

THE KING'S BENCH
WINNIPEG CENTRE

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA
CLINIC HOLDING CO. LTD.**

(the "Applicants")

**APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C., c. C-36, AS AMENDED**

NOTICE OF MOTION
(STAY EXTENSION AND OTHER RELIEF)
DATE OF HEARING: WEDNESDAY, AUGUST 2, 2023 at 10:00 AM
THE HONOURABLE MR. JUSTICE KROFT

TAYLOR McCaffrey LLP
Barristers and Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba
R3B 3L3

Douglas E. Finkbeiner, K.C./Ph. 204-988-0414
David R.M. Jackson/Ph. 204-988-0375
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Fax No. 204-957-0945

Client File No. 1102-154

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WINNIPEG CENTRE

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

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(the "Applicants")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(STAY EXTENSION)

The Applicants will make a motion before the Honourable Mr. Justice Kroft on Wednesday, the 2nd day of August, 2023 at 10:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule 1 to this Notice of Motion which provides, *inter alia*:

- a) An Order that this matter be heard on short notice;
- b) An Order abridging the time for service and/or otherwise validating service of the Notice of Motion such that the motion is properly returnable Wednesday, August 2, 2023 and dispensing with further service thereof;

- c) An Order extending the stay period ("**Stay Period**") as defined in paragraph 10 of the Amended and Restated Initial Order of the Honourable Mr. Justice Kroft dated December 2, 2022 ("**Initial Order**") until October 2, 2023;
- d) An Order approving the Third Report of the Monitor ("**Third Report**") provided by Alvarez & Marsal Canada Inc. in its capacity as monitor of the Applicants ("**Monitor**") and the Monitor's activities, actions, and conduct as described therein;
- e) An Order approving the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Third Report;
- f) An Order approving the Applicants' execution of an amendment to the DIP Financing Commitment Letter to:
 - (i) incorporate a new baseline revised budget; and
 - (ii) extend the maturity date of the facility until October 2, 2023;
- g) Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), ss. 11 and 11.02.
2. King's Bench Rules 1.04, 2.01, 2.03, 3.02(1), 16.04, 16.08 and 37.08(2).
3. On November 30, 2022 this Court granted an Initial Order under the CCAA which included a stay of proceedings against the Applicants (as defined in the Initial Order) until December 9, 2022, the appointment of a Monitor and collateral initial relief.
4. On December 1, 2022 this Court amended and restated the Initial Order which, *inter alia*:
 - a) extended the Stay Period until February 24, 2023;

- b) provided the balance of the restructuring tools contemplated under the Model Order;
 - c) provided DIP Financing, enhanced the Monitor's powers, authorized a Key Employee Retention Program ("**KERP**") and provided authorization to the Applicants with the approval of the Monitor to make certain True-Up Payments.
5. On January 25, 2023, this Court granted an Order which, *inter alia*:
- a) extended the Stay Period until April 28, 2023; and
 - b) authorized and empowered the Monitor, with the consent of CIBC, to convey, transfer, lease or assign any part or parts of the Property (as defined in the Initial Order) out of the ordinary course of business without further approval of this Court in respect of any transaction not exceeding \$50,000 and provided that the aggregate consideration for all such transactions does not exceed \$350,000.
6. On April 21, 2023, this Court granted two Orders which, *inter alia*:
- a) extended the Stay Period until August 31, 2023;
 - b) approved the Physicians Retention Payment Plan as detailed in the Monitor's Second Report dated April 18, 2023 (the "**Second Report**") and authorized and directed the Applicants to make payments in accordance with the terms thereof;
 - c) authorized and empowered the Applicants to sign an Amendment to the Commitment Letter incorporating a Revised Budget to be agreed to by the Applicants, CIBC and Monitor;
 - d) approved the Sale and Investment Solicitation Process (the "**SISP**"); and
 - e) authorized and directed the Monitor and the Marketing Agent to implement the SISP and do all things as are reasonably necessary to conduct and give full effect to the SISP.
7. The Applicants have acted in good faith and with due diligence since the granting of the Initial Order, and have been working with the Monitor to stabilize the

business operations of the Applicants with a view to developing a restructuring plan and, ultimately, implementing the SISP.

