

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

IMV Inc., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 23-10589 (KBO)

(Jointly Administered)

Hearing Date: Sept. 26, 2023 at 2:00 p.m. (ET)

Objection Deadline: Sept. 8, 2023 at 4:00 p.m. (ET)

**MOTION PURSUANT TO SECTIONS 105(a), 1507, 1521, AND 1525 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9006, FOR ENTRY OF AN ORDER
(I) RECOGNIZING AND ENFORCING THE SECOND EXTENSION ORDER AND
(II) GRANTING RELATED RELIEF**

IMV Inc., in its capacity as the duly-appointed foreign representative (“IMV” or the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”), each of which is subject of proceedings (collectively, the “Canadian Proceeding”) pending before the Supreme Court of Nova Scotia (the “Canadian Court”), initiated pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”), has commenced the above-captioned chapter 15 cases and moves (this “Motion”), pursuant to sections 105(a), 1507, 1521, and 1525 of 11 U.S.C. §§101-1532 (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) recognizing and giving effect in the United States to the *Second*

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers, are: IMV Inc. (6991); IMV USA Inc. (4184) (“IMV USA”); and Immunovaccine Technologies Inc. (6772) (“IVT”). The location of the Debtors’ headquarters and the Debtors’ foreign representative is: 130 Eileen Stubbs Avenue, Suite 19, Dartmouth, Nova Scotia B3B 2C4.

Extension Order attached to the Proposed Order as Exhibit 1 (the “Second Extension Order”), as entered by the Canadian Court in the Canadian Proceeding, and granting related relief. In support of this Motion, the Foreign Representative submits and incorporates by reference the *Declaration of Andrew Hall in Support of the Debtors’ Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Amended and Restated Initial Order, and (IV) Related Relief* [D.I. 5] (the “Hall Declaration”)² and respectfully submits as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters pursuant to 28 U.S.C. § 157(b)(2)(P).

2. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. These chapter 15 cases have been properly commenced pursuant to sections 1504 and 1509 of the Bankruptcy Code by the filing of the chapter 15 petitions filed for each of the Debtors as D.I. 1 in their respective cases (the “Chapter 15 Petitions”) and the *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative,*

² Capitalized terms used but not defined herein shall the meaning ascribed to them in the Hall Declaration or the Second Extension Order, as applicable.

(III) Recognition of Amended and Restated Initial Order, and (IV) Related Relief under Chapter 15 of the Bankruptcy Code [D.I. 4] (the “Verified Petition”) under section 1515 of the Bankruptcy Code

4. Venue is proper pursuant to 28 U.S.C. § 1410.

5. The bases for the relief requested herein are sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code, Bankruptcy Rule 9006, and Local Rule 9006-1.

BACKGROUND

6. On April 28, 2023, the Debtors commenced the Canadian Proceeding under the CCAA to initiate restructuring proceedings under the supervision of the Canadian Court. On May 1, 2023, the Canadian Court entered an initial order (the “Initial Order”) appointing FTI Consulting Canada Inc. (the “Monitor”) as monitor of the Debtors and authorizing IMV to act as Foreign Representative of the Debtors.

7. On May 5, 2023, following a comeback hearing in the Canadian Proceeding, the Canadian Court entered an amended and restated Initial Order (the “Amended and Restated Initial Order”). A description of the relief provided in the Amended and Restated Initial Order is described in detail in the Hall Declaration.

8. On May 8, 2023 (the “Petition Date”), the Foreign Representative filed the Chapter 15 Petitions and the Verified Petition, thereby commencing the Debtors’ chapter 15 cases.

9. Additional information about the Debtors’ business and operations, the events leading up to the filing of the Chapter 15 Petitions, and the facts and circumstances surrounding the Canadian Proceeding and these chapter 15 cases can be found in the Hall Declaration.

10. On June 2, 2023, the Court entered the *Order (I) Recognizing Foreign Main Proceeding, (II) Recognizing Foreign Representative, (III) Recognizing Amended and Restated*

Initial Order, and (IV) Granting Related Relief [D.I. 29] (the “Recognition Order”), which, among other things, provided that:

The Amended and Restated Initial Order, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors’ property that now or in the future is located within the territorial jurisdiction of the United States.

Recognition Order at ¶ 6.

