

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-065011-245

DATE: December 17, 2024

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

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

JUDGMENT ON REQUEST FOR AN AMENDED AND REVISED INITIAL ORDER

OVERVIEW

[1] On December 11, 2024, the undersigned issued an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*¹ (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**”).

- 1.1. staying 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**”);
- 1.2. staying all civil proceedings and remedies taken or that might be taken in respect of Laurent Amram, and any of his property, with respect to:
i) personal guarantees granted on debts of the Applicants as well as other related entities forming part of the ELNA Group, and ii) personal loans whose proceeds were totally invested in the Applicants as well as other related entities forming part of the ELNA Group (the “**Amram Stay**”);
- 1.3. appointing Raymond Chabot Inc. (“**RCI**” or the “**Monitor**”) as the monitor of the Applicants in these proceedings (the “**CCAA Proceedings**”) and granting the Monitor certain powers;
- 1.4. granting the Administration Charge (as defined in the Initial Order);
- 1.5. granting a D&O Charge (as defined in the Initial Order);
- 1.6. authorizing the engagement of the CFO (as defined in the Initial Order);

¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36.

- 1.7. authorizing National Bank of Canada ("**NBC**") to provide the DIP Facility (as defined in the Initial Order) to the Applicants and granting a DIP Charge (as defined in the Initial Order) in relation thereto;
- 1.8. 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;
- 1.9. 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;
- 1.10. authorizing the Applicants to establish the MRP and granting the related MRP Charge (as these terms are defined in the Initial Order); and
- 1.11. ordering the sealing of certain confidential exhibits.

[2] 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**").

[3] The Court scheduled a comeback hearing for this morning, December 17, 2024 (the "**Comeback Hearing**").

[4] Applicants now solicit the issuance of an Amended and Restated Initial Order (the "**ARIO**");

- 4.1. extending the Stay Period until on or about February 12, 2025;
- 4.2. extending the Amram Stay until on or about February 12, 2025;
- 4.3. 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 \$500,000 individually and \$1,500,000 in the aggregate;
- 4.4. increasing certain CCAA Charges;
- 4.5. adding Gestion Privamed Inc. ("**Gestion Privamed**") as an Applicant to these Proceedings;
- 4.6. authorizing the Applicants to establish a KERP Plan (as defined below) and a KERP Charge (as defined below).

CONTEXT

1. The ELNA Clinic Network

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

[6] 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**”).

[7] 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.

[8] 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.

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

ELNA Clinic Network:

- 9.1. ELNA branded clinics (the “**ELNA Clinics**”);
- 9.2. Brunswick Health Group Inc. and related entities (“**Brunswick Health Group**”);
- 9.3. La Cité Médicale Inc. – Ste-Foy and Charlesbourg (“**La Cité Médicale**”);
- 9.4. Physimed Health Group Inc. and related entities (“**Physimed Health Group**”);
- 9.5. Gestion Privamed and related entities (“**Privamed**”);
- 9.6. Medicentres Canada Inc. and related entities (“**Medicentres**”);

Diagnostic Laboratory:

- 9.7. CDL Laboratories Inc. and related entities (“**CDL**”);

Remote Monitoring:

- 9.8. M-Health Solutions Inc. and related entities (“**M-Health**”).

[10] The Initial Order applied 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.

[11] Certain real estate holding entities (including Gestion Privamed, 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 were not affected by the Initial Order.

ANALYSIS

[12] The clauses of the proposed ARIO differ from the Initial Order already issued in the following ways:

1. Stay of Proceedings

1.1 The Extension of the Stay Period to February 12, 2025

[13] In the Initial Order, the Court issued a Stay of Proceedings for ten days.

[14] The Applicants seek an extension of the Stay Period until February 12, 2025, to allow for the full deployment of the SISP.

[15] The extension is required to allow the Applicants, Mr. Amram, and the Monitor to focus on the SISP which is crucial to the restructuring efforts.

[16] No creditor of the Applicants will be materially prejudiced if the extension is granted.

[17] The DIP Facility, approved in the Initial Order, provides the ELNA Group with sufficient cash flow to continue operations and its restructuring initiatives under the CCAA up to and including February 12, 2025.

[18] The Monitor supports the requested extension of the Stay Period until February 12, 2025.

1.2 The Application of the Stay to Mr. Amram Personally

[19] In the Initial Order, the Court issued the Amram Stay to proceedings against Mr. Amram personally but limited this stay to the following claims:

- 19.1. Statutory claims against Mr. Amram as a director pursuant to subsection 11.03(1) of the CCAA;
- 19.2. Personal guarantees granted by Mr. Amram on debts to the Applicants;
- 19.3. Personal loans whose proceeds were reinvested by Mr. Amram in the

Applicant companies.

