

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-11-065011-245

DATE: December 11, 2024

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**BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.**

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**IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:**

**ELNA MEDICAL GROUP INC. / GROUPE MÉDICAL ELNA INC.,**

and

**9508503 CANADA INC.**

and

**ELNA Pediatrics Inc.**

and

**Tiny Tots Medical Centre Ltd.**

and

**7503881 Canada Inc.**

and

**Clinique Médicale ELNA Unimed Inc.**

and

**Gestion ELNA 2 Inc. (ELNA Plateau Mont-Royal)**

and

**CDL Protontherapy Center Inc.**

and

**CDL Proton Management Inc.**

and

**Clinique Médicale ELNA Châteauguay Inc.**

and

**Clinique Métro-Medic Centre-Ville Inc.**

and

**9248-5994 Québec Inc. (ELNA Pierrefonds)**

and

**Créa-Med Clinique de Médecine Privée Inc.**

and  
**GBMC Medical Office Management Inc.**  
and  
**Omni-Med Stillview Inc.**  
and  
**ELNA ROCKLAND MANAGEMENT INC.and**  
**ELNA Rockland Clinic Inc.**  
and  
**ELNA Clinique A Inc.**  
and  
**ELNA Group Inc. (ELNA Cosmetics)**  
and  
**ELNA Anti-Aging Inc.**  
and  
**Clinique Médicale ELNA Décarie Inc.**  
and  
**ELNA Plus Decarie Square Inc.**  
and  
**ELNA Mental Health Inc.**  
and  
**ELNA Technologies Inc.**  
and  
**Montreal Perfusion Center Inc.**  
and  
**Gestion ELNA 1 Inc.**  
and  
**Clinique Privamed Inc.**  
and  
**M-Health Solutions Inc.**  
and  
**100224328 Ontario Inc.**  
and  
**CDL Laboratories Inc.**  
and  
**1127603 Canada Inc.**  
and  
**7159099 Canada Inc.**  
and  
**CDL Cardiology Inc.**  
and  
**ELNA Acquisitions Inc.**  
and  
**Medicentres Canada Inc.**  
and

**9472-1024 Québec Inc.**

Applicants

and

**LAURENT AMRAM**

Impleaded Party

and

**RAYMOND CHABOT INC.,**

Proposed Monitor

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## JUDGMENT ON REQUEST FOR AN INITIAL ORDER

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### OVERVIEW

[1] Applicants, Elna Medical Group Inc. ("**EMG**"), 9508503 Canada Inc. ("**950 Canada**"), as well as other Applicants listed in Schedule A to the attached initial order (collectively with EMG and 950 Canada, the "**Applicants**") have filed an application (the "**Application**") seeking the issuance of an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*<sup>1</sup> (the "**CCAA**"):

- 1.1. declaring that the CCAA applies to the Applicants;
- 1.2. staying all proceedings and remedies taken or that might be taken in respect of the Applicants, Laurent Amram, and any of their property (the "**Stay**"), for an initial period of ten days in accordance with the CCAA (the "**Stay Period**");
- 1.3. appointing Raymond Chabot Inc. ("**RCI**" or the "**Monitor**") as the monitor of the Applicants in these proceedings and granting the Monitor the powers sought by the present Application;
- 1.4. ordering the procedural consolidation of these CCAA proceedings in respect of each of the Applicants, for administrative purposes only;
- 1.5. granting the Administration Charge (as defined below);
- 1.6. granting a D&O Charge (as defined below);
- 1.7. authorizing the engagement of the CFO (as defined below);
- 1.8. authorizing National Bank of Canada ("**NBC**") to provide the DIP Facility (as

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<sup>1</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

defined below) to the Applicants and granting a DIP Charge (as defined below) in relation thereto;

- 1.9. authorizing the Applicants, with the consent of the Monitor, to convey, assign, lease or in any other manner dispose of property, outside the normal course of business, in whole or in part, provided that the price in each case does not exceed \$300,000 in the aggregate;
- 1.10. authorizing the Applicants to pay, with the consent of the Monitor, any pre-filing unpaid claims of suppliers it deems critical, up to an aggregate amount of \$300,000;
- 1.11. authorizing the Applicants to establish the MRP and granting the related MRP Charge (as these terms are defined below);
- 1.12. the scheduling of a comeback hearing on December 17, 2024 (the “**Comeback Hearing**”); and
- 1.13. ordering the sealing of certain confidential exhibits supporting this Application.

[2] The Applicants also seek an order (the “**SISP Approval Order**”) approving the initiation of a Sale and Investment Solicitation Process (the “**SISP**”).

[3] At the Comeback Hearing, the Applicants intend to seek an Amended and Restated Initial Order (the “**ARIO**”):

- 3.1. extending the Stay Period until on or about February 12, 2025;
- 3.2. increasing certain CCAA Charges; and
- 3.3. granting any other relevant relief sought by the Applicants or deemed necessary by this Court.

