

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 “**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 François Alexandre Toupin
	Stewart McKelvey Lawyers Sara L. Scott
Monitor, FTI Consulting Canada Inc.	Stikeman Elliott LLP Maria Konyukhova Natasha Rambaran
Horizon Technology Finance Corporation, as agent	Aird & Berlis LLP Miranda Spence Kyle Plunkett

WHEREAS on May 1, 2023, this Court granted an Initial Order under the CCAA 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:

- (a) amending the ARIO in order to *inter alia* expand the powers of the Monitor;
- (b) amending the Claims Process Order to authorize the Monitor and the Applicants to stop processing Claims and to dispense them from any further obligation to review certain Proofs of Claim filed and value the amounts and terms set out therein for voting and distribution purposes;
- (c) 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;
- (d) extending the Stay Period until and including October 27, 2023; and
- (e) approving the fees and activities of the Monitor and its legal counsel.

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. 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 ARIO or the Claims Process Order in these CCAA proceedings, as the context requires.

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 (the "**Effective Time**").

Extension of the Stay Period

5. The Stay Period and the application of the ARIO is extended until and including October 27, 2023.

Amendments to the ARIO

6. In addition to the powers and duties of the Monitor set out in the ARIO or any other Order of this Court in these proceedings (the "**CCAA Proceedings**"), and without altering in any way the limitations and obligations of the Applicants as a result of the CCAA Proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:
 - (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of the Applicants in order to facilitate the performance of any ongoing obligations of the Applicants and to carry out the Monitor's duties under this Order or any other Order of this Court in these CCAA Proceedings;
 - (b) execute administrative filings as may be required on behalf of the Applicants;
 - (c) exercise any powers which may be properly exercised by a board of directors of the Applicants;
 - (d) engage, retain, or terminate the services of, or cause the Applicants to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor and on terms as agreed to by the Monitor;
 - (e) cause the Applicants to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Applicants, the distribution of any proceeds of the Applicants' Property, or any other related activities, including in connection with terminating these CCAA Proceedings;
 - (f) conduct, supervise and direct the continuation or commencement of any process or effort to recover any Property or other assets of the Applicants and their affiliates (including any accounts receivable or cash);
 - (g) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicants in the name of or on behalf of the Applicants;
 - (h) claim or cause the Applicants to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which the Applicants are entitled;

- (i) exercise any shareholder, partnership, joint venture or other rights of any of the Applicants;
 - (j) access all books and records that are the property of the Applicants in the Applicants' possession or control or the same access as the Applicants under the Purchase Agreement to any books and records no longer in the Applicants' control or possession;
 - (k) facilitate or assist the Applicants and their affiliates with accounting, tax and financial reporting functions, including the preparation of cash flow forecasts, employee-related remittances, T4 statements and records of employment, in each case based solely upon the information provided on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements and records;
 - (l) act as an authorized representative of the Applicants and/or their affiliates in respect of dealings with the Canada Revenue Agency (the "CRA") or any taxing authority, and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Applicants and/or their affiliates that the CRA or any taxing authority may require in order to confirm the Monitor's appointment as an authorized representative for such purposes;
 - (m) consult with CRA with respect to any issues arising in respect of these CCAA Proceedings;
 - (n) sign documentation or take other steps as necessary to cause or implement the dissolution or winding-up of the Applicants and/or their affiliates;
 - (o) assign the Applicants or cause the Applicants to be assigned into bankruptcy, and that FTI Consulting Canada Inc. is authorized and empowered to act as trustee in bankruptcy of each of the Applicants or to engage a third party to act as trustee in bankruptcy of each of the Applicants;
 - (p) cause the dissolution or winding-up of any of the Applicants;
 - (q) apply to this Court for advice and directions or any further orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court, including for advice and directions with respect to any matter; and
 - (a) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
7. Subparagraph 15(c) of the ARIO is hereby deleted in its entirety and replaced with the following:
- (c) with the consent of the Collateral Agent, convey, transfer, assign, lease, or in any other manner dispose of the Property outside the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$1,200,000 or \$1,500,000 in the aggregate.

8. The Applicants and the Monitor be and are hereby authorized and directed to distribute to Horizon Technology Finance Corporation (“Horizon”), in its capacity as collateral agent for itself and Powerscourt Investments XXV, LP, such additional amounts as may become available as repayment for any amounts owing by the Applicants to Horizon pursuant to the Venture Loan and Security Agreement dated as of December 17, 2021.
9. The banks and/or financial institutions which maintain the Applicants' Cash Management System (which includes for the avoidance of doubt, each of the Applicants' bank accounts) are directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Applicants in connection with such Cash Management System and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute documents for or on behalf of and in the name of any of the Applicants and shall be empowered and permitted to add and remove persons having signing authority with respect to the Applicants' Cash Management System. The financial institutions maintaining such Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the Applicants and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person.
10. Notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of the Applicants.
11. Without limiting the provisions of the ARIO or any other Order of this Court in these CCAA Proceedings, the Applicants shall remain in possession and control of their Property and Business, and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of the Applicants, or any part thereof.
12. The Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 11.8(1) of the CCAA. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.
13. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the ARIO or any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and the fulfillment of its duties and the carrying out of the provisions of this Order and exercising any powers granted to it hereunder.
14. Nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicants within the meaning of any relevant legislation and that any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the Applicants.
15. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to

such matters and, in the event of a conflict between the terms of this Order and those of the ARIO or any other Order of this Court, the provisions of this Order shall govern.

Amendments to the Claims Process Order

16. Notwithstanding anything to the contrary provided by the Claims Process Order, the Monitor and the Applicants are hereby authorized to stop processing Claims and Claims against the Directors and Officers and are dispensed from any further obligation to review Proofs of Claim filed in the Claims Process and value the amounts and terms set out therein for voting and distribution purposes.
17. The Monitor and the Applicants are hereby authorized to take no further steps in connection with the Claims Process.
18. Notwithstanding (i) paragraphs 16 and 17 of this Order; (ii) the impending termination of these CCAA proceedings; and (iii) any future proceedings commenced by the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), the Claims Bar Dates set forth in the Claims Process Order shall remain in full force and effect. For further clarity, as the status of the Claims Process in these proceedings is final, there is no need for a Trustee appointed in any future BIA proceedings of the Applicants to: (i) commence a further claims process; (ii) accept proofs of claim pursuant to section 124 of the BIA; or (iii) make any determinations with respect to claims pursuant to section 135 of the BIA.

Release and Channeling Injunction

19. 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.

20. 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.

Approval of the Monitor’s activities and fees

21. 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 Fifth Report of the Monitor dated September 22, 2023 (the “**Fifth Report**”), are hereby approved.
22. 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.
23. The fees and disbursements of the Monitor and its legal counsel, Stikeman Elliott LLP, as detailed in the Fifth Report as well as the Affidavit of Jeffrey Rosenberg sworn September 22, 2023, attached as Appendix “C” to the Fifth Report and the Affidavit of Maria Konyukhova, sworn September 22, 2023, attached as Appendix “D” to the Fifth Report are hereby approved.

General

24. This Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
25. 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.
26. 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 , 2023

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*

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