

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-064451-244

DATE: December 6 2024

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OF ARRANGEMENT OF:

LIEBEL-FLARSHEIM CANADA INC.

and

9431-0091 QUÉBEC INC.

and

9190-2395 QUÉBEC INC.

and

9528-1960 QUÉBEC INC.

and

9528-1986 QUÉBEC INC.

Debtors

FTI CONSULTING CANADA INC.

Monitor

DISTRIBUTION ORDER

[1] **CONSIDERING** the Initial Order granted by this Court on July 26, 2024 (as amended and restated on August 6, 2024 and on September 20, 2024, the “**Initial Order**”)

the Approval and Vesting Order granted by this Court on November 21, 2024 (the “**Approval Order**”)¹ ;

[2] **CONSIDERING** that the Monitor has issued the Certificate of the Monitor as contemplated in Approval Order and now wishes to distribute the proceeds which it has collected pursuant to the approved transactions which total, after adjustments, 30 541 736\$ (the “**Proceeds**”);

[3] **CONSIDERING** the *Application for the Issuance of a Distribution Order* (the “**Application**”) filed by FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”) in its capacity as court-appointed monitor of the Debtors;

[4] **CONSIDERING** that the Application was served on the Service List, and in particular, on all secured creditors and that several of them appeared before the Court today and that no one is contesting the Application;

[5] **CONSIDERING** the powers of this Court under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”);

[6] **CONSIDERING**, generally, the recommendation of the Monitor and, in particular, considering the following elements which the Court draws from the testimony of the Monitor’s representative, Martin Franco, from the exhibits filed in support of the Application and from counsel’s representations, namely:

- 6.1. The proposed distribution is set out in exhibit R-2 (the **Distribution**).
- 6.2. The allocation of the Proceeds between Liebel-Flarsheim Canada Inc. (**LFC**), 9431-0091 Québec inc. (**RealCo**) and MedXL reflects what is set out in the agreements which were approved by this Court in the Approval Order.
- 6.3. The Monitor has deducted from the Proceeds the cure costs, as was foreseen in the Approval Order. No creditor has contested the amount set out as cure costs, save for one creditor and for an amount which is not material for the purposes of the Distribution, given the sums which the Monitor will continue to hold after the Distribution.
- 6.4. The Monitor has deducted from the Proceeds the amounts which could be payable to employees as a result of the operation of s. 81.3 of the *Bankruptcy and Insolvency Act*.
- 6.5. Briva, the Interim and Supplementary Interim Lender, has been reimbursed or will shortly be reimbursed all sums owing to it.

¹ *Arrangement relatif à MedXL*, 2024 QCCS 4268; and the reasons provided in support thereof of November 22 and rectified on November 27, 2024 are found at *Arrangement relatif à MedXL*, 2024 QCCS 4269.

- 6.6. After considering several scenarios, the Monitor allocated the amounts owed to Briva amongst LFC, RealCo and MedXL. His explanations for doing so are convincing.
- 6.7. Despite the CCAA charges ordered or restated in the *Second Amended and Restated Initial Order*², all the beneficiaries of such charges agree to the Distribution, notwithstanding any Charges they may hold.
- 6.8. The Monitor reviewed the security held by each of the secured creditor's beneficiaries under the Distribution and is satisfied that for each creditor who will benefit from the Distribution, each beneficiary holds valid and enforceable security which entitles it to participate in the Distribution.
- 6.9. For the purposes of preparing the Distribution, the Monitor allocated the Proceeds relating to MedXL amongst four distinct headings : receivables, inventory, equipment and intangible assets as set out in Appendix B of R-2. The Monitor's representative convincingly explained its reasoning for so doing.
- 6.10. Extensive discussions were held regarding the Distribution with the secured creditors. The Distribution is the result of concessions made on all their parts. Investissement Québec's (IQ) counsel has relayed its client's opinion, which is not shared by the Monitor, that IQ could have been consulted earlier in the process. Regardless, IQ's counsel does confirm that IQ does not contest the Distribution.
- 6.11. The absence of contestation by the Attorney General of Canada to paragraph 15 hereof is subject to the same reserves as those the Court has set out in the rectified Approval Order.