## **CONTEXT**

### **1. The ELNA Clinic Network**

[4] ELNA was founded in Quebec over 30 years ago by Mr. Laurent Amram through a wholly owned subsidiary, CDL Laboratories.

[5] ELNA is a leading Canadian medical clinic consolidator and operator that offers primary and specialty medical care (in over 30 in-house specialties), including laboratory diagnostics and remote patient monitoring services (collectively the “**ELNA Group**”).

[6] The ELNA Group comprises more than 100 clinics and points of care in five provinces (Quebec, Ontario, Alberta, Saskatchewan and Manitoba), including 10 medical complexes (9 of which are in Quebec). It employs approximately 1,000 physicians and an additional 1,000 employees and healthcare professionals. It serves approximately three million Canadians.

[7] The ELNA Group is Canada's largest network of integrated medical clinics, diagnostic laboratory services, and remote patient monitoring services. It generates approximately \$200 million of annual gross revenue.

[8] The ELNA Group's head office is in Montreal, Québec. Most of its employees are in Quebec. Most strategic and corporate decisions regarding the ELNA Group are made by the management team in Montreal.

[9] ELNA Group has satellite administrative offices in Edmonton (AB) and Hamilton (ONT).

[10] The ELNA Group operates under various banners divided into three main business lines (clinics, laboratories and remote monitoring) which include:

ELNA Clinic Network:

- 10.1. ELNA branded clinics (the "**ELNA Clinics**");
- 10.2. Brunswick Health Group Inc. and related entities ("**Brunswick Health Group**");
- 10.3. La Cité Médicale Inc. – Ste-Foy and Charlesbourg ("**La Cité Médicale**");
- 10.4. Physimed Health Group Inc. and related entities ("**Physimed Health Group**");
- 10.5. Gestion Privamed Inc. and related entities ("**Privamed**");
- 10.6. Medicentres Canada Inc. and related entities ("**Medicentres**");

Diagnostic Laboratory:

- 10.7. CDL Laboratories Inc. and related entities ("**CDL**");

Remote Monitoring:

- 10.8. M-Health Solutions Inc. and related entities ("**M-Health**").

[11] The present CCAA proceedings solely relate to the Applicants listed in Schedule A of the Initial Order, which are ELNA Group entities operating under the banners: ELNA Clinics, Medicentres, Privamed, CDL, and M-Health.

[12] The real estate holding entities (Gestion Privamed Inc., 9074-2743 Québec Inc. and Gestion Elna Pierrefonds Inc.) as well as the entities operating under the Brunswick Health Group, Physimed Health Group and La Cité Médicale banners are not affected by the present proceedings.

## **2. Financial Difficulties**

[13] Throughout the COVID-19 pandemic, the ELNA Clinic Network struggled as a result of diminishing patient visits. It suffered material revenue losses. However, the laboratory component of the business thrived. These revenues (as well as additional financing) were used to proceed with further acquisitions.

[14] Among those, the Medicentres and Brunswick Health Group acquisitions were both turnaround situations, While the cash burn has reduced since the acquisitions, the operations remain cash flow negative such that additional funds are required on a monthly basis to meet their obligations in the ordinary course. The current monthly burn rate is approximately \$1.5 million.

[15] Some initiatives were implemented but unfortunately, they failed to generate sufficient revenues to address ELNA's financial woes.

[16] The ELNA Group is facing liquidity challenges and significant financial hardship such that it cannot meet its obligations as they become due, nor can it continue its operations in the normal course without additional funding.

### **2.1 Assets**

[17] The Applicants' assets and property, on a consolidated basis, consist primarily of a combination of intangible assets, including patient data, contractual and service revenue, intellectual property, laboratory, medical and office equipment.

### **2.2 Secured Debts**

[18] The Applicants' operations are principally financed by a number of secured creditors, each of which hold security on various assets of the ELNA Group, as well as in certain instances personal guarantees from Mr. Laurent Amram. These include:

- 18.1. Various credit agreements (the "**NBC Credit Agreements**") pursuant to which the National Bank of Canada ("**NBC**") provided credit facilities to EMG and m-Health Solutions Inc. (the "**NBC Borrowers**") which are guaranteed by several of the ELNA Group entities (the "**NBC Guarantors**"). The NBC Borrowers owe approximately \$43 million. In conjunction with these CCAA proceedings, NBC, the NBC Borrowers and the NBC Guarantors entered into a new Forbearance Agreement (the "**NBC Forbearance Agreement**") pursuant to which NBC has agreed to continue to support the ELNA Group

in the context of these CCAA proceedings and to provide additional interim financial to the ELNA Group through the DIP Facility (as defined below).

