Court File No. CV-18-603054-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ARALEZ PHARMACEUTICALS INC. AND ARALEZ PHARMACEUTICALS CANADA INC.

Applicants

FACTUM OF THE APPLICANTS
(Returnable December 7, 2018)

December 5, 2018

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PART I - OVERVIEW

1. Aralez Pharmaceuticals Inc. ("**API**") and its wholly owned subsidiary Aralez Pharmaceuticals Canada Inc. ("**Aralez Canada**", and together with API, the "**Applicants**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 10, 2018 (the "**Initial Order**"). Richter Advisory Group Inc. was appointed Monitor of the Applicants (the "**Monitor**") in these proceedings (such proceedings, the "**CCAA Proceedings**").

2. This motion is brought by the Applicants seeking:

(a) a sale approval and vesting order (the "**Approval and Vesting Order**"), substantially in the form of the draft order attached at Tab "3" of the Motion Record, *inter alia*:

i. approving the sale transaction (the "**Transaction**") contemplated by a share purchase agreement (the "**Share Purchase Agreement**") among API, as vendor, Aralez Canada, as the corporation, and Nuvo

Pharmaceuticals Inc., as the purchaser (the "**Purchaser**") dated September 18, 2018;

ii. vesting in the Purchaser all of API's right, title and interest in and to all of the shares in the capital of Aralez Canada; and

iii. approving the Pre-Closing Reorganization (defined below) and authorizing the Applicants to complete any steps and transactions necessary or desirable to consummate the Pre-Closing Reorganization; and

(b) A CCAA termination order (the "**Aralez Canada Termination Order**"), substantially in the form of the draft order attached at Tab "4" of the Motion Record, inter alia:

i. terminating the CCAA Proceedings in respect of Aralez Canada upon the filing by the Monitor of a certificate confirming the occurrence of the Aralez Canada CCAA Termination Time (defined below);

ii. fully, finally, irrevocably, unconditionally, automatically and forever terminating, waiving, discharging, extinguishing, cancelling, barring and releasing any and all debts, liabilities and obligations of Aralez Canada to Deerfield Management Company L.P. or its affiliates ("**Deerfield**"), or API, Aralez Pharmaceuticals Management Inc. ("**Aralez Management**"), Aralez Pharmaceuticals R&D Inc. ("**Aralez R&D**"), Aralez Pharmaceuticals U.S. Inc. ("**Aralez U.S**."), POZEN Inc. ("**Pozen**"), Halton Laboratories LLC ("**Halton**"), Aralez Pharmaceuticals Holdings Limited ("**APHL**"), Aralez Pharmaceuticals Trading DAC ("**Aralez DAC**"), Aralez Luxembourg Finance and Tribute Pharmaceuticals International Inc. (together, the "**Affiliates**");

iii. fully, finally, irrevocably, unconditionally, automatically and forever terminating, waiving, discharging, extinguishing, cancelling, barring

and releasing any and all debts, liabilities and obligations of Aralez Canada to API or any Affiliates thereof;

iv. barring all Claims (as that term is defined in the Claims Order dated October 10, 2018, the "**Claims Order**") as against Aralez Canada which have not been submitted pursuant to a Proof of Claim actually received by the Monitor on or before the Claims Bar Date or the Restructuring Claims Bar Date (as those terms are defined in the Claims Order), as applicable, or determined to be a Claim against Aralez Canada by Order of the Court or with the consent of the Applicants, the Purchaser and the Monitor; and

v. discharging the Monitor as against Aralez Canada except as necessary to complete the claims process pursuant to an order to be sought in the CCAA Proceedings and as detailed below; and

(c) an order extending the Stay Period (as defined below) to February 1, 2019; and

(d) such further and other relief as the Court deems just.

PART II - THE FACTS

3. The facts with respect to this motion are more fully set out in the affidavit Adrian Adams sworn November 29, 2018 (the "**Adams Affidavit**"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Adams Affidavit.

