸

12. The Sale Process will be undertaken by the Monitor in consultation with the Applicants and Royal Bank of Canada (“**RBC**”), the Applicants’ senior secured creditor.⁹

13. The milestone dates in the Sale Process are:¹⁰

Milestone	Deadline (each at 5:00 PM Toronto time)
Publish Notice and Press Release	April 8, 2022
Deliver Teaser Letter and NDA to Known Potential Bidders	April 29, 2022
Deliver Confidential Information Memorandum	May 6, 2022
Establish Electronic Data Room	May 6, 2022
Phase 1 Bid Deadline	July 29, 2022
Phase 2 Bid Deadline	August 10, 2022
Auction, if any	August 12, 2022
Approval and Vesting Order Motion hearing, if no auction (depending on court availability)	August 24, 2022
Approval and Vesting Order Motion hearing, if auction (depending on court availability)	August 26, 2022
Closing of Transaction subject to Approval and Vesting Order	September 15, 2022

⁷ Second Rombouts Affidavit at para 21 Applicants’ MR, Tab 2, p 17.

⁸ Second Rombouts Affidavit at para 11, Applicants’ MR, Tab 2, p 13.

⁹ Second Rombouts Affidavit at para 12, Applicants’ MR, Tab 2, p 13.

¹⁰ Second Rombouts Affidavit at paras 13-14, Applicants’ MR Tab 2, pp 13-15.

14. The Sale Process should optimize the chances, in the particular circumstances facing the Applicants, of securing the best possible transaction for the Eve Group's assets and/or business.¹¹

III. ISSUE PRESENTED

15. The issues to be addressed before this Honourable Court are whether:

- a. the Extended Stay Period should be granted;
- b. the DIP Loan and Priority Charges should be increased; and
- c. the Sale Process should be approved.

IV. LAW AND ARGUMENT

A. Extending the Stay of Proceedings

16. The Initial Order granted a ten day stay of proceedings that ends on April 4, 2022. The Applicants are requesting an order extending the stay of proceedings to August 26, 2022.

17. A court may grant an extension of the stay of proceedings where the court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the debtor has acted, and is continuing to act, in good faith and with due diligence.¹²

18. A stay of proceedings is appropriate to provide a debtor with breathing room while it tries to restore solvency and emerge from CCAA protection on a going concern basis.¹³

19. The following factors support the granting of the Extended Stay Period:

- a. since the Initial Order was granted, the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders

¹¹ Second Rombouts Affidavit at para 16, Applicants' MR, Tab 2, p 16.

¹² s 11.02(2)-(3), *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA").

¹³ *Target Canada Co, Re*, [2015 ONSC 303](#) at para 8.

and to develop the Sale Process, while operating in the ordinary course of business thereby preserving the value of their businesses;¹⁴

- b. subject to the Court's approval of the increase in the DIP Loan and the charge securing the amounts advanced by the DIP Lender pursuant to the DIP Term Sheet ("**DIP Lender's Charge**"), the Cash Flow Forecast (as defined in the First Rombouts Affidavit) demonstrates that the Applicants will have sufficient liquidity during the Extended Stay Period to fund operating expenses and the costs of the CCAA proceedings;¹⁵
- c. the Extended Stay Period is required to complete the Sale Process without having to incur additional costs during the process to return to court to seek a further extension;¹⁶
- d. the Monitor supports the requested Extended Stay Period;¹⁷ and
- e. the Applicants believe that no creditor will be materially prejudiced as a result of the Extended Stay Period.¹⁸

20. In the above circumstances, the Applicants ask that the stay of proceedings be extended to August 26, 2022.

B. Increasing DIP Lender's Charge and Administration Charge

21. The Initial Order granted a DIP Lender's Charge and a charge to secure the amounts owed to the Monitor, the Monitor's counsel, and the Applicants' counsel on account of their fees and disbursements ("**Administration Charge**") together with the

DIP

¹⁴ Second Rombouts Affidavit at para 9, Applicants' MR, Tab 2, p 12.

¹⁵ Second Rombouts Affidavit at para 19, Applicants' MR, Tab 2, p 16.

¹⁶ Second Rombouts Affidavit at para 18, Applicants' MR, Tab 2, p 16.

¹⁷ Second Rombouts Affidavit at para 10, Applicants' MR, Tab 2, p 13.

¹⁸ Second Rombouts Affidavit at para 20, Applicants' MR, Tab 2, p 17.

