

Court File No.:

**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 THE COMPROMISE OR ARRANGEMENT OF EVE & CO
INCORPORATED, NATURAL MEDCO LTD., EVE & CO INTERNATIONAL HOLDINGS
LTD.

Applicants

**FACTUM OF THE APPLICANTS
(CCAA Application)**

March 24, 2022

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I. INTRODUCTION

1. This is an application by Eve & Co Incorporated (“**Eve & Co**”), Natural MedCo Ltd. (“**NMC**”), and Eve & Co International Holdings Ltd. (“**Eve International**”, collectively, the “**Eve Group**” or the “**Applicants**”) for an order (“**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) (i) providing a stay of proceedings to allow the Eve Group to stabilize its business operations and develop a sale and investment solicitation process for its business and property (“**Sale Process**”); (ii) appointing BDO Canada Limited as monitor of the Eve Group in these proceedings (“**Monitor**”); (iii) approving a DIP Term Sheet (as defined below) and authorizing the Applicants to borrow up to \$1,200,000 during the initial stay period; and (iv) granting an Administration Charge, DIP Lender’s Charge, and Directors’ Charge (each as defined below) over the Eve Group’s assets.

2. The Applicants are licenced producers and vendors of cannabis flower, cannabis plants, and cannabis products for both adult use and medicinal use, located in Strathroy, Ontario.

3. In recent years, the Eve Group’s performance has been negatively impacted by, among other things, a series of breached sales agreements that resulted in a loss of millions of dollars in expected annual revenue and the attendant spoilage of unsold inventory, investments in partnerships that did not come to fruition, and a failed equity investment transaction, all in the face of the ongoing COVID-19 pandemic.

4. The Eve Group is insolvent. The Applicants will have sufficient cash to sustain operations for the week ending March 25, 2022, including payroll, but will have insufficient funds thereafter to fund operating expenses.

5. Further, through NMC, the Eve Group is in default of its obligations to its senior secured creditor, the Royal Bank of Canada ("**RBC**").

6. Immediately prior to the commencement of these proceedings, Eve & Co, as guarantor, and NMC as borrower entered into a form of forbearance agreement with RBC ("**Forbearance Agreement**"), which, subject to the jurisdiction of this Court, is intended to: (i) ensure that RBC remains an unaffected creditor in the CCAA proceedings; (ii) confirm priorities as between the security held by RBC over the assets of NMC and the charges granted under the Initial Order; and (iii) ensure that all indebtedness owing to RBC by NMC, as borrower, and Eve & Co, as guarantor, is repaid in full from the proceeds of any Sale Process.

7. As explained below, the Forbearance Agreement and these proceedings generally contemplate a CCAA filing to permit the Eve Group to operate on a going concern basis, and to facilitate a Sale Process, while ensuring that the indebtedness owing to RBC is repaid. The Applicants seek to have the Forbearance Agreement, and the terms thereof, approved, ratified, and confirmed pursuant to the Initial Order, and any other orders sought in the herein proceedings.

8. In all of the circumstances, the Eve Group has determined that it is in the best interests of the Applicants and their stakeholders for the Eve Group to seek creditor protection at this time.

9. The breathing room afforded by the CCAA will allow the Eve Group to stabilize operations, preserve value for stakeholders and permit a Sale Process for the Eve Group and its business, all with a view to restructuring the Applicants' business.

10. The Applicants seek to schedule a comeback hearing on April 1, 2022 ("**Comeback Hearing**"), to request, among other things, approval of the Sale Process,

an extension of the stay of proceedings, and an increase in the Priority Charges (as defined below).

II. FACTS

A. Corporate Overview

11. The facts underlying this Application are more fully set out in the affidavit of Melinda Rombouts (“**Rombouts**”), sworn March 23, 2022. Rombouts is President and Chief Executive Officer of Eve & Co, and a member of the board of directors. She is also the CEO and a member of the board of directors of both NMC and Eve International.¹

12. The Eve Group has broad, business-to-business sales channels domestically in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland, New Brunswick, and the Yukon. As one of the few female-lead cannabis companies, the Eve Group has formed strategic partnerships with well-established brands for female-focused cannabis-infused edibles, vape pens, and topicals.²

13. The Eve Group, through NMC, owns 32 acres of land in Strathroy, Ontario (“**Real Property**”), which is subject to a first charge/mortgage in favour of RBC, and on which the Eve Group operates one of the largest cannabis cultivation and processing facilities in the world at 1,000,000 square feet (“**Facility**”). Although the Facility is purpose built for cannabis production, it is easily adaptable to other agricultural crops.³

14. Each of the Applicants is incorporated pursuant to the laws of Ontario and has its registered head office at the Facility.⁴

¹ Affidavit of Melinda Rombouts, sworn March 23, 2022 (“**Rombouts Affidavit**”) at paras 1-2, Application Record, Tab 2, p 36.

