

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-065011-245

DATE: April 25, 2025

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

ELNA MEDICAL GROUP INC. / GROUPE MÉDICAL ELNA INC.

and

9508503 CANADA INC.

and

THE OTHER APPLICANTS LISTED IN SCHEDULE A OF THE APPLICATION

Applicants

and

RAYMOND CHABOT INC.

Monitor

JUDGMENT ON APPLICATION FOR A FOURTH AMENDED AND RESTATED
INITIAL ORDER AND APPROVAL OF A REVERSE VESTING ORDER

OVERVIEW

[1] On December 11, 2024, the undersigned issued an initial order (the “**Initial Order**”)¹ pursuant to the *Companies’ Creditors Arrangement Act*² (the “**CCAA**”) on behalf of Applicants, ELNA Medical Group Inc. (“**EMG**”), 9508503 Canada Inc. (“**950 Canada**”), as well as other Applicants listed in Schedule A of the Initial Order (collectively with EMG and 950 Canada, the “**Applicants**”).

¹ *Arrangement relatif à Elna Medical Group Inc. / Groupe médicale Elna inc.*, 2024 QCCS 4541.

² *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

[2] Among other things, the Initial Order:

- 2.1. stayed all proceedings and remedies taken or that might be taken in respect of the Applicants and their property (the “**Stay**”), for an initial period of ten days (the “**Stay Period**”);
- 2.2. appointed Raymond Chabot Inc. (“**RCI**” or the “**Monitor**”) as the monitor of the Applicants in these proceedings (the “**CCAA Proceedings**”) and granted the Monitor certain powers;
- 2.3. authorized National Bank of Canada (“**NBC**” or the “**Interim Lender**”) to provide the DIP Facility (as defined in the Initial Order) to the Applicants and granted DIP Charge (as defined in the Initial Order) in relation thereto;
- 2.4. ordered that certain documents be kept confidential.

[3] At the same time, the Court issued an order (the “**SISP Approval Order**”) approving the initiation of a Sale and Investment Solicitation Process (the “**SISP**”) and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process (the “**Bidding Procedures**”).

[4] The SISP Approval Order approved the engagement of Raymond Chabot Grant Thornton & Co LLP (the “**Financial Advisor**”) to assist in the implementation of the SISP.

[5] Amended and restated initial orders (“**ARIO**”) were issued on December 17, 2024,³ February 12, 2025,⁴ and March 10, 2025⁵ which, among other relief extended the Stay Period and authorised increases to the DIP financing and certain CCAA Charges.

[6] The Applicants now ask for a Fourth Amended and Restated Initial Order (the “**Fourth ARIO**”), seeking, *inter alia*:

- 6.1. an extension of the Stay Period up to and until May 30, 2025;
- 6.2. the increase of the DIP Facility and the DIP Charge up to \$8,000,000 and \$9,600,000 respectively;

[7] The Monitor seeks the issuance of:

- 7.1. an approval, vesting and assignment order (the “**m-Health AVO**”), *inter alia*:
 - (i) authorizing *nunc pro tunc* the Monitor to execute an asset purchase agreement dated April 17, 2025 (the “**m-Health APA**”)⁶ between m-

³ Arrangement relatif à ELNA Medical Group Inc. / Groupe médical ELNA inc., 2024 QCCS 4612.

⁴ Arrangement relatif à ELNA Medical Group Inc. / Groupe médical ELNA inc., 2025 QCCS 370.

⁵ Arrangement relatif à ELNA Medical Group Inc./ Groupe médical ELNA inc., 2025 QCCS 781

⁶ Exhibit R-7 (filed under seal).

Health Solutions Inc. (“**m-Health**”), acting through the Monitor on its behalf, as vendor, and CML Healthcare Inc. (“**CML**”), as purchaser, for the sale of the m-Health Assets (as defined below) (the “**m-Health Transaction**”);

- (ii) assigning all rights and obligations of m-Health under the Assigned Contracts (as defined in the m-Health APA), upon the issuance of the relevant Monitor’s Certificate, as well as providing for a post-closing assignment mechanism; and
- (iii) approving the m-Health Transaction.