4. The Applicants are in the business of acquiring, developing, marketing and selling specialty pharmaceutical products. The Applicants are two entities within a larger corporate structure that includes Aralez Management, Aralez R&D, Aralez U.S., Pozen, Halton, APHL, and Aralez DAC (collectively, the "**Chapter 11 Entities**" and with the Applicants, the "**Aralez Entities**").

Adams Affidavit at paras 4-5, Applicants' Motion Record, Tab 2.

5. On August 10, 2018, the Applicants were granted creditor protection and related relief under the CCAA pursuant to the Initial Order, as amended. On the same day, the Chapter 11 Entities filed voluntary petitions in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**") under chapter 11 of title 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**" and together with the CCAA Proceedings, the "**Restructuring Proceedings**").

Adams Affidavit at paras 6-7, Applicants' Motion Record, Tab 2.

A. THE SALES PROCESS

6. As a key part of their restructuring strategy, the Aralez Entities concertedly developed and executed a process to sell a significant portion of their assets through the Restructuring Proceedings (such process, the "**Sales Process**"). The Sales Process included entering into three stalking horse agreements (the "**Stalking Horse Agreements**") which set the floor, or minimum acceptable bid, within the Sales Process and were subject to higher or otherwise better offers; and developing bidding procedures (the "**Bidding Procedures**") in which to seek such higher or better offers.

Adams Affidavit at paras 14-17 & 23-24, Applicants' Motion Record, Tab 2.

7. The development of the Stalking Horse Agreements was complex but ultimately successful. After an extensive pre-filing marketing process conducted with the assistance of the Aralez Entities' investment banker, Moelis & Company LLC ("**Moelis**"), the three purchasers under the Stalking Horse Agreements and certain of the Aralez Entities signed

non-binding letters of intent on the eve of the Restructuring Proceedings. Then followed further, intensive negotiations over five weeks, resulting in the signing of the Stalking Horse Agreements.

8. One Stalking Horse Agreement (the "**Canadian Stalking Horse Agreement**") governed the sale of a significant portion of the Applicants' assets, being all of the shares of Aralez Canada (the "**Canadian Assets**"), which are held by API, for the purchase price of $62,500,000. The Canadian Stalking Horse Agreement and the Bidding Procedures were both approved by this Court on October 10, 2018.

Adams Affidavit at para 18, Applicants Motion Record, Tab 2.

9. The two other Stalking Horse Agreements (the "**Toprol Stalking Horse Agreement**" and the "**Vimovo Stalking Horse Agreement**") contemplate the sale of certain of the Chapter 11 Entities' assets and were approved, along with the Bidding Procedures, by the U.S. Court by order dated October 11, 2018. The purchaser under the Vimovo Stalking Horse Agreement is a related party to the Purchaser, and the Vimovo Stalking Horse Agreement and the Canadian Stalking Horse Agreement are cross-conditioned on the other being approved by the applicable court, among other things. There is no cross-conditionality with respect to the Toprol Stalking Horse Agreement. The Toprol Stalking Horse Agreement and the Vimovo Stalking Horse Agreement do not require approval of this Court and such approval is not being sought in this Court. Likewise, approval of the Canadian Stalking Horse Agreement is not being sought in the U.S. Court.

Adams Affidavit at paras 16, 20-21, Applicants Motion Record, Tab 2.

i. Conducting the Sales Process and Outcome

10. Immediately upon approval of the Bidding Procedures and the Stalking Horse Agreements, the Aralez Entities, with the assistance of Moelis and their other advisors, and under the supervision of the Monitor, began a broad remarketing effort for the Aralez Entities' assets and business. Over the course of this process, Moelis contacted 156 potentially interested parties, including approximately 30 financial sponsors. Following the initial solicitation, 24 interested parties executed non-disclosure agreements with the Aralez Entities to begin due diligence and potentially develop a bid for some combination of the Aralez Entities' business.

Adams Affidavit at paras 27, Applicants Motion Record, Tab 2.

11. As appropriate during the Sales Process and in accordance with the Bidding Procedures, the Applicants engaged with, *inter alia*, Deerfield, the Monitor, counsel to the Monitor and the Official Committee of the Unsecured Creditors in the Chapter 11 Proceedings (the "**UCC**" and collectively, the "**Consultation Parties**"), to ensure that the Consultation Parties and their respective advisors were aware of developments in the Sales Process.