11. On August 3, 2023 the Canadian Court entered the *Extension Order* (the “First Extension Order”), which, among other things, extended the Stay Period in the Amended and Restated Initial Order through and including August 18, 2023, approved the activities of the Monitor, and approved certain fees and disbursements of the Monitor and its counsel, with the relief granted therein applied retroactively to July 17, 2023.

12. On August 4, 2023, the Debtors filed the *Motion Pursuant to Sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code and Bankruptcy Rule 9006, for Entry of an Order (I) Recognizing and Enforcing the Second Extension Order and (II) Granting Related Relief* [D.I. 33] and on August 17, 2023, the Court entered the *Order Granting Motion Pursuant to Sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code and Bankruptcy Rule 9006, for Entry of an Order (I) Recognizing and Enforcing the Extension Order and (II) Granting Related Relief* [D.I. 35], recognizing the First Extension Order.

13. On August 17, 2023 the Canadian Court entered the *Second Extension Order*.

THE SECOND EXTENSION ORDER

14. The Second Extension Order: (i) extends the Stay Period and relief granted in the Amended and Restated Initial Order through and including September 29, 2023; (ii) approves the activities of the Monitor through the date of the Second Extension Order; and (iii) approves certain fees and disbursements of the Monitor and its counsel. Attached hereto as **Exhibit B** is the *Third*

Report of FTI Consulting Canada Inc., as Monitor, dated August 15, 2023, which provides an update on the Canadian Proceedings, including the SISP, the claims process in the Canadian Proceedings, the wind-down of the Debtors' operations, a summary of the Monitor's activities in the Canadian Proceeding, and details on the fees and expenses of the Monitor and its counsel.

RELIEF REQUESTED

15. The Foreign Representative seeks entry of the Proposed Order recognizing and enforcing in the United States the Second Extension Order and granting related relief.

BASIS FOR RELIEF

16. Pursuant to the Recognition Order, this Court has recognized the Canadian Proceeding as a foreign main proceeding. Where a foreign case is recognized as a foreign main proceeding, a bankruptcy court may grant "any appropriate relief" to "effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. §1521(a). Pursuant to section 1522 of the Bankruptcy Code, the court may grant relief under section 1521 only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected. 11 U.S.C. § 1522; *see also In re Energy Coal S.P.A.*, 582 B.R. 619 (LSS) (Bankr. D. Del. 2018). "The analysis under § 1522 is one of balancing the respective interests based on the relative harms and benefits in light of the circumstances presented." *In re Better Place, Inc.*, 2018 Bankr. LEXIS 322 at *19 (LSS) (Bankr. D. Del. Feb. 5, 2018) (citations omitted).

17. As a separate basis for recognition of foreign orders, section 1507(a) of the Bankruptcy Code also permits a court to "provide additional assistance to a foreign representative" provided such assistance is consistent with the principles of comity and satisfies the factors set forth in section 1507(b) of the Bankruptcy Code. 11 U.S.C. § 1507. In addition, section 1525(a) of the Bankruptcy Code provides that, "[c]onsistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative." 11 U.S.C. § 1525(a).

18. Here, recognition of the Second Extension Order is vital to the Debtors' successful reorganization in the Canadian Proceeding. As noted in the Hall Declaration, one of the Debtors' goals in initiating the Canadian Proceeding was to conduct a sale of the Debtors' business and assets through the SISP, which was approved by the Canadian Court in the Amended and Restated Initial Order and recognized through this Court in the Recognition Order. The Monitor and the Debtors received multiple qualified bids for the Debtors' assets in connection with the SISP, none of which were for the operations as a going concern of the Debtors; they focused on the Debtors' intellectual property and DPX platform. Further, the Debtors' secured lender Horizon Technology Finance Corporation ("Horizon") is currently undertaking due diligence and, upon information and belief, intends to submit a credit bid under the SISP. By extending the Stay Period and the other relief granted in the Amended and Restated Initial Order through and including September 29, 2023, the Second Extension Order grants the Debtors additional breathing room to finalize the SISP and achieve the best possible result for creditors and stakeholders through the SISP. In addition, the Debtors are in the process of winding down their operations, including the wind-down of clinical trials, and are working to complete their claims process. The extension of the Stay Period ensures that the Debtors are able to focus on these key tasks, while remaining protected by the relief granted in the Amended and Restated Initial Order. Further, approval of the Monitor's activities and approval of the Monitor's and its counsel's fees and disbursements are critical to both the SISP and the claims process, as the Monitor is a central party in reviewing and evaluating bids for the Debtors' assets, negotiating with Horizon with respect to its potential credit bid, and interfacing with potential claimants in the claims process.