7.2. an approval and reverse vesting order (the “**Medicentres RVO**”), *inter alia*:

- (i) authorizing *nunc pro tunc* the Monitor to execute a subscription agreement dated April 17, 2025 (the “**Medicentres SPA**”)⁷ between Medicentres Canada Inc. (“**Medicentres**”), acting through the Monitor on its behalf, as vendor, and Medavie Inc. (“**Medavie**”), as purchaser, for the purchase of the Subscribed Shares, as defined in the Medicentres SPA (the “**Medicentres Transaction**”);
- (ii) authorizing the (a) retention, subject to the Permitted Encumbrances, the Retained Assets, the Retained Contracts, and the Assumed Liabilities, the (b) transfer and vesting to two ResidualCos of the Excluded Assets, Excluded Contracts and Excluded Liabilities, and the (c) discharge of all Claims and Encumbrances, save and except for all Permitted Encumbrances and Assumed Liabilities, upon issuance of the relevant Monitor’s Certificate (capitalized terms being as defined in the Medicentres SPA); and
- (iii) approving the Medicentres Transaction.

[8] Both applications are uncontested.

ANALYSIS

1. Approval of the m-Health and Medicentres Transactions

[9] Under section 36(3) of the CCAA, the court has authority to approve the sale of a debtor company’s assets outside of the ordinary course of business. The section sets out non-exclusive criteria that a Court must consider when asked to do so. These include:

- 9.1. whether the process leading to the proposed sale or disposition was

⁷ Exhibit R-8 (filed under seal).

reasonable in the circumstances;

- 9.2. whether the monitor approved the process leading to the proposed sale or disposition;
- 9.3. 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;
- 9.4. the extent to which the creditors were consulted;
- 9.5. the effects of the proposed sale or disposition on the creditors and other interested parties; and
- 9.6. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁸

[10] In the absence of evidence that a proposed sale transaction is improvident or that there has been an abuse of process, the Court should grant deference to the Monitor's opinion on the proposed transactions.⁹

[11] The Monitor submits that these criteria are met. The Court agrees.

[12] The process leading to the proposed transactions was fair. It was approved by the Monitor and the Court. The fourth report of the Monitor confirms that the proposed transactions are more beneficial to the creditors than a sale under a bankruptcy (Annex F filed under seal). The main secured creditors of both m-Health and Medicentres were consulted throughout the process and the Monitor has obtained their approval. The proposed transactions are also in the interest of other stakeholders as they allow for the continuation of the businesses as a going concern and preserve continued employment for employees, retention or assumption of most contracts, in the interest of employees, contractual counterparties, physicians, patients, clients and the general public. The consideration in both proposed transactions is reasonable and fair.

[13] Given the presence of Mr. Amram (sole director and officer of ELNA) as a related bidder, the latter was isolated from the conduct of the SISP and the information relating to same and to the proposed transactions. Therefore, there remains no director to execute and implement these transactions. Thus, the Monitor must be authorized and empowered to execute the agreements and required documentation, and to take steps necessary to implement the proposed transactions.

⁸ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, paras. 31-32 and 47 to 51; *Re Green Relief Inc.*, 2020 ONSC 6837, para. 8.

⁹ *Royal Bank v Soundair Corp*, 1991 CanLII 2727 (Ont CA), p. 10; *Bloom Lake GPL (Arrangement Relatif à)*, 2015 QCCS 1920, para. 28 (leave to appeal to the CA dismissed, 2015 QCCA 754); *White Birch Paper Holding Company (Arrangement Relatif à)*, 2011 QCCS 7304, paras. 63-74.

[14] The SISP followed two previous solicitation processes conducted prior to the initiation of the CCAA proceedings.

[15] In the context of Phase 1 of the SISP, solicitation packages were sent 258 prospective parties. 103 parties executed non-disclosure agreements. By the Phase 1 bid deadline, the Financial Advisor had received letters of intent ("**LOIs**") from 45 parties (a few of these parties having submitted multiple LOIs).

[16] On February 7, 2025, the Financial Advisor informed 26 interested parties that following receipt and review of the Phase 1 LOIs, they had been qualified to participate in Phase 2 of the SISP ("**Phase 2 Qualified Bidders**"). Other parties received a rejection letter such that all parties having submitted a LOI received a communication from the Financial Advisor.

[17] The Financial Advisor then initiated Phase 2 of the SISP, populated and opened a separate Phase 2 virtual data room and the Phase 2 Qualified Bidders were invited to continue their due diligence and submit definitive offers by March 7, 2025.