Adams Affidavit at para 29, Applicants Motion Record, Tab 2.

12. Pursuant to the Bidding Procedures, the bid deadline was November 26, 2018 at 5:00 p.m. The Purchaser was the only party who submitted a bid for the Canadian Assets. Two other parties expressed a strong interest in the Canadian Assets, but neither party submitted a bid as they viewed the Purchaser's bid as higher than what they were willing to bid.

Adams Affidavit at para 32, Applicants' Motion Record, Tab 2.

13. Two bids were received in the Chapter 11 Proceedings. One bid was for the assets subject to the Toprol Stalking Horse Agreement, which was ultimately determined to not be a "Qualified Bid" (as that term is defined in the Bidding Procedures). The other bid was for the assets subject to the Vimovo Stalking Horse Agreement and was determined to be a "Qualified Bid"; however, the Chapter 11 Entities, after consultation with the required parties, determined not to conduct an auction in respect of the Vimovo Assets. As such, no auction was held as originally contemplated in the Bidding Procedures, the Purchaser was informed it was the successful party under the Bidding Procedures and the Canadian Stalking Horse Agreement became the Share Purchase Agreement.

Adams Affidavit at paras 33-36, Applicants' Motion Record, Tab 2.

ii. Pre-Closing Reorganization

14. Pursuant to the Approval and Vesting Order, the Applicants are seeking the authority to complete a series of pre-closing restructuring transactions (the "**Pre-Closing Reorganization**") as contemplated in section 6.4 of the Canadian Stalking Horse Agreement. The purpose of the Pre-Closing Reorganization is to, among other things, preserve the tax attributes of Aralez Canada, unwind or eliminate intercompany debt between Aralez Canada and the other Aralez Entities, and release Aralez Canada of its secured debt obligations to Deerfield.

Adams Affidavit at paras 40, Applicants' Motion Record, Tab 2

The Report of the Monitor, dated December 4, 2018 (the "**Monitor's Fifth Report**") at para 31(iii).

15. The Applicants have discussed the Pre-Closing Reorganization, including the specific transactions and steps contemplated to complete the Pre-Closing Reorganization, with the

Monitor, the Purchaser and Deerfield. To the extent the steps of the Pre-Closing Reorganization change before the return of this motion, such changes will be communicated to the Court and the service list.

Adams Affidavit at para 42, Applicants' Motion Record, Tab 2.

B. ARALEZ CANADA TERMINATION ORDER

16. The Share Purchase Agreement requires that the Aralez Entities bring a motion for approval of an order terminating the CCAA Proceedings as against Aralez Canada. Given that the Canadian Stalking Horse Agreement is a share purchase agreement, Aralez Canada's CCAA Proceedings must be terminated for the company to move forward post-closing.

Adams Affidavit at paras 44-45, Applicants' Motion Record, Tab 2.

17. The Aralez Canada Termination Order provides, *inter alia*, that:

(a) upon delivery of a Monitor's certificate (the "**Aralez Canada CCAA Termination Time**"), Aralez Canada's debts and liabilities to Deerfield or any of its affiliates will be released, as shall (i) Aralez Canada's debts and liabilities to API or its Affiliates and (ii) API and its Affiliates' debts and liabilities to Aralez Canada;

(b) all other Agreements (as that term is defined in the Aralez Canada Termination Order) remain in force;

(c) Claims not filed by the Claims Bar Date (as these terms are defined in the Aralez Canada Termination Order) shall be barred;

(d) persons shall be enjoined from exercising, enforcing or relying on any rights, remedies, claims or benefits (including, without limitation, any contractual termination rights) arising from, among other things, the insolvency of the Applicants, the CCAA Proceedings or the Transaction, including, without limitation, as a result of the change of control of Aralez Canada resulting from the Transaction; and

(e) the Monitor shall be discharged in respect of Aralez Canada at the Aralez Canada CCAA Termination Time.

