

**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 September 5, 2018)**

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**TO: THE SERVICE LIST**

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**PART I - OVERVIEW**

1. Aralez Pharmaceuticals Inc. ("**API**") and its wholly owned subsidiary Aralez Pharmaceuticals Canada Inc. (collectively with API, the "**Applicants**") are two entities within a larger international corporate structure that includes Aralez Pharmaceuticals Management Inc., Aralez Pharmaceuticals R&D Inc., Aralez Pharmaceuticals U.S. Inc. ("**Aralez U.S.**"), POZEN Inc., Halton Laboratories LLC, Aralez Pharmaceuticals Holdings Limited, and Aralez Pharmaceuticals Trading DAC (collectively, the "**Chapter 11 Entities**" and, with the Applicants, the "**Aralez Entities**"). Together, the Aralez Entities are in the business of acquiring, developing, marketing and selling specialty pharmaceutical products, with a focus on cardiovascular health and pain management, in Canada and the U.S.

2. On August 10, 2018, the Applicants sought and obtained an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Initial Order**") providing relief under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Richter Advisory Group Inc. was appointed Monitor of the Applicants (the "**Monitor**") in these proceedings (the "**CCAA Proceedings**").

3. Also on August 10, 2018, the Chapter 11 Entities filed voluntary petitions 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”**) in the United States Bankruptcy Court for the Southern District of New York (the **“U.S. Court”**). The U.S. Court granted certain interim relief in the Chapter 11 Proceedings on August 14, 2018.

4. This motion is brought by the Applicants seeking, *inter alia*:
- (a) an Amended and Restated Initial Order providing for certain amendments to the Initial Order substantially in the form of the draft order attached at Tab “3” of the Motion Record, including approval of:
    - (i) a charge (the **“Transactional Charge”**) in favour of Moelis & Company LLC (**“Moelis”**); and,
    - (ii) the Cross-Border Protocol (as that term is defined below); and
  - (b) an order extending the stay of proceedings (the **“Stay Period”**) in respect of the Applicants to November 14, 2018, substantially in the form of the draft order attached at Tab “4” of the Motion Record.

## PART II - THE FACTS

5. The facts with respect to this motion are more fully set out in the affidavits of Andrew I. Koven sworn August 9, 2018 (the **“First Koven Affidavit”**) and August 28, 2018 (the **“Second Koven Affidavit”**). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the First Koven Affidavit and the Second Koven Affidavit.

6. Since commencing the Restructuring Proceedings, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of the business operations, manage relationships with key stakeholders and carry out the terms of the Initial Order. As a result of these efforts, the Aralez Entities have continued to operate without significant disruption.

Second Koven Affidavit at para. 10, Applicants’ Motion Record, Tab 2.

7. The Aralez Entities are also developing a sales process, which includes stalking horse agreements, pursuant to which the Aralez Entities anticipate selling all or substantially all of the business. The Aralez Entities expect to return to court in the near term to seek approval of this sales process.

Second Koven Affidavit at para. 13, Applicants' Motion Record, Tab 2.

**A. THE AMENDED AND RESTATED INITIAL ORDER**

**i. The Transactional Charge**

**(A) The Engagement of Moelis**

8. In response to certain financial difficulties affecting their business, the Aralez Entities engaged Moelis as investment banker in late 2017 to evaluate strategic alternatives and establish sales processes of various business lines. As this engagement progressed and in connection with the present sales process under development, the Aralez Entities continued to rely on Moelis, ultimately tasking Moelis to evaluate potential financial and strategic alternatives with respect to any Restructuring, Transaction or Financing (as these terms are defined in the July 18, 2018 engagement letter between API, Aralez U.S. and Moelis, the "**Moelis Engagement Letter**"), including implementing a restructuring plan, establishing sales processes for the various business lines and executing on any financing.

Second Koven Affidavit at para. 8, Applicants' Motion Record, Tab 2.

First Koven Affidavit at para. 67(f), Applicants' Motion Record, Tab 2 - Exhibit A.

The Report of the Monitor dated August 30, 2018 (the "**Monitor's First Report**") at para. 31.