19. Recognition of the Second Extension Order here ensures that the relief granted by the Canadian Court is likewise granted to the Debtors in the United States. Indeed, recognition of

the Second Extension Order is consistent with the principles of comity, as it would give further effect to an order of the Canadian Court and ensure that the Canadian Proceeding, SISP, wind-down of the Debtors' operations, and claims process are not undermined by attempts by parties to act within the United States and outside of the Canadian Proceeding. Finally, recognition of the Second Extension Order is consistent with the relief already granted by this Court in the Recognition Order. Thus, the relief sought in this Motion should be granted pursuant to sections 105(a), 1507(a), 1521(a), and 1525(a) of the Bankruptcy Code.

NOTICE

20. The Foreign Representative will provide notice of this Motion to the Notice Parties as defined in the *Order (A) Scheduling Hearing on Recognition of Chapter 15 Hearing and Specifying Form and Manner of Service of Notice* [D.I. 16]. The Foreign Representative respectfully requests that, in light of the nature of the relief requested, no other or further notice of the Motion need be given.

CONCLUSION

WHEREFORE the Foreign Representative respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

[Signature Page Follows]

Dated: August 25, 2023
Wilmington, Delaware

Respectfully Submitted,

/s/ Kenneth A. Listwak

TROUTMAN PEPPER HAMILTON SANDERS LLP

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Counsel to the Foreign Representative

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

IMV Inc., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 23-10589 (KBO)

(Jointly Administered)

Hearing Date: Sept. 26, 2023 at 2:00 p.m. (ET)

Objection Deadline: Sept. 8, 2023 at 4:00 p.m. (ET)

**NOTICE OF MOTION PURSUANT TO SECTIONS 105(a), 1507, 1521, AND 1525 OF
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9006, FOR ENTRY OF AN
ORDER (I) RECOGNIZING AND ENFORCING THE SECOND EXTENSION ORDER
AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on August 25, 2023, IMV Inc., in its capacity as the duly-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtors, filed the attached *Motion Pursuant to Sections 105(a), 1507, 1521, and 1525 of The Bankruptcy Code and Bankruptcy Rule 9006, for Entry of an Order (I) Recognizing and Enforcing The Second Extension Order and (II) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel to the Foreign Representative on or before **September 8, 2023 at 4:00 p.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **September 26, 2023 at 2:00 p.m. (ET)** at the United States Bankruptcy Court for the District of Delaware before the Honorable Karen B. Owens, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that a copy of the Motion can be obtained for a fee through the Bankruptcy Court’s website at www.deb.uscourts.gov, or, upon request, from the undersigned counsel.

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers, are: IMV Inc. (6991); IMV USA Inc. (4184) (“IMV USA”); and Immunovaccine Technologies Inc. (6772) (“IVT”). The location of the Debtors’ headquarters and the Debtors’ foreign representative is: 130 Eileen Stubbs Avenue, Suite 19, Dartmouth, Nova Scotia B3B 2C4.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 25, 2023
Wilmington, Delaware

Respectfully Submitted,

/s/ Kenneth A. Listwak

TROUTMAN PEPPER HAMILTON SANDERS LLP

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Counsel to the Foreign Representative

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

IMV Inc., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 23-10589 (KBO)

(Jointly Administered)

Re: D.I. ____

ORDER GRANTING MOTION PURSUANT TO SECTIONS 105(A), 1507, 1521, AND 1525 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9006, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE SECOND EXTENSION ORDER AND (II) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of IMV Inc., in its capacity as the duly appointed foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code; and the Court finding that the relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted; and the Court having found that the interests of the Debtors’ creditors in the United States are sufficiently protected; and after due deliberation and sufficient cause appearing therefor,

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers, are: IMV Inc. (6991); IMV USA Inc. (4184) (“IMV USA”); and Immunovaccine Technologies Inc. (6772) (“IVT”). The location of the Debtors’ headquarters and the Debtors’ foreign representative is: 130 Eileen Stubbs Avenue, Suite 19, Dartmouth, Nova Scotia B3B 2C4.