² Rombouts Affidavit at para 18(g)-(h), Application Record, Tab 2, p 42.

³ Rombouts Affidavit at para 18(a)-(b), Application Record, Tab 2, pp 40-41.

⁴ Rombouts Affidavit at paras 22, 26, 30, and 31, Application Record, Tab 2, pp 43, 44.

B. Eve Group's Business

i. Operations

15. Eve & Co is a publicly traded company and is listed on the TSX Venture Exchange under the trading symbol "EVE" and posted for trading on the OTCQX Best Market in the United States under the symbol "EEVVF".⁵

16. Eve & Co is a holding company that owns both NMC and Eve International.⁶

17. The Eve Group's operations are substantially conducted through NMC.⁷

18. NMC holds four cannabis licenses: (i) a license from Health Canada for the cultivation, processing and sale of cannabis and cannabis extracts, edibles, and topicals; (ii) a cannabis license under the *Excise Act, 2001*, S.C. 2002, c. 22, as amended; (iii) a European Union Certificate of Good Manufacturing Practice issued by the Government of Upper Bavaria, Germany, permitting NMC to export medical grade cannabis throughout the European Union; and (iv) a CUMCS-GA certificate as recognized by the Israeli Medical Cannabis Agency to export medical-grade cannabis to Israel.⁸

19. Eve International has no assets of value and no ongoing operations. The company was integral to the Eve Group's expansion efforts in Portugal and Romania and was a participant in two unsuccessful foreign joint venture agreements and related arrangements.⁹

⁵ Rombouts Affidavit at para 20, Application Record, Tab 2, p 42.

⁶ Rombouts Affidavit at paras 2, 21, Application Record, Tab 2, pp 36, 42.

⁷ Rombouts Affidavit at para 21, Application Record, Tab 2, p 42.

⁸ Rombouts Affidavit at paras 23, 42-59 Application Record, Tab 2, pp 43, 48-52.

⁹ Rombouts Affidavit at para 34, Application Record, Tab 2, p 45.

ii. Employees

20. NMC employs 43 employees on an hourly basis, in addition to six management level employees, who are full-time salaried employees. All employees work at the Facility.¹⁰

21. Rombouts is the only employee of Eve & Co. Eve International has no employees.¹¹

22. NMC provides a standard group benefit plan to its employees that covers extended health care, dental care, life insurance, and accidental death and dismemberment insurance.¹²

C. Debts and Obligations of the Eve Group

i. Senior Secured Debt

23. RBC is the Eve Group's senior secured creditor. NMC, as borrower, and Eve & Co, as guarantor, entered into a Loan Agreement with RBC, as lender, on March 12, 2019, and accepted on March 18, 2019, that was subsequently amended and restated ("**RBC Credit Agreement**").¹³

24. The credit facilities advanced by RBC under the RBC Credit Agreement consist of: (i) a \$18,595,102.40 non-revolving term loan ("**RBC Loan**"); and (ii) a Business Card Visa facility with a credit limit of \$25,000.¹⁴

¹⁰ Rombouts Affidavit at para 60, Application Record, Tab 2, p 52.

¹¹ Rombouts Affidavit at para 61, Application Record, Tab 2, p 52.

¹² Rombouts Affidavit at para 65, Application Record, Tab 2, p 53.

¹³ Rombouts Affidavit at para 71, Application Record, Tab 2, p 55.

¹⁴ Rombouts Affidavit at para 71, Application Record, Tab 2, p 55.

25. As security for the RBC Credit Agreement, NMC agreed to provide RBC with a first-ranking charge over the Real Property in the amount of \$25,000,000 (“**RBC Charge**”).¹⁵

26. As additional security, Eve & Co agreed to guarantee NMC’s obligations under the RBC Credit Agreement and also agreed to postpone Eve & Co’s claims against NMC in favour of RBC’s claims.¹⁶

27. By letters dated April 9, 2021, May 13, 2021, August 4, 2021, and November 12, 2021, RBC provided notice of NMC’s default and continued default of the RBC Credit Agreement, and also amended the terms of the RBC Credit Agreement.¹⁷

28. NMC remains in default of the RBC Credit Agreement.¹⁸

ii. Forbearance Agreement

29. On March 22, 2022, RBC, NMC, and Eve & Co entered into the Forbearance Agreement. Pursuant to the terms of the Forbearance Agreement, RBC granted NMC a period of forbearance from March 22, 2022 to September 15, 2022.¹⁹

30. Concurrent with the execution of the Forbearance Agreement, RBC issued a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), and a Notice of Intent by Secured Creditor pursuant to section 21 of the *Farm Debt Mediation Act*, S.C. 1997, c. 21, as amended, to NMC, and a demand for payment to Eve & Co as guarantor.²⁰

¹⁵ Rombouts Affidavit at para 75, Application Record, Tab 2, p 56.

