

**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**

**AFFIDAVIT**

I, Andrew Hall, of the City of Gilette, in the State of New Jersey, make oath and give evidence as follows:

- 1. This affidavit is made in support of motion by the Debtors / Applicants IMV Inc., Immunovaccine Technologies Inc. (“**IVT**”) and IMV USA Inc. (“**IMV USA**” and collectively with IMV Inc. and IVT, “**IMV**” or the “**Applicants**”) for an Extension Order (the “**Second Extension Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
- 2. I am the Chief Executive Officer of IMV Inc. and I am also President of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with the legal, financial and other advisors to the Applicants, as well as members of the Applicants’ senior management team. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.
- 3. All references to monetary amounts in this Affidavit are in Canadian dollars unless otherwise noted, and do not represent amounts or measures prepared in accordance with US GAAP.

4. This Affidavit is organized in the following sections:

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## I. Introduction

- On May 1, 2023, the Applicants obtained protection under the CCAA pursuant to an initial order (the “**Initial Order**”) of the Nova Scotia Supreme Court (the “**Court**”). The Initial Order, among other things, appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these proceedings (the “**CCAA Proceedings**”) and provided an initial stay of proceedings until and including May 5, 2023 (the “**Stay Period**”).
- On May 5, 2023, the 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 approved a sale and investment solicitation process (the “**SISP**”) to solicit offers for a broad range of executable transactions in respect of the business and/or assets of the Applicants.
- On July 17, 2023, the Court granted an Extension Order which, among other things, extended the Stay Period until and including August 18, 2023.
- IMV sought CCAA protection because it required the flexibility of the CCAA and breathing space from the exercise of creditor remedies in order to continue the review of its strategic alternatives initiated prior to the commencement of the CCAA Proceedings. IMV entered the CCAA Proceedings with the objective of implementing one or more transaction(s), as the case may be, which would allow IMV’s business to continue, albeit in a different form, for its DPX technology to continue to be developed in the hope that it can one day change the lives of patients with cancer.
- As described in greater detail below, at the motion returnable August 17, 2023 before the Court, the Applicants are seeking the Second Extension Order to, among other things, extend the Stay Period until and including September 29, 2023, and approve the fees and activities of the Monitor and its counsel.

## II. Overview of the Applicants' Activities Since the ARIO

10. Since the granting of the ARIO, IMV, in close consultation and with the assistance of the Monitor, has been working in good faith and with due diligence to stabilize its business and operations.
11. The Foreign Representative of the Applicants initiated proceedings under Chapter 15 of the United States Bankruptcy Code (the "**U.S. Code**") on May 8, 2023. On May 9, 2023, IMV obtained an order under Chapter 15 of the U.S. Code for recognition of the CCAA Proceedings as the "Foreign Main Proceeding".
12. IMV has assisted the Monitor with the implementation of the SISP approved as part of the CCAA Proceedings.
13. IMV, with the assistance of the Monitor, has also engaged in ongoing discussions with its stakeholders, including suppliers, creditors and employees, regarding the CCAA Proceedings and responded to requests for information from certain of such parties.
14. In addition, IMV, with the assistance of the Monitor, has also worked to resolve issues arising with its stakeholders.
15. Furthermore, as authorized pursuant to the ARIO, IMV proceeded to disclaim 16 unprofitable contracts and leases. No counterparty contested the disclaimers within the period provided for under the CCAA to do so. IMV intends to issue another disclaimer notice in the coming days.
16. Finally, IMV worked, in consultation with the Monitor, to review and update its cash flow projections for its receipts and disbursements for the period up to and including September 29, 2023.

## III. The SISP<sup>1</sup>

17. As previously stated to the Court in my prior affidavits, a successful restructuring of IMV was only possible with the implementation of one or more transactions in respect of the business and/or assets of the Applicants. As a result, the outcome of the CCAA Proceedings hinges on the outcome of the sale and investment solicitation process (the "**SISP**") approved as part of the ARIO and which was implemented in the context of the CCAA Proceedings.

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<sup>1</sup> Capitalized terms used in this section and not otherwise defined have the meanings ascribed to them in the SISP

18. Since the approval of the SISP, the Monitor, with the assistance of its affiliate, FTI Capital Advisors, and with input from IMV, has been conducting the SISP in accordance with the bidding procedures of the SISP approved by this Court (the “**SISP Procedures**”). The following steps were promptly taken after the approval of the SISP in connection with its implementation:
- (a) the Monitor, with the assistance of IMV, developed a list of known potential bidders and provided them with a summary (the “**Teaser**”) regarding the opportunity and outlining the process under the SISP and inviting them to participate in the SISP. I am informed that the Teaser was sent to 575 potential bidders;
  - (b) I am informed that the Monitor arranged for the notice of the SISP to be published in The Globe and Mail (National Edition), La Presse+ and the Wall Street Journal;
  - (c) I am informed that several interested potential bidders were provided with a confidential information package and access to a data room after executing a non-disclosure agreement.
19. As set out in the SISP, the bid deadline for non-binding Sale Proposal or Investment Proposal bids (“**LOI’s**”) was 5:00 pm (Halifax Time) on June 19, 2023. Multiple LOIs were received by this deadline (the “**LOI Deadline**”). The Monitor, in consultation with IMV, reviewed the LOIs received by the LOI Deadline and determined that multiple appropriate parties would proceed to the next phase and be invited to submit a Qualified Bid.
20. The Monitor and IMV, in consultation with its secured creditor, Horizon Technology Finance Corporation (“**Horizon**”), made the determination as to which of the Prospective Bidders were Qualified Bidders and the Prospective Bidders were promptly informed of this determination.
21. In order to continue to participate in the SISP, a Qualified Bidder was required to deliver a Qualified Purchase Bid or Qualified Investment Bid to the Monitor by no later than 5:00 pm (Halifax Time) on July 10, 2023 (the “**Bid Deadline**”). The Monitor received multiple bids in accordance with the SISP Procedures by the Bid Deadline. None of the bids received were for the operations as a going concern of IMV; they focused on IMV’s intellectual property and DPX platform.