Adams Affidavit at paras 45-46, Applicants' Motion Record, Tab 2.

18. Notice of the relief sought in the Aralez Canada Termination Order has been provided to the service list and all known contractual counterparties to Aralez Canada, among other parties.

Affidavit of Service of Nicholas Avis, sworn December 3, 2018.

Affidavit of Service of Colleen Thompson, sworn December 5, 2018.

The Monitor's Fifth Report at para 45.

19. The Applicants, Purchaser and Monitor are developing a process to resolve Claims filed against Aralez Canada in the claims process contemplated in the Claims Procedure Order dated October 10, 2018, after the closing of the Transaction, which would require continued involvement of the Monitor and Aralez Canada's advisors going forward. Such process will be communicated to this Court once finalized.

C. STAY EXTENSION

20. The Initial Order granted a stay of proceedings up to and including September 7, 2018 (the "**Stay Period**"). The Stay Period was extended twice: first to November 14, 2018; and then to December 7, 2018.

Adams Affidavit at para 48, Applicants' Motion Record, Tab 2.

21. The extended Stay Period is needed by the Applicants to, *inter alia*, close the Transaction (which is anticipated to close prior to the end of 2018), address any post-closing matters ancillary to the Transaction; review and determine Claims that have been submitted; and distribute the proceeds arising from the Transaction to stakeholders.

Adams Affidavit at para 49, Applicants' Motion Record, Tab 2.

22. The Monitor supports the extension of the Stay Period to February 1, 2019.

The Monitor's Fifth Report at para 47.

Adams Affidavit at para 51, Applicants' Motion Record, Tab 2.

PART III - ISSUES

23. The issues on this motion are whether the Court should:

(a) approve the Approval and Vesting Order;

(b) approve the Aralez Canada Termination Order; and

(c) approve an order extending the Stay Period to February 1, 2019.

PART IV - THE LAW

A. THE SHARE PURCHASE AGREEMENT SHOULD BE APPROVED

i. The Court has the Jurisdiction to Approve the Applicants' Share Purchase Agreement

24. It is well-established that the Court has jurisdiction to make an order for a sale of a debtor company's assets in a CCAA proceeding. In this case, the asset being sold is all of the issued and outstanding shares in the capital of the Aralez Canada held by API.

> *Re Canadian Red Cross Society*, [1998] O.J. No. 3306 (Gen Div) at para 45-46, Applicants' Book of Authorities at Tab 1.
>
> *Nortel Networks Corp., Re*, [2009] O.J. No. 3169 (Sup Ct. [Comm. List]) [***Nortel***] at paras 35-40 and 48, Applicants' Book of Authorities at Tab 2.

25. Pursuant to s. 36 of the CCAA, the Court may approve a sale of assets outside of the ordinary course of business. In determining whether to approve a sale transaction, s. 36(3) of the CCAA sets out a list of non-exhaustive factors for the Court to consider.

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36.

26. CCAA courts have noted that the s. 36 criteria largely correspond with the *Soundair* principles for approval of a sale of assets in an insolvency scenario, being:

(a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers have been obtained; and

(d) whether there has been unfairness in the working out of the process.

Re Canwest Publishing Inc. (2010), 68 CBR (5th) 233 (Ont Sup Ct [Comm List]) at para 13, Applicants' Book of Authorities at Tab 3.

Royal Bank v Soundair Corp, [1991] OJ No 1137 (CA) [***Soundair***] at para 16, Applicants' Book of Authorities at Tab 4.

ii. The Share Purchase Agreement and Transaction Meeting the Requisite Criteria and Should be Approved

27. The Transaction satisfies each of the s. 36(3) criteria and the *Soundair* principles and is in the best interest of the Applicants' stakeholders generally, and should therefore be approved:

(a) **The Sales Process is reasonable:** The Sales Process leading to the Share Purchase Agreement was developed in consultation with the Applicants' advisors, including their investment banker. The Monitor consulted on the structuring and execution of the Sales Process. Further, the Sales Process was

approved by not one, but two courts. Finally, no person has alleged that the running of the Sales Process was unreasonable. Overall, the Sales Process was reasonable both in design and execution;