[20] Applicants submit that a Amram Stay is required and that it should be extended to February 12, 2025 as well.

[21] Applicants' main secured creditors support a stay of proceedings against Mr. Amram.

[22] Mr. Brandon Schiller, a private lender who lent money to Mr. Amram and has a second ranking mortgage (the "**Schiller Loan**") on Mr. Amram's personal residence opposed the Amram Stay.

[23] Certain of the other creditors (including DeltaX inc., Les Placements SP Canada Inc. and Investissement Quebec) also raised concerns on the Amram Stay.

[24] It is recognized that courts have the authority under the CCAA (sections 11 and 11.02) 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 guarantee against a director.² Investissement Quebec's claim against Mr. Amram falls in this category.

[25] 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.³ 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".⁴

[26] When an 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".⁵

[27] 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:

² *Great Basin Gold Ltd. (Re)*, 2015 BCSC 1199, para. 32.

³ *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.

⁴ *Balboa Inc. et al. (Re)*, Court File No. CV-24-00713254 cited in *2675970 Ontario Inc.*, 2024 ONSC 6174, para. 30.

⁵ *Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à)*, *supra*, para. 52-53.

- 27.1. the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
- 27.2. extending the stay to the third party would help maintain stability and value during the CCAA process;
- 27.3. 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.
- 27.4. if the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant.
- 27.5. 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;
- 27.6. 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
- 27.7. the balance of convenience favours extending the stay to the third party.⁶

[28] In its judgement supporting the Initial Order, the Court held that the Personal Stay would be valid until the Comeback Hearing and that, if Applicants wished to maintain the Stay, they would have to demonstrate that it is still required.

[29] The Court noted that an over encompassing stay of all claims against Mr. Amram was not supported by the evidence. Very little evidence had been provided as to Mr. Amram's personal assets, his income, or other sources of revenue. Furthermore, no specific evidence had been advanced to buttress the statement that the personal loan proceeds were reinvested in ELNA Group.

[30] This evidential void has now been rectified.

[31] In support of extending the Amram Stay, Mr. Amram filed a sworn declaration together with a personal balance sheet.⁷

⁶ *McEwan Enterprises Inc.*, *supra*, note 3, para. 43; *Woodward's Ltd. (Re)*, [1993] BCJ No 42 [TAB 7] at paras. 32-33

⁷ Exhibit LA-1.

[32] These show that his personal wealth remains intimately tied to the value of the ELNA Group and that, without a restructuring, Mr. Amram will not be in a position to repay his debts.

[33] The sworn declaration also supports Mr. Amram's testimony at the initial hearing to the effect that the proceeds of the most important personal loans (and especially the Schiller Loan) were reinvested into ELNA.⁸ With regard to the Schiller Loan, the proceeds were deposited in Mr. Amram's bank account on August 10, 2023. The bulk of these proceeds were wired to ELNA the next day.⁹

[34] Furthermore, the table shows that several of the personal loans are guaranteed by certain of the Applicant companies or are secured on Applicants' assets.

[35] All of Mr. Amram's non-ELNA assets are highly leveraged.

[36] His family residence is subject to a first-ranking hypothec securing \$1.435M owed to NBC and a second-ranking hypothec securing \$2.8M owed to Mr. Schiller.

[37] Mr. Amram also owns various commercial buildings (the "**CRE Properties**") but those are collectively subject to first-ranking hypothecs of approximately \$15.219M and second-ranking hypothecs of approximately \$6.804M.

[38] Mr. Amram also owns over \$34M outstanding in relation to personal loans, the proceeds of which he testified were reinvested into the ELNA Group as shareholder loans.

[39] He also has over \$41M of personal guarantee obligations in relation to loans outstanding by companies in the ELNA Group.

[40] His net worth is currently significantly negative.

[41] The net value of his family residence is approximately negative \$435,000 and the aggregate net value of the CRE Properties is approximately negative \$2,713M at fair market value of these assets.

[42] While the situation is exceptional, the Court believes that the criteria listed above support an extension of the Amram Stay.

[43] Mr. Amram's debts and assets are intertwined with the business and its operations. Many of his personal assets serve to guarantee company loans. Many of the Applicants' assets secure personal loans. Personal loans are secured by shares that Mr. Amram holds, directly or indirectly, in the Applicants.

⁸ Sworn declaration of Mr. Laurent Amram, dated December 16, 2024, par. 21; Exhibit LA-2.

⁹ Exhibit LA-2.

[44] Thus, it is difficult to carve out personal loans or assets that are not affected by the restructuring.