Lender's Charge, the "**Priority Charges**") during the Initial Stay Period, but limited the charges to the amounts reasonably necessary for the Applicants' continued ordinary course operations during the Initial Stay Period.¹⁹ The Eve Group now seeks to increase the Priority Charges for the amounts reasonably necessary during the Extended Stay Period.

22. The Monitor, the DIP Lender, and RBC are supportive of the increases to the Priority Charges.²⁰

i. Administration Charge

23. The amount of the Administration Charge in the Initial Order was limited to the estimated professional fees and disbursements of the Monitor, counsel for the Monitor, and counsel for the Applicants (collectively, the "**Professional Group**") during the Initial Stay Period.

24. The Applicants seek to increase the Administration Charge from \$150,000 to \$500,000 to provide security for the professional fees and disbursements of the Professional Group during the Extended Stay Period.

25. A court may grant an administration charge in a CCAA proceeding pursuant to section 11.52 of the CCAA.²¹ In deciding whether to grant an administration charge, courts have considered a number of factors including: (a) the size and complexity of the businesses being restructured; (b) the role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the amount of the proposed charge

¹⁹ Second Rombouts Affidavit at para 24, Applicants' MR, Tab 2, p 17.

²⁰ Second Rombouts Affidavit at para 10, Applicants' MR, Tab 2, p 13.

²¹ s 11.52, CCAA.

appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.²²

26. The Applicants submit that it is appropriate for this Court to exercise its discretion to increase the Administration Charge. The beneficiaries of the Administration Charge will play a critical role in assisting the Applicants with the Sale Process and the progression of these CCAA proceedings. Further, each proposed beneficiary of the Administration Charge is performing distinct functions: there are no duplication of roles. The quantum of the increased Administration Charge is in line with the nature and size of the Applicants' business and the involvement required by the professional advisors.²³

27. Moreover, any secured creditors who may be affected by the proposed increase to the Administration Charge have been provided with notice of the same.

ii. DIP Loan and DIP Lender's Charge

28. The DIP Loan was limited to \$1,200,000 in the Initial Order, the amount that was reasonably necessary for the Applicants' to continue to operate in the ordinary course of business during the Initial Stay Period. Similarly, the DIP Lender's Charge was limited to \$1,200,000 during the Initial Stay Period.

29. The Applicants seek authorization to borrow a further \$1,000,000 of the DIP Loan to fund the costs of these CCAA proceedings and the Eve Group's operating costs. The Cash Flow Forecast demonstrates that the Eve Group requires this additional funding to meet its operating costs during the Extended Stay Period so that it may complete the Sale Process.

²² [*Canwest Publishing Inc., Re*](#), 2010 ONSC 222 at para 54; [*Re Lydian International Limited*](#), 2019 ONSC 7473 at para 46.

²³ Affidavit of Melinda Rombouts, sworn March 23, 2022 ("**First Rombouts Affidavit**") at paras 183-184, Application Record, Tab 2, p 82.

30. The Applicants also seek a corresponding increase in the DIP Lender's Charge in connection with the increase of the DIP Loan.

31. A court has jurisdiction to authorize interim financing and a related charge under section 11.2 of the CCAA. The debtor must provide notice to secured creditors who are likely to be affected by the charge, and the charge cannot secure pre-filing advances.²⁴

32. In determining whether to approve a proposed increase in interim financing and a corresponding increase in an interim financing charge, a court is required to consider the following non-exhaustive factors under section 11.2(4) of the CCAA:²⁵

(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.

33. The rationale put forward by the Applicants for the DIP Loan and DIP Lender's Charge on the application for the Initial Order supports the requested increase in these charges. Specifically:

²⁴ s 11.2, CCAA.

²⁵ s 11.2(4).

- a. the Applicants are requesting an increase in the DIP Loan and DIP Lender's Charge, the DIP Term Sheet has already been approved by the Court;²⁶
- b. the necessity of the DIP Loan is demonstrated and supported by the Cash Flow Forecast;²⁷
- c. the Applicants are requesting an extension of the stay of proceedings for the Extended Stay Period;
- d. the Applicants' business will be managed by its directors and senior management, in consultation with the Monitor;
- e. in the absence of the DIP Loan, the Applicants will be unable to continue to carry on business or carry out the Sale Process and will be forced to shut down their operations to the detriment of their stakeholders;²⁸
- f. no creditor should be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge;
- g. the Applicants have provided notice of the DIP Lender's Charge to affected secured creditors;
- h. the Applicants' senior secured creditor, RBC, supports the relief being sought;²⁹ and
- i. the Monitor is supportive of the increase in the DIP Loan and the DIP Lender's Charge.³⁰

²⁶ First Rombouts Affidavit at para 179, Application Record, Tab 2, pp 80-81.