[18] Since then, Management, the Financial Advisor and the Monitor have worked intensively to respond to numerous due diligence requests, which includes providing documentation to Phase 2 Qualified Bidders and conducting site visits.

[19] Given the (i) high level of interest, (ii) number of Phase 2 Qualified Bidders, (iii) number of entities and business segments, (iv) volume of due diligence requests, and the (iv) very short timeframe initially contemplated, several Phase 2 Qualified Bidders asked the Financial Advisor to extend the SISP deadline to submit binding proposals.

[20] After negotiation with the Interim Lender, the remaining SISP deadlines were extended. The Phase 2 Bid deadline was extended to March 21, 2025. The deadline for selection of final successful bids was extended to April 4, 2025.

[21] On March 21, 2025, a total of seventeen Phase 2 offers were received in respect of various entities, which were thereafter reviewed by the Financial Advisor and the Monitor, in accordance with the Bidding Procedures, and in consultation with NBC.

[22] Clarifications were obtained. Several meetings were held between the Financial Advisor, the Monitor, NBC and their respective counsel to discuss the offers.

[23] As a result, it became apparent that multiple transactions would be required to maximize value for stakeholders, with the objective of maintaining the going concern of the most entities, insofar as possible.

[24] On April 3, 2025, following the recommendation of the Financial Advisor and with the support of NBC, the Monitor confirmed to Medavie that it was selected as the Successful Bidder in relation to Medicentres.

[25] On April 4, 2025, the Monitor also confirmed to Quest Diagnostics Inc. (as signatory of the Phase 2 Offer in relation to m-Health) ("**Quest**"), that it was selected as the Successful Bidder for m-Health.

[26] Following these confirmations, the Monitor, the Applicants, the purchasers and their counsel began the negotiations leading to the signing of an asset purchase agreement (in relation to m-Health) and a subscription agreement (in relation to Medicentres).

[27] An offer was also selected in relation to Privamed (which operates two clinics on the south shore of Montreal) but this offer is not the subject of the present application.

[28] In parallel, the Financial Advisor and the Monitor, in consultation with NBC, continued to review and analyze the offers and options in connection with the other assets.

[29] On April 11, 2025, the Monitor initiated a third Phase of the SISF in respect to the other Applicant assets, notably CDL Laboratories Inc. and certain clinics of the Applicants located in Quebec ("**Phase 3 SISF**").¹⁰

[30] In the context of the Phase 3 SISF, bidders were asked to submit revised bids no later than April 17, 2025. It was foreseen that one or more successful bid(s) will be identified by April 24, 2025.

1.1 The Medicentres Transaction

[31] Medicentres operates a large network of 32 clinics mostly in Alberta (with certain clinics also operating in Ontario, Manitoba and Saskatchewan). Approximately 182 physicians and health professionals, and 243 employees support its operations.

[32] Medicentres is a well-recognized brand of clinics in the above provinces. Medicentres operates since 1979 and was acquired by ELNA in 2020.

[33] Medicentres provides family medicine services (in person or virtual), which are covered by provincial insurance.

[34] All Medicentres doctors operate within the public health care system, in the respective provinces in which they render services.

[35] The proposed purchaser for Medicentres, Medavie, is a not-for-profit healthcare organization headquartered in New Brunswick. Medavie has activities across the country. It is the largest Blue Cross provider in the country, processing \$6.9 billion in claims, covering over 3.5 million Canadians. It is Canada's largest private administrator of federal and provincial government-sponsored health programs.

¹⁰ Exhibit R-6.

[36] Medavie is also Canada's largest contracted provider of emergency medical services with operations in Alberta, Saskatchewan, Ontario and Atlantic Canada and a national leader in primary and community health care solutions, including the operation of a network of ten medical clinics (prior to the contemplated transaction).

[37] The Medicentres Transaction is structured as a reverse vesting transaction.

[38] It contemplates the continuation of substantially all of Medicentres' activities and the retention of substantially all of Medicentres' assets.

[39] The Medicentres Transaction is comprised of the following steps (capitalised terms are defined in the Medicentres RVO):

- 39.1. implementation of pre-closing transactions to incorporate ResidualCo 1 and ResidualCo 2;
- 39.2. at the Closing Time, (i) assumption of Excluded Liabilities by ResidualCo 1, and (ii) transfer of Excluded Contracts and Excluded Assets to ResidualCo 2;
- 39.3. upon issuance of the Medicentres RVO, cancellation of Existing Shares and subscription by the purchaser of the Subscribed Shares, in consideration of the Subscription Price and vesting of the Assumed Liabilities, Retained Assets and Retained Contracts in Medicentres; and
- 39.4. payment of Cure Costs from the Subscription Price.

