Court File No. BK-25-03268936-0031

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 XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., IOVATE HEALTH SCIENCES AUSTRALIA PTY LTD, AND NORTHERN INNOVATIONS HOLDING CORP.

Applicants

FACTUM OF THE MONITOR
(RETURNABLE DECEMBER 12, 2025)

December 11, 2025

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PART I - NATURE OF THE MOTION

1. On September 5, 2025, Iovate Health Sciences International Inc. ("**Iovate International**"), Iovate Health Sciences U.S.A. Inc., and Northern Innovations Holding Corp. (collectively, the "**NOI Applicants**") each filed a notice of intention to make a proposal (each an "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"). KSV Restructuring Inc. ("**KSV**") consented to act as proposal trustee.

2. On October 31, 2025, this Court granted an order (the "**Initial Order**") granting the NOI Applicants, Xiwang Iovate Holdings Company Limited ("**Iovate Holdings**"), and Iovate Health Sciences Australia PTY Ltd (collectively, the "**Applicants**") protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 (the "**CCAA**"). By the same order, this Court appointed KSV as the monitor of the Applicants (in such capacity, the "**Monitor**").

3. On November 28, 2025, this Court granted the SISP Order and the ARIO (each as defined below) approving a sale and investment solicitation process (the "**SISP**") and granting the Monitor certain powers in connection therewith. Certain complexities have since arisen, including in respect of administering the information-sharing and communication restrictions imposed under the SISP Order to address the potential participation of related parties in the SISP.

4. The Applicants accordingly seek an order (the "**Enhanced Powers Order**") permitting the Monitor to more directly supervise and, where appropriate, manage the business of the Applicants in order to ensure the fair and transparent administration of these CCAA proceedings and the SISP. The proposed Enhanced Powers Order is necessary and appropriate in the circumstances to preserve the integrity of the value-maximizing SISP for the benefit of all stakeholders by reducing the risk of perceived or inadvertent unfairness arising in circumstances involving related parties.

It is also necessary to address the increased likelihood of inadvertent, asymmetric disclosure of information resulting from the current governance processes in place at the Applicants. The relief sought by the Monitor is supported by the Applicants' indirect majority shareholder, Xiwang Foodstuffs Co., Ltd. ("**Xiwang Foodstuffs**"), and is not opposed by the Applicants' directors.

PART II - THE FACTS

5. The facts underlying this motion are more fully set out in the Second Report of the Monitor dated December 9, 2025 (the "**Second Report**").[1]

A. Background

6. The Applicants are part of a group of companies engaged in the development, production, and sale of health and nutrition products in Canada, the United States, and internationally.[2] Following the NOI Applicants' receipt of demand letters from their secured creditors under a syndicated credit agreement and loss of access to working capital due to a writ of garnishment against a major customer, the NOI Applicants determined that it was in the best interests of their stakeholders to commence the NOI proceedings.[3]

7. On September 5, 2025, the NOI Applicants each filed an NOI under the BIA. KSV consented to act as proposal trustee.[4] On October 3, 2025, this Court granted an order extending the time for the NOI Applicants to file a proposal to November 4, 2025.[5]

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1 Capitalized terms used but not otherwise defined herein are as defined in the Second Report.

2 Affidavit of Wesley Parris sworn September 6, 2025 (the "**September 6 Parris Affidavit**") at para 4.

3 September 6 Parris Affidavit at paras. 26-36.

4 Second Report at para. 1.0(1).

5 Second Report at para. 1.0(2).

8. On October 31, 2025, this Court granted the Initial Order under the CCAA, which included a stay of proceedings in favour of the Applicants to and including December 12, 2025 (the "**Stay Period**").[6]

9. On November 28, 2025, this Court granted an order (the "**SISP Order**"): (a) approving the SISP to be conducted by the Monitor, with the assistance of the Applicants and the Sales Agent (as defined below), in consultation with the Administrative Agent (as defined in the SISP); and (b) authorizing and empowering the Monitor and the Sales Agent to implement the SISP.[7]

