

2023



Hfx No. 523334

**SUPREME COURT OF NOVA SCOTIA**

**IN THE MATTER OF:**      **Application by IMV Inc. and Immunovaccine Technologies Inc. and IMV USA Inc. (the "Applicants"), for relief under the Companies' Creditors Arrangement Act**

**Order**

Before the Honourable Justice John P. Bodurtha in chambers:

The Applicants propose to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") and they applied for an initial order and, now or in the future, other relief under the CCA as may be sought on notice of motion.

The following parties received notice of this application: see attached at Schedule "A".

The following parties, represented by the following counsel, made submissions:

<u>Party</u>	<u>Counsel</u>
Applicants	<b>McCarthy Tétrault LLP</b> Alain N. Tardif François Alexandre Toupin
	<b>Stewart McKelvey Lawyers</b> Sara L. Scott
Monitor, FTI Consulting Canada Inc.	<b>Stikeman Elliott LLP</b> Maria Konyukhova Natasha Rambaran
Horizon Technology Finance Corporation, as agent	<b>Aird &amp; Berlis LLP</b> Miranda Spence Kyle Plunkett

**WHEREAS** on May 1, 2023, this Court granted an Initial Order under the CCA in respect of the Applicants (as amended and restated on May 5, 2023, the "Initial Order"), which, among other things, appointed FTI Consulting Canada Inc. as monitor in these proceedings (the "Monitor");

**AND WHEREAS** on May 5, 2023, this Court granted an Amended and Restated Initial Order (the "ARIO"), which, among other things, extended the Stay Period until and including July 17, 2023;

**AND WHEREAS** on May 9, 2023, this Court granted a Claims Process Order (the "Claims Process Order"), approving the procedure for the determination and adjudication of claims against the Applicants and their present and former, *de facto* and *de jure*, directors and officers (the "Directors and Officers");



**AND WHEREAS** on July 17, 2023, this Court the Court granted an Extension Order which, among other things, further extended the Stay Period until and including August 18, 2023;

**AND WHEREAS** on August 17, 2023, this Court the Court granted an Extension Order which, among other things, further extended the Stay Period until and including September 29, 2023;

**AND WHEREAS** on September 6, 2023, the Court granted an Approval and Vesting Order (the "**Approval and Vesting Order**") which, among other things, approved the transaction contemplated by the Agreement of Purchase and Sale dated September 1, 2023 (the "**Purchase Agreement**"), by and between Horizon Technology Finance Corporation (the "**Collateral Agent**"), as purchaser, and IMV Inc. and IVT, as vendors (the "**Transaction**");

**AND UPON** motion of the Applicants for an Order, *inter alia*, granting a release in favour of the Directors and Officers as well as a "channeling injunction" to allow the pursuit of claims against the Directors and Officers as against any existing director and officer insurance policies;

**AND UPON** reading the Fifth Report of the Monitor dated September 22, 2023 and the other materials filed herein;

**AND UPON** hearing the submissions on behalf of the Applicants and the Monitor;

**NOW UPON MOTION IT IS HEREBY ORDERED AND DECLARED THAT:**

**Service and Definitions**

1. Service of this Order is permitted at any time and place and by any means whatsoever.
2. All capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the ARIO or the Claims Process Order in these CCAA proceedings, as the context requires.

**Effective Time**

3. This Order and all of its provisions are effective as of 12:01 a.m. Halifax time, province of Nova Scotia, on the date of this Order (the "**Effective Time**").

**Release and Channeling Injunction**

4. From and after the Effective Time, the Directors and Officers shall be forever irrevocably and unconditionally released and discharged from any and all present and future claims, losses, damages, judgments, executions, recoupments, debts, sums of money, expenses, costs, accounts, liens, taxes, penalties, interests, recoveries, and other obligations, liabilities and encumbrances of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, or due or not yet due, in law or equity and whether based in statute, contract or otherwise) based in whole or in part on any act, omission, transaction, dealing or other occurrence, matter, circumstance or fact existing or taking place on or prior to the Effective Time or completed pursuant to the terms of the Approval and Vesting Order and/or in connection with the Transaction, in respect of or relating to, in whole or in part, directly or indirectly, any of the Applicants or their assets, liabilities, business or affairs wherever or however conducted or governed,

the administration and/or management of the Applicants, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, or the Transaction (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably, unconditionally and forever waived, discharged, released, cancelled and barred as against the Directors and Officers, and the commencement, prosecution, continuation or assertion, whether directly, indirectly, derivatively or otherwise, by any Person of any Released Claims against the Directors and Officers, whether before a court, administrative tribunal, arbitrator, other dispute resolver or otherwise, shall be permanently restrained and enjoined; provided, however, that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the present and former directors of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