[40] Certain other key terms of the Medicentres SPA include:

- 40.1. it is conditional upon the issuance of the Medicentres RVO sought herein;
- 40.2. the Subscription Price is payable in full upon closing;
- 40.3. the Assumed Liabilities include (i) all Liabilities with respect to any vacation entitlement and notice entitlement upon termination of employment of the Retained Employees, and (ii) all Liabilities of the Corporation which relate to payment obligations to physicians in respect of services performed under any Retained Contracts on or prior to the Closing Date and for which a corresponding Account Receivable is a Retained Asset; and
- 40.4. the closing of the Medicentres Transaction shall occur on or before April 30, 2025.

[41] Medavie's stated intention to retain all or nearly all employees and contracts, as well as to keep all or nearly all clinics in operation.

[42] The Medicentres Transaction is in the best interest of its stakeholders and of the public, as it contemplates a going concern transaction which will maintain the activities of the dozens of clinics, continuous employment for the employees, as well as to preserve contracts that are currently in place, the whole in order to maintain services for the thousands of patients of the public sector who attend these clinics.

[43] The Monitor is also satisfied that the Medicentres Purchase Price is fair and reasonable in the circumstances. The Medicentres Purchase Price is sufficient and will allow for repayment of the pre-filing amounts owed to physicians which are guaranteed under the MRP Charge, which was put in place in order to foster the retention of the affected physicians and was essential in order to preserve value and avoid the disruption of activities for patients during the restructuring proceedings.

[44] The Medicentres Purchase Price will also provide allow for a reimbursement of the DIP Facility and partial reimbursement of the indebtedness to National Bank of Canada, who is the first-ranking secured creditor on Medicentres.

[45] As for the structuring of the Medicentres Transaction in the form of a RVO, Professor Sarra has summarised the RVO process as follows:

The result of an RVO is to expunge the existing corporate structure of the debtor company of anything the purchaser does not want. The newco is added to the insolvency proceeding and continues in that process while the debtor company exits the insolvency proceeding with broad liability releases; then the newco is liquidated or placed in bankruptcy to be liquidated. The transaction takes place outside of a negotiated and court-approved plan of arrangement or compromise. The RVO structure was crafted to allow those businesses to continue through the debtor company, since it was that corporate vehicle who owned the valuable “assets” that could be not transferred.¹¹

[46] Professor Sarra notes that RVOs significantly deviate from the usual CCAA framework as they bypass provisions of insolvency legislation aimed at giving both secured and unsecured creditors a meaningful voice/vote in the proceedings.¹² As such, it is sometimes stated that RVO structures should remain the exception and not the rule.¹³

[47] Nonetheless, it is now recognised that courts have jurisdiction to approve RVOs under the various insolvency legislations and that such orders may be appropriate to allow

¹¹ Janis SARRA, “Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions”, 2022 CanLIIDocs 431.

¹² *Id.*

¹³ *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246, para. 32; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, para. 96.

businesses to continue through the debtor company when the debtor company owns valuable assets that cannot be transferred.¹⁴ Examples include:

- 47.1. Debtors that operate in highly regulated environments where existing permits, licenses or other rights are complicated to reassign.
- 47.2. Debtors who are parties to key agreements that would be difficult or impossible to assign to a purchaser; or
- 47.3. Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order.¹⁵

[48] Given the above, many RVOs have been approved in the mining, health care, pharmaceutical and nutrition industries.

[49] In assessing whether to approve a reverse vesting order the court must examine:

- 49.1. Whether sufficient efforts to get the best price have been made and whether the parties acted providently;
- 49.2. The efficacy and integrity of the process followed;
- 49.3. The interests of the parties; and
- 49.4. Whether any unfairness resulted from the process.¹⁶

[50] In the present circumstances, the Monitor submits that the structure is required to:

- 50.1. facilitate and accelerate the transition of the business in all four (4) provinces in an efficient and orderly manner, including more particularly as it relates to billing measures, licenses, permits, regulatory approvals and other requirements to operate the 32 clinics; and to
- 50.2. maintain any such permits, licenses and authorizations during the transition,

¹⁴ *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 13, paras. 87, 93-94; *Quest University Canada (Re)*, 2020 BCSC 1883, paras. 127-128 and 157-158; *Harte Gold Corp. (Re)*, 2022 ONSC 653, paras. 36-37.