**(B) Moelis' Fees and Expenses Under the Moelis Engagement Letter**

9. As compensation for Moelis' efforts, the Moelis Engagement Letter provides for the following types of remuneration (together, the "Transactional Fee"):

- (a) *Transaction Fee*: 2% of the amount of the "Transaction Value" of any deal (as that term is defined in Schedule "B" of the Moelis Engagement Letter), subject to a minimum fee of \$2.5 million. As more fully detailed in Schedule "B", in general terms the Transaction Value is the aggregate of the value of all proceeds and other consideration of a transaction plus the aggregate principal amount of all indebtedness for borrowed money and other liabilities assumed in connection with a transaction. Any amount of Transaction Fee over the \$2.5 million minimum will be credited against the Restructuring Fee (described below).
- (b) *Financing Fee*: 1.50% of the gross proceeds of any debt capital (including any debtor-in-possession financing) raised; and/or 3.50% of the gross proceeds of any equity capital raised; and/or 1.00% of the face value of any of the Debtors' debt securities and/or other indebtedness, obligations or liabilities that is the subject of a refinancing. The Aralez Entities have incurred the financing fee in the amount of \$150,000 with respect to its DIP Financing approved by the CCAA Court on August 10, 2018 (which amount will be 100% credited against the Restructuring Fee).
- (c) *Monthly Fee*: \$150,000 per month, payable on the first day of each month starting May 1, 2018. 50% of each Monthly Fee, beginning with the fifth full Monthly Fee that is actually paid, shall be offset, to the extent previously paid, against any Restructuring Fee. The Monthly Fee is to be split evenly between the Applicants and the Chapter 11 Entities.
- (d) *Restructuring Fee*: \$3,500,000 upon the closing of a Restructuring (as that term is defined in the Moelis Engagement Letter, which includes the

filing of a plan of arrangement), subject to the applicable credits as detailed above and more fully in the Moelis Engagement Letter.

- (e) *Discretionary Fee*: Moelis does not intend to seek a discretionary fee in this matter.

Second Koven Affidavit at para. 16 and 20, Applicants' Motion Record, Tab 2.

10. In the aggregate, the Transaction Fee, Restructuring Fee (after applicable credits) and the fee associated with the DIP Financing (being the DIP financing approved in the Initial Order) have a maximum cap of \$6.5 million. The Monthly Fee and any additional Financing Fees are not included in this cap.

Second Koven Affidavit at paras. 16 and 18, Applicants' Motion Record, Tab 2.

11. Transactional Fees earned by Moelis are to be allocated proportionately between the CCAA Proceedings and the Chapter 11 Proceedings based on sale proceeds.

Second Koven Affidavit at para. 20, Applicants' Motion Record, Tab 2.

12. To secure the Aralez Entities' obligations under the Moelis Engagement Letter, the Aralez Entities are seeking the Transactional Charge in the maximum amount of \$2.5 million, which will rank fourth on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

Second Koven Affidavit at para. 21, Applicants' Motion Record, Tab 2.

ii. **The Cross-Border Protocol**

13. The proposed Amended and Restated Initial Order contemplates a cross-border insolvency protocol (the "**Cross-Border Protocol**") to facilitate the

administration of the Restructuring Proceedings in both Canada and the U.S. The Restructuring Proceedings involve nine entities with globally located assets and involve creditors and other interested parties located in Canada, the U.S. and elsewhere. While the Cross-Border Protocol is sufficiently flexible to accommodate any cross-border issue that arises in the Restructuring Proceedings, it is specifically designed to ensure that:

- (a) if needed, it could facilitate a joint hearing or court-to-court communications in the event that approval of a sale process or a sale so requires;
- (b) that Restructuring Proceedings are coordinated to avoid, if possible, conflicting or duplicative rulings by the Courts;
- (c) all parties in interest are provided sufficient notice of key issues in both Restructuring Proceedings;
- (d) the substantive rights of all parties in interest are protected; and
- (e) the jurisdictional integrity of the Courts is preserved.

Second Koven Affidavit at paras. 22 and 23, Applicants' Motion Record, Tab 2.