10. On the same date, this Court also granted an Amended and Restated Initial Order (the "**ARIO**"), among other things:

(a) authorizing the Monitor, *nunc pro tunc*, to the exclusion of all others (including the Applicants and their respective officers and directors) to: (i) negotiate and execute the letter agreement dated November 11, 2025 (the "**Engagement Letter**") between the Applicants and Origin Merchant Partners (the "**Sales Agent**"); (ii) cause the Applicants to perform their obligations under the Engagement Letter; and (iii) perform such other functions and duties, and enter into any agreements or incur any obligations on behalf of and in the name of the Applicants, as may be necessary or incidental to the negotiation, execution and performance of the Engagement Letter by the Applicants;

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6 Second Report at para. 1.0(3).

7 Second Report at para. 1.0(5).

(b) ratifying and approving the Engagement Letter, *nunc pro tunc*, and authorizing and directing the Applicants to make the payments contemplated thereunder in accordance with the terms and conditions of the Engagement Letter; and

(c) extending the Stay Period to and including January 30, 2026.[8]

11. In addition to the relief granted by the Court on November 28, the Applicants had also sought: (a) authorization to make certain bonus-related payments to employees in accordance with previously-agreed contractual arrangements (collectively, the "**Incentive Payments**"); (b) approval of a key employee retention plan (the "**KERP**") and a corresponding charge; and (c) authorization to make certain principal payments in accordance with the Credit Agreement (the "**Principal Payments**"). The Court adjourned this portion of the Applicant's motion on November 28, as the Monitor required additional time to confirm certain inputs and assumptions in the cash flow forecast.[9]

B. Update on the CCAA proceedings

12. Since November 28, the Monitor has worked with several senior executives of the Applicants to review applicable inputs, assumptions, and working capital requirements, and has confirmed that the existing cash flow forecast is reasonable and accurate. The Monitor will continue evaluating the KERP, the Incentive Payments, and the Principal Payments, and will determine whether to bring a motion seeking such relief.[10] The Monitor has also implemented the information-sharing and communication protocols imposed under the SISP, which restrict the

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8 Second Report at para. 1.0(5).

9 Second Report at para. 1.0(6).

10 Second Report at para. 1.0(7).

Applicants from: (a) directly or indirectly communicating with potentially interested parties regarding the SISP unless the Monitor or the Sales Agent are participating in the communications or copied on the correspondence; and (b) sharing any information about the Applicants with any potentially interested party without also making such information available to all parties.[11]

13. Since November 28, however, certain complexities have arisen in the Monitor's administration of these restrictions, in light of:

(a) Xiwang Foodstuffs' position as the Applicants' indirect majority shareholder and its expressed intention to participate in the SISP;

(b) the overlap between Xiwang Foodstuffs' management and the Applicants' Board of Directors;[12]

(c) the expressed interest of other shareholders and/or related parties in participating in the SISP;

(d) the governance processes in place at the Applicants, which complicate the implementation of the required information-sharing and communication restrictions, resulting in an increased likelihood of inadvertent, asymmetric disclosure of information; and

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[11] Second Report at paras. 3.0(4).

[12] For example, the Monitor understands that Mr. Xiyao Michael Lui serves as an executive of Xiwang Foodstuffs, a Managing Director of Iovate Holdings, and the Executive Vice Chairman of Iovate International: Second Report at para. 3.0(5)(b).

(e) differing perspectives within the Applicants' management regarding implementation processes for the information-sharing and communication restrictions.[13]

PART III - THE ISSUES

14. The issues addressed in this factum are whether this Court should grant the Enhanced Powers Order.

PART IV - THE LAW

A. The Enhanced Powers Order should be granted

15. The Monitor is seeking enhanced powers to permit it to more directly supervise and, where appropriate, manage the business of the Applicants in order to ensure the fair and transparent administration of these CCAA proceedings and the SISP. These enhanced powers would enable the Monitor to exercise any powers that may be properly exercised by a board of directors or any officers of the Applicants to cause the Applicants to, among other things:

(a) take any and all actions and steps to manage, operate and carry on the business of the Applicants;

(b) preserve and protect the property of the Applicants, or any parts thereof;

(c) report to, meet with, and discuss with such affected persons as the Monitor deems appropriate on all matters relating to the Applicants' business and property, and to share information, subject to the requirements of the SISP Order or such other terms of confidentiality as the Monitor deems advisable;

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[13] Second Report at paras. 3.0(5)-(6).