¹⁵ *Arrangement relating to MedXL*, 2024 QCCS 4269, para 33; *VBI Vaccines Inc v. Ernst & Young Inc. et al.*, 2024 ONSC 6604, para. 13; *Proposition de Brunswick Health Group Inc.*, 2023 QCCS 4643, par. 39.2 and 60-69; *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 13, paras. 86 and 114-116; *Harte Gold Corp. (Re)*, *supra*, note 14, paras. 58, 66-69, 70-71 and 73-76; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, paras. 13-14 and 21; *Quest University Canada (Re)*, *supra*, note 14, para. 136.

¹⁶ *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 13, para. 95; *Harte Gold Corp. (Re)*, *supra*, note 14, para. 38; *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, para. 50 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999); *Clearbeach and Forbes*, 2021 ONSC 5564, para. 25.

given the highly regulated nature of the sector, and avoid issues in providing services to patients.

[51] The Monitor is satisfied that the SISP was conducted in a fair and reasonable manner and that the Medicentres Transaction constitutes the highest and best transaction available for Medicentres resulting from the SISP, to the benefit of the stakeholders and the public.

[52] No unfairness results from the process. The particular structure of the Medicentres Transaction does not place stakeholders in a worse position than they would have been under a traditional asset transaction.

[53] The relief sought in relation to the Medicentres Transaction, as detailed in the Medicentres RVO, is granted.

1.2 The m-Health Transaction

[54] M-Health specializes in remote patient monitoring of vital signs and cardiac diagnostics. Its technology enables doctors to diagnose various conditions.

[55] M-Health was founded in 2010 and was acquired by ELNA in 2022. It currently operates in Ontario (where it offers public and private services) as well as Québec (where it offers privately funded services).

[56] Quest (an affiliate of CML (the Canadian entity acting as buyer pursuant to the m-Health APA)), is a Fortune 500 publicly traded company (NYSE symbol: DGX-N) headquartered in Secaucus, New Jersey. In 2024, it had over 50,000 employees.

[57] Quest operates across the Americas as a provider of commercial laboratory and diagnostics services providing testing to physicians, hospitals, managed care organizations, employers, government institutions and other clinical laboratories.

[58] Quest submitted a binding offer prior to the Phase 2 Bid Deadline. In the following days, it submitted a revised offer, which was selected as a successful bid in relation to m-Health (the “**Quest Bid**”).

[59] After careful review and consideration, the Quest Bid was deemed to be the most advantageous to the stakeholders.

[60] The m-Health Transaction entails the sale and transfer of substantially all of m-Health’s assets relating to the business, including, Inventory, Assumed Contracts, Fixed Assets and Equipment, Real Property Leases, Assumed Contracts, Intellectual Property and Permits (as these terms are defined in the m-Health APA) (collectively, the “**m-Health Purchased Assets**”).

[61] The m-Health APA contemplates the sale of the m-Health Purchased Assets for a purchase price set forth at Section 3.1 of the m-Health APA (the “**m-Health Purchase Price**”), which should remain confidential.

[62] Other key terms of the m-Health APA include:

- 62.1. the m-Health Purchased Assets are sold, and the Assumed Liabilities, which include the trade payables incurred on and after the filing date to be listed in the final closing statement and the obligations towards employees as provided by the m-Health APA, including any vacation pay, bonus accruals or wage liabilities, are assumed, on an “as is, where is” basis;
- 62.2. the m-Health APA is conditional upon the issuance of the m-Health AVO sought herein;
- 62.3. the m-Health Purchase Price is payable in full by CML to the Monitor at Closing, subject to certain limited adjustments provided under Section 3.5 of the m-Health APA;
- 62.4. the purchaser will assume the majority of the employees and contracts of m-Health; and
- 62.5. the closing of the m-Health Transaction is expected to occur by mid-May 2025 and no later than July 16, 2025.