- 18.2. A loan agreement (the “**Norea Loan Agreement**”) through which Norea Capital (“**Norea**”) loaned money to M-Health Solutions Inc. (“**M-Health**”) to provide financing to allow the ELNA Group to acquire M-Health in 2022. M-Health currently owes Norea approximately \$6,148,000.00, subject to interest and adjustments, pursuant to the terms of the Norea Loan Agreement and is in default of its obligations thereunder.
- 18.3. A loan agreement (the “**IQ Loan Agreement**”) pursuant to which Investissement Québec (“**IQ**”) loaned money to CDL for research and development initiatives. CDL currently owes approximately \$2,146,588, subject to interest and adjustments, to IQ pursuant to the terms of the IQ Loan Agreement.
- 18.4. On October 29, 2024, Medicenters Canada Inc. (“**Medicenters**”) entered into a term loan agreement (the “**McKesson Loan Agreement**”) with La Corporation McKesson Canada (“**McKesson**”). Medicenters currently owes McKesson approximately \$2,800,000, subject to interest and adjustments, pursuant to the terms of the McKesson Loan Agreement.
- 18.5. On May 21, 2020, CDL Laboratories Inc. entered into a secured loan agreement with BDC with respect to a working capital loan (the “**BDC CDL Loan**”). CDL Laboratories Inc. owes approximately \$231,966 to BDC pursuant to the BDC CDL Loan, subject to interest and fees.
- 18.6. On January 31, 2024, EMG entered into a secured loan agreement with Mr. Jason Rabin for an amount of \$1,500,000 (USD). This amount remains outstanding.
- 18.7. In the last year, m-Health Solution Inc., CDL Laboratories Inc. and Clinique Privamed Inc. entered into several secured loan agreements with Merchant Capital Group LLC for an amount of approximately \$428,500, subject to interest and adjustments.

[19] Mr. Amram also took out certain personal loans as follows:

- 19.1. Pursuant to various personal loan agreements (the “**CFC Loans**”) entered into in 2023 between Mr. Laurent Amram and Crawford & Finchley Capital (“**CFC**”), Mr. Amram is currently indebted for approximately \$2,500,000, subject to interest and adjustments.
- 19.2. Pursuant to various personal loan agreements (the “**143 Loans**”) entered into in recent years between Mr. Laurent Amram and 143956 Canada Inc. (“**143 Canada**”), Mr. Amram is currently indebted for approximately

\$4,500,000, subject to interest and adjustment.

- 19.3. Pursuant to two personal loan agreements (the "**Placement SP Loans**") entered into in 2023 and 2024 between Mr. Laurent Amram and Les Placements SP Canada Inc. ("**Placements SP**"), Mr. Amram is currently indebted for approximately \$3,200,000, subject to interest and adjustments.
- 19.4. On April 25, 2023, K&S Financial Group Inc. ("**K&S**") advanced the sum of \$750,000 to Mr. Laurent Amram the proceeds of which were used to fund the operations of the ELNA Group (the "**K&S Loan**"). This amount, subject to interest and adjustments, remains outstanding.
- 19.5. In addition to the foregoing, various personal loans to Mr. Laurent Amram, the proceeds of which were advanced to fund the operations of the ELNA Group (collectively referred to herein as the "**Secured Business Loans**").

### 2.3 Unsecured Debts

[20] Applicants also have unsecured debt which includes funds indirectly advanced to the ELNA Group in recent years to fund certain acquisitions and cash flow requirements ("**Unsecured Business Loans**"). Unsecured Business Loans were borrowed by Mr. Laurent Amram directly, for the sole benefit and use of the ELNA Group.

[21] In addition, there remains a balance owing to the prior owner/vendor in connection with the M-Health acquisition in the amount of approximately \$1,500,000.

### 2.4 Tax Authorities

[22] Applicants also owe the following approximate amounts to various provincial and federal tax authorities ("**Tax Authorities**"):

- |                             |             |
|-----------------------------|-------------|
| 22.1. GST/QST:              | \$654,000   |
| 22.2. Corporate Income Tax: | \$4,370,000 |

### 2.5 Trade Liabilities

[23] As of December 6, 2024, the Applicants' indebtedness to their suppliers, landlords and other unsecured creditors (excluding the Unsecured Business Loans) is in the aggregate amount of approximately \$24,000,000.

### 2.6 Employee Liabilities and Doctor Compensation

[24] Although all normal pay obligations are current. The aggregate gross employee pay obligations total approximately \$3,000,000 per month.



[25] Additionally, the estimated amount of accrued, unused vacation time as of the date hereof is approximately \$1,870,000.

[26] The majority of the Québec-based physicians, doctors of the ELNA Group practicing in the public healthcare system attend to their own billings and collections, including directly with respect to the healthcare authorities, and pay a monthly fee to the ELNA Group.

[27] Other than with respect to certain amounts owing to the Medicentres' doctors for certain services rendered in November 2024 (discussed below), all amounts owing to the doctors of the ELNA Group for services rendered both prior to and following the date of these CCAA proceedings are intended to be paid in full in the ordinary course.

### **3. Operational Restructuring Efforts**

#### **3.1 The Equity Raise Process**

[28] In order to fund its growth strategy and address its liquidity needs, the ELNA Group retained the services of National Bank Financial Inc. ("**NBF**") as its financial advisor in May 2023 to initiate an equity raise process with the goal of raising approximately \$50,000,000 (the "**Equity Raise Process**").