(b) **The Sales Process is approved by the Monitor**: The Monitor supported, and continues to support, the Sales Process and has filed a report confirming such support, noting that "the market was extensively canvased…and all likely bidders have been provided with an opportunity to bid on the Canadian Assets;"

(c) **The Monitor has filed a report stating that the sale is more beneficial to creditors than a sale or disposition in a bankruptcy proceeding**: The Monitor has opined that the Share Purchase Agreement is in the best interest of the creditors and stakeholders of the Applicants and that the outcome of the Share Purchase Agreement is more beneficial for the creditors of the Applicants than a sale or disposition in a bankruptcy context;

(d) **Creditor consultation was extensive**: The Bidding Procedures built in the concept of consultation for creditors and other parties by creating the Consultation Parties group. The Consultation Parties—the Monitor, Deerfield, and the UCC (which has no direct interest in these CCAA Proceedings)—have been kept informed of the Sales Process and were involved in the development of the Bidding Procedures;

(e) **The proposed sale is of benefit to creditors and others**: The Transaction is structured through a share purchase agreement, meaning that Aralez Canada's employees will enjoy continued employment, creditors will continue to be paid in the ordinary course, and customers will continue receiving their drug products post-closing. The Monitor has also opined that the sale is of benefit to creditors and other interested parties;

(f) **Consideration is reasonable and fair**: The market was invited to test the value of the Canadian Assets through the Sales Process and the outcome

indicates that the consideration offered is reasonable and fair. As detailed in the Adams Affidavit, Moelis reached out to a number of parties prior to the Restructuring Proceedings to develop stalking horse bids. On the approval of the Bidding Procedures, Moelis undertook a remarketing process, contacting 156 potentially interested parties for some or all of the Aralez Entities' assets. Two parties indicated that they were interested in the Canadian Assets but were not able to meet the price set in the Share Purchase Agreement. The Monitor has opined that the consideration is reasonable and fair. Overall, the consideration received for the shares of Aralez Canada is fair and reasonable and represents the highest or otherwise best offer for the Canadian Assets.

Adams Affidavit at paras 25, 27, 29, 30 and 32 Applicants' Motion Record, Tab 2.

The Monitor's Fifth Report at para 48.

28. In *Century Services*, the Supreme Court of Canada described three ways of exiting CCAA proceedings, with the "best outcome" being achieved "when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the CCAA process terminates without reorganization being needed". This objective of the CCAA is achieved where a debtor company returns to solvency on a going concern basis under new ownership.

Ted Leroy Trucking [Century Services] Ltd, Re, 2010 SCC 60 at para 14, Applicants' Book of Authorities at Tab 5.

Toys "R" Us (Canada) Ltd (Re), Endorsement of F.L. Myers J (30 April 2018), Toronto CV-17-582960-CL (Ont Sup Ct [Comm List]) at para 9, Applicants' Book of Authorities at Tab 6.

Nortel, *supra* at paras 34 and 40, Applicants' Book of Authorities at Tab 2.

29. The share purchase structure of the Transaction preserves significant value and maintains important customer, vendor and employee relationships of the Applicants. The

Transaction and the resulting restoration of solvency is the "best outcome" for the Applicants and their stakeholders. Accordingly, it is appropriate for the Court to grant the Approval and Vesting Order to facilitate the completion of the Transaction.

iii. The Court has jurisdiction to approve the Pre-Closing Reorganization

30. Section 11 of the CCAA provides the Court the power to make any order that it considers appropriate in the circumstances, provided the order is consistent with the CCAA. With this jurisdiction, a court may approve a material transaction entered into by the debtor company if (i) the transaction is fair and reasonable; (ii) the transactions will be beneficial to the debtor and its stakeholders generally; and (iii) the transaction is consistent with the purpose and spirit of the CCAA.

> CCAA, s. 11.
>
> *Return on Innovation Capital Ltd v Gandi Innovations Ltd*, 2010 ONSC 1759 at para 11, Applicants' Book of Authorities at Tab 7.
>
> *Air Canada (Re),* [2004] OJ No 303 (Sup Ct [Comm List]) at para 9, Applicants' Book of Authorities at Tab 8.