¹⁶ Rombouts Affidavit at para 76, Application Record, Tab 2, p 56.

¹⁷ Rombouts Affidavit at paras 78-80, Application Record, Tab 2, p 56-57.

¹⁸ Rombouts Affidavit at para 81, Application Record, Tab 2, pp 57-58.

¹⁹ Rombouts Affidavit at para 82, Application Record, Tab 2, p 58.

²⁰ Rombouts Affidavit at para 83, Application Record, Tab 2, p 59.

31. Pursuant to the terms of the Forbearance Agreement, RBC has agreed to delay the enforcement of the RBC Charge to allow the Sale Process and these CCAA proceedings to proceed. RBC has also agreed that the RBC Charge shall be subsequent in priority to the Administration Charge and the DIP Lender's Charge, but in priority to the Directors' Charge (all as defined below).²¹

32. As consideration for entering into the Forbearance Agreement, and subject to the jurisdiction of this Court, the Applicants have agreed to the following terms, which have been incorporated by reference into the Initial Order:²²

- a. RBC shall be an unaffected creditor in these CCAA proceedings, and retains the right to enforce the RBC Charge;
- b. NMC shall repay all indebtedness (including accrued interest and legal fees) owing to RBC by September 15, 2022;
- c. if NMC fails to repay its indebtedness to RBC by September 15, 2022, NMC has consented to the appointment of a Receiver over the Real Property.

iii. Junior Secured Debt

33. Brian Van Engelen and Joann Van Engelen (together, the "**Van Engelens**"), as lenders, NMC, as borrower, and Eve & Co., David Burch ("**Burch**"),²³ and Rombouts as guarantors, entered into a Loan Agreement dated December 21, 2020 ("**Van Engelen Loan Agreement**") pursuant to which the Van Engelens agreed to loan NMC up to \$1,000,000 ("**Van Engelen Loan**").²⁴

²¹ Recital I and para 4, Forbearance Agreement, Exhibit "T" to the Rombouts Affidavit, Application Record, Tab 2, pp 304, 307.

²² Paras 5(c), 10(i)(iii), and 16, Forbearance Agreement, Exhibit "T" to the Rombouts Affidavit, Application Record, Tab 2, pp 307, 312, and 317.

²³ Burch and Rombouts purchased the Real Property through NMC's predecessor in 2005. Rombouts Affidavit at para 38, Application Record, Tab 2, p 47.

²⁴ Rombouts Affidavit at para 84, Application Record, Tab 2, p 59.

34. The Van Engelen Loan consists of two \$500,00 facilities.²⁵

35. The Van Engelen Loan matures on December 31, 2022. Interest on both facilities was 15% per annum payable monthly between January 1, 2021 and December 31, 2021, and is 11% per annum payable between January 1, 2022 and December 31, 2022.²⁶

36. As evidence of the Van Engelen Loan, NMC and Eve & Co each provided promissory notes to the Van Engelens, dated December 29, 2020 ("**Van Engelen Promissory Notes**").²⁷

37. NMC and Eve & Co also granted the Van Engelens a security interest over all of their personal property pursuant to general security agreements, dated December 29, 2020. The GSAs have a second-ranking charge over the personal property of NMC and Eve & Co.²⁸

38. As additional security for the amounts advanced under the Van Engelen Loan, NMC granted the Van Engelens a second-ranking charge against the Real Property in the amount of \$1,200,000.²⁹

39. NMC has not made the required payments under the Van Engelen Loan since February 2022 and is accordingly in default of the terms of the Van Engelen Loan.³⁰

iv. Salt Capital Inc. o/ Capital Now Cannabis

40. NMC, as seller, and 2355097 Alberta Ltd. o/a Capital Now Cannabis ("**CNC**"), as factoring agent, entered into a Master Factoring Agreement on July 12, 2021 ("**MFA**")

²⁵ Rombouts Affidavit at para 85, Application Record, Tab 2, p 59.