[29] The Equity Raise Process resulted in a non-binding letter of intent for 10% of the equity of the ELNA Group in the amount of \$25 million (the "**Equity Offer**"), representing an overall valuation of no less than \$250 Million as at September 2024.

[30] The Equity Offer is currently in the due diligence process but given the Applicants' current financial situation and the time required to close on the Equity Offer, ELNA is unable to pursue the Equity Raise Process without initiating the present CCAA proceedings.

[31] The Equity Raise Process will continue as part of the revised SISP discussed below.

#### **3.2 The Initial SISP**

[32] Given the delays associated with the Equity Raise Process, NBF was also retained in September 2024 to initiate, in parallel with the Equity Raise Process, an initial sale investment solicitation process (the "**Initial SISP**") with a view of identifying one or more transactions in respect of the sale, investment in, or refinancing of all or part of the business.

[33] NBF, with the assistance of the Applicants, managed all Initial SISP-related documents (including the preparation of a teaser letter ("**Teaser**") and confidential information memorandum regarding the business ("**CIM**"), a target list of potential

purchasers or investors, and non-disclosure agreements) and provided all required information to potential bidders.

[34] On or about October 7, 2024, the Initial SISP was initiated by the communication of the Teaser to potential bidders from both strategic and financial sectors.

[35] All parties who signed confidentiality agreements were provided with a copy of the CIM, and invited to submit non-binding letters of intent by no later than November 19, 2024.

[36] The Applicants received non-binding letters of interest from potential bidders (“**LOIs**”), and after carefully reviewing the LOIs, the Applicants, on the recommendation of NBF, advised potential bidders that they would be proceeding to Phase 2 of the SISP.

[37] Unfortunately, given the ELNA Group’s financial situation, the Applicants do not have the required liquidity to carry the SISP to its conclusion.

[38] The Applicants’ limited financial resources leave them with no alternative but to continue these efforts in the context of CCAA proceedings, while maintaining reduced uninterrupted operations.

[39] Through the DIP Facility (as defined below), NBC is offering to provide interim financing on reasonable terms and conditions which shall allow for the continuation of the SISP in the context of these CCAA proceedings.

## **ANALYSIS**

[40] The various criteria for the issuance of an initial order under the CCAA have been met.

[41] The Applicants are affiliated debtor companies within the meaning of section 2 of the CCAA.

[42] The Applicants are insolvent because the value of their assets in a liquidation context would be insufficient to meet all their obligations to their creditors, and they are unable to meet their obligations as they become due. A looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured is sufficient to meet the requirements of the CCAA.<sup>2</sup>

[43] The Applicants’ total indebtedness exceeds the \$5,000,000 threshold required by the CCAA.

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<sup>2</sup> *Stelco Inc., Re*, 48 C.B.R. (4th) 299, paras. 26 et 28.

[44] The Quebec Superior Court has jurisdiction to issue the sought order as the ELNA Group has its head office or chief place of business in Quebec<sup>3</sup>.

[45] Considering the number of Applicant entities (37) it is in the best interest of all stakeholders that this Court order the administrative consolidation of the Applicants' filings under a single CCAA proceeding.

[46] The clauses of the proposed Initial Order are in line with the standard draft order subject to certain matters which will be discussed below.

### **1. Stay of Proceedings Against Applicants and Mr. Amram Personally**

[47] The Applicants are in real danger of no longer being able to maintain their activities without the protection of the CCAA. The stay of proceedings for an initial period of 10 days, subject to extensions is necessary to avoid a possible liquidation at a discount of the Applicants' assets in the context of multiple potential litigation and hypothecary recourses of the Applicants' various creditors.

[48] Mr. Amram also requests a stay of all potential lawsuits against him.

[49] The principal secured creditors support the application of the stay to Mr. Amram.

[50] At least one secured creditor of Mr. Amram has opposed the extension of the Stay.

[51] Subsection 11.03(1) of the CCAA allows the court to stay proceedings against directors if they relate to their liability under the law, in their capacity as director, for the payment of the obligations of the debtor company.

[52] Courts also have the authority under the broad jurisdiction granted under sections 11 and 11.02 of the CCAA to grant a stay of proceedings in favour of third parties that are not themselves applicants in a CCAA proceeding, including recourses seeking the enforcement of a personal surety against a director.<sup>4</sup>

[53] Mr. Amram submits that he is essential to the operations of the Applicants and to the success of these restructuring proceedings. He will be called upon to work tirelessly over the coming days and weeks and it is essential that this take place without any distraction. Thus, he asks that all claims against him be stayed including personal claims that are unrelated to the Applicants.

[54] While at first glance sympathetic, this argument cannot be accepted on its own. If it were, any principal shareholder, director or key employee of the debtor would be justified to seek protection from his or her creditors during the restructuring as long as he or she could establish that they are a key protagonist in the process. This would entail a

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<sup>3</sup> Subsection 9(1) of the CCAA.