31. In *AbitibiBowater*, the Court approved a series of intercompany transactions outside of a plan of arrangement in order to prevent adverse tax consequences arising from the repayment of an intercompany note. The Court noted that there were economic reasons for the tax restructuring, the restructuring appeared reasonable and legitimate, and the legality of the corporate steps was properly supported.

> *AbitibiBowater (Re)*, 2009 QCCS 5833 [***AbitibiBowater***] at paras 29-32, Applicants' Book of Authorities at Tab 9.
>
> *Performance Sports Group Ltd. (Re)*, Approval and Vesting Order (6 February 2017), Toronto CV-16-11582-00CL (Ont Sup Ct [Comm List])

at paras 44-61, Applicants Book of Authorities at Tab 10.

Lightstream Resources Ltd (Re), Approval and Vesting Order (8 December 2016), Calgary 1601-12571 (Alta QB) at para 38, Applicants' Book of Authorities at Tab 11.

iv. The Court should approve the Pre-Closing Reorganization

32. The Share Purchase Agreement contemplates the Pre-Closing Reorganization in the steps detailed at Exhibit "D" to the Adams Affidavit. The Pre-Closing Reorganization preserves the tax attributes of Aralez Canada, unwinds or eliminates intercompany debt between Aralez Canada and the other Aralez Entities, and releases Aralez Canada of its secured debt obligations to Deerfield. The Pre-Closing Reorganization is fair and reasonable, benefits stakeholders generally, and is consistent with the purpose of the CCAA, and should therefore be approved.

B. THE ARALEZ CANADA TERMINATION ORDER SHOULD BE APPROVED

i. The Share Purchase Agreement Requires the Termination of the CCAA Proceedings

33. The Share Purchase Agreement contemplates, and is conditional on, Aralez Canada emerging from these CCAA Proceedings upon the completion of the Transaction. Pursuant to the Aralez Canada Termination Order, the CCAA Proceedings as they relate solely to Aralez Canada will be terminated and the Initial Order will have no further force or effect in respect of Aralez Canada at the Aralez Canada CCAA Termination Time. The Monitor will continue to have the protections afforded to it at law, or pursuant to the CCAA, the Initial Order, as amended and restated, and other orders issued in these proceedings to the extent the Monitor is required to address any sundry matters that arise following the termination of

these proceedings against Aralez Canada. The Monitor will further retain control over the resolution of Claims as highlighted below.

> Aralez Canada CCAA Termination Order, para 3, Applicant's Motion Record Tab 4.
>
> The Monitor's Fifth Report at para 44.

34. Courts have granted orders terminating proceedings under the CCAA and discharging the Monitor on terms similar to those sought in the proposed Aralez Canada Termination Order.

> *Golf Town Canada Inc. et. al (Re)*, CCAA Termination Order (29 March 2018), Toronto CV-16-11527-00CL (Ont Sup Ct [Comm List]), Applicants' Book of Authorities at Tab 12.
>
> *Toys "R" Us (Canada) Ltd (Re)*, CCAA Discharge Order (9 May 2018), Toronto CV-17-582960-CL (Ont Sup Ct [Comm List]), Applicants' Book of Authorities at Tab 13.

35. It is appropriate for the Court to order that the CCAA Proceedings be terminated with respect to Aralez Canada at the Aralez Canada CCAA Termination Time because:

(a) Aralez Canada will be solvent upon completion of the Transaction and no longer in need of creditor protection;

(b) the termination of the CCAA Proceedings as they apply to Aralez Canada is a condition of closing under the Share Purchase Agreement; and

(c) the Monitor supports the termination of these CCAA Proceedings on the terms set forth in the Aralez Canada Termination Order.