²⁷ First Rombouts Affidavit at para 69, Application Record, Tab 2, p 55.

²⁸ First Rombouts Affidavit at para 69, Application Record, Tab 2, p 55.

²⁹ Second Rombouts Affidavit at para 10, Applicants' MR, Tab 2, p 13.

³⁰ Second Rombouts Affidavit at para 10, Applicants' MR, Tab 2, p 13.

34. If the DIP Loan and DIP Lender's Charge are not increased, the Eve Group will not be able to continue to operate in the ordinary course of business during the Extended Stay Period, to the detriment of its stakeholders.

35. In all of the above circumstances, the Applicants respectfully submit that an increase in the amounts of the DIP Loan and DIP Lender's Charge should be approved.

C. Approval of Sale Process

36. A court may approve a sale in a CCAA proceeding prior to or in the absence of a plan of compromise or arrangement.³¹

37. In considering whether to approve a sale process, a court may consider whether:³²

- a. a transaction is warranted at this time;
- b. the sale will benefit the whole economic community;
- c. creditors have a *bona fide* reason to object to a sale of the business; and
- d. there is a better viable alternative.

38. Although not strictly applicable to approval of a sale process, courts have also considered the factors set out in section 36(3) of the CCAA:³³

- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. whether the monitor approved of the process leading to the proposed sale or disposition;

³¹ s 36, CCAA.

³² [Nortel Networks Corp., Re](#), [2009] OJ No 3169 at para 49 (Ont Sup Ct J [Commercial List]); [Brainhunter Inc., Re \(2009\)](#), 183 ACWS (3d) 905 at para 13 (Ont Sup Ct J [Commercial List]).

³³ [U.S. Steel Canada Inc., Re](#), 2015 ONSC 2523 at para 8; s 36(3), CCAA.

- c. whether the monitor filed a report with the court stating that in their opinion the sale or disposition would be more beneficial to creditors than a sale or disposition in bankruptcy;
- d. the extent to which creditors were consulted;
- e. the effects of the proposed sale or disposition on creditors and other interested parties; and
- f. whether the consideration to be received for the assets is reasonable and fair, taking into consideration their market value.

39. The Applicants submit that the Sale Process should be approved at this time for the following reasons:

- a. the Applicants are insolvent and cannot continue to operate in the ordinary course without the DIP Loan;
- b. the sale process will benefit the whole economic community because it is designed to test the market by soliciting the best bids thereby maximizing value for the Applicants' stakeholders;
- c. the DIP Lender and RBC support the approval of the Sale Process and no creditor has indicated that they object to the Sale Process;
- d. the Applicants have pursued a number of strategic alternatives to improve their financial position before commencing the CCAA proceedings. Despite their attempts to raise equity and debt financing, no other alternative has materialized;³⁴
- e. the Sale Process was developed in consultation with the Monitor who is supportive of the Sale Process. The Monitor will administer the Sale

³⁴ First Rombouts Affidavit at paras 153-169, Application Record, Tab 2, pp 74-78

Process in consultation with the Applicants and RBC, and the Monitor will have certain consent rights in respect of material decisions (for example, extending timelines, dispensing with bid requirements, and terminating the Sale Process). The Monitor is not aware of any stakeholders who will be prejudiced by the Sale Process. RBC also has certain consent rights, including a motion for approval of the successful bid;³⁵

- f. the Applicants indicated their intention to seek approval of the Sale Process on this motion in their initial application materials. During the Initial Stay Period, the Applicants have communicated with various stakeholders, including secured creditors, to provide information and answer questions relating to the CCAA proceedings.³⁶

40. The Applicants submit that the Sale Process represents the best strategy, in the circumstances, to maximize the value of the Eve Group's assets and is in the best interests of the Applicants and their stakeholders. The process provides a fair and transparent process that gives interested parties sufficient time to evaluate the opportunity and submit a bid before the bid deadline.

41. The Monitor, DIP Lender, and RBC all support the approval of the Sale Process.

³⁵ Second Rombouts Affidavit at paras 12-13, Applicants' MR, Tab 2, pp 13-15.

³⁶ Second Rombouts Affidavit at para 9, Applicants' MR, Tab 2, p 12.

V. RELIEF REQUESTED

42. The Applicants respectfully request that this Honourable Court grant the relief provided for in the Initial Order in accordance with the terms of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of March, 2022.