²⁶ Rombouts Affidavit at para 86, Application Record, Tab 2, p 59.

²⁷ Rombouts Affidavit at para 87, Application Record, Tab 2, p 60.

²⁸ Rombouts Affidavit at para 88, Application Record, Tab 2, p 60.

²⁹ Rombouts Affidavit at para 89, Application Record, Tab 2, p 60.

³⁰ Rombouts Affidavit at para 91, Application Record, Tab 2, p 60.

pursuant to which CNC agreed to purchase certain accounts receivable from NMC at 95% of face value.³¹

41. As security for the amounts paid by CNC, NMC granted CNC a security interest in all of NMC's present and after acquired personal property, including accounts receivable, pursuant to a general security agreement, dated July 12, 2021.³²

42. As of March 3, 2022, NMC is currently in arrears to CNC in the amount of \$160,622.³³

v. Other Creditors

43. The Eve Group leases certain equipment and other personal property in connection with the operation of its business and two lessors have filed registrations in the Ontario personal property registration system.³⁴

44. NMC is also indebted to the Canada Revenue Agency for the following amounts:³⁵

- a. \$195,418 for unremitted Employment Insurance and Canada Pension Plan deductions, as of March 16, 2022;
- b. \$1,434,051 for excise tax remittances, as of March 3, 2022; and
- c. \$275,358 for unpaid HST, as of March 3, 2022.

45. Additionally, as of March 16, 2022, NMC owes the Workplace Safety and Insurance Board of Ontario premiums of \$51,737.³⁶

³¹ Rombouts Affidavit at para 92, Application Record, Tab 2, pp 60-61.

³² Rombouts Affidavit at para 94, Application Record, Tab 2, p 61.

³³ Rombouts Affidavit at para 95, Application Record, Tab 2, p 61.

³⁴ Rombouts Affidavit at para 96, Application Record, Tab 2, p 61.

³⁵ Rombouts Affidavit at paras 101-103, Application Record, Tab 2, pp 62-63.

³⁶ Rombouts Affidavit at para 104, Application Record, Tab 2, p 63.

46. NMC is also indebted to various trade creditors. As at March 3, 2022, the largest trade creditor is Universal Fabricating, the builder of the Facility, who is owed approximately \$3,700,000.³⁷

47. Further, NMC is indebted to Rombouts and Burch pursuant to two promissory notes dated June 14, 2018, each in the principal amount of \$488,000 and bearing interest at the rate of 5% per annum, calculated monthly ("**Promissory Notes**").³⁸

48. As at September 30, 2021, the amount outstanding pursuant to the Promissory Notes is \$965,850.³⁹

49. Eve & Co is also indebted to two debenture holders in the amount of \$77,000.⁴⁰

D. Financial Difficulties

50. The cannabis industry is nascent, highly regulated and has experienced rapid change. The uncertainty caused by these changes has created challenges for companies in the industry, including the ability to obtain investment or financing for operations and capital expenditures.⁴¹

51. In the past year, the Applicants have suffered a series of financial and operational challenges. These challenges have included: (i) failed supply agreements in Germany and Australia that resulted in a loss of expected cash flow and wasted expenses and inventory that could not be salvaged; (ii) investments in partnership in foreign entities that failed to return the expected revenue and market opportunities; (iii) significant debt taken on to finance the expansion of the Facility that has not produced the expected returns;

³⁷ Rombouts Affidavit at para 105, Application Record, Tab 2, p 63.

³⁸ Rombouts Affidavit at para 107, Application Record, Tab 2, p 63.

³⁹ Rombouts Affidavit at para 110, Application Record, Tab 2, p 64.

⁴⁰ Rombouts Affidavit at paras 114-115, Application Record, Tab 2, p 64-65.

⁴¹ Rombouts Affidavit at para 15, Application Record, Tab 2, p 40.

and (iv) the eviction of a lessee from the Facility for non-payment of rent and other breaches causing NMC to lose a meaningful source of revenue.⁴²

52. To address these challenges, the Eve Group's management has pursued a number of strategic initiatives to improve its operations and financial position including (i) entering into a share subscription agreement; (ii) seeking debt financing; (iii) exploring opportunities for an acquisition; (iv) leveraging the Real Property through a potential sale and lease-back transaction; (v) capitalizing on the Facility through potential third party leases or licenses; (vi) converting debt to equity to improve the balance sheet and reduce debt servicing costs; and (vii) reducing operating expenses.⁴³

E. Need for CCAA Protection

53. As a result of continuing liquidity challenges, the Applicants are insolvent and cannot meet their liabilities as they become due.⁴⁴

54. The Applicants have determined that a CCAA proceeding is required to complete a Sale Process and otherwise address their current financial challenges by restructuring their operations.⁴⁵

F. Proposed DIP Loan

55. Pursuant to the cash flow forecast prepared by the Applicants, with the assistance of the Monitor, for the 23 weeks ended August 27, 2022 ("**Cash Flow Forecast**"), the Eve Group requires immediate funding to ensure operations through the initial ten day stay of proceedings.⁴⁶

⁴² Rombouts Affidavit at para 116, Application Record, Tab 2, p 65.