<sup>4</sup> *Great Basin Gold Ltd. (Re)*, 2015 BCSC 1199, para. 32.

significant expansion of current practice. In fact, the Applicants were not able to provide any precedent for the issuance of an unrestricted stay to protect key players in a CCAA proceeding from lawsuits related to personal debts.

[55] In most cases where stays were issued to protect directors, the stayed claims related to statutory claims covered by subsection 11.03(1) of the CCAA or personal guarantees of company debts.<sup>5</sup> As such the stayed claims had a minimal rational connection to the operation of the debtor's business. As Justice Kimmel observes, in such cases, the stay is "consistent with the single-proceeding model that favours the resolution of claims within a CCAA process and avoids the inefficiencies and chaos that could otherwise result from uncoordinated attempts at recovery".<sup>6</sup>

[56] When a extension of the stay is sought, it falls upon the applicant to demonstrate that the potential claim "would hinder or complicate the restructuring process" and that ordering the stay "is necessary to advance the policy objectives underlying the CCAA, to further the efforts to achieve the remedial purpose of the CCAA, or that not ordering such a stay would interfere with an orderly restructuring".<sup>7</sup>

[57] In determining whether to extend a stay of proceedings to non-applicant third parties, including directors, the following non-exhaustive list of factors have been considered by the Courts:

- 57.1. the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
- 57.2. extending the stay to the third party would help maintain stability and value during the CCAA process;
- 57.3. not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company.
- 57.4. if the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant.
- 57.5. failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;

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<sup>5</sup> *Pride Group Holdings Inc.*, 2024 ONSC 1830, paras. 33 to 35; *McEwan Enterprises Inc.*, 2021 ONSC 6453, para. 19; *Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à)*, 2015 QCCS 4716 at paras. 50-53.

<sup>6</sup> *Balboa Inc. et al. (Re)*, Court File No. CV-24-00713254 cited in *2675970 Ontario Inc.*, 2024 ONSC 6174, para. 30.

<sup>7</sup> *Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à)*, *supra*, para. 52-53.

57.6. if the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and

57.7. the balance of convenience favours extending the stay to the third party.<sup>8</sup>

[58] Mr. Amram is the sole director, shareholder and founder of the ELNA Group. As a result of these roles, he gave personal guarantees on loans extended to the ELNA Group.

[59] Mr. Avram also entered into personal loan agreements. In his testimony he indicates that 100% of the proceeds of these loans were invested in ELNA. However, the loans in question were not specifically identified.

[60] Mr. Amram's alleges that his personal wealth is intimately tied to the value of the ELNA Group. He alleges that he is unable to independently satisfy his personal obligations until the restructuring efforts can be fully implemented.

[61] Mr. Amram is unable to file for personal bankruptcy at this time as this would prevent him from acting as a director of a CBCA governed corporation (s. 105(11) CBCA). As he is the sole director of the Applicants it is important that he remain in place throughout these proceedings, and his inability to act would impair the restructuring efforts.

[62] This may be true but nonetheless, an overall and over encompassing stay of all claims against Mr. Amram is not supported by the evidence nor warranted at this time. Very little evidence has been provided as to Mr. Amram's personal assets, his income, or other sources of revenue. Thus, it is difficult to determine if the stay is even necessary.

[63] Furthermore, no specific evidence has been advanced to buttress the statement that all personal loan proceeds were reinvested in ELNA Group. In any event, such personal loans were not identified.

[64] For the time being, the Court will issue a Stay of proceedings against Mr. Amram but this extended stay will be limited to the following claims:

- 64.1. Statutory claims against him as a director pursuant to subsection 11.03(1) of the CCAA;
- 64.2. Personal guarantees granted on debts to the Applicants;
- 64.3. Personal loans whose proceeds were wholly reinvested in the Applicants.

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<sup>8</sup> *McEwan Enterprises Inc.*, *supra*, note 5, para. 43.

[65] The stay will be valid until the Comeback Hearing. If the Applicants wish to maintain the stay they will have to demonstrate that it is required.

## **2. The Monitor**

[66] The appointment of RCI, a licensed insolvency trustee, to act as Monitor under the provisions of the CCAA is appropriate. Mr. Benoît Fontaine has recognised expertise in this field.

[67] Raymond Chabot Grant Thornton LLP (“**RCGT**”), an affiliated company of the Monitor, has been analyzing the financials of the ELNA Group at the request of NBC since May 2023. In October 2024, RCGT was mandated to analyze the financials of M-Health. Appointing RCI would be efficient and save both time and money both of which are of the essence here.

[68] A separate team of RCI has acted as court-appointed monitor in the CCAA proceedings of the Brunswick Health Group (Superior Court no 500-11-062636-234), as part of which 15529301 Canada inc., a company ultimately held by Laurent Amram, has purchased a group of medical clinics. Further to this transaction, the assets of the Brunswick Health Group remain encumbered in favour of RCGT in its capacity as monitor in Brunswick Health Group CCAA, as *fondé de pouvoir* for the existing secured creditors in said file, namely TD Bank and BDC.