14. The salient provisions of the Cross-Border Protocol are summarized in paragraph 26 of the Second Koven Affidavit. A copy of the Cross-Border Protocol is attached as Schedule "A" to the Amended and Restated Initial Order contained at Tab 3 of the Motion Record.

15. The Chapter 11 Entities intend to obtain approval of the Cross-Border Protocol from the U.S. Court.

Second Koven Affidavit at para. 27, Applicants' Motion Record, Tab 2.

**B. EXTENSION OF THE STAY PERIOD**

16. The Initial Order had the effect of imposing a stay of proceedings until and including September 7, 2018. The Applicants are requesting an extension of the Stay Period until and including November 14, 2018.

Second Koven Affidavit at para. 29, Applicants' Motion  
Record, Tab 2.

17. Since the commencement of the CCAA Proceedings, the Applicants have diligently and in good faith operated their business as a going concern. To date, the Applicants and their advisors have been largely focused on maintaining the stability of the business, advancing the sales process and the associated stalking horse bids, communicating with employees and other stakeholders and addressing matters relating to the initiation of the CCAA Proceedings. In the coming months, the Applicants will continue to be focused on operating the business and completing the sales process.

Second Koven Affidavit at para. 28, Applicants' Motion  
Record, Tab 2.

18. The Aralez Entities are expected to have sufficient liquidity up to the end of the new proposed Stay Period.

Second Koven Affidavit at para. 30, Applicants' Motion  
Record, Tab 2.

**PART III - ISSUES**

19. The issues on this motion are as follows:

- (a) with respect to the Amended and Restated Initial Order, whether to:
  - (i) approve the Transactional Charge in favour of Moelis; and
  - (ii) approve the Cross-Border Protocol; and



- (b) with respect to the Stay Extension Order, whether to extend the Stay Period until and including November 14, 2018.

#### PART IV - THE LAW

##### A. THE TRANSACTIONAL CHARGE SHOULD BE APPROVED

20. The Aralez Entities seek the Court's approval of the Transactional Charge pursuant to the Moelis Engagement Letter to secure any obligations owed by the Aralez Entities' to Moelis for its fees and expenses (other than the Monthly Fee which is the subject of the Administration Charge).

Second Koven Affidavit at para. 21, Applicants' Motion Record, Tab 2.

**i. Courts have the Jurisdiction under the CCAA to Grant the Financial Advisor's Charge**

21. It is within this Court's power to grant a super-priority charge to secure the payment of obligations the debtor owes to Moelis. Section 11.52(1)(b) of the CCAA grants the Court the jurisdiction to approve the fees and expenses of financial advisors and, in so doing, order a super-priority charge to secure them:

11.52 (1) ... [T]he court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of...

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act...

CCAA, section 11 and 11.52(1)(b).

*Canwest Global Communications Corp. (Re)*, Toronto CV-09-8396-00CL (Ont. S.C.J. [Comm. List]), Initial Order (October 6, 2009) at para. 61, Applicants' BOA, Tab 1.

*Target Canada Co. et al (Re)*, Toronto CV-15-10832-00CL (Ont. S.C.J. [Comm. List]), Initial Order (January 15, 2015) at para. 42, Applicants' BOA, Tab 2.

*Canwest Publishing Inc. (Re)*, 2010 ONSC 222 at paras. 52 and 55 (S.C.J. [Comm. List]) [*Canwest Publishing*], Applicants' BOA, Tab 3.

*Essar Algoma Steel Inc. (Re)*, Toronto CV-15-000011169-00CL (Ont. S.C.J. [Comm. List]), Order Re Approval of Evercore Fees and Expenses and Financial Advisor's Charge (January 29, 2016) [*Essar Algoma Steel Inc. (Re)*], Applicants' BOA, Tab 4.

*Royal Bank v. Cow Harbour Construction Ltd.* (2011), 2011 ABQB 96 at paras. 54 and 69 (Alta. Q.B.), Applicants' BOA, Tab 5.

*Danier Leather Inc., Re*, 2016 ONSC 1044 at paras. 46-54, Applicants' BOA, Tab 6.