[63] With regard to the assignment of contracts, section 11.3 of the CCAA provides that, on the application by the debtor and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the debtors to a third party. Criteria to be considered include:

- 63.1. whether the monitor approved the proposed assignment;
- 63.2. whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- 63.3. whether it would be appropriate to assign the rights and obligations to that person.¹⁷

[64] In determining whether it would be appropriate to assign the rights and obligations under the agreements, it is relevant to consider:

- 64.1. the importance of the assignment to the reorganization process and to the

¹⁷ *Arrangement relatif à Groupe SMI inc.*, 2018 QCCS 5319, paras. 4-5 (appeal dismissed by the Court of Appeal (2020 QCCA 438) and the Supreme Court (2021 CSC 53)).

achievement of the remedial objectives of the CCAA;

- 64.2. the continuation of the business;
- 64.3. the continued employment of the greatest number of employees; and
- 64.4. the interests of the other parties to the contracts as well as the stakeholders' interests more broadly.¹⁸

[65] Section 11.3(4) provides that the court may not make an order requiring an assignment unless it is satisfied that all monetary defaults in relation to the agreement will be remedied.¹⁹

[66] The criteria are met and there are no impediments to approving the assignments.

[67] The Assumed Contracts to which m-Health is party (Schedule E of the m-Health AVO), will be assigned to CML as part of the m-Health AVO. In such cases, Cure Costs shall be payable at the Closing Time.

[68] The m-Health APA also provides for a mechanism for post-closing assignment of contracts as follows:

- 68.1. The purchaser shall be entitled to notify the Monitor in writing, no later than 30 days following Closing, that it seeks the post-closing assignment of the rights, benefits and interests under one or more contracts or agreements to which one or more of the Applicants are party and which do not form part of Assumed Contracts;
- 68.2. within 5 days of receipt, the Monitor is to review the proposed assignment and if it approves the proposed assignment, send one or more notices of a proposed assignment to the parties to the proposed Post-Closing Assigned/Assumed Contracts, or if it does not, inform the buyer in writing;
- 68.3. the parties to the proposed Post-Closing Assigned/Assumed Contracts have five days to notify the Monitor of their opposition following receipt of the notice of assignment sent by the Monitor, if applicable;
- 68.4. if no party to a proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of an opposition within five days of the receipt of the notice of assignment sent by the Monitor, the Monitor shall issue forthwith and file with the Court a post closing assignment certificate;
- 68.5. alternatively, the Monitor (if a party to a proposed Post-Closing

¹⁸ *Arrangement relatif à Groupe SMI Inc.*, supra, note 17, paras. 27-30; *Veris Gold Corp (Re)*, 2015 BCSC 1204, paras. 50 and 53-58; *TBS Acquireco Inc (Re)*, 2013 ONSC 4663, para. 25.

¹⁹ *Zayo Inc. v. Primus Telecommunications Canada Inc.*, 2016 ONSC 5251, para. 14.

Assigned/Assumed Contracts has notified its opposition) or the buyer (if the Monitor has not approved the proposed assignment) shall be entitled to apply to the Court to seek the assignment of the proposed Post-Closing Assignment Contract;

- 68.6. The Cure Costs associated with the Post-Closing Assigned/Assumed Contracts shall be paid by the purchaser and any liability in connection with any Post-Closing Assigned/Assumed Contract shall be assumed by the buyer.

[69] The m-Health APA contemplates that the purchaser will continue the business of m-Health and the employment of all of the employees of m-Health.

[70] The Monitor is satisfied that the m-Health Transaction is in the best interest of its stakeholders as it contemplates a going concern transaction which will maintain its activities as well as provide continuous employment of all of the approximately 50 employees, as well as to preserve contracts that are currently in place.

[71] More importantly, the m-Health Transaction allows for the continuation of the services provided to patients and clients of m-Health.

[72] The Monitor reports that it is satisfied that the SISP was conducted in a fair and reasonable manner and that the m-Health Transaction constitutes the highest and best transaction available to the benefit of the stakeholders. The Monitor is also satisfied that the m-Health Purchase Price is fair and reasonable in the circumstances.

[73] Subject to the closing of the Medicentres Transaction, the m-Health Transaction is sufficient to repay a portion of the DIP Facility, amounts owed to NBC under its first ranking security against m-Health, as well as the amounts owed under m-Health's second ranking security held by Norea Capital (being understood that the amounts claimed by Norea Capital are under review by the Monitor and are not accepted, but such determination would apply even if the amounts were to be accepted in full by the Monitor or by the Court).

[74] The relief sought in relation to m-Health Transaction is approved.