8. At this time, the Applicants are returning to Court with the Monitor to provide an update on its restructuring efforts and seek an extension of the Stay Period until October 2, 2023. An extension of the Stay Period until that date is necessary and appropriate in the circumstances, in particular to allow the Applicants and Monitor to continue their restructuring efforts, complete the SISP, and apply to Court to approve any proposed transaction(s) resulting from the SISP.

9. Pursuant to section 15(b)(ii) of the DIP Financing Commitment Letter, the Applicants were required to provide a revised budget based on a one-week roll-forward of the agreed upon budget. The DIP Financing Commitment Letter allows for budget variances, but they have been exceeded in light of material property tax payments and other amounts owing within the forecast period that were not previously included in the budget. The Applicants and CIBC have agreed on a new baseline revised budget.

10. In addition, the maturity date set out in section 14(a) of the DIP Financing Commitment Letter was scheduled to expire on June 1, 2023. CIBC agreed to extend the maturity date for another three months until September 1, 2023. With the within proceedings now expected to continue past that date, CIBC has agreed to extend the maturity date until October 31, 2023 to accord with the current stay request; however, the DIP Financing Commitment Letter does not contemplate a further extension, such that an additional amendment is required.

11. For the reasons set out in paragraphs 9 and 10 above, the Applicants are seeking the Court's authorization to enter into a Second Amendment to the Interim Financing Term Sheet (the "**Second Amendment**") with CIBC to incorporate the new baseline revised budget and extend the maturity date until October 31, 2023. The balance of the terms of the DIP Financing Commitment Letter remain the same.

12. Provided the execution of the Second Amendment is approved, the Applicants have sufficient liquidity with the DIP Financing in place to be able to continue operating in the ordinary course during the requested Stay Period.

13. The Monitor and CIBC are supportive of the requested extension of the Stay Period.

14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT
THE HEARING OF THE MOTION:

1. The Affidavit of Keith McConnell sworn November 28, 2022;
2. The Pre-Filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022;
3. The First Report of the Monitor, dated January 20, 2023;
4. The Amended and Restated Initial Order signed December 2, 2022;
5. The Second Report of the Monitor, dated April 18, 2023;

6. The Third Report of the Monitor, to be filed; and
7. Such further and other documentation as counsel may advise and this Honourable Court may permit.

Date: July 31, 2023

TAYLOR McCaffrey LLP
2200 – 201 Portage Avenue
Winnipeg, Manitoba
R3B 3L3

Douglas E. Finkbeiner/Ph. (204) 988-0414
David R.M. Jackson/Ph. (204) 988-0375
Charles Roy/Ph. (204) 988-0472

TO: SERVICE LIST ATTACHED

Schedule 1

File No. CI 22-01-38613

**THE KING'S BENCH
WINNIPEG CENTRE**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**ORDER
(STAY EXTENSION AND OTHER RELIEF)**

**TAYLOR McCaffrey LLP
Barristers and Solicitors
2200 – 201 Portage Avenue
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R3B 3L3**

**Douglas E. Finkbeiner, K.C./Ph. 204-988-0414
David R.M. Jackson/Ph. 204-988-0375
Charles Roy/Ph. 204-988-0472
Fax No. 204-957-0945**

Client File No. 1102-154

**THE KING'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) Wednesday, the 2nd day of August, 2023
MR. JUSTICE KROFT)

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1985, c. C-36, AS AMENDED

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APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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ORDER
(STAY EXTENSION AND OTHER RELIEF)

THIS MOTION made by the Applicants for an Order, *inter alia*: (i) extending the Stay Period as defined in paragraph 10 of the Amended and Restated Initial Order entered December 2, 2022 ("Initial Order") to and including October 2, 2023; (ii) approving the Third Report of the Monitor, Alvarez & Marsal Canada Inc. ("A&M"), dated _____ ("Third Report") in its capacity as Monitor of the Applicants ("Monitor") and the activities, actions, and conduct described therein; (iii) approving the professional fees of the Monitor, the Monitor's legal counsel and Applicants' legal counsel, as set out in the Third Report; (iv) authorizing the Applicants to execute the Second Amendment to the Interim Financing Sheet (the "Second Amendment"); and (v) such further and other relief

as to this Honourable Court may deem just was heard this day at Winnipeg, in the Province of Manitoba.