⁴³ Rombouts Affidavit at para 153, Application Record, Tab 2, pp 74-75.

⁴⁴ Rombouts Affidavit at para 13, Application Record, Tab 2, p 39.

⁴⁵ Rombouts Affidavit at para 19, Application Record, Tab 2, p 42.

⁴⁶ Rombouts Affidavit at para 69, Application Record, Tab 2, p 55.

56. To facilitate this interim period, Deans Knight Private Credit GP Inc., as General Partner of Deans Knight Private Credit Limited Partnership, and DK Strategic Yield U.S. GP LLC, as General Partner of Deans Knight Strategic Yield Master Trust Limited Partnership (collectively, the “**DIP Lender**”) has agreed to provide up to a \$2,200,000 loan (“**DIP Loan**”) pursuant to a DIP Term Sheet between the Applicants and the DIP Lender, dated March 22, 2022 (“**DIP Term Sheet**”).⁴⁷

57. The DIP Loan is conditional on court approval of the DIP Loan and charge in favour of the DIP Lender in the amount of \$2,200,000 (“**DIP Lender’s Charge**”).⁴⁸

58. The Applicants are seeking approval of \$1,200,000 of the DIP Loan and related charge on the initial application so as to limit the relief sought to the funds required by the Applicants between the date of the hearing for the Initial Order and the proposed Comeback Hearing.⁴⁹

59. However, the Applicants will require additional funding from the DIP Lender should the stay of proceedings be extended. Accordingly, the Applicants intend to request that the Court increase the DIP Lender’s Charge at the Comeback Hearing to permit the use of additional available funds.⁵⁰

G. Proposed Monitor

60. The Applicants are proposing that BDO Canada Limited (“**BDO**”) act as monitor of the Eve Group in these CCAA proceedings. BDO has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives, and

⁴⁷ Rombouts Affidavit at para 179, Application Record, Tab 2, pp 80-81.

⁴⁸ Rombouts Affidavit at para 179, Application Record, Tab 2, pp 80-81.

⁴⁹ Rombouts Affidavit at para 179, Application Record, Tab 2, pp 80-81.

⁵⁰ Rombouts Affidavit at para 179, Application Record, Tab 2, pp 80-81.

restructuring efforts to date because BDO was previously engaged as a financial advisor in April 2021 in connection with the RBC Credit Agreement.⁵¹

61. BDO has reviewed and assisted in the preparation of the Cash Flow Forecast, and has provided guidance and assistance in the commencement of these CCAA proceedings.⁵²

III. ISSUE PRESENTED

62. The issues to be addressed before this Honourable Court are whether:

- a. the Applicants meet the definition of “company” and “debtor company” under the CCAA;
- b. the Stay of Proceedings should be granted;
- c. the Administration Charge should be granted;
- d. the Directors’ Charge should be granted;
- e. the DIP Loan should be approved and the DIP Lender’s Charge granted;
- f. the Forbearance Agreement should be approved, ratified, and confirm; and
- g. BDO should be appointed as monitor.

IV. LAW AND ARGUMENT

A. Applicants are Debtor Companies

63. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5,000,000.⁵³ The term “company” is defined as “any company, corporation or legal person incorporated by or under an Act

⁵¹ Rombouts Affidavit at para 173, Application Record, Tab 2, p 79.

⁵² Rombouts Affidavit at para 174, Application Record, Tab 2, p 79.

