

Robinson, Jim

From: Conway, Madam Justice Barbara (SCJ) <Barbara.Conway@scj-csj.ca>
Sent: Friday, October 16, 2020 1:42 PM
To: Noel, Mike; JUS-G-MAG-CSD-Toronto-SCJ Commercial List; scott bomhof; Adam Slavens; Linda Galessiere; skukulowicz@cassels.com; ssopic@stikeman.com; iomoruna@dv-law.com; amacfarlane@blg.com; mcitak@grllp.com; jeffrey.mispagel@lw.com; Meakin, Nigel; Robinson, Jim
Subject: [EXTERNAL] RE: GNC Holdings, Inc. et al - Court File No.: CV-20-00642970-00CL - Orders, Endorsement Correspondence and Counsel Slip for today's 10:00 am hearing
Attachments: Counsel slip for Oct 16 hearing.pdf; Signed Recognition Order (Final) - Oct 16 2020.pdf; GNC Order re Approval of Information Officer Fees and Activities October 16 2020.pdf
Importance: High

Two motions proceeded before me today by Zoom. The counsel slip is attached.

The first is the Foreign Representative's motion for an order, pursuant to s. 49 of the CCAA, recognizing the Confirmation Order and the Additional U.S. Orders granted by the US court, all as defined in the motion materials. The Confirmation Order approves a plan of reorganization of GNC Holdings, Inc. and its Debtor Affiliates (the Plan) following the asset sale transaction to Harbin Pharmaceutical Group Holding Co., Ltd. The Plan provides for the winddown of the Debtors, the distribution of proceeds from the Harbin sale agreement and settlement of creditors' claims, and the grant of certain releases, exculpations and injunctions. The Plan was overwhelmingly approved by the voting creditors of the various Debtors.

The request to the US court for the Confirmation Order (and for the findings made by that court in the order) was supported by a declaration of Robert A. Del Genio (of FTI Consulting, Inc. in New York) dated October 13, 2020, which specifically states that the Plan provides for a greater recovery for creditors than they would receive in a liquidation. Gregory Berube (of Evercore Croup LLC, the Debtors' investment banking and advisory firm) also filed a declaration dated October 13, 2020 that states his belief that the Plan is in the best interests of the Debtors, their estates, creditors and other parties involved in the Chapter 11 cases.

I am satisfied that the Confirmation Order should be recognized by this court. The court has the jurisdiction to approve a joint plan of reorganization, including recognition of a US plan confirmation order, and this court has previously stated that doing so is consistent with the purposes of Part IV of the CCAA: see *Xerium Technologies Inc., Re*, 2010 ONSC 3974. I am further satisfied that the Additional U.S. Orders should be granted, as they were obtained by the Debtors to facilitate their restructuring efforts and, among other things, minimize the adverse effects of the Chapter 11 cases on their business.

I required counsel to include additional language in the Recognition Order to ensure that the order will not have the effect of releasing claims against the directors and officers of Vitamin Oldco Centres Company (formerly General Nutrition Centres Company) that cannot be compromised pursuant to s. 5.1(2) of the CCAA. They have revised the order accordingly.

I have signed the Recognition Order and attached it to this email.

As agreed by the Foreign Representative and Shape Properties (Lougheed) Corp., the discharge of the registration listed in Schedule "B" to the Recognition Order dated October 16, 2020 shall not be registered until the later of: (i) the expiration of the time for Shape Properties (Lougheed) Corp. to file a claim in accordance with the Claims Bar Order of the US Bankruptcy Court dated July 21, 2020 (the "Bar Order") without a claim

being filed; or (ii) if a claim is filed in accordance with the Bar Order, the date that such claim is finally determined in accordance with the Bar Order. Counsel for Shape Properties (Lougheed Corp.) shall notify Torys LLP of the status of any claim filed by Shape Properties (Lougheed) Corp.

The second motion before me is the Information Officer's motion for approval of its fees/disbursements and those of its counsel. The Information Officer also seeks approval of its activities as set out in its four reports to this court. The motion is unopposed. I have reviewed the motion record and in particular the two affidavits in support of the fee and disbursement approval. I am satisfied that the fees and disbursements are reasonable and should be approved. I am also approving the Information Officer's activities as set out in the four reports.

I have signed the requested order and attached it to this email.

These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.

Superior Court of Justice (Toronto)