5. From and after the Effective Time, any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a Director and Officer except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a "**Director and Officer Claim**") shall be irrevocably limited to recovery in respect of such Director and Officer Claim solely from the proceeds of the applicable insurance policies held by the Applicants (the "**Insurance Policies**"), and persons with any Director and Officer Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the Directors and Officers, other than enforcing such person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.
6. The Directors and Officers of the Applicants, or any one of them, are hereby authorized, for administrative purposes only and for the purpose of preserving and insurance coverage available to the Applicants, if any, to provide instructions with respect to any claim to be advanced as against the Applicants and any insurer of the Applicants, as the case may be. In the event that the Directors and Officers disagree with respect to any instruction to be given pursuant to this paragraph, the instructions agreed upon by a majority of such Directors and Officers shall prevail. The Directors and Officers are not personally liable for any action taken in accordance with this paragraph. For greater certainty, the Directors and Officers shall not incur any personal liability resulting from or in connection with any instruction given to any insurer in accordance with this paragraph.

#### **General**

7. This Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
8. The aid and recognition of any Court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor as may be necessary or desirable to give effect to this Order,

to grant representative status to the Monitor or the authorized representative of the Applicants in any foreign proceeding, to assist the Applicants and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

- 9. Each of the Applicants and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

Issued *October 18*, 2023

*Trace Elizabeth*  
\_\_\_\_\_  
Prothonotary  
**TRACE ELIZABETH**  
Deputy Prothonotary

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

**OCT 18 2023**

*Trace Elizabeth*  
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Deputy Prothonotary

**TRACE ELIZABETH**  
Deputy Prothonotary

**Schedule "A" – Service List**

## SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: **Application by IMV Inc., Immunovaccine Technologies Inc. and IMV USA Inc. (the "Applicants"), for relief under the Companies' Creditors Arrangement Act**

## SERVICE LIST

Party	Method of Service
<p><b>McCarthy Tétrault LLP</b> 1000 De La Gauchetière Street West Suite MZ400 Montréal, QC H3B 0A2 <i>Counsel to the Applicants.</i></p>	<p><b>M<sup>re</sup> Alain N. Tardif</b> Tel : 514.397.4274 E-mail : atardif@mccarthy.ca</p> <p><b>M<sup>re</sup> Gabriel Faure</b> Tel: 514.397.4182 E-mail: gfaure@mccarthy.ca</p> <p><b>M<sup>re</sup> François Alexandre Toupin</b> Tel: 514.397.4210 E-mail: fatoupin@mccarthy.ca</p>
<p><b>Stewart McKelvey</b> Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2 <i>NS Counsel to the Applicants</i></p>	<p><b>M<sup>re</sup> Sara L. Scott</b> Tel : 514.397.4274 E-mail : sscott@stewartmckelvey.com</p>
<p><b>Aird &amp; Berlis LLP</b> Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 <i>Counsel to the Horizon Technology Finance Corporation, as agent</i></p>	<p><b>M<sup>re</sup> Miranda Spence</b> Tel : 416.865.3414 E-mail : mspence@airdberlis.com</p> <p><b>M<sup>re</sup> Graham Topa</b> Tel: 416.865.4739 E-mail : gtopa@airdberlis.com</p> <p><b>M<sup>re</sup> Kyle Plunkett</b> Tel: 416.865.3406 E-mail : kplunkett@airdberlis.com</p>
<p><b>Ropes &amp; Gray LLP</b> Prudential Tower 800 Boylston Street Boston, MA 02199-3600 <i>US Counsel to the secured creditor Horizon Technology Finance Corporation, as agent</i></p>	<p><b>M<sup>re</sup> Cristine Schwarzman</b> Tel: 212.596.9635 E-mail : Cristine.Schwarzman@ropesgray.com</p> <p><b>M<sup>re</sup> Patricia I. Chen</b> Tel : 617.951.7553 E-mail: patricia.chen@ropesgray.com</p>