⁵³ s 3(1), *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“**CCAA**”).

of Parliament or the legislature of a province...”.⁵⁴ “Debtor company” is defined as “any company that: (a) is bankrupt or insolvent...”.⁵⁵

64. The insolvency of a debtor is determined as of the time the debtor files its CCAA application.⁵⁶ Insolvent is not defined in the CCAA. However, courts have held that a company is insolvent under the CCAA if:⁵⁷

- a. the company meets the definition of “insolvent person” under the BIA, which includes a person “...who is for any reason unable to meet [its] obligations as they generally become due...”;⁵⁸ or
- b. the company faces a looming liquidity crisis.⁵⁹

65. Protection under the CCAA may be extended not only to a debtor company, but also to entities that are “necessary parties” to ensure that a stay of proceedings is effective. A court should “take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively.”⁶⁰

66. Each of the Applicants are incorporated pursuant to the laws of Ontario and have their registered head offices in Ontario. The Applicants are also insolvent as they are unable to meet their obligations as they generally become due and they face an imminent liquidity crisis. The Eve Group is unable to meet its payroll and other obligations beyond March 25, 2022.

⁵⁴ s 2(1), CCAA.

⁵⁵ s 2(1), CCAA.

⁵⁶ [Re Stelco Inc. \(2004\)](#), 48 CBR (4th) 299 at para 4 (Ont Sup Ct J [Commercial List]).

⁵⁷ [Re Stelco Inc. \(2004\)](#), 48 CBR (4th) 299 at paras 21-22, and 26 (Ont Sup Ct J [Commercial List]).

⁵⁸ s 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”).

⁵⁹ [Re Stelco Inc. \(2004\)](#), 48 CBR (4th) 299 at para 40 (Ont Sup Ct J [Commercial List]).

⁶⁰ [First Leaside Wealth Management Inc., Re](#), 2012 ONSC 1299 at paras 29-30.

67. Eve International, which was heavily involved in Eve Group's unsuccessful European expansion efforts, seeks CCAA protection on the basis of its affiliate company relationship with the Eve Group entities NMC and Eve & Co, and in order to ensure that the CCAA stay of proceedings sought is most effective.

68. The Applicants have total debts in excess of \$5,000,000.

69. Accordingly, the Applicants submit that they are debtor companies to whom the CCAA applies.

B. Stay of Proceedings

70. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate.⁶¹ A stay of proceedings is appropriate where it provides a debtor with breathing room while the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.⁶²

71. Section 11.001 of the CCAA further provides:⁶³

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

72. The purpose of section 11.001 "is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the

⁶¹ s 11.02, CCAA; [Re Lydian International Limited](#), 2019 ONSC 7473 at para 22.

⁶² [Target Canada Co.](#), 2015 ONSC 303 at para 8.

⁶³ s 11.001, CCAA.

restructuring process.”⁶⁴ Its intent is to ensure that the relief granted upon an initial application is limited to the relief reasonably necessary for the debtor to continue to operate in the ordinary course.⁶⁵

73. The Applicants submit that given their current financial condition, a stay of proceedings at this time is in the best interests of the Eve Group and their stakeholders, and is both necessary and appropriate.

74. The Applicants have limited the relief sought on this application to relief that is reasonably necessary in the circumstances to maintain the *status quo* and to give the Applicants the breathing room they need to stabilize their operations and develop a sale process for the benefit of their stakeholders.

75. The Applicants also request that the stay extend to their directors and officers. Section 11.03 of the CCAA provides that an order made under section 11.02 of the CCAA may provide that no person may commence or continue any action against a director of the company or any claim against directors that arose before the commencement of proceedings under the CCAA and that relates to the obligations of the company.⁶⁶

76. The Applicants submit that the stay should be extended to the Eve Group’s directors and officers so that they may focus on the CCAA proceedings and developing and implementing the Sale Process.

C. DIP Loan and DIP Lender’s Charge

77. Section 11.2 of the CCAA allows this Honourable Court to grant the DIP Loan, and to order a charge (“**DIP Lender’s Charge**”) that ranks in priority to the Applicants’ secured creditors, on notice to those secured creditors that would be affected and in an amount

⁶⁴ [Re Clover Leaf Holdings Company](#), 2019 ONSC 6966 at para 13.

⁶⁵ [Re Lydian International Limited](#), 2019 ONSC 7473 at paras 30, 32.

⁶⁶ s 11.03, CCAA.

that the Court considers appropriate having regard to the Applicants' Cash Flow Statement.⁶⁷

78. The security or charge may not secure an obligation that exists before the order is made.⁶⁸

79. Section 11.2(5) provides that a court shall not grant an order for interim financing at the same time as granting an initial order under section 11.2 unless it is satisfied that the terms of the loan are limited to those terms that are reasonably necessary for the applicant's continued operations in the ordinary course of business during the initial stay of proceedings.⁶⁹ What is "reasonably necessary" in each case is fact dependent.⁷⁰

80. In determining whether the DIP Lender's Charge is appropriate, a court is required to consider the following factors under section 11.2(4) of the CCAA:⁷¹

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

⁶⁷ s 11.2(1), CCAA.