2. Releases

[75] The proposed transactions and related orders contemplate the release of a plethora of parties upon closing, including the Monitor, the Financial Advisor, the purchasers, legal counsel to all persons previously listed and to the seller. The releases also applies to the affiliates, shareholders, members, equity holders, trustees, directors, officers, managers, employees, partners, legal counsel, advisors and other representatives of the persons previously listed (collectively, the "**Released Parties**").

[76] The definition of Released Claims in the draft orders is all encompassing. The only exclusions are claims arising from fraud, willful misconduct, or an intentional or gross fault.

[77] The Monitor submits that it is now commonplace for third-party releases in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan, in the context of a transaction. Indeed, examples of such releases abound.²⁰

[78] When granting such releases, courts have applied the criteria set out by Justice Morawetz J. (as he then was) in *Lydian*²¹ which include:

- 78.1. Whether the claims to be released are rationally connected to the purpose of the plan;
- 78.2. Whether the plan can succeed without the releases;
- 78.3. Whether the parties being released contributed to the plan;
- 78.4. Whether the releases benefit the debtors as well as the creditors generally;
- 78.5. Whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and
- 78.6. Whether the releases are fair, reasonable and not overly broad.

[79] While these are worthwhile criteria, the way counsel interprets them has led to such releases being an automatic inclusion in practically every draft order submitted to the court seeking approval of a transaction.

[80] The Court has no reason to doubt that the Released Parties have acted in good faith or that the Monitor and legal professionals have properly discharged and performed their duties and obligations in the present CCAA proceedings.

[81] Nonetheless, the undersigned has expressed some reticence to approve such broad releases in the past.²²

[82] The issue is not whether the Court is aware of a potential negligent act by any of the Released Parties. The issue to be decided is rather: if at any point there was a negligent

²⁰ *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 13; *Harte Gold Corp. (Re)*, *supra*, note 14, para. 79; *Re Green Relief Inc.*, *supra*, note 8, paras. 27-28.

²¹ *Lydian International Limited (Re)*, 2020 ONSC 4006, para. 54. See *Harte Gold Corp. (Re)*, *supra*, note 14, paras. 78 to 86; *Re Green Relief Inc.*, *supra*, note 8, paras. 27-28.

²² *Arrangement relatif à Goli Nutrition Inc.*, 2024 QCCS 1507, paras. 34-41.

act committed, is there a valid reason to release the faulty party without knowing what that fault consists of?

[83] Indeed, it is difficult for this Court to grant a release for actions or factual circumstances that the Court is not aware of. Furthermore, releases should not bind parties who have not had a chance of being heard on potential issues that may remain unknown to them. Finally, while the motion was served to the service list, the releasors are not identified and are not limited to those served with the application. The right of a party to be heard before a judgment is issued affecting his or her rights remains a fundamental principle of justice.²³

[84] In addition, it is far from clear that the restructuring cannot succeed without the broad releases that are proposed.

[85] In fact, the releases may not be needed.

[86] The Initial Order already provides that “no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court”. The present order maintains this protection.²⁴

[87] Furthermore, the Monitor’s reports as well as actions and conduct of the Monitor in connection with the CCAA Proceedings have been approved by this Court.

[88] Finally, the Monitor already benefits from certain specific statutory releases under the CCAA²⁵ including for loss or damage resulting from reliance by others on its reports prepared in good faith with reasonable care.

[89] As Justice Shrager observed in *Aveos* (when he was at the Superior Court), it should not, as a matter of policy, be viewed “as a negative that professionals such as a monitor know that they are potentially liable for negligent acts. While the vast majority of monitors behave in a professional and prudent matter, the deterrence of potential liability is a great motivation to continue such professional and prudent conduct”²⁶.

[90] In any event, as some authors have noted, the “potential for liability of a monitor appears to be very limited within the CCAA framework. While the *Aveos* decision may suggest that there remains a limited exposure to potential proceedings against a monitor

²³ *Alliance des Professeurs Catholiques de Montréal v. Quebec Labour Relations Board*, 1953 CanLII 45 (SCC), [1953] 2 SCR 140

²⁴ Fourth ARIO para. 76.

²⁵ See for example sections 11.8(1), 11.8(2) and 23(2) of the CCAA.

²⁶ *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5924, para. 34.

after a proper discharge has been granted, past experience would indicate that this risk may well be only hypothetical.”²⁷

[91] The same comment applies to the legal professionals.