[45] For example, While the DeltaX loans were used to purchase clinics that are excluded of the CCAA proceedings, the loans are guaranteed by a pledge of shares of companies that are part of the Applicants. Some of SP's loans are also guaranteed by assets of the Applicants.

[46] Mr. Amram is the sole director, shareholder, and founder of the ELNA Group. He is essential to the operations of the Applicants and to the success of the restructuring process.

[47] In the past week alone, Mr. Amram spent considerable time to reassure suppliers, clients, staff and doctors of the ELNA Group. He also responded to numerous media enquiries. These calls are important and are likely to continue.

[48] 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 and 327 C.C.Q.). 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.

[49] Mr. Amram has received numerous demands, notices, and lawsuits in relation to his personal debts. Dealing with these multiple claims would constitute a serious distraction to the attention he is required to devote to the restructuring process.

[50] Thus, extending the Amram Stay will help maintain stability and value during the CCAA process. It is a temporary measure designed to preserve the *status quo* and create breathing space during the CCAA proceedings.

[51] Refusing the Amram Stay would have a negative impact on the Applicants' ability to restructure, potentially jeopardizing the success of the restructuring.

[52] The ensuing economic harm would be far-reaching and significant on stakeholders including the patients of the ELNA Group. The benefits to these stakeholders of extending the Amram Stay outweigh the prejudice that could be caused by such an extension.

[53] Indeed, a successful restructuring is in the best interest of most creditors who could be affected by the Amram Stay.

[54] In particular, Mr. Schiller will not suffer a major prejudice from an extension.

[55] Mr. Schiller submits that if the Amram Stay is maintained, he will be dragged into proceedings involving multiple stakeholders, millions of dollars at issue, and a multitude of sophisticated parties and their attorneys.

[56] This is not the case. The value of Mr. Schiller's debt is unaffected by the CCAA proceedings. Only his recourses are temporarily suspended. The debt continues to bear interest. His security is still in place and its value is unlikely to be affected by the present proceedings.

[57] With regard to creditors who may have recourses against ELNA companies that are outside of the CCAA Proceedings or that are secured by assets that do not belong to the Applicants, such claims are unaffected by the Amram Stay. As paragraph 19 of the ARIO stipulates, the Amram Stay covers only proceedings against Amram or his property.

[58] In the Initial Order, the Court limited the Amram Stay to personal loans whose proceeds were reinvested into the ELNA Group. After hearing the more detailed evidence provided by Mr. Amram, the Court is satisfied that the loan proceeds from certain lenders listed in the table attached to Exhibit LA-1 (copied as Exhibit B to the ARIO) were mostly reinvested into ELNA to keep the business afloat.

[59] The Court believes that forcing Mr. Amram to proceed with a detailed tracing of the money from those loan proceeds to ELNA prior as a prior condition to extend the Amram Stay would require considerable time investment without any significant additional benefit to the stakeholders.

[60] The Monitor approves the extension of the Amram Stay.

[61] Mr. Fontaine confirms that the past week's experience has confirmed that Mr. Amram is fully committed to the restructuring and that his full attention will be necessary to lead it to fruition. The Monitor supports the extension of the Amram Stay and believes that refusing it would be counterproductive.

[62] In such matters, the opinion of the Monitor, a court-appointed officer, carries significant weight.¹⁰

[63] The Court thus believes the Amram Stay is appropriate under the circumstances.

[64] As the Supreme Court of Canada has observed,¹¹ appropriateness under the CCAA is assessed "by inquiring whether the order sought advances the policy objectives underlying the CCAA". "The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company."

[65] In order to avoiding these social costs, the Court believes that the focus should remain on the patients and doctors of the ELNA Group who would be the first to suffer if the restructuring should be in jeopardy.

¹⁰ 2675970 *Ontario Inc.*, 2024 ONSC 6174, para. 48.

¹¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 70.

[66] The Amram Stay will be maintained, it will cover personal claims by certain creditors listed in Schedule B to the ARIO and it will be in place until February 12, 2025.

[67] This being said, nothing mentioned in the present ARIO judgement should be considered to limit the right of creditors to ask the Amram Stay should be further limited or even eliminated if it is considered no longer appropriate.

2. Increase of Certain Charges

[68] In the Initial Order, this Court put in place:

- 68.1. An Administration Charge of \$750,000 to secure the professional fees and disbursements to be incurred in connection with the CCAA proceedings;
- 68.2. A D&O Charge of \$725,000;
- 68.3. An MRP Charge (applicable to the Medicentres' assets and property up to \$3,000,000); and
- 68.4. A DIP Charge of \$1,200,000 to guarantee the interim financing.