⁶⁸ s 11.2(1), CCAA.

⁶⁹ s 11.2(5), CCAA.

⁷⁰ [8440522 Canada Inc., Re](#), 2013 ONSC 6167 at para 30.

⁷¹ s 11.2(4), CCAA

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

81. The Applicants submit that the amount of the proposed DIP Loan is appropriate because it is the amount estimated to be required to allow the Applicants to continue operations in the ordinary course during the initial 10-day stay of proceedings, including the payment of all pre-filing professional fees.

82. It is also submitted that the Court should approve the DIP Term Sheet and grant the DIP Lender's Charge. The DIP Loan is essential to the Eve Group because it provides the Applicants with the financing needed to continue to operate in the ordinary course and engage in the Sale Process. The following additional factors support the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge:

- a. the availability of the DIP Loan is contingent on an order of this Court approving the DIP Term Sheet and the DIP Lender's Charge being granted to secure any advances made thereunder;
- b. the necessity of the DIP Loan is demonstrated and supported by the Cash Flow Forecast;
- c. if the Initial Order is granted, the Applicants intend to return to court for the Comeback Hearing to request an extension of the stay of proceedings;
- d. the Applicants' business will be managed by its directors and senior management, in consultation with the proposed Monitor;
- e. in the absence of the DIP Loan, the Applicants will be unable to continue to carry on business or carry out the Sale Process and will be forced to shut down its operations to the detriment of their stakeholders;
- f. no creditor should be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge;

- g. the Applicants' senior secured creditor, RBC, does not oppose the relief being sought; and
- h. the proposed Monitor is supportive of the DIP Loan, the DIP Term Sheet, and the DIP Lender's Charge.⁷²

D. Administration Charge

83. The Applicants seek a first-ranking court-ordered charge in the amount of \$150,000 over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order ("**Administration Charge**").

84. The Court may grant an administration charge pursuant to section 11.52 of the CCAA.⁷³ In deciding whether to grant an administration charge, courts have considered a number of factors including:⁷⁴

- a. the size and complexity of the businesses being restructured;
- b. the proposed role of the beneficiaries of the charge;
- c. whether there is an unwarranted duplication of roles;
- d. whether the quantum of the proposed charge appears to be fair and reasonable;
- e. the position of the secured creditors likely to be affected by the charge; and
- f. the position of the Monitor.

⁷² Report of the Proposed Monitor, dated March 23, 2022 ("**Pre-Filing Report**") paras 43-44.

⁷³ s 11.52, CCAA.

⁷⁴ [Canwest Publishing Inc, Re](#), 2010 ONSC 222 at para 54; see also, [Re Lydian International Limited](#), 2019 ONSC 7473 at para 46.

85. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The beneficiaries of the Administration Charge will play a critical role in assisting the Applicants with the Sale Process and the progression of these CCAA proceedings. Further each proposed beneficiary of the Administration Charge is performing distinct functions, there is no duplication of roles. The quantum of the proposed Administration Charge is in line with the nature and size of the Applicants' business and the involvement required by the professional advisors.⁷⁵

86. The proposed Monitor is also supportive of the granting and quantum of the Administration Charge.⁷⁶

E. Directors' Charge

87. The proposed Initial Order contemplates the indemnification of the Applicants' directors and officers and the creation of a charge as security for the indemnity ("**Directors' Charge**").

88. A court may grant a directors' charge on a super-priority basis pursuant to section 11.51 of the CCAA which provides:⁷⁷

(1) On application by a debtor company and 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 the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of 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.

Restriction — indemnification insurance

⁷⁵ Rombouts Affidavit at paras 183-184, Application Record, Tab 2, p 82.

⁷⁶ Pre-Filing Report at para 39.

⁷⁷ s 11.51, CCAA.

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

89. The purpose of a directors' charge was described in *Canwest Global Communications Corp. (Re)*:⁷⁸

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring..... Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

90. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:⁷⁹

- a. whether notice has been given to the secured creditors likely to be affected by the charge;
- b. whether the amount is appropriate;
- c. whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and
- d. whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

⁷⁸ [\[2009\] OJ No 4286](#) at para 48 (Ont Sup Ct J [Commercial List]).

⁷⁹ [2014 ONSC 494](#) at para 45.