**ii. The Court Should Exercise its Jurisdiction to Grant the Financial Advisor's Charge**

22. The fees being secured by the Transactional Charge are fair and reasonable. The Applicants are seeking a \$2.5 million charge, which as noted by the Monitor, represents less than 40% of the potential maximum Transactional Fees (excluding certain additional financing) that may be sought. The Monitor is of the view that relative to the potential value of the Aralez Entities, the fees contemplated under the Moelis Engagement Letter are within market parameters.

Second Koven Affidavit at para. 21, Applicants' Motion Record, Tab 2.

Monitor's First Report at para. 36.

23. The Applicants' CCAA proceedings include many characteristics of other CCAA proceedings in which sale-, restructuring- and financed-based fees were approved, such as the multi-jurisdictional nature of the proceedings and a sales process that is highly dependent on the continued assistance of financial advisors. For instance:

- (a) In *Essar Steel Algoma Inc., Re*, Newbould J. authorized a financial advisor fee, including a success fee of US\$8 million (subject to

certain credits and other potential reductions), and a related charge.

*Essar Algoma Steel Inc. (Re)*, Applicants' BOA, Tab 4.

- (b) In *Performance Sports Group Ltd., Re*, Newbould J. authorized an engagement letter between the debtors and their investment bank, that provided for, amongst other fees, a restructuring fee of US\$5 million and a sale fee of 1% of proceeds (subject to certain credits). The aggregate fee cap was US\$8 million. The administration charge was extended to include the entirety of all fees owed by the debtors to the investment bank.

*Performance Sports Group Ltd., Re*, Toronto CV-16-11582-00CL (Ont. S.C.J. [Comm. List]), Order Re Centerview Engagement and Fee Approval (December 14, 2016) at paras. 1 and 3, Applicants' BOA, Tab 7.

- (c) In *Target Canada Co., Re*, Morawetz R.S.J. granted a \$3 million charge on the property of the debtor in favour of the debtor's investment bank and financial advisor.

*Target Canada Co., Re* (2015), 251 A.C.W.S. (3d) 380 (Ont. S.C.J. [Comm. List]) at paras. 55 and 63, Applicants' BOA, Tab 8.

24. In *Re Canwest Publishing*, Pepall J. (as she then was) granted a \$10 million charge in favour of the debtors' financial advisor, approving the quantum of the charge (the amount of the fees) due to the complexity and magnitude of (i) the debtors' business and (ii) the tasks the financial advisor would be performing during the restructuring. The charge was as security for the fees and disbursements, including a success fee (if any) payable to the financial advisor pursuant to the engagement letter.

*Re Canwest Publishing* at paras. 40, 52-55, Applicants' Book of Authorities, Tab 3.

25. In addition to the aforementioned factors that Pepall J. considered in *Re Canwest Publishing*, Her Honour developed a general list of factors that support securing fees owing to a financial advisor. These factors, when applied to the present case, support a super-priority charge benefiting Moelis:

- (a) *Size and Complexity:* The Aralez Entities' business is international, highly regulated and consists of multiple subsidiaries and hundreds of millions of dollars' worth of assets. Much of the Aralez Entities' assets are in the form of intellectual property, which adds additional complexity in a sales process. Furthermore, the sales process is expected to apply for both the CCAA Entities and the Chapter 11 Entities, which requires cross-border coordination and additional work to ensure both jurisdictions will approve any proposed sales. The services of an experienced investment banking advisor are essential to conduct a successful sales process for this large and complex business;
- (b) *Proposed Role for Moelis:* Moelis' involvement is vital to completing the upcoming sales process as expeditiously and inexpensively as possible. Moelis has played and will continue to play a key role in the negotiations with prospective stalking horse parties as well as supporting counsel. Further, its knowledge of and history with the Aralez Entities would be wasted if the Aralez Entities were deprived of the benefit of Moelis' advice and assistance and were required to retain a new financial advisor;
- (c) *Avoiding Unwarranted Duplication of Roles:* Moelis fulfills an important role in the Restructuring Proceedings that could not be replicated by the Applicants' other professional advisors;
- (d) *Quantum of the Proposed Charge:* The quantum of fees is reasonable in light of the services Moelis has provided and will be providing the Applicants in connection with the sales process and during these Restructuring Proceedings and such quantum is supported by the Monitor. Moelis' fees were the product of arms-length negotiations and are payable on the achievement of clear milestones;
- (e) *Position of Secured Creditors:* The Amended and Restated Initial Order provides that the Transactional Charge will rank fourth on the property of the Applicants, meaning that it ranks below all of the other priority

charges granted to date, being the Administration Charge, the DIP Lenders' Charge and the D&O Charge. Deerfield Partners, L.P. and certain of its affiliates (the Aralez Entities pre-filing secured creditors) do not oppose the relief sought; and

