

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)

DECLARATION OF BRITTANY DAVISON IN SUPPORT OF THE MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(a), 363 (AS APPLICABLE), 365, 1507, 1520, 1521, AND 1525 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9006, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING (A) THE CANADIAN COURT’S APPROVAL AND VESTING ORDER AND (B) CERTAIN PORTIONS OF THE CANADIAN COURT’S INTERIM DISTRIBUTION ORDER AND (II) GRANTING RELATED RELIEF

I, Brittany Davison, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the law of the United States as follows:

1. I am the Chief Accounting Officer of IMV Inc. (“IMV” or the “Foreign Representative”), which is the duly-appointed 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”), and commenced the above-captioned chapter 15 cases. I am authorized to provide this declaration on behalf of the Foreign Representative and each of the Debtors. I offer this declaration in support of the *Motion for Entry of an Order Pursuant to Sections 105(a), 363 (as applicable), 365, 1507, 1520, 1521, and 1525 of the Bankruptcy Code and*

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.

*Bankruptcy Rule 9006, for Entry of an Order (I) Recognizing and Enforcing (A) the Canadian Court's Approval and Vesting Order and (B) Certain Portions of the Canadian Court's Interim Distribution Order and (II) Granting Related Relief, filed concurrently herewith (the "Motion")*².

2. I have been the Chief Accounting Officer of IMV since September 15, 2022 and have been the acting Chief Financial Officer since March 31, 2022. Prior to that, I held the position of Senior Vice-President Finance since January 1, 2022 and have held various roles in finance at IMV since joining the company in February 2014. I am also Chief Accounting Officer of each of the other Debtors. As such, I have personal knowledge of the matters deposed to in this declaration. 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 declaration, I have consulted with legal, financial and other advisors to, as well as other members of the senior management team of, the Debtors. The Debtors do not waive or intend to waive any applicable privilege by any statement herein.

3. On April 28, 2023, the Debtors commenced the Canadian Proceeding by filing an application under the CCAA to initiate restructuring proceedings under the supervision of the Canadian Court. On May 1, 2023, the Canadian Court entered the Initial Order, *inter alia*, appointing FTI Consulting Canada Inc. (the "Monitor") as monitor of the Debtors and authorizing IMV to act as Foreign Representative of the Debtors.

4. On May 5, 2023, following a comeback hearing in the Canadian Proceeding, the Canadian Court entered the Amended and Restated Initial Order. Through the Amended and Restated Initial Order, the Canadian Court approved the Debtors' sale and investment solicitation process, referred to as the SISP, and the SISP Procedures, as described below.

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

5. On May 8, 2023 (the “Petition Date”), the Foreign Representative filed the Chapter 15 Petitions and the Verified Petition under section 1515 of the Bankruptcy Code, thereby commencing the Debtors’ chapter 15 cases.

6. 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], which, among other things, recognized the Canadian Proceeding as a foreign main proceeding and recognized and gave effect in the United States to the Amended and Restated Initial Order.

7. On August 3, 2023 the Canadian Court entered the *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. On August 4, 2023, the Debtors filed a motion [D.I. 33] seeking this Court’s recognition of the Canadian Court’s *Extension Order* and on August 17, 2023, the Court entered an order [D.I. 35] granting such motion and recognizing the *Extension Order*.

8. On August 17, 2023 the Canadian Court entered the *Second Extension Order*, which, among other things, extended the Stay Period in the Amended and Restated Initial Order through and including September 29, 2023, approved the activities of the Monitor, and approved certain fees and disbursements of the Monitor and its counsel, through the date of the order. On August 25, 2023, the Debtors filed a motion [D.I. 38] seeking this Court’s recognition of the Canadian Court’s *Second Extension Order*, which is currently pending.

9. On September 1, 2023, the Debtors filed a motion in the Canadian Proceedings that, among other things: (i) sought approval of the Transaction (as defined in the AVO), effectuating

the sale of certain of the Selling Debtors' assets to Horizon Technology Finance Corporation ("Horizon"), as collateral agent (the "Collateral Agent") for the Debtors' secured lenders (the "Secured Lenders") pursuant to the Agreement (as defined in the AVO) and (ii) sought entry of Interim Distribution Order.

10. On September 6, 2023, the Canadian Court entered the AVO and the Interim Distribution Order. The relief granted by the AVO and the Interim Distribution Order is described below.

11. I am advised by counsel that the Motion seeks entry of an order of the Court, pursuant to sections 105(a), 363 (as applicable), 365, 1507, 1520, 1521, and 1525 of the Bankruptcy Code, Bankruptcy Rule 9006, and Local Rule 9006-1: (I) recognizing and giving effect in the United States to (A) the AVO and (B) certain portions of the Interim Distribution Order, each as entered by the Canadian Court in the Canadian Proceeding; and (II) granting related relief.