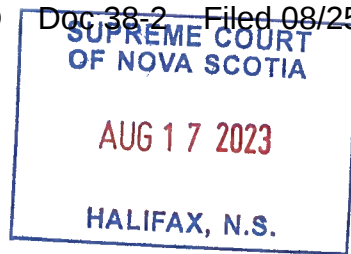
² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Court recognizes the Second Extension Order, attached hereto as **Exhibit 1**, which is hereby given full force and effect in the United States in its entirety.
3. Pursuant to sections 105(a), 1507, 1521, and 1525 of the Bankruptcy Code, the Foreign Representative, the Debtors, and the Monitor (as well as each of their respective officers, employees and agents) are authorized to take any and all actions necessary or appropriate to implement the Second Extension Order and this Order.
4. All objections to the entry of this Order that have not been withdrawn, waived, settled, or otherwise resolved, are denied and overruled on the merits, with prejudice.
5. This Order shall be effective and enforceable immediately upon entry.
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.
7. This Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

EXHIBIT 1

Second Extension Order



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**

Second Extension 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 "CCAA") and they applied for an initial order and, now or in the future, other relief under the CCAA 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	McCarthy Tétrault LLP Alain N. Tardif Gabriel Faure François Alexandre Toupin
Monitor, FTI Consulting Canada Inc.	Stewart McKelvey Lawyers Sara L. Scott
Horizon Technology Finance Corporation, as agent	Stikeman Elliott LLP Maria Konyukhova Natasha Rambaran
	Aird & Berlis LLP Miranda Spence Kyle Plunkett

On motion of the Applicants, the following is ordered and declared:

Service and Definitions

1. The service of the Notice of Motion, the associated pleadings, and the supporting documents, as set out in the affidavit of service is hereby abridged and validated so that this Motion is properly returnable today and further service thereof is hereby dispensed with.
2. Service of this Order is permitted at any time and place and by any means whatsoever.

3. All capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order issued on May 5, 2023 in these CCAA proceedings.

Effective Time

4. 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.

Extension of the Stay Period

5. The Stay Period and the application of the Amended and Restated Initial Order is extended until and including September 29, 2023.


Approval of the Monitor's activities and fees

6. The activities of FTI Consulting Canada Inc., in its capacity as monitor (the "Monitor"), up to the date of this Order, as described in the Third Report of the Monitor dated August 15, 2023 (the "Third Report"), are hereby approved.
7. The Monitor has fulfilled its obligations pursuant to the CCAA and the orders of the Court up until and including the date of this Order.
8. The fees and disbursements of the Monitor and its legal counsel, Stikeman Elliott LLP, as detailed in the Third Report as well as the Affidavit of Jeffrey Rosenberg sworn August 15, 2023, attached as Appendix "C" to the Third Report and the Affidavit of Maria Konyukhova, sworn August 15, 2023, attached as Appendix "D" to the Third Report are hereby approved.

General

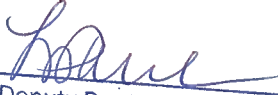
9. This Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
10. The aid and recognition of any Court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order 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.
11. 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 August 17th, 2023



~~Prothonotary~~
LAUREL PAUL
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.

AUG 17 2023


Deputy Prothonotary

Schedule "A" – Service List

2023

Hfx No. 523334

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>McCarthy Tétrault LLP 1000 De La Gauchetière Street West Suite MZ400 Montréal, QC H3B 0A2 <i>Counsel to the Applicants.</i></p>	<p>M^{tre} Alain N. Tardif Tel : 514.397.4274 E-mail : atardif@mccarthy.ca</p> <p>M^{tre} Gabriel Faure Tel: 514.397.4182 E-mail: gfaure@mccarthy.ca</p> <p>M^{tre} François Alexandre Toupin Tel: 514.397.4210 E-mail: fatoupin@mccarthy.ca</p>
<p>Stewart McKelvey Queen’s Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2 <i>NS Counsel to the Applicants</i></p>	<p>M^{tre} Sara L. Scott Tel : 514.397.4274 E-mail : sscott@stewartmckelvey.com</p>
<p>Aird & Berlis LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 <i>Counsel to the Horizon Technology Finance Corporation, as agent</i></p>	<p>M^{tre} Miranda Spence Tel : 416.865.3414 E-mail : mspence@airdberlis.com</p> <p>M^{tre} Graham Topa Tel: 416.865.4739 E-mail : gtopa@airdberlis.com</p> <p>M^{tre} Kyle Plunkett Tel: 416.865.3406 E-mail : kplunkett@airdberlis.com</p>
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EXHIBIT B

Third Report of FTI Consulting Canada Inc., as Monitor

EXHIBIT B AVAILABLE UPON REQUEST