<p><b>FTI Consulting Canada Inc.</b>  TD South Tower  79 Wellington Street West  Suite 2010, P.O. Box 104  Toronto, ON M5K 1G8</p> <p><i>Monitor</i></p>	<p><b>Jodi Porepa</b>  Tel : 437.332.5743  E-mail : Jodi.Porepa@fticonsulting.com</p> <p><b>Jeffrey Rosenberg</b>  Tel: 416.649.8073  E-mail: Jeffrey.Rosenberg@fticonsulting.com</p> <p><b>Adsaran Vithiyananthan</b>  E-mail :  Adsaran.Vithiyananthan@fticonsulting.com</p>
<p><b>Stikeman Elliot LLP</b>  5300 Commerce Court West  199 Bay Street  Toronto ON M5L 1B9</p>	<p><b>M<sup>rs</sup> Maria Konyukhova</b>  Tel : 416.869.5230  E-mail: mkonyukhova@stikeman.com</p> <p><b>M<sup>rs</sup> Natasha Rambaran</b>  Tel : 416.869.5504  E-mail: nrambaran@stikeman.com</p> <p><i>Counsel to the Appointed Monitor</i></p>
<p><b>Atlantic Canada Opportunities Agency</b>  Legal Services Department of Justice /  Government of Canada  PO Box 6051 644 Main Street  Moncton, NB E1C 9J8</p>	<p><b>M<sup>rs</sup> Corinne Godbout</b>  E-mail: Corinne.Godbout@ACOA-  APECA.GC.CA</p>
<p><b>Canada Revenue Agency</b></p>	<p><b>M<sup>rs</sup> Sophie Dupre</b>  Department of Justice  Tel: 902 407-7674  E-mail: Sophie.dupre@justice.gc.ca</p> <p><b>General address for service:</b></p> <p>E-mail:  notificationPGC-AGC.fiscal-tax@justice.gc.ca  notificationPGC-AGC.civil@justice.gc.ca</p>
<p><b>McInness Cooper</b>  1969 Upper Water Street  Suite 1300  McInness Cooper Tower – Purdy's Wharf  Halifax, NS B3J 2V1</p>	<p><b>M<sup>rs</sup> Ben Durnford</b>  Tel: 902.444.8454  E-mail: ben.durnford@mcinnescooper.com</p>
<p><b>Nova Scotia Securities Commission</b></p>	<p><b>M<sup>rs</sup> Doug Harris</b>  Nova Scotia Securities Commission  E-mail : Doug.harris@novascotia.ca</p> <p><b>M<sup>rs</sup> Daniel Boyle</b>  Nova Scotia Department of Justice  E-mail: Daniel.Boyle@novascotia.ca</p>

<b>Powerscourt Investments XXV</b> 1251 Avenue of the Americas, 50th Floor New York, NY 10020	<b>Conan Sang</b> E-mail: CSang@waterfallam.com
<b>Borden Ladner Gervais LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide St. W, Toronto, ON M5H 4E3  <i>Counsel to Zoetis</i>	<b>M<sup>re</sup> Roger Jaipargas</b> Tel: 416.367.6266 E-mail: RJaipargas@blg.com  <b>M<sup>re</sup> Krstina Skocic</b> Tel: 416.367.6451 E-mail: KSkocic@blg.com
<b>Fonds de solidarité FTQ</b>	<b>M<sup>re</sup> Caroline Dion</b> Tel : 514.603.2812 E-mail: cdion@fondsfq.com
<b>XL Specialty Insurance Company</b> First Canadian Place 100 King Street West, Suite 3020 Toronto, Ontario M5X 1C9	<b>Virginia Jagoda</b> E-mail: Virginia.Jagoda@axaxl.com
<b>AIG Insurance Company of Canada</b> 120 Bremner Boulevard, Suite 2200 Toronto, Ontario M5J 0A8	E-mail: ebill@tripemco.com
<b>Allied World Specialty Insurance Company</b> 200 King Street West, Suite 1600 Toronto, Ontario M5H 3T4	<b>Ffiona McDonough</b> E-mail: Ffiona.McDonough@awac.com
<b>Chubb Insurance Company of Canada</b> 199 Bay Street, Suite 2500, 12th floor P.O. Box 139 Commerce Court Postal Station Toronto, Ontario, M5L 1E2	<b>Maria DiPietro</b> E-mail: Maria.DiPietro@Chubb.com
<b>Shareholder Group</b>	<b>M<sup>re</sup> Jonathan Foreman</b> Tel: 519.914.1175 x 102 E-mail: jforeman@foremancompany.com



**Email distribution list:**

Atardif@mccarthy.ca; fatoupin@mccarthy.ca; sscott@stewartmckelvey.com;  
Adsaran.Vithiyananthan@fticonsulting.com; Jodi.Porepa@fticonsulting.com;  
Jeffrey.Rosenberg@fticonsulting.com; mkonyukhova@stikeman.com;  
nrambaran@stikeman.com; mspence@airdberlis.com; gtopa@airdberlis.com;  
kplunkett@airdberlis.com; Cristine.Schwarzman@ropesgray.com;  
patricia.chen@ropesgray.com; Corinne.Godbout@ACOA-APECA.GC.CA;  
Sophie.dupre@justice.gc.ca; notificationPGC-AGC.civil@justice.gc.ca;  
notificationPGC-AGC.fiscal-tax@justice.gc.ca; ben.durnford@mcinnescooper.com;  
Daniel.Boyle@novascotia.ca; Doug.harris@novascotia.ca; CSang@waterfallam.com;  
RJaipargas@blg.com; KSkocic@blg.com; cdion@fondsftq.com; Virginia.Jagoda@axaxl.com;  
ebill@tripemco.com; Ffiona.McDonough@awac.com; Maria.DiPietro@Chubb.com;  
jforeman@foremancompany.com