

**THE QUEEN'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: Certain proceedings taken in the United States
Bankruptcy Court for the District of Delaware with
respect to IMRIS Inc., IMRIS, Inc. and NeuroArm
Surgical Ltd., (Collectively, the "Chapter 11 Debtors")

Application of Imris, Inc. ("Applicant") under the: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. 36, s. 46, as Amended

**SECOND REPORT TO THE COURT SUBMITTED
BY ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS
INFORMATION OFFICER**

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INTRODUCTION

1. On May 25, 2015 (the “**Petition Date**”), the Chapter 11 Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the “**Chapter 11 Proceedings**”) in the United States Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”).

2. On May 27, 2015 the US Bankruptcy Court made certain First Day Orders including appointing IMRIS, Inc. (“**IMRIS US**”) as a foreign representative of the Chapter 11 Debtors (the “**Foreign Representative**”).

3. The Foreign Representative has commenced proceedings (the “**Recognition Proceedings**” or “**Canadian Proceedings**”) before this Honourable Court

and to date obtained the following Orders under Part IV of the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36, (the "CCAA"):

- a. Initial Recognition Order dated June 3, 2015;
- b. Supplemental Order dated June 3, 2015;
- c. Replacement Order dated June 11, 2015 ("**Replacement Order**");
- d. Amended and Restated Initial Recognition Order dated June 11, 2015 ("**Initial Recognition Order**");
- e. Amended and Restated Supplemental Order dated June 11, 2015 ("**Supplemental Order**");and
- f. A Second Recognition Order dated June 26, 2015.

4. In accordance with the terms of the Replacement Order and Supplemental Order Alvarez & Marsal Canada Inc. ("A&M Canada" or Information Officer) was appointed as Information Officer. A&M Canada is maintaining a website, alvarezandmarsal.com/IMRIS, where the First Report and other documents relating to the Canadian proceedings are available. Readers should refer to the First Report for information on the Orders referenced in paragraph 3 a to e.

5. A Second Recognition Order was granted by this Court on June 26, 2015 which recognized and gave full force and effect in all the provinces and territories of Canada pursuant to Section 49 of the CCAA to the following U.S. Orders granted in the Chapter 11 Proceedings:

- a. A final Cash Management Order (A) Approving the Continued Use of the Debtors' Cash Management System, (B) Approving Continued Transfers Between Debtors and Non-Debtor Subsidiaries, and (C) Granting Related Relief ("**Final Cash Management Order**");

- b. A final Prepetition Taxes Order (I) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition Taxes and (II) Authorizing Banks to Honor Related Checks and Electronic Transfers (“**Final Prepetition Taxes Order**”);
- c. An Order Approving the Debtors’ Non-Insider Key Employee Retention Plan (“**Key Employee Retention Order**”);
- d. An Order Pursuant to Bankruptcy Code Sections 363(B) and 105(A) Authorizing (I) the Debtors to Pay the Prepetition Claims of Certain Critical Vendors, and (II) Financial Institutions to Honor and Process Prepetition Checks and Transfer to Certain Critical Vendors (“**Critical Vendor Order**”);
- e. An Order (A) Approving Procedures in Connection with the Sale of Substantially all of the Debtors’ Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; and (E) Granting Related Relief (“**Bid Procedures Order**”); and
- f. A Final Order: (I) Authorizing Debtors to Obtain PostPetition Financing; (II) Authorizing Debtors to Use Cash Collateral; (III) Granting Adequate Protection to PrePetition Secured Parties; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) (“**Final DIP Order**”, collectively with the Final Cash Management Order, the Final Prepetition Taxes Order, the Key Employee Retention Order, the Critical Vendor Order, and the Bid Procedures Orders, the “**U.S. Orders**”).

PURPOSE OF THE SECOND REPORT

6. A&M Canada hereby submits this second report (the “**Second Report**”) to provide information and to assist the Court in considering the Foreign Representative’s request for recognition of further orders in the Canadian Proceedings and to update on the Court on the activities of the Information Officer.

7. In preparing this Report, A&M Canada has relied solely on information and documents provided by the Foreign Representative, FTI Consulting, the Chapter 11 Debtors and their affiliates and their Counsel. A&M Canada has not audited, reviewed or

otherwise attempted to independently verify the accuracy of completeness of this information. Accordingly, A&M Canada expresses no opinion or other form of assurance on the information contained herein.