[69] The Applicants ask that:

- 69.1. The Administration Charge be increased by \$250,000 for a total aggregate amount of \$1,000,000;
- 69.2. The DIP Charge be increased by \$4,800,000 for a total aggregate amount of \$6,000,000;
- 69.3. The D&O Charge be increased by \$875,000 for a total aggregate amount of \$1,600,000.

[70] They also ask that the Administration Charge rank above any deemed trusts in favour of the Crown.

[71] Administration charges “are required to derive the most value for the stakeholders”. They are “beneficial to all creditors”.¹²

[72] The Supreme Court of Canada¹³ has recognised that the CCAA authorizes courts to grant super-priority charges which have priority over a deemed trust created by the

¹² *Canada v. Canada North Group Inc*, 2021 SCC 30, paras. 28 to 30; *Syndic de Chronométriq inc.*, 2023 QCCA 1295, para. 33.

¹³ *Canada v. Canada North Group Inc*, *supra*, para. 70.

Income Tax Act.¹⁴ However, they should do so “only when necessary” to “achieve the objectives of the CCAA”.¹⁵

[73] This will be the case only “where the supervising judge believes that, without a super-priority charge, a particular professional or lender would not act” though the Court recognizes that “[t]his may often be the case”.¹⁶

[74] Here, the relief sought is unopposed by the tax authorities.

[75] For understandable reasons, the continued service and involvement of directors and officers in CCAA proceedings is often conditional upon the granting of an Order which includes a directors and officers charge.¹⁷ This is the case here.

[76] The D&O Charge in the Initial Order was established in consultation with the Monitor, taking into consideration potential directors’ and officers’ post-filing liabilities in connection with payroll, vacation pay and sales taxes, as is done in comparable circumstances.

[77] The D&O Charge must be updated to take into consideration the increase in these potential liabilities.

[78] The DIP Charge must also be updated in line with the DIP financing. The projected cashflow for the Applicants (the “**Cashflow**”), as set out in the Pre-Filing Report of the Monitor dated December 10, 2024 justifies the cash requirements for the period ending February 14, 2025. Without access to interim financing, the Applicants will be unable to continue their operations.

[79] The DIP Charge is a *sine qua non* condition of the DIP financing.

[80] The increase is approved.

3. KERP and KERP Charge

[81] The Initial Order included MRP and a MRP Charge to secure the ongoing support of doctors of the Medicenters’ clinics.

[82] The Applicants’ now wish to put in place a key employee retention plan (the “**KERP**”) to secure the contribution of two employees which are is essential to the success of the CCAA proceedings.

¹⁴ *Income Tax Act*, RSC 1985, c 1 (5th Supp.), s. 227(4.1).

¹⁵ *Canada v. Canada North Group Inc*, *supra*, para. 72.

¹⁶ *Canada v. Canada North Group Inc*, *supra*, para. 73.

¹⁷ *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422, paras. 56 and 57.

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

- 83.1. arm's length safeguards;
- 83.2. necessity; and
- 83.3. reasonableness of design.¹⁸

[84] Factors to be considered include:

- 84.1. whether the Monitor supports the program agreement and charge, to which great weight is attributed;
- 84.2. whether the beneficiaries of the program are likely to consider other employment opportunities if the program and associated charge are not approved;
- 84.3. whether the continued employment of the beneficiaries of the program is important for the stability of the business and to enhance the effectiveness of any marketing process;
- 84.4. the beneficiaries' history with and knowledge of the debtor company;
- 84.5. whether a replacement could be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company;
- 84.6. 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;
- 84.7. whether the program agreement and charge are supported or consented to by secured creditors of the debtor; and
- 84.8. whether the payments under the program are payable upon the completion of the restructuring process.¹⁹

[85] The KERP and the corresponding KERP Charge are appropriate in the present circumstances.

¹⁸ *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586, para. 69; *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para. 30.

¹⁹ *Just Energy Group Inc. et al.*, 2021 ONSC 7630, para. 7; *Mountain Equipment Co-Operative (Re)*, supra, 18, para. 68; *Aralez Pharmaceuticals Inc. (Re)*, supra, note 18, para 29; *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at para 59.

[86] The two employees covered have significant experience and specialized expertise that cannot be easily replicated or replaced.

[87] They are likely to be offered other employment opportunities and they will be faced with a significantly increased workload during the restructuring process.

[88] In fact, certain key employees who would benefit from the KERP have already indicated their intention to imminently resign because of the restructuring process.

[89] The KERP includes key members of the Medicentres business who are essential to the sale process in respect of these assets. The total amount of the KERP payments made by the Applicants will be approximately \$250,000.