(d) oversee and direct the preparation and dissemination of financial and other information of the Applicants in the CCAA proceedings, including cash flow statements;

(e) apply to the Court for advice and direction or for any further orders in the CCAA proceedings; and

(f) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.[14]

16. The CCAA provides this Court with "broad discretion in respect of the Monitor's functions,"[15] including, through sections sections 11 and 23(1)(k), the authority to expand the Monitor's powers.[16] Section 11 of the CCAA provides the Court with the authority to "make any order that it considers appropriate in the circumstances," provided that this discretion is exercised in furtherance of the CCAA's remedial objectives, and that the applicant demonstrates that the order sought is appropriate in the circumstances and that it has been acting in good faith and with due diligence.[17] Section 23(1)(k) of the CCAA specifically provides that the monitor shall "carry out any other functions in relation to the company that the court may direct."

17. It is well-accepted that this Court may enhance the role of a monitor by granting it additional powers where appropriate in furtherance of the CCAA's purposes, which include

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14 Second Report at para. 3.0(7).

15 *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para. 91.

16 *Chesswood Group Limited (Re)* (29 October 2024), Toronto CV-24-00730212-00CL (ONSC) (Endorsement) at para. 29.

17 *In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.* (12 October 2023), Toronto CV-23-00693758-00CL (ONSC) (Endorsement) at para. 15, citing *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 48-49 [*Callidus*].

maximizing creditor recovery.[18] Monitors can, for example, act as a "super monitor,"[19] and their role can be expanded even in liquidating CCAA proceedings.[20]

18. Indeed, courts have granted monitors similar powers to:

(a) exercise any powers that may be properly exercised by a debtor company's officers or directors;[21]

(b) take all actions to manage, operate, and carry on the debtor company's business;[22]

(c) preserve and protect the property of a debtor company;[23]

(d) report to and discuss with such affected persons as the monitor deems appropriate all matters relating to the business or property of a debtor company, and to share information, subject to certain terms as to confidentiality;[24]

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[18] *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659 at paras. 61-62 [*Aquadis*]. See, *e.g.*, *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 at para. 73 [*Bloom Lake*].

[19] See *Aquadis* at para. 68.

[20] *Bloom Lake* at paras. 92-93.

[21] See, *e.g.*, *Chesswood Group Limited et al. (Re)* (29 October 2024), Toronto CV-24-00730212-00CL (ONSC) (Initial CCAA Order) at para. 26(a)(viii) [*Chesswood Initial Order*]; *6045073 Canada Inc.* (14 November 2025), Toronto CV-25-00748871-00CL (ONSC) (Expansion of Monitor's Powers Order) at para. 3 [*6045073 Expansion of Monitor's Powers Order*].

[22] See, *e.g.*, *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)* (12 October 2023), Toronto CV-23-00693758-00CL (ONSC) (Monitor's Enhanced Powers and Amended Bid Process Approval Order) at para. 3(a) [*Original Traders Enhanced Powers Order*]; *Griffon Partners Operation Corporation et al. (Re)* (27 March 2024), Calgary 2401-01422 (ABKB) (Amended Monitor's Enhanced Powers Order) at para. 3(c) [*GPOC Monitor's Enhanced Powers Order*].

[23] See, *e.g.*, *Original Traders Enhanced Powers Order* at para 3(b); *Chesswood Initial Order* at para. 26(b).

[24] See, *e.g.*, *Original Traders Enhanced Powers Order* at para. 3(c); *GPOC Monitor's Enhanced Powers Order* at para. 3(n).