THE SISP

12. One of the primary goals of initiating the Canadian Proceeding and these chapter 15 cases was to implement the SISP to solicit offers for a broad range of executable transactions in respect of the Debtors' business and/or assets for the benefit of all of the Debtors' stakeholders. Indeed, even prior to the Canadian Proceeding, the Debtors had explored their strategic alternatives following a review of their business, retaining Stonegate to canvas the market—approximately 880 potentially interested parties across 8 different target groups, including both strategic and financial targets, who conduct business in North America, Europe and, to a lesser extent, Asia—for potential investors or buyers to solicit them for the pursuit of a strategic acquisition or merger. Despite the significant efforts expended by the Debtors, with the assistance of Stonegate, to pursue a

restructuring outside of formal insolvency proceedings, the Debtors were unable to secure the additional funding required or implement a transaction in the near term.

13. The Debtors' efforts to market their business and assets continued in the context of the Canadian Proceedings through the implementation of the SISP, conducted in accordance with the SISP Procedures approved by the Canadian Court (attached as Schedule C to the Amended and Restated Initial Order) and which set out the manner in which bids and proposals for a broad range of executable transactions in respect of the business and/or assets of the Debtors were to be solicited from interested parties, negotiated, and, as the case may be, selected and submitted for approval by the Canadian Court. Since the approval of the SISP, the Monitor, with the assistance of its affiliate, FTI Capital Advisors, and with input from the Debtors, has been conducting the SISP in accordance with the SISP Procedures. Specifically, since the SISP was approved by the Canadian Court, I am informed that the following has taken place:

- (a) the Monitor, with the assistance of the Debtors, 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. The Teaser was sent to 575 potential bidders;
- (b) 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*; and
- (c) several interested potential bidders were provided with a confidential information package and access to a data room after executing a non-disclosure agreement.

14. Under the SISP, the bid deadline for non-binding sale proposal or investment bids ("LOI's") was 5:00 pm (Halifax Time) on June 19, 2023 (the "LOI Deadline"). Multiple LOIs were received by the LOI Deadline. The Monitor, in consultation with the Debtors, 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" under the SISP Procedures.

15. The Monitor and IMV, in consultation with the Collateral Agent, made the determination as to which of the prospective bidders were Qualified Bidders and such bidders were promptly informed of this determination.

16. Under the SISP Procedures, 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 two bids in accordance with the SISP Procedures by the Bid Deadline. None of the bids received were for the Debtor’s operations as a going concern; they focused on the Debtor’s intellectual property and DPX platform. I have been informed that, since the Bid Deadline, one of the two aforementioned bidders rescinded its bid. Likewise, it is my understanding from the Monitor that the remaining bid provided for a *de minimis* upfront cash consideration and that the balance of the consideration was dependent on the achievement of various milestones, the achievement of which was uncertain, and therefore provided for a high level of uncertainty in the recovery for the Debtors’ stakeholders.

17. The SISP Procedures provide that if no bid is received in the SISP that contemplates a purchase price sufficient to repay in cash all outstanding amounts owed to the Secured Lenders, the Secured Lenders shall be authorized to submit a credit bid under the SISP.

18. Given that no bids were received which contemplated a purchase price sufficient to repay in cash all outstanding amounts owed to the Secured Lenders, the Collateral Agent informed the Monitor that it intended to submit a credit bid in accordance with the SISP Procedures subject to completing its due diligence.

19. On August 23, 2023, the Collateral Agent submitted a credit bid to the Monitor, which bid was determined to be the “Successful Bid” under the SISP Procedures. The transactions contemplated by that credit bid are memorialized in the Agreement.

THE TRANSACTION

20. The Agreement provides in effect for the purchase, on an as is, where is basis, of the Selling Debtors’ intellectual property portfolio (the “Intellectual Property”) relating to their vaccine platform technology which includes 22 patent families containing 66 issued patents and 77 pending patent applications in 12 jurisdictions. The Agreement also contemplates the assignment of the Assumed Contracts (as defined in the Agreement) to the Collateral Agent or its designee as part of the Transaction—the Assumed Contracts are to be identified by the Collateral Agent, and subsequently assigned, prior to closing.

21. The key terms and conditions of the Transaction are summarized below:³

Key Terms	Agreement
Purchaser	Horizon, as Collateral Agent for the Secured Lenders.
Selling Debtors	IMV and IVT
Sale to an Insider	Horizon is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code
Purchased Assets	All right, title and interest in and to the following rights, properties and assets which are used in, related to or otherwise associated with the Business: (i) the Intellectual Property; (ii) any Assumed Contracts; and (iii) the Books and Records.