[69] RCGT (and now RCI) has put in place confidentiality and conflict measures between the teams working on the Brunswick Health Group CCAA matter and the ELNA Group and current CCAA matter.

[70] A separate team of McCarthy Tétrault LLP is acting as counsel for RCI as monitor in the Brunswick Health Group CCAA matter. McCarthy Tétrault LLP has also put in place confidentiality and conflict measures between the teams working on the Brunswick Health Group CCAA matter and the current CCAA matter.

[71] In addition, another separate team of McCarthy Tétrault LLP is acting as counsel for Fiera as secured creditor of certain entities of the ELNA group, including La Cité Médicale. McCarthy Tétrault LLP has put in place confidentiality and conflict measures between the teams working for Fiera as secured creditor of certain entities of the ELNA Group and the current CCAA matter.

[72] All conflicts or potential conflicts have been disclosed to the ELNA Group, NBC and Fiera who are all satisfied of the measures above.

[73] The Brunswick entities are not Applicants under the present CCAA proceedings.

[74] None of the restrictions provided by subsection 11.7(2) of the CCAA are applicable to the Monitor.

[75] The granting of the Monitor's powers is appropriate to help the Applicants achieve their restructuring objectives.

### **3. The SISP**

[76] Thirdly, it is proposed that the Monitor be authorized to continue the SISP process.

[77] While the Initial SISP included a broad canvass of the market, The Monitor believes it is appropriate to expand the list of potential interested parties to include additional strategic and financial players, in order to provide the best possible outcome for all stakeholders.

[78] The Applicants ask that the Court approve the SISP bidding procedures ("**SISP Guidelines**").<sup>9</sup> These are in line with those used in other recent comparable insolvency proceedings.

[79] The SISP Guidelines contemplate a two-phase bidding process and timeline which was agreed to by the Applicants, and the Monitor, in compliance with the terms and conditions of the DIP Term Sheet.

[80] The Court believes that the SISP Approval Order is appropriate in the circumstances.

[81] The Applicants are insolvent and they are unable to indefinitely continue operations in their current state. They must restructure to preserve their business.

[82] The monetization of certain of the Applicants' assets will maximize value for stakeholders by allowing the business to continue as a going concern.

[83] The proposed SISP Guidelines outline the terms and procedures for a fair and efficient sale process.

[84] The Monitor is of the view that the SISP Approval Order and SISP Guidelines are reasonable and appropriate in the circumstances.

[85] Given the liquidity constraints, it is essential that the SISP Guidelines be approved as soon as possible in order to initiate the revised SISP forthwith.

### **4. Debtor In Possession ("DIP") Financing and DIP Charge**

[86] Applicants require interim financing to provide the stability required to continue their operations, while pursuing their restructuring efforts under these CCAA proceedings, including the revised SISP and Equity Raise Process.

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<sup>9</sup> Exhibit P-6.

[87] NBC has agreed to continue to support the Applicants through their restructuring efforts by providing Applicants with a DIP facility (the “**DIP Facility**”) in accordance with the related term sheet (the “**DIP Term Sheet**”).<sup>10</sup>

[88] The DIP Facility includes the following commercial terms:

88.1. Facility size: \$5,000,000

88.2. February 12, 2025

[89] Applicants propose that the DIP Facility be secured by a Court-ordered charge (the “**DIP Charge**”) on all of the present and future assets, property and undertakings of the Applicants up to a maximum amount of \$1,200,000 in the Initial Order, to be increased to in the ARIO. The DIP Charge will have priority over all other security interests, hypothecs, charges and liens, except the Administration Charge, and the MRP Charge (as these terms are defined below).

[90] Interim financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.<sup>11</sup>

[91] NBC has indicated that the DIP Charge is a key condition of the DIP Term Sheet, and that it is not prepared to provide interim financing to the Applicants without the DIP Charge.

[92] The terms of the DIP Facility are reasonable and akin to what is generally available on the market.

[93] No other alternative facility has been obtained at this time that would allow continuity of operations in the near term.

[94] The Monitor supports the proposed DIP Facility and the DIP Charge.

[95] The Court finds that the DIP Facility and DIP charge are necessary to allow the Applicants to continue operating their business throughout the restructuring process.

## **5. Medicentres Doctors Retention Program**

[96] There is currently an aggregate amount of approximately \$3.6 million owing to the Medicentres’ doctors for services rendered up to date. Part of this is money owed by the government and will be paid to the doctors upon reception.

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<sup>10</sup> Exhibit P-7.

<sup>11</sup> *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6453 at para 16.



[97] The DIP Facility is not sufficient to cover these amounts. To secure the ongoing support of the doctors, the Applicants, with the consent of NBC, are seeking approval of a Medicentres doctor's retention program ("**MRP**") for an amount of up to \$3,000,000.

[98] The MRP was developed by the Applicants, with the consent of the Monitor, to facilitate and encourage the continued participation of the Medicentres doctors, who are necessary to continue operating the Medicentres clinics throughout these proceedings, maintain patient care, and preserve value for all stakeholders.