ON READING the Affidavit of Keith McConnell sworn November 28, 2022, the Pre-Filing Report of A&M dated November 29, 2022, the First Report of A&M dated January 20, 2023, the Second Report dated April 18, 2023, the Second Confidential Supplement, the Third Report dated July ___, 2023, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce (“CIBC”), no one appearing for any other party although duly served as appears from the Affidavit of Service of Laura Leigh Buley sworn July 31, 2023:

Service

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

Stay Extension

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including October 2, 2023.

Monitor's Activities and Related Matters

3. THIS COURT ORDERS that the Third Report and the activities, actions, and conduct as described therein are hereby approved.

4. THIS COURT ORDERS that the professional fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP and Applicants' legal counsel, Taylor McCaffrey LLP, as set out in the Third Report, are hereby approved.

5. THIS COURT ORDERS that the Applicants are authorized to execute the Second Amendment.

Date:

Kroft, J.

I, DAVID R.M. JACKSON, of the firm of Taylor McCaffrey LLP, hereby certify that I have received the consents as to form of the following parties:

J.J. Burnell of MLT Aikins LLP, counsel for CIBC
Ian Sutherland, K.C. of McDougall Gauley LLP, counsel for the Monitor

As directed by the Honourable Mr. Justice Kroft.

Schedule 2

File No. CI 22-01-38613

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**SERVICE LIST
AS AT JULY 7, 2023**

TAYLOR McCaffrey LLP

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2200 – 201 Main Street
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R3B 3L3

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SERVICE LIST

Party/Counsel	Telephone	Facsimile	Party Represented
THE MANITOBA CLINIC MEDICAL CORPORATION THE MANITOBA CLINIC HOLDING CO. LTD. 790 Sherbrook Street Winnipeg, Manitoba, R3A 1M3 Attention: Keith McConnell E-Mail: kmccconnell@manitobaclinic.ca	204-788-5525		Applicants
TAYLOR MCCAFFREY LLP 2200-201 Portage Avenue Winnipeg, Manitoba, R3B 3L3 David R.M. Jackson E-Mail: djackson@tmlawyers.com Douglas E. Finkbeiner, K.C. E-Mail: dfinkbeiner@tmlawyers.com Charles Roy E-Mail: croy@tmlawyers.com	(204) 988-0475 (204) 988-0414 (204) 988-0472	204-957-0945	Solicitors for the Applicants

Party/Counsel	Telephone	Facsimile	Party Represented
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ALVAREZ & MARSAL CANADA INC. Suite 1110, 250 6 th Avenue S.W. Calgary, Alberta, T2P 3H7 Attention: Orest Konowalchuk Jill Strueby E-Mail: okonowalchuk@alvarezandmarsal.com E-Mail: jstrueby@alvarezandmarsal.com	(403)470-7478		Proposed Monitor
McDOUGALL GAULEY 500 – 616 Main Street Saskatoon, Saskatchewan S7H 0J6 Attention: Ian A.Sutherland E-Mail: isutherland@mcdougallgauley.com Attention: Craig Frith E-Mail: cfrith@mcdougallgauley.com	306-665-5417	306-652-1323	Counsel for Proposed Monitor
MANITOBA JUSTICE Civil Legal Services 301 – 310 Broadway Avenue Winnipeg, Manitoba R3C 3L6 Attention: Shelley Haner E-Mail: shelley.haner@gov.mb.ca	204-792-6471	204-948-2826	Counsel for the Minister of Finance
DEPARTMENT OF JUSTICE CANADA 601 – 400 St. Mary Avenue Winnipeg, Manitoba, R3C 4K5 Attention: Timothy Doyle E-Mail: timothy.doyle@justice.gc.ca			Counsel for Her Majesty
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BARIK MEDICAL INC. 239 Cree Crescent Winnipeg, Manitoba, R3J 3Y2 Attention: Janice Carson E-Mail: sales@barikmedical.com	204-888-2330	204-888-2262	
DOCTORS MANITOBA Attention: Andrew Swan E-Mail: aswan@doctorsmanitoba.ca	204-985-5860		General Counsel
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