(e) oversee the preparation and dissemination of financial and other information about the debtor company in the CCAA proceedings;[25] and

(f) apply to the court for advice and direction or a further order.[26]

19. Here, the enhanced powers sought are necessary to address the governance and information flow complexities resulting from, among other things, Xiwang Foodstuffs' and other related parties/shareholders' expressed intention to participate in the SISP and the existing governance processes in place at the Applicants. The Monitor is concerned that these complexities may create a meaningful risk of perceived unfairness and increase the likelihood of inadvertent, asymmetric disclosure of information through ordinary interactions with the Applicants' employees.[27]

20. If the enhanced powers are not granted, the complexities identified by the Monitor could jeopardize the integrity of the SISP, and by extension threaten the very purpose of these CCAA proceedings—namely to create a stabilized environment for the Applicants to undertake a Court-supervised SISP to either refinance their existing debt or enter into a sale or other strategic transaction.[28] Granting the Enhanced Powers Order would therefore promote the CCAA's aims of "providing for timely, efficient and impartial resolution of a debtor's insolvency" and "preserving and maximizing the value of a debtor's assets."[29]

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25 See, *e.g.*, *Original Traders Enhanced Powers Order* at para. 3(d).

26 See, *e.g.*, *Original Traders Enhanced Powers Order* at para. 3(e); see also *6045073 Expansion of Monitor's Powers Order* at para. 3(s).

27 Second Report at para. 3.0(6).

28 Second Report at para. 2.0(2).

29 *Callidus* at para. 40.

21. Further, the enhanced powers are a natural extension of powers previously granted to the Monitor through the ARIO and the SISP Order in order to maintain the fairness and integrity of the SISP in light of the likelihood that a related party will submit a bid. Through the ARIO, this Court authorized the Monitor to: (a) negotiate and execute the Engagement Letter on behalf of the Applicants; (b) cause them to perform their obligations thereunder; and (c) perform other such functions and duties, and enter into any agreements or incur any obligations on behalf of the Applicants, as may be necessary or incidental to the negotiation, execution and performance of the Engagement Letter by the Applicants.[30] The SISP also imposes strict information-sharing and communication protocols to prevent direct or indirect contact between the Applicants and any interested parties without the participation of the Monitor or the Sales Agent.[31]

22. The Monitor has discussed the relief sought in the proposed Enhanced Powers Order with counsel for the directors of Iovate Holdings and counsel for Xiwang Foodstuffs. The Monitor understands that Xiwang Foodstuffs supports the enhanced powers and related protections sought by the Monitor in this motion, and that the directors do not oppose the relief sought.[32]

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30 Second Report at para. 3.0(3).

31 Second Report at para. 3.0(4), citing s. 29 of the SISP.

32 Second Report at para. 3.0(8).

PART V - RELIEF REQUESTED

23. The Applicants respectfully request that this Court grant the proposed Enhanced Powers Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of December 11, 2025.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *6045073 Canada Inc.* (14 November 2025), Toronto CV-25-00748871-00CL (ONSC) (Expansion of Monitor's Powers Order)
2. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10
3. *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659
4. *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946
5. *Chesswood Group Limited (Re)* (29 October 2024), Toronto CV-24-00730212-00CL (ONSC) (Endorsement)
6. *Chesswood Group Limited et al. (Re)* (29 October 2024), Toronto CV-24-00730212-00CL (ONSC) (Initial CCAA Order)
7. *Griffon Partners Operation Corporation et al. (Re)* (27 March 2024), Calgary 2401-01422 (ABKB) (Amended Monitor's Enhanced Powers Order)
8. *Harte Gold Corp. (Re)*, 2022 ONSC 653
9. *In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.* (12 October 2023), Toronto CV-23-00693758-00CL (ONSC) (Endorsement)
10. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)* (12 October 2023), Toronto CV-23-00693758-00CL (ONSC) (Monitor's Enhanced Powers and Amended Bid Process Approval Order)

I certify that I am satisfied as to the authenticity of every authority.

Date December 11, 2025

Signature

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

***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.

Duties and functions

23 (1) The monitor shall […]

(k) carry out any other functions in relation to the company that the court may direct.

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