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Lawyers for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Target Canada Co. Re, 2015 ONSC 303](#)
2. [Canwest Publishing Inc., Re, 2010 ONSC 222](#)
3. [Re Lydian International Limited, 2019 ONSC 7473](#)
4. [Nortel Networks Corp., Re, \[2009\] OJ No 3169 \(Ont Sup Ct J \[Commercial List\]\)](#)
5. [Brainhunter Inc., Re \(2009\), 183 ACWS \(3d\) 905 \(Ont Sup Ct J \[Commercial List\]\)](#)
6. *U.S. Steel Canada Inc., Re*, 2015 ONSC 2523

SCHEDULE “B” RELEVANT STATUTES

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Stays, etc. — other than initial application

11.02(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.

Burden of proof on application

(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.

Interim financing

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.

Priority — secured creditors

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

Priority — other orders

(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.

Factors to be considered

(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.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(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.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property

SCHEDULE "C"
AUTHORITIES NOT HYPERLINKED

CITATION: U.S. Steel Canada Inc. (Re), 2015 ONSC 2523
COURT FILE NO.: CV-14-10695-00CL
DATE: 20150417

SUPERIOR COURT OF JUSTICE - ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO U.S. STEEL CANADA INC.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *K. Peters and R. Paul Steep*, for the Applicant

R. Sahmi, for the Monitor

R. Thornton and J. Galway, for United States Steel Corporation

L. Harmer, for the United Steelworkers International Union, the United Steelworkers Union, Local 8782 and as agent for the United Steelworkers Union, Local 1005

A. Hatnay and B. Walancik, for the non-unionized retirees and active employees

L. Willis, for Her Majesty the Queen in Right of Ontario and the Superintendent of Financial Services (Ontario)

HEARD: April 2, 2015

ENDORSEMENT

[1] The applicant sought an order authorizing a sale and restructuring process (the "SARP") and approving the eighth report of the Monitor and the activities described therein, which relate principally to the SARP. The order was granted with written reasons to follow, which are set out in this Endorsement.

[2] The proposed form of the SARP was initially the subject of objections from Her Majesty the Queen in Right of Ontario and the Superintendent of Financial Services (Ontario), the United Steelworkers, the United Steelworkers Local 8782, the United Steelworkers Local 1005, and the non-unionized retirees and active employees of the applicant (collectively, the "Major Stakeholders"). After negotiations among the parties, the revised form of the SARP was consented to by the Major Stakeholders and the United States Steel Corporation.

[3] The proposed process satisfies the criteria enumerated by Morawetz R.S.J. in *Nortel Networks Corp., Re*, 2009 CanLII39492 (ONSC) at para. 49 for the following four reasons which address the four factors articulated in that decision.

[4] First, commencement of the SARP is warranted at this time to permit the applicant sufficient time to run an effective sales and investment process if a consensual restructuring is not possible among the stakeholders.

[5] Second, a sale or restructuring process will benefit the whole "economic community" having a stake in the applicant. In particular, an active sales or investment process is necessary to maintain the confidence of the applicant's suppliers and customers and thereby ensure the continued operation of the applicant's business in the ordinary course. Absent a consensual restructuring, a sale of, or investment in, the applicant is the only form of restructuring that would have the potential for maintaining the applicant's business as a going concern and thereby maintaining the economic and social benefits of its continued operation, including preservation of employment at the applicant's two facilities.

[6] Third, as mentioned, the Major Stakeholders consented to the Order. The Monitor also advised the Court that it supported the SARP. No other creditors objected to the SARP process as contemplated in the proposed order.

[7] Lastly, there is no better viable alternative. In particular, in the absence of a consensual restructuring, a sale or investment transaction produced by the SARP would likely preserve considerably more value than a sale in a receivership or in a bankruptcy liquidation proceeding.

[8] In addition, while not technically applicable, the relevant factors in s. 36(3) of the *Companies' Creditors Arrangement Act* are also satisfied in respect of the Order. In particular, as mentioned, the Monitor supported the proposed SARP, which was also consented to by the Major Stakeholders. Further, the process contemplated is reasonable, both in terms of the substance and the timelines contemplated for the stages of such process, and is consistent with sales and investment process orders for businesses of comparable complexity in the current market.



Wilton-Siegel J.

Date: April 17, 2015

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No.: CV-22-00678884-00CL

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF EVE & CO INCORPORATED, NATURAL MEDCO LTD., and EVE & CO INTERNATIONAL HOLDINGS LTD.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at TORONTO

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(COMEBACK MOTION)**

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