- (f) *Position of the Monitor*: The Monitor is of the view that the Transactional Charge is reasonable in the circumstances.

*Canwest Publishing* at para. 54, Applicants' BOA, Tab 3.

Second Koven Affidavit at para. 21, Applicants' Motion Record, Tab 2.

Draft Order Re: Amended and Restated Initial Order at para. 50, Applicants' Motion Record, Tab 3.

Monitor's First Report at paras. 38 and 39 and Appendix A at para. 41.

26. Moelis has worked extensively with the Applicants since its initial engagement and has significant knowledge with respect to their business, operations and finances. Moelis' continued involvement is critical to the successful completion of the going-concern transaction as part of the CCAA Proceedings that will maximize value for stakeholders, and the loss of the CCAA Entities' investment banker at this crucial point in the sales process would be of significant detriment to their ability to complete a going-concern sale of the business on the terms that the parties have been working towards over the past month.

27. The Transactional Charge is consistent with the principles of the CCAA and is reasonable when compared to the fees and charges that have previously been granted. In such circumstances, the Transactional Charge is appropriate and should be granted.

## **B. THE CROSS-BORDER PROTOCOL SHOULD BE APPROVED**

28. To facilitate the orderly administration of these Restructuring Proceedings and given the international nature of these Restructuring Proceedings, the proposed Amended and Restated Initial Order includes the Cross-Border Protocol.

29. Courts have approved cross-border protocols where “it is clear that there are issues of over-lapping jurisdiction that would make a form of cross-border protocol appropriate.” A cross-border protocol is particularly desirable if debtors’ cross-border operations are highly integrated and ongoing coordination between the Canadian and U.S. courts is necessary to facilitate an upcoming sales process.

*Calpine Canada Energy Limited (Companies’ Creditors Arrangement Act)*, 2006 ABQB 743 at paras. 36 and 39, Applicants’ BOA, Tab 9.

See also *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974 at para. 24, Applicants’ BOA, Tab 10.

CCAA, section 11.

30. The Cross-Border Protocol was developed by U.S. and Canadian counsel. The coordination contemplated by the Cross-Border Protocol is essential and should, amongst other things, maximize the efficiency of the Restructuring Proceedings and reduce any associated costs.

Second Koven Affidavit at para. 25, Applicants’ Motion Record, Tab 2.

31. Cross-Border Protocols have been used to promote efficiency, fairness and consistency in cross border insolvency proceedings. In *Nortel*, Justice Morawetz held that cross-border protocols provide “the basis for communication and cooperation between the Canadian and U.S. courts, while confirming their independence.” In *Eddie Bauer*, Justice Morawetz noted some of the benefits of Cross-Border Protocols, including ensuring that:

(i) both the CCAA and the Chapter 11 Proceedings are coordinated to avoid inconsistent, conflicting or duplicative rulings by the Courts; (ii) all parties in interest are provided with sufficient notice of key issues in both proceedings; (iii) the substantive rights of all parties in interest are protected; and (iv) the jurisdictional integrity of the Court is preserved.

*Nortel Networks Corp. (Re)* (2009), 50 C.B.R. (5th) 77 (Ont.

S.C.J. [Comm List]) [*"Nortel"*] at para. 42, Applicants' BOA, Tab 11.

*Eddie Bauer of Canada, Inc. (Re)* (2009), 55 C.B.R. (5th) 33 (Ont. S.C.J. [Comm List]) at paras. 27-28, Applicants' BOA, Tab 12.