[90] The KERP payments will be made in a single lump-sum payment payable in priority following either: (i) the closing of a single, or multiple transaction(s) for substantially all of the Medicentres' assets, property and undertakings, or (ii) the implementation of a plan of arrangement or compromise in respect of Medicentres.

[91] The KERP is appropriate in the circumstances and is supported by the main creditors and the Monitor.

[92] The Court approves it.

4. Disposition of Property Outside the normal Course

[93] The Applicants ask that they be authorized, 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 \$500,000 individually and \$1,500,000 in the aggregate.

[94] While the Monitor does not foresee any such transactions at this time, the authorisation is requested as a matter of efficiency.

[95] No one has opposed it.

[96] The increase is approved.

5. The Addition of Gestion Privamed as an Applicant to these Proceedings

[97] Gestion Privamed Inc. ("**Gestion Privamed**") is a real estate holding company established to purchase two properties on the south shore of Montreal out of which Privamed and Clinique Santé Dix30

[98] The purchase of these two properties was financed by the Business Development Bank of Canada ("**BDC**") under a financing agreement ("**BDC Loan Agreement**").

[99] The BDC Loan Agreement is secured by first ranking immovable hypothecs on the following properties (the “**BDC Security**”):

- 99.1. 5970, Côte-des-Neiges, Montreal.
- 99.2. 5990, Côte-des-Neiges, Montreal.
- 99.3. 3400 Rue du Marché, Dollard-Des Ormeaux.
- 99.4. 1052 Lionel-Daunais #203, Boucherville.
- 99.5. 5955, Marie-Victorin Boulevard, Brossard.

[100] Gestion Privamed currently owes approximately \$4,253,000, subject to interest and adjustment, to BDC pursuant to the terms of the BDC Loan Agreement.

[101] On November 20, 2024, BDC served notices pursuant to Section 244 of the *Bankruptcy and Insolvency Act* to Gestion Privamed.

[102] Gestion Privamed, as borrower, other entities related to the ELNA Group, as guarantors, and BDC, as lender, have entered into a Forbearance Agreement (the “**BDC Forbearance Agreement**”).

[103] Under the BDC Forbearance Agreement, BDC has agreed to tolerate the defaults to the BDC Loan Agreement, and certain other agreements with entities related to the ELNA Group. The Applicants have agreed that BDC shall be treated as an unaffected creditor in these CCAA proceedings, including in any plan resulting therefrom solely in respect of Gestion Privamed Inc.

[104] The tolerance period under the BDC Forbearance Agreement is set to expire on February 12, 2025.

[105] Gestion Privamed is a limited guarantor of the NBC Borrowers indebtedness towards NBC.

[106] No one has contested the inclusion of Gestion Privamed in the CCAA Proceedings.

[107] The inclusion of Gestion Privamed as an Applicant is appropriate.

6. Intercompany Transactions

[108] The Initial Order provided that the Applicants could continue to enter into transactions with each other (“**Intercompany Transactions**”) provided that:

- 108.1. Applicants notify, at least three days in advance, the Interim Lender of any monetary payment from an Applicant to another Applicant or their affiliates,

and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.

108.2. Prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made in respect of any amounts owing under the CCAA Charges (as defined herein), the Monitor shall prepare and file with the Court a report (an **“Intercompany Transactions Report”**) detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Applicant(s), which Intercompany Transactions Report shall include the Monitor’s proposed allocation of the net amount to be attributed to each Applicant as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Applicant to another Applicant as the case may be (the **“Proposed Allocation”**).

108.3. The Monitor serve a copy of the Intercompany Transactions Report upon the Service List and that any interested creditor shall be entitled to apply to this Court within five calendar days of said notification to contest or make representations with respect to the Proposed Allocation.

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

[110] Any such transactions will need to be approved by the Monitor.

[111] With regard to the distribution of potential proceeds, the ARIO states that any distribution after reimbursement of certain charges be preceded by a report of the Monitor on a proposed distribution.

[112] The Court is satisfied that this adequately protects the creditors.

7. Execution Notwithstanding Appeal

[113] 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

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

[115] The Amended Restated Initial Order is granted.

[116] Given that the parties' documents were submitted in English, that this ARIO applies to assets in other Canadian provinces and that it is urgent that judgement be rendered without delay, the present judgement is issued prior to a French translation being available.

FOR THESE REASONS, THE COURT:

[117] **ISSUES** an Amended and Restated Initial Order submitted by the parties this day and attached to the present judgement;

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

MARTIN F. SHEEHAN, J.S.C.

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Hearing date: December 17, 2024