> The Monitor's Fifth Report at paras 32(iv) & 48.

ii. Approval of the Injunctive Relief

36. The Aralez Canada Termination Order contemplates injunctive relief, including that: (i) any Claims not received by the Monitor prior to the Claims Bar Date or the Restructuring Claims Bar Date (as these terms are defined in the Aralez Canada Termination Order), as applicable, or filed but determined not to be a valid Claim, shall be forever barred and released as against Aralez Canada, its property, and its directors and officers, unless otherwise ordered by the Court or agreed to by the Purchaser; and (ii) all persons are prohibited from enforcing any rights against, among others, Aralez Canada arising from or relating to the insolvency of the Applicants, the CCAA Proceedings or the entering into and implementation of the Share Purchase Agreement, including the change of control arising therefrom (the "**Injunctive Relief**"). The Monitor, the Purchaser and the Applicants are developing a plan to deal with Claims that have been filed but not resolved as of closing such that those claims will ultimately be determined, with valid claims being settled and invalid claims becoming subject to Injunctive Relief.

37. Section 11 of the CCAA provides that the Court may, subject to the restrictions in the CCAA, make any order that it considers appropriate in the circumstances. The CCAA is a flexible instrument that is to be liberally construed so as to facilitate successful restructurings whenever possible.

> CCAA, s. 11.
>
> *Century Services, supra* at para 70, Applicants' Book of Authorities at Tab 5.
>
> *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587 at para 44, Applicants' Book of Authorities at Tab 14.

38. The Court has jurisdiction under its general power and section 11.02(2) of the CCAA to grant permanent injunctive relief surviving the restructuring of a debtor company in respect of events of default or breaches relating or occurring prior to a restructuring. Specifically, the CCAA provides the jurisdiction to grant permanent injunctive relief to address a change in ownership effected by the debtor company's restructuring where the change of ownership does not involve the imposition of any materially greater or different obligations on affected counterparties.

> CCAA, s. 11.02(2)(c).
>
> *Playdium Entertainment Corp, Re* (2001), 31 CBR (4th) 309 (Ont Sup Ct [Comm List]) at paras 32 & 34, Applicants' Book of Authorities at Tab 15.

39. Courts routinely grant permanent injunctive relief with respect to non-monetary defaults in the context of approving CCAA plans of compromise or arrangement, including preventing third parties from enforcing or exercising any rights as a result of the implementation of the restructuring transaction and any resulting change of control. The Transaction is not being implemented by way of a plan of arrangement because there is no compromise of creditor claims; however, the principles supporting the granting of injunctive relief in the context of approving a plan of arrangement are applicable in the context of approving the going concern restructuring of Aralez Canada pursuant to the Transaction.

> *GuestLogix Inc (Re)*, Plan Sanction Order (12 September 2016), Toronto CV-16-11281-00CL (Ont Sup Ct [Comm List]) at para 20, Applicants' Book of Authorities at Tab 16.
>
> *U.S. Steel Canada Inc*, Sanction Order dated June 9, 2017 (Court File No. CV-14-1065-00CL) (Ont Sup Ct [Comm List]) at para 30, Applicants' Book of Authorities at Tab 17.

40. It is appropriate for this Court to grant the Injunctive Relief in the circumstances of this case because, among other things, the Injunctive Relief is a condition to the completion of the Transaction and it will preserve the value of Aralez Canada and protect against actions that could adversely impact Aralez Canada's business operations upon its emergence from creditor protection. The Injunctive Relief is also consistent with the remedial purpose of the CCAA.

Adams Affidavit at paras 45-46, Applicants' Motion Record, Tab 2.

The Monitor's Fifth Report at para 40.

C. APPROVAL OF THE STAY EXTENSION

41. An extension of the Stay Period is required until and including February 1, 2019, to give the Applicants sufficient time to execute and complete the Sales Process and continue dealing with other restructuring matters. The current Stay Period expires on December 7, 2018.

42. Under s. 11.02 and pursuant to s. 11.02(3) of the CCAA, the Court may extend the stay of proceedings when satisfied that (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, s. 11.02(3).