[92] Nonetheless, when the scope of the releases was discussed during the hearing, counsel for the Monitor submitted that the focus of today’s hearing should remain on the approval of the proposed transactions.

[93] He agreed to provide a rephrased release limited to what is strictly necessary to proceed with the proposed transactions.

[94] The issue of releases can be revisited later.

3. Extension of the Stay

[95] The current stay expires April 25, 2025.

[96] The Monitor requires additional time to review the Phase 3 SISP bids, and potentially complete one or more transactions in respect of CDL Laboratories Inc. and certain of the Applicants’ clinics located in Quebec.

[97] Additional time is also needed to close the M-Health Transaction and Medicentres Transaction and obtain approval for the Privamed transaction.

[98] The extension of the Stay Period until May 30, 2025, is appropriate and necessary in the circumstances.

4. The Increase of the DIP Facility and Corresponding Charge

[99] In the ARIO, the Court authorized interim financing in an amount not exceeding \$5 million.

[100] The amount was increased to \$6.5 million in the Third ARIO.

[101] The Applicants request that the DIP financing be increased to \$8 million, which is expected to be sufficient to allow for the continuation of operations during the proposed Stay Period and proceed with the closing of the M-Health Transaction and Medicentres Transaction.

[102] NBC has agreed to continue supporting the Applicants through their restructuring efforts and provide the increased DIP Facility.

²⁷ Sylvain RIGAUD and Toni VANDERLAAN, “Much ado about nothing: the AVEOS decision on discharge of CCAA monitors”, (2013-2014) 26 Comm. Insolv. R. 40-44 at p. 43.

[103] Without additional interim financing, the Applicants will not be able to continue to operate and will not have sufficient liquidity to effectuate their restructuring strategy and complete the SISP. This would negatively impact their business and assets, to the detriment of their creditors and other stakeholders.

[104] A correlative increase of the DIP Charge is also required, up to the amount of \$9.6 million (being \$8 million + 20%).

[105] The Monitor supports the increase of the DIP Facility and DIP Charge.

5. Sealing Order

[106] The Monitor seeks an order declaring that the m-Health APA and the Medicentres SPA (Exhibits R-7 and R-8 and their variations) as well as Annexes B, B.1, D, F and G of the fourth report of the Monitor (that provide details of the bids) be filed under seal.

[107] This relief is warranted in the circumstances given that the m-Health and the Medicentres Transactions have yet to close.

[108] Furthermore, the Privamed Transaction is still under negotiation and Phase 3 of the SISP has not completed.

[109] Indeed, even in a redacted form, confidentiality cannot reasonably be ensured. Disclosure of bidding information could provide an advantage to bidders and/or subsequent purchasers in the present SISP, who would be able to take cognizance of the extent of negotiations in the other transactions. This could compromise the integrity of the SISP to the detriment of stakeholders.

[110] For secured creditors having an interest, as the case may be, in both transactions that are sought for approval herein, copies will be made available subject to a confidentiality undertaking.

[111] In light of the foregoing, and despite it being an exceptional measure, a sealing order is required and justified to preserve the integrity and competitiveness of the process, with a view of maximizing the value for stakeholders and ensuring viable transactions ensuring the going concern of the businesses, insofar as possible.

[112] Maintaining the integrity of a sale process in the context of an insolvency proceeding is considered a public interest that justifies a sealing order.²⁸

[113] Once the transactions as part of the SISP are closed, the Monitor proposes to disclose the realizations for each of them.

²⁸ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, paras. 50 and 52.

CONCLUSION

[114] The Fourth ARIO, the Medicentres RVO and the m-Health AVO are in the interest of the stakeholders including, first and foremost, the patients who rely on ELNA Group's services.

[115] The urgency and severity of the circumstances confronting the Applicants justify that the execution of the order sought herein be granted notwithstanding appeal.

FOR THESE REASONS, THE COURT:

[116] **ISSUES** a Fourth ARIO in the form submitted by the parties this day and signed contemporaneously with the present judgment;

[117] **ISSUES** an Approval and Vesting Order as well as an Approval and Reverse Vesting Order in the form submitted by the parties this day and signed contemporaneously with the present judgment;

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

**Martin
Sheehan**
Signature numérique
de Martin Sheehan
Date : 2025.04.25
15:05:39 -04'00'
MARTIN F. SHEEHAN, J.S.C.

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Hearing date: April 25, 2025