22. Further to the Bid Deadline, Horizon, informed the Monitor that it intended to submit a Credit Bid in accordance with the SISP Procedures subject to completing its due diligence.
23. As at the date hereof, Horizon is continuing its due diligence process. However, I am informed by the Monitor, and truly believe, that it is still Horizon's intention to submit a Credit Bid.
24. IMV intends to be back in Court before September 29, 2023, for a further update and the approval of a potential Credit Bid transaction pursuant to the SISP Procedures as well as a partial distribution to Horizon.

#### **IV. The Wind-down of IMV's Clinical Trials**

25. From the outset of the CCAA Proceedings, IMV represented to the Court that it was committed to taking all the necessary measures to minimize any disruptions to the ongoing clinical trials and to limit any inconveniences for the patients involved in these clinical trials, who are already suffering as a result of their condition.
26. As outlined above, interest for IMV and its assets was focused on IMV's intellectual property and DPX platform. In the absence of interest from potential purchasers to continue ongoing clinical trials, IMV needed to take the necessary steps to initiate an orderly wind-down of its clinical trials while ongoing discussions with respect to a possible transaction continue.
27. Leading up to the filing of the motion returnable on July 17, 2023, for the issuance of an extension order, IMV, in collaboration with its consultants, outlined a clinical wind-down plan (the "**Wind-Down Plan**") and researched special access programs (the "**Special Access Programs**") (e.g. Expanded Access in the US, Compassionate Use, etc.) per jurisdiction and regulatory agency in the event that a wind-down of clinical trials was required.
28. In some jurisdictions, these programs could allow for the site investigator to continue to oversee and accept responsibility for a patient's care and IMV's only responsibility would be to supply sufficient drug product. IMV has ample drug product to complete treatment per protocol for all remaining active patients.
29. In accordance with the Wind-Down Plan, IMV terminated the employment of all but nine of its remaining employees since July 17, 2023. The remaining nine employees are being retained solely to assist with the wind down of the clinical trials and the Wind-Down Plan, and the sale of the lab and asset with the closing of a transaction.

30. The wind-down of clinical trials has been initiated and is being conducted with the involvement of IMV's remaining employees, in collaboration with IMV's consultants, the investigators and the various sites.
31. IMV has started reaching out to the regulatory agencies for clarification, guidance and support of the Wind-Down Plan. IMV has also started contacting the investigators at each site with active patients to provide them a package outlining their responsibilities to transfer the patient to a Special Access Program specific to each regulatory jurisdiction. The investigators were given until August 8, 2023, to accept or decline whether they will transfer the actively treated patients to a Special Access Program.
32. From the nine (9) actively treated patients which were expected to be impacted by the wind-down of the clinical trials, two (2) will be transferred to a Special Access Program. For the other seven (7) patients, the investigators have declined either because the patients had progressed or for other reasons. Those seven (7) patients will therefore be removed from the studies.
33. IMV remains committed to ensuring that the Wind-Down Plan will be implemented efficiently, while minimizing to the greatest extent possible any disruptions for the patients.

## **V. Certain relief sought as part of the Extension Order**

### **A. The Extension of the Stay Period**

34. The Applicants are seeking to extend the Stay Period until and including September 29, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the completion of the wind-down of the clinical trials while IMV finalizes the SISP and seeks the approval of a transaction. The extension of the Stay Period will also allow IMV to continue the ongoing claims process, which provides for a claims bar date of August 31, 2023 for the filing of claims against directors and officers of IMV.
35. As will be demonstrated by the cash flow forecast which will be attached as a schedule to the third report of the Monitor to be filed in support of the relief sought (the "**Third Report**"), IMV has sufficient funds to get through the Stay Period, including a provision for the payments under the KERP and the payments to the critical suppliers, if required.
36. I believe that IMV has acted and is continuing to act in good faith and with due diligence in the CCAA Proceedings since the granting of the Initial Order.

- 37. All stakeholders generally, including creditors, will be prejudiced from the extension of the Stay Period.
- 38. Furthermore, I am informed by counsel to the Monitor, and believe it to be true that Horizon supports IMV’s request for the extension of the Stay Period.

**B. Approval of the Monitor’s Fees and Activities**

- 39. Pursuant to the Second Extension Order, IMV requests this Court’s approval of the fees and activities of the Monitor and its counsel as detailed in the Third Report.
- 40. I believe that the fees and activities of the Monitor and its counsel are comparable to the hourly rates charged by other firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring matters and are therefore reasonable in the circumstances.

**VI. Conclusion**

- 41. I believe that IMV has acted in good faith and with due diligence since the issuance of the Initial Order.
- 42. I am confident that the granting of the Second Extension Order sought by the Applicants is in the best interests of IMV and its stakeholders.
- 43. I swear this Affidavit in support of the request of the Applicants for the issuance of a Second Extension Order and for no other or improper purpose.

Sworn to before me at Montréal, Province of Québec on the 15<sup>th</sup> day of August, 2023 )

*Gene Lerocelle #88375*

A commissioner for taking affidavits in the Province of Quebec and outside of Québec )

*Andrew Hall*

Andrew Hall, Chief Executive Officer