32. The Cross-Border Protocol negotiated in the Restructuring Proceedings meets these goals by, *inter alia*, establishing principles for issues arising out of the transnational nature of the Restructuring Proceedings and procedures for the Applicants and their stakeholders to file materials and conduct joint hearings. As such, it is in the best interests of the Applicants and their stakeholders that Cross-Border Protocol be approved.

Second Koven Affidavit at paras. 23, 24 and 26, Applicants' Motion Record, Tab 2.

33. The Monitor supports the approval of the Cross-Border Protocol.

Monitor's First Report at para. 42.

### **C. THE STAY PERIOD SHOULD BE EXTENDED**

34. The Initial Order granted a stay of proceedings to September 7, 2018. An extension of the Stay Period until and including November 14, 2018 is necessary to give the Applicants sufficient time to consult with their stakeholders and execute a restructuring. Pursuant to section 11.02 of the CCAA, the Court may extend the stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor companies have acted and are acting in good faith and with due diligence.

CCAA, s. 11.02.

35. In *Canwest Global Communications Corp. (Re)*, the Court granted an extension of the Stay Period to ensure the necessary stability to allow the debtors to continue working towards a solution that would result in their businesses continuing as a going concern. The factors which supported the decision were (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] O.J. No. 4788  
(S.C.J. [Comm. List]) at para. 43, Applicants' BOA, Tab 13.

36. Given the Aralez Entities' access to necessary liquidity during the proposed Stay Period and the on-going development of the sales process, no creditors are expected to suffer material prejudice as a result of the extension of the Stay Period.

Second Koven Affidavit at para. 30, Applicants' Motion  
Record, Tab 2.

37. As of the date of this factum, the Aralez Entities are unaware of any opposition to the requested stay extension. The Applicants have acted and continue to act in good faith and with due diligence and the Monitor supports extending the Stay Period to November 14, 2018.

Monitor's First Report at para. 43.

38. For the reasons described above, the Stay Period should be extended to November 14, 2018.

#### **PART V - ORDER SOUGHT**

39. For all of the foregoing reasons, the Aralez Entities request orders approving the amendments to the Initial Order and extending the Stay Period until and including November 14, 2018.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of September, 2018.



Stikeman Elliott LLP  
Lawyers for the Applicants



**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Canwest Global Communications Corp. (Re)*, Toronto CV-09-8396-00CL (Ont. S.C.J. [Comm. List]), Initial Order (October 6, 2009)
2. *Target Canada Co. et al (Re)*, Toronto CV-15-10832-00CL (Ont. S.C.J. [Comm. List]), Initial Order (January 15, 2015)
3. *Canwest Publishing Inc. (Re)*, 2010 ONSC 222 at paras. 52 and 55 (S.C.J. [Comm. List])
4. *Essar Algoma Steel Inc. (Re)*, Toronto CV-15-000011169-00CL (Ont. S.C.J. [Comm. List]), Order Re Approval of Evercore Fees and Expenses and Financial Advisor's Charge (January 29, 2016)
5. *Royal Bank v. Cow Harbour Construction Ltd.*, 2011 ABQB 96
6. *Danier Leather Inc., Re*, 2016 ONSC 1044.
7. *Performance Sports Group Ltd., Re*, Toronto CV-16-11582-00CL (Ont. S.C.J. [Comm. List]), Order Re Centerview Engagement and Fee Approval (December 14, 2016)
8. *Target Canada Co., Re* (2015), 251 A.C.W.S. (3d) 380 (Ont. S.C.J. [Comm. List])
9. *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, 2006 ABQB 743
10. *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974
11. *Nortel Networks Corp. (Re)* (2009), 50 C.B.R. (5th) 77 (Ont. S.C.J. [Comm List])
12. *Eddie Bauer of Canada, Inc. (Re)* (2009), 55 C.B.R. (5th) 33 (Ont. S.C.J. [Comm List])
13. *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4788 (S.C.J. [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. – initial application**

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(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.

**Stays, etc. – other than initial application**

(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**

(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**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[...]

### **Court may order security or charge to cover certain costs**

**11.52** (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT  
(RETURNABLE SEPTEMBER 5, 2018)**

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