[99] Therefore, with a view to securing this ongoing support, management prepared a doctor retention program pursuant to which Medicentres (i) will pay the \$2.0 million pre-filing amount upon collection of the accounts receivable related thereto, (ii) will pay for all post-filing services immediately upon collection of the accounts receivable related thereto, and (iii) seek the approval of a charge on all of the present and future assets, property and undertakings of Medicentres as part of the Application (the "**MRP Charge**"), in order to secure the \$1.6 million pre-filing amount that remains unpaid and any and all unpaid post-filing amounts.

[100] The Applicants consider that the approval of the MRP and the MRP Charge are essential to the success of their restructuring efforts. The Applicants are hopeful that the MRP and the MRP Charge will help secure the ongoing support of the Medicentres doctors.

[101] There are three overarching considerations applicable on an application to approve a retention or incentive program in an insolvency proceeding, being:

- 101.1. arm's length safeguards;
- 101.2. necessity; and
- 101.3. reasonableness of design.<sup>12</sup>

[102] Factors to be considered include:

- 102.1. whether the Monitor supports the program agreement and charge, to which great weight is attributed;
- 102.2. whether the beneficiaries of the program are likely to consider other employment opportunities if the program and associated charge are not approved;
- 102.3. whether the continued employment of the beneficiaries of the program is important for the stability of the business and to enhance the effectiveness

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<sup>12</sup> *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586, para. 69; *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para. 30.

of any marketing process;

- 102.4. the beneficiaries' history with and knowledge of the debtor company;
- 102.5. whether a replacement could be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company;
- 102.6. whether the program agreement and charge were approved by the debtor company's board of directors, including any independent directors, as the business judgment of the board should not be ignored;
- 102.7. whether the program agreement and charge are supported or consented to by secured creditors of the debtor; and
- 102.8. whether the payments under the program are payable upon the completion of the restructuring process.<sup>13</sup>

[103] The MRP and MRP Charge are appropriate in the present circumstances.

[104] The doctors' cooperation is crucial to continue operating the Medicentres clinics throughout these proceedings, maintain patient care, and preserve value for all stakeholders.

[105] The beneficiaries of the MRP possess specialized knowledge and expertise that cannot be easily replicated or replaced.

[106] Doctors are vital to maintaining the stability of the business and avoiding any disruptions that could affect the SISP.

[107] Payments under the MRP are tied to either the termination of the present CCAA proceedings through the implementation of a plan of arrangement or compromise in respect of Medicentres or the closing of a single, or multiple transaction(s) for substantially all of the Medicentres' assets, property and undertakings.

[108] The quantum of the MRP is appropriate in the circumstances and the MRP is supported by the main creditors and the Monitor.

[109] The Court approves it.

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<sup>13</sup> *Just Energy Group Inc. et al.*, 2021 ONSC 7630, para. 7; *Mountain Equipment Co-Operative (Re)*, supra, 12, para. 68; *Aralez Pharmaceuticals Inc. (Re)*, supra, note 12, para 29; *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at para 59.

## **6. Engagement of the Chief Financial Officer**

[110] The Applicants wish to engage Crowe BGK LLP (Mr. Patrick Ifergan) to act in a role akin to that of a chief financial officer of the ELNA Group (the “**CFO**”).

[111] Mr. Ifergan acted as Chief Financial Officer of the ELNA Group between June 2023 and August 2024, when he joined Crowe BGK LLP as a partner.

[112] Since joining Crowe BGK LLP, Mr. Ifergan has continued to act as the de facto Chief Financial Officer of the ELNA Group in accordance with a consulting agreement entered into between the ELNA Group and Crowe BGK LLP.

[113] This agreement was recently amended (the “**CFO Agreement**”).<sup>14</sup> The CFO Agreement contemplates that (i) it be ratified and approved by the Court in the circumstances where insolvency proceedings are initiated in respect of Applicants, and (ii) obligations owed to the CFO by the ELNA Group be secured by a charge.

[114] It is contemplated that the Administration Charge (discussed below) shall notably enure to the benefit of the CFO with respect to the payment of his services.

[115] The services of the CFO are considered essential to a successful and timely restructuring of the Applicants’ business, as the CFO has an intimate knowledge of the Applicants’ affairs and has been providing them extensive support.

[116] The Monitor supports the CFO Agreement and the inclusion of the CFO’s remuneration in the Administrative Charge.

## **7. D&O Charge**

[117] Mr. Amram is the sole director of the ELNA Group. His participation is essential to the viability of the restructuring efforts, especially in the context of the SISF.

[118] The Applicants maintain directors’ and officers’ liability insurance in respect of Medicentres, but there is no insurance coverage for any other Applicant entities.

[119] Moreover, the current amount of coverage provided by the Medicentres Director and Officer’s insurance may not be sufficient to protect Mr. Amram from potential claims.