THE SALE APPROVAL ORDER AND VESTING ORDER

8. The Foreign Representative has now filed a motion returnable on August 14, 2015 seeking an approval and vesting order for the Canadian Assets and recognition of the following Orders recently granted in the US Proceedings:

- a. an Order (A) Authorizing the sale of substantially all of the debtors' assets pursuant to the successful bidder's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (B) Approving the Assumption and Assignment of certain executory contracts and unexpired leases related thereto; and (C) Granting related relief (the "Sale Approval Order"), attached as Schedule "A" to the Third Recognition Order;
- b. an Order establishing information sharing procedures for compliance with 11 U.S.C § 1102(B)(3) (the "Information Procedures Order") , attached as Schedule "B" to this the Third Recognition Order; and
- c. an Order Approving Motion of the Debtors and Debtors in Possession for Entry of an Order Pursuant to Section 363 of the Bankruptcy Code Approving the Services Agreement Between the Debtors and FTI Consulting, Inc., *Nunc Pro Tunc* to the Petition Date (the "CRO Appointment Order"), attached as Schedule "C" to the Third Recognition Order;

9. As noted in the Pre-Filing Report dated June 1, 2015, on March 10, 2015 the Chapter 11 Debtors engaged Imperial Capital LLC ("Imperial") as Financial Advisor to explore strategic and sales opportunities. During the ensuing sales process, Imperial approached 39 potential financial and strategic buyers. After commencing the Chapter 11 Proceedings, sales and marketing efforts continued. The Bid Procedures Order previously recognized by the Court authorized a stalking horse and credit bid process. Imperial was engaged to continue as Financial Advisor. The bid process included

Canadian assets and the Initial Recognition Order requires court approval for the sale of Canadian assets out of the ordinary course. Significant factors in the bid process include:

- a. On May 25, 2015 the Chapter 11 Debtors and Deerfield Acquisition Corp. (“**Stalking Horse Purchaser**”), an affiliate of Deerfield, entered into a purchase agreement (the “**Stalking Horse Agreement**”) for an aggregate price of \$9.5 million consisting of \$2.5 million for the Robotics Business and \$7.0 million for the Imaging and Services Businesses. The purchase price is a credit bid with no cash component and will be paid by way of reduction the Deerfield Claim Amount. Other consideration includes the assumption of specifically identified liabilities by the Stalking Horse Bidder and reimbursement of expenses of the transaction up to \$1.0 million.
- b. Qualified bids were to be received by July 17, 2015 together with a 10% deposit. The Qualified bid had to be greater than the Stalking Horse Purchase Price plus the expenses reimbursed by at least \$100,000 and must be on terms no less favorable.
- c. If at least one Qualified bid was received an auction was to held and
- d. If no Qualified bids were received there would not be an auction and the Stalking Horse Purchaser's bid may be recommended at the sale hearing originally scheduled for July 24, 2015.
- e. Imperial approached an additional 30 potential buyers, 19 of which signed non-disclosure agreements. While there were several interested parties unfortunately no qualified bids were received by the July 17, 2015 deadline resulting in the Stalking Horse Purchaser becoming the successful bidder.
- f. The sale hearing in the US Proceeding was adjourned to August 12, 2015 as the terms of the Sale Approval Order were being negotiated between Deerfield as the Stalking Horse Purchaser and DIP Lender and the Chapter 11 Debtors.

10. The Sale Approval Order was granted in the US Proceedings on August 12, 2015. It should be noted that the US Bankruptcy Court found and determined that, *inter alia*:

- a. The Chapter 11 Debtors thoroughly and fairly marketed the assets and conducted the sales process in good faith and in compliance with the Bid Procedures Order;
- b. The Stalking Horse Bidder at all times acted in good faith;
- c. The Asset Purchase Agreement ("APA") and the transaction contemplated thereby was entered into without collusion, in good faith and from arm's length bargaining positions;
- d. The APA constitutes the highest and best offer for the assets and provides reasonable equivalent value and fair and reasonable consideration; and
- e. The parties demonstrated good, sufficient and sound business reasons and compelling circumstances to enter into the APA and such action was in the best interests of the Chapter 11 Debtors, their estates and creditors, and other parties in interest.

The Unsecured Creditors' Committee also supported this Order. As noted in the First Report of the Information Officer, the Bid Procedure Process was consistent with proceedings generally under the CCAA and the Information Officer was of the view that it was a reasonable process in the circumstances. The Information Officer is satisfied that the assets were adequately exposed to the market and that the APA approved by the US Bankruptcy Court is fair and commercially reasonable in the circumstances. The Information Officer also believes that

recognition of this order is in the best interests of the creditors. Consequently the Information Officer supports the recognition of the Sale Approval Order in the Canadian Proceedings and vesting of the Canadian Assets as described there in subject to the concerns noted in paragraph 11 being dealt with.