³ All capitalized terms used in this paragraph shall have the meaning ascribed to them in the Motion or in the Agreement, as applicable

Key Terms	Agreement
Excluded Assets	All assets, properties and undertakings of the Vendors other than the Purchased Assets, including, for greater certainty: (i) any Cash and Cash Equivalents; (ii) any contracts, agreements or licenses other than the Assumed Contracts; (iii) any employment agreements and any employee benefit plans for any employees; (iv) any leases, including any leases to the Premises; and (v) any equipment, furniture or fixtures.
Purchase Price	The purchase price payable by credit bid by the Purchaser, on behalf of the Secured Lenders, to the Vendors for the Purchased Assets will be \$15,000,000.
Credit Bid	Pursuant to the SISP Procedures, Horizon’s credit bid was selected as the “Successful Bid.” The Purchase Price is to be paid and satisfied by release of a portion of the Secured Debt, on a ratable basis among the Secured Lenders, in the amount of the Purchase Price.
Transaction Structure	Traditional CCAA vesting structure.
Target Closing Date	September 20, 2023, or such earlier or later date mutually agreed upon by the parties in writing.
Key Conditions to Closing	An order will have been made by the Canadian Court on or before September 5, 2023 or such later date as may be agreed to by the parties approving the Agreement and the Proposed Transaction, substantially in the form of the Approval and Vesting Order. An order will have been made by the US Court in the Chapter 15 Proceedings within fourteen (14) days of the CCAA Court Approval Date in a form acceptable to the Vendors and the Purchaser, recognizing the Approval and Vesting Order.

22. The Transaction, which is in the form of a credit bid and presented by the Collateral Agent in accordance with the SISP Procedures, is the only bid which provides a certain recovery for IMV’s stakeholders insofar as it would result in the Secured Lenders releasing a portion of the Secured Debt. Further, I am informed by the Monitor and reasonably believe that the consideration to be received for the Intellectual Property pursuant to the Transaction is reasonable and fair taking into account the other bids received in the context of the SISP and the broad canvassing of potentially interested parties during the SISP. I reasonably believe that, under the present

circumstances, the Transaction represents the best alternative available for the Debtors' stakeholders resulting from a SISP which was conducted in a fair and reasonable manner and thoroughly canvassed the market for available options.

THE INTERIM DISTRIBUTION ORDER

23. The Debtors are party to a Venture Loan and Security Agreement dated as of December 17, 2021, entered into among IMV Inc., IVT and IMV USA, as borrowers, and the Secured Lenders. (the "Venture Loan Agreement"). As of August 30, 2023, the Debtors are indebted towards the Secured Lenders in the approximate amount of \$27,005,157, which amount remains to be adjusted in interest, fees, premiums, final payments, and expenses (the "Secured Debt"). The Secured Debt and the obligations of the Debtors under the Venture Loan Agreement are secured by a priority security interest (the "Security") in all assets of the Debtors, excluding the Intellectual Property, but including all accounts and proceeds of Intellectual Property. I am informed by the Monitor, and believe it to be true, that the Monitor has obtained an independent security opinion confirming the validity and enforceability of the Security under the laws of Nova Scotia and Quebec. The details of these opinions are set forth in Section F of the *Fourth Report of FTI Consulting Canada Inc., as Monitor*, dated September 1, 2023.

24. The Debtors currently have approximately \$5.6 million (CAD) in available cash. The Debtors expect that they may require an amount of up to \$3.6 million (CAD) in order to complete the wind-down of their business operations and complete the Canadian Proceeding.

25. Pursuant to the Interim Distribution Order, the Canadian Court approved an interim distribution to the Secured Lenders in the amount of \$2 million (CAD) (the "Interim Distribution"), representing the current cash available to the Debtors less the amounts potentially required to complete the Canadian Proceeding and a provision for any unexpected expenses as well as to cover

the charges approved in the Canadian Proceeding. I am advised by the Debtors' Canadian counsel that payment to a secured creditor, whose security is validated by an independent opinion obtained by a monitor, prior to the close of a case, such as the Interim Distribution here, is a common feature of CCAA proceedings.

26. In addition to authorizing the Interim Distribution, the Interim Distribution Order approves the activities of the Monitor through the date of the Interim Distribution Order and approves certain fees and disbursements of the Monitor and its counsel. It is my understanding and belief that the Monitor was a central party in reviewing and evaluating bids for the Debtors' assets and negotiating with Horizon, and remains central to the claims process and wind-down of the Debtors' operations.

27. Finally, paragraph 4 of the Interim Distribution Order makes a specific finding as to the former employees of IMV and IVT under section 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1. The Foreign Representative is not seeking recognition by the Court of this provision of the Interim Distribution Order given that it only applies to Canadian employees, but is seeking recognition of all other aspects of the Interim Distribution Order.

28. Based on the facts stated in this declaration, I believe that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and stakeholders.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 6, 2023

/s/ Brittany Davison

Brittany Davison
Chief Accounting Officer
IMV Inc., Foreign Representative