43. In *Canwest Global Communications Corp (Re)*, the Court granted an extension of the Stay Period to allow the debtors to continue working towards a solution that would result in

their businesses continuing as a going concern. In support of that decision, the Court considered that:

(a) the cash-flow forecast indicated that the debtors had sufficient cash resources to operate throughout the extension of the stay period;

(b) the monitor supported the extension;

(c) there was a lack of opposition to the motion; and

(d) the debtors had acted and were continuing to act in good faith and with due diligence.

Canwest Global Communications Corp (Re), [2009] OJ No 4788 (Sup Ct [Comm List]) [***Canwest***] at para 43, Applicants' Book of Authorities at Tab 18.

44. The Applicants' situation is similar to that in *Canwest*, given that:

(a) the Applicants have sufficient liquidity to operate during the proposed Stay Period;

(b) the Monitor supports the extension to February 1, 2019;

(c) the Applicants' are presently unaware of any opposition to the extension and no creditors are expected to be materially prejudiced as a result of the extension; and

(d) the Applicants have acted and continue to act in good faith and with due diligence in respect of all matters relating to the CCAA Proceedings.

Adams Affidavit at paras 51-52, Applicants' Motion Record, Tab 2.

The Monitor's Fifth Report at para 47.

45. For the reasons described above, the Stay Period should be extended to and including February 1, 2019.

PART V - ORDER SOUGHT

46. For all of the foregoing reasons, the Applicants respectfully request that the Court grant the proposed Approval and Vesting Order, Aralez Canada Termination Order, and Stay Period extension to February 1, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of December, 2018.

Stikeman Elliott

Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Re Canadian Red Cross Society*, [1998] OJ No 3306 (Gen Div)

2. *Nortel Networks Corp., Re*, [2009] OJ No 3169 (Sup Ct [Comm List])

3. *Re Canwest Publishing Inc.* (2010), 68 CBR (5th) 233 (Ont Sup Ct [Comm List])

4. *Royal Bank v Soundair Corp*, [1991] OJ No 1137 (CA)

5. *Ted Leroy Trucking [Century Services] Ltd, Re*, 2010 SCC 60

6. *Toys "R" Us (Canada) Ltd (Re)*, Endorsement of F.L. Myers J (30 April 2018), Toronto CV-17-582960-CL (Ont Sup Ct [Comm List])

7. *Return on Innovation Capital Ltd v Gandi Innovations Ltd*, 2010 ONSC 1759

8. *Air Canada (Re),* [2004] OJ No 303 (Sup Ct [Comm List])

9. *AbitibiBowater (Re)*, 2009 QCCS 5833

10. *Performance Sports Group Ltd. (Re)*, Approval and Vesting Order (6 February 2017), Toronto CV-16-11582-00CL (Ont Sup Ct [Comm List])

11. *Lightstream Resources Ltd (Re),* Approval and Vesting Order (8 December 2016), Calgary 1601-12571 (Alta QB)

12. *Golf Town Canada Inc. et. al (Re)*, CCAA Termination Order (29 March 2018), Toronto CV-16-11527-00CL (Ont Sup Ct [Comm List])

13. *Toys "R" Us (Canada) Ltd (Re)*, CCAA Discharge Order (9 May 2018), Toronto CV-17-582960-CL (Ont Sup Ct [Comm List])

14. *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587

15. *Playdium Entertainment Corp, Re* (2001), 31 CBR (4th) 309 (Ont Sup Ct [Comm List])

16. *GuestLogix Inc (Re)*, Plan Sanction Order (12 September 2016), Toronto CV-16-11281-00CL (Ont Sup Ct [Comm List])

17. *U.S. Steel Canada Inc*, Sanction Order dated June 9, 2017 (Court File No. CV-14-1065-00CL) (Ont Sup Ct [Comm List])

18. *Canwest Global Communications Corp (Re)*, [2009] OJ No 4788 (Sup Ct [Comm List])

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

* * * * *

Stays, etc. — other than initial application

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

* * * * *

Burden of proof on application

11.02(3) The court shall not make the order unless

> (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

36 (2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

36 (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

36 (5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

36 (6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

36 (7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ARALEZ PHARMACEUTICALS INC. ET AL.

Court File No: CV-18-603054-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

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(RETURNABLE DECEMBER 7, 2018)

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