FOR THESE REASONS, THE COURT:

[7] **GRANTS** the Motion;

SERVICE

[8] **ORDERS** that the time for service of the Application is hereby abridged and validated, if necessary, so that the Application is properly returnable today and hereby **DISPENSES** with further service thereof.

[9] **PERMITS** service of this Order at any time and by any means whatsoever.

² *Arrangement relatif à MedXI Inc.*, 2024 QCCS 3572.

DEFINITIONS

[10] **DECLARES** that, unless otherwise indicated, the capitalized terms in this Order shall have the meanings ascribed thereto in the Initial Order and the Approval Order.

DISTRIBUTION OF NET PROCEEDS

[11] **ORDERS** that the waterfall filed as Exhibit R-2 to the Application (the "**Waterfall**") is hereby approved, and that the Monitor is hereby authorized, without further order of this Court, to proceed with the distribution of the net proceeds realized from the transactions previously approved by this Court as part of the Approval Order (the "**Net Proceeds**"), as well as any other proceeds held in the trust account of the Monitor (if any), all in accordance with the waterfall filed as Exhibit R-2 to the Application, subject to the prior payment of the claims secured by the CCAA Charges (as defined in the Initial Order).

[12] **ORDERS** that this Order shall constitute the only authorization or approval required by the Monitor to proceed with the distribution contemplated in paragraph [11] hereof (the "**Distribution**"), and that the Monitor is hereby authorized to take all necessary steps and actions to effect such Distribution.

[13] **ORDERS** that the Monitor shall not incur any liability as a result of making the Distribution in accordance with paragraph [11] hereof, or taking any steps or actions deemed necessary to effect the Distribution in accordance with paragraph [12] hereof.

[14] **ORDERS** that, notwithstanding:

- a) the pendency of these CCAA proceedings;
- b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) (the "BIA") or other applicable legislation in respect of the Debtors and any bankruptcy or receivership order issued pursuant to any such applications;
- c) any assignment in bankruptcy made in respect of the Debtors; and
- d) provisions of any federal or provincial legislation,

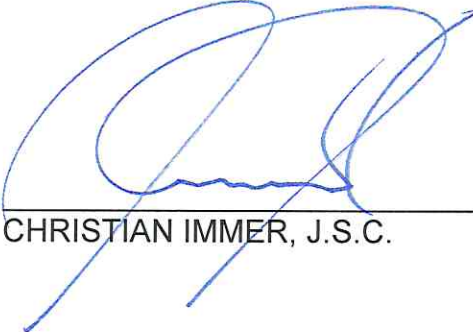
the Distribution shall be made free and clear of all Encumbrances (as defined in the Approval Order), and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Debtors and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

[15] **ORDERS AND DECLARES** that any distributions, disbursements or payments made in accordance with this Order, including the Distribution contemplated in paragraph [11] hereof, shall not constitute a “distribution” by the Monitor, for the purposes of section 14 of the Tax Administration Act (Québec), section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), section 46 of the Employment Insurance Act (Canada), or any similar federal, provincial, territorial or municipal tax legislation (collectively, the “**Tax Statutes**”) and the Monitor, in making such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, including for the purpose of effecting the Distribution contemplated in paragraph [11] hereof, and is not exercising any discretion in making such distributions, disbursements or payments and the Monitor is not “distributing” any assets or funds under any provincial or federal statute or regulation, and the Monitor shall not incur any liability under the Tax Statutes in respect of distributions, disbursements or payments made by it and the Monitor is hereby forever released, remised and discharged from any and all claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of any distributions, disbursements or payments made by it in accordance with this Order, and any such claim are hereby forever barred.

[16] **APPROVES** the activities of the Monitor, up to the date of this Order, as described in its reports filed with the Court, in the Application and in the testimony of its representative at the hearing on the Application, and confirms that the Monitor has fulfilled its obligations pursuant to the CCAA and the orders of this Court up until the date of this Order.

[17] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

[18] **THE WHOLE WITHOUT COSTS.**



CHRISTIAN IMMÉR, J.S.C.

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Hearing date: December 6, 2024