[120] The Applicants therefore request a Court ordered charge (“**D&O Charge**”) in the amount of \$725,000 as part of the Initial Order, to take rank after the Administration Charge (as defined below), the MRP Charge, and the DIP Charge.

[121] The D&O Charge is intended to allow Mr. Amram to focus his efforts on these restructuring proceedings, for the benefit of all stakeholders.

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<sup>14</sup> Exhibit P-8.

[122] The D&O Charge has been calculated according to usual practice and is supported by the Monitor.

## **8. Administration Charge and Ranking of Charges**

[123] The support of the Monitor, its counsel, the CFO, and the Applicant's counsel (collectively, the "**Professionals**") is essential to ELNA Group's restructuring.

[124] The Professionals have requested that their respective fees and disbursements be secured by a Court Charge in an initial aggregate amount of \$750,000 to cover the work done to prepare the present proceedings and the work required until the Comeback Hearing in connection with the Applicants ("**Administration Charge**", together with the DIP Charge, the MRP Charge, and the D&O Charge the "**CCAA Charges**").

[125] The Professionals ask that their respective fees and disbursements be secured by an administration charge, ranking ahead of the claims of all secured and unsecured creditors, and have indicated that the granting of an administration charge is essential to their support throughout the proceedings.

[126] The Administration Charge will be secured by a charge on all of the Applicants present and future assets, property and undertakings ranking ahead of all Applicants' other secured and unsecured creditors.

[127] The Applicants request that this Court grant the following super-priority charges in the following order of priority:

127.1. The Administration Charge;

127.2. The MRP Charge (only on the Medicentres assets, property and undertakings);

127.3. The DIP Charge; and

127.4. The D&O Charge.

[128] The Initial Order provides that the CCAA Charges will not rank ahead of any statutory deemed trusts in favour of the Crown in right of Canada or of any province.

[129] The Monitor is supportive of the Administration Charge, and the ranking of the court ordered super-priority charges.

## **9. Critical Suppliers and Key Expenses**

[130] During the course of the CCAA proceedings, the Applicants intend to make payments for post-filing goods and services supplied in the ordinary course.

[131] Given that certain critical suppliers are located abroad or may be highly dependent on continuous payment from the Applicants in order to ensure uninterrupted business operations during the CCAA proceedings, the Applicants are proposing that they be authorized, with the consent of the Monitor, to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Applicants business and ongoing operations.

[132] The Applicants therefore seek to be authorized to pay, with the consent of the Monitor, or the Court, any pre-filing unpaid claims of third parties it deems critical, up to an initial aggregate amount of \$300,000.

#### **10. Intercompany Transactions**

[133] In the ordinary course of their business operations, certain of the Applicants enter into transactions with each other, including without limitation (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Applicants, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, “**Intercompany Transactions**”).

[134] Norea has indicated that it intends to oppose intercompany transactions that involve M-Health as it fears that its security will be affected.

[135] For the time being the Applicants only ask that Intercompany Transactions among the Applicants continue on terms consistent with existing arrangements, subject to such changes or to such governing principles, policies or procedures as the Monitor may require.

[136] The Monitor has indicated that he does not foresee such changes prior to the Comeback Hearing. The matter can be dealt with then.

#### **11. Sealing of Confidential Documents**

[137] The Applicants seek an order declaring that Exhibit P-7 and Schedule C of the Monitor’s Pre-filing Report, be strictly kept confidential and filed under seal considering that they contains commercially sensitive information regarding the business and assets of the Applicants, which disclosure risks impacting the SISF and Equity Raise Process.

[138] Applicants’ creditors will have access to this information upon the execution of a confidentiality agreement or undertaking.

**12. Execution Notwithstanding Appeal**

[139] Given the urgency and severity of the circumstances confronting the Applicants, it is appropriate that the execution of the orders sought herein be granted notwithstanding appeal.

**CONCLUSION**

[140] The Initial Order is in the interest of the stakeholders including, first and foremost, the patients that who rely on ELNA Group's services.

[141] The Initial Order is granted subject to modifications related to the stay of proceedings in favour of Mr. Amram.

**FOR THESE REASONS, THE COURT:**

[142] **ISSUES** an Initial Order submitted by the parties this day and attached to the present judgment;

[143] **ISSUES** the SISP Approval Order submitted by the parties this day and attached to the present judgment;

[144] **THE WHOLE** without costs.

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MARTIN F. SHEEHAN, J.S.C.

Mtre Sandra Abitan  
Mtre Julien Morissette  
Mtre Ilia Kravtsov  
Mtre Jack M. Little  
**OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L./S.R.L.**  
Attorneys for the Applicants

Mtre Isabelle Desharnais  
Mtre Kevin Maïlloux  
**BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.**  
Attorneys for the National Bank of Canada

Mtre Adam Spiro  
**SPIEGEL SOHMER INC.**  
Attorney for Mr. Laurent Amram

Mtre Jocelyn Perreault  
Mtre Marc-Étienne Boucher  
**MCCARTHY TÉTRAULT LLP**  
Attorneys for the Monitor

Hearing date: December 11, 2024