11. The Stalking Horse bid is a partial credit bid and debt assumption and therefore all of the assets of the Chapter 11 Debtors will be conveyed in consideration for a partial reduction of the secured debt and an assumption of a certain portion of the debt. Consequently there will be no proceeds available to stand in place of the assets in order to deal with any claims that may rank in priority to the DIP Lender and Deerfield, as the first secured creditor. That said, post-petition, as well as some pre-petition, ordinary course trade payables are being assumed by the Stalking Horse Bidder. The Information Officer has made inquiries of the Chapter 11 Debtors and the Chief Restructuring Officer and has been advised that they are not aware that any potential priority claims exist, other than the Administration Charge. Furthermore, the Chapter 11 Debtors' confirmed that statutory claims have been remitted on a current basis and the 5 Canadian employees are all being offered employment with the Purchaser on substantially the same terms. Generally once a Court approves a sale in a CCAA and the assets are vested, the proceeds stand in place of the assets sold and are not distributed without further order of the Court. That will not be case here as there will be no actual proceeds resulting from the proposed transaction. This also impacts the effectiveness of the Administration Charge granted by this Court under the Supplemental Order to protect the Information Officer and its legal counsel for

their professional fees. The parties benefiting from the proposed Order should be providing such assurances as to this Honourable Court may seem just.

12. The Sale Approval Order also approves the assumption and assignment of certain executory contracts and unexpired leases. There are a number of such agreements with Canadian entities being assumed. The Information Officer has been advised that all affected parties were served with proper notice of the US motion, and several counterparties appeared and made submissions. The Stalking Horse Bidder did file evidence with the US Bankruptcy Court proving adequate assurance of future performance and will be obliged to make cure payments as a condition of the assignments. There were three objections by Canadian creditors. Two objections were resolved before or at the application approving the assignments and the parties vacated their objections. One objection was overruled. The Sale Approval Order is being recognized under Part IV of the CCAA and Section 49 of the CCAA provides that in recognizing an order of a foreign court, the Canadian Court may make any order provided it is satisfied that it is necessary for the protection of the debtor's property or the interest of creditors. The APA requires the assignment of executory agreements and leases and there appears to be no material agreements in dispute. Therefore in the view of the Information Officer, the Sale Approval Order is in the interest of the creditors and should be recognized in the Canadian Proceedings.

THE INFORMATION PROCEDURES AND CRO APPOINTMENT ORDERS

13. The Information Procedures Order reference in Paragraph 8 b. establishes information sharing procedures required to be compliant with US statutes. Although there is no similar requirements under the CCAA the relief being granted is appropriate in the circumstances.

14. The CRO Appointment Order reference in paragraph 8 c. approves the engagement of FTI Consulting as the Chief Restructuring Officer. That is consistent with relief granted in CCAA proceedings and appropriate in the circumstances.

UPCOMING MATTERS IN THE CHAPTER 11 PROCEEDINGS

15. The next set of hearings in the U.S. Court are scheduled for September 11, 2015. At that time, the Chapter 11 Debtors will apply for, among other things, a Motion for an Order Establishing Deadlines for Filing Proofs of Claim and Section 503(b)(9) Claim Requests and Approving the Form and Manner of Notice Thereof. Such Order should provide the opportunity for all creditors to prove their claims in accordance with the US Bankruptcy Code. The Chapter 11 Debtors have advised that it is their intention to file a Liquidation Plan under Chapter 11 for the benefit of their creditors.

ACTIVITIES OF THE INFORMATION OFFICER

16. The activities of the Information Officer since the First Report to date included:

- a. Review of various court materials filed and Orders obtained in the US Proceedings;

- b. Receipt of and responding to a limited number of inquiries by Canadian Creditors;
- c. Liaison with the CRO regarding the ongoing status of the US Proceedings and relevance to Canadian creditors.
- d. Instructions to Taylor McCaffery LLP as independent legal counsel to the Information Officer.

SUMMARY

17. The Information Officer is of the view that continuation of the stay of proceedings in respect of the Chapter 11 Debtors' property and business in Canada and also in respect of the directors and officers of the Chapter 11 Debtors, is required in order to obtain sufficient time to complete the sale and complete the restructuring

18. The Information Officer is of the view that granting the Third Recognition Order and vesting of the Canadian assets is appropriate in the circumstances and in the best interests of the creditors, having regard to the current status of the Chapter 11 Debtors, the orders made in the US Bankruptcy Court and to allow for co-ordination of the Canadian Proceedings with the Chapter 11 Proceedings.

The Information Officer respectfully submits to the Court this Second Report.

Dated this 13th day of August, 2015.

Alvarez & Marsal Canada Inc.
Information Officer
IMRIS, Inc.



Tim Reid CA
Senior Vice President