91. The Applicants maintain an insurance policy for their directors and officers. The policy insures directors and officers of the Eve Group for certain claims that may arise against them in their capacity as directors or officers. However, the insurance policy contains certain exclusions and limitations, and it is possible that the policy will not provide sufficient coverage in respect of potential directors and officer liabilities in these CCAA proceedings.⁸⁰

92. It is important to have the Directors' Charge to keep the directors and officers in place during the CCAA proceedings and to protect them against liabilities that they could incur throughout the CCAA proceedings in their capacity as directors and officers.

93. The Applicants have worked with the Monitor and the other professionals to estimate the proposed quantum of the Directors' Charge.⁸¹

94. The Applicants respectfully submit that the Directors' Charge is reasonable in the circumstances. Accordingly, the Applicants request that this Court exercise its discretion to approve the Directors' Charge.

F. Approval of Forbearance Agreement

95. Ontario Courts have incorporated forbearance agreements by reference, or specific terms of forbearance including a "sunset clause", into CCAA orders on several occasions where such agreements, or the order(s) incorporating them, recognize the inherent jurisdiction of the Court to control the conducts and outcome of CCAA proceedings.⁸²

⁸⁰ Rombouts Affidavit at para 188, Application Record, Tab 2, p 83.

⁸¹ Rombouts Affidavit at para 189, Application Record, Tab 2, pp 83-84.

⁸² [167986 Canada Inc. v. GMAC Commercial Finance Corporation-Canada/Société Financière Commerciale GMAC-Canada](#), 2009 CanLII 65819 at para 15 (Ont Sup Ct J [Div. Ct.]) [**'GMAC'**]; [Amended and Restated Initial Order, Re SAAN Stores Ltd. – Les Magasins SAAN Ltée](#), Court File No.

96. In *Tamerlane Ventures Inc. and Pine Point Holding Corp.*, the court incorporated terms of forbearance into the initial order, although not a separate forbearance agreement itself, and recognized the importance of a cooperative senior secured creditor in CCAA proceedings, stating:⁸³

It is apparent from looking at the history of the matter that Global Resource Fund had every intention of exercising its rights under its security to apply to court to have a receiver appointed, and with the passage of time during which there were defaults, including defaults in forbearance agreements, the result would likely have been inevitable ... it is understandable that the directors agreed to the terms required by Global Resource Fund. If Global Resource Fund had refused ... to agree to any further extension for payment of the secured loan, the prospects of financing the payout of Global Resource Fund through a SISP process would in all likelihood not been available to the applicants or its stakeholders

97. The court also approved a “sunset clause” in the initial order, along with the appointment of a receiver, in the event that the secured creditor was not paid, as was agreed to by both the applicants and the secured creditor, subject to the ongoing and inherent jurisdiction of the court.⁸⁴

98. RBC’s continued cooperation throughout the CCAA proceedings, including its agreement to forbear from appointing a receiver over the Real Property, is critical for the completion of these proceedings generally, and the Sale Process in particular.

99. In the Forbearance Agreement, RBC has indicated its intention to seek a receivership over the Real Property in the event of a default thereunder, and NMC has consented to such relief being sought, subject to this Court’s jurisdiction.

100. The terms of the Initial Order, which incorporate the Forbearance Agreement by reference, do so recognizing the jurisdiction and discretion of this Court.

[05-CL-5695](#), as referenced at paragraph 15 of *GMAC; Tamerlane Ventures Inc. and Pine Point Holding Corp.*, 2013 ONSC 5461 at para 28 and 33-34.

⁸³ [2013 ONSC 5461](#) at para 33.

⁸⁴ [Tamerlane Ventures Inc. and Pine Point Holding Corp.](#), 2013 ONSC 5461 at para 28.

101. Pursuant to the terms of the Forbearance Agreement, RBC has also agreed to potentially prejudice itself, by recognizing the priority of the Administration Charge and the DIP Lender's Charge over the RBC Charge.

102. The Eve Group requests that the Forbearance Agreement be approved, ratified, and confirmed, subject to this Court's jurisdiction, in order to allow the CCAA proceedings and the Sale Process to proceed with a material chance for success.

G. Appointment of Monitor

103. A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made pursuant to section 11.7 of the CCAA.⁸⁵

104. Section 11.7(2) of the CCAA also sets out certain requirements for and restrictions on who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.⁸⁶

105. BDO is a trustee within the meaning of subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. BDO has also consented to its appointment as Monitor.⁸⁷

106. The Eve Group requests that BDO be appointed monitor of the Applicants during these CCAA proceedings.

V. RELIEF REQUESTED

107. The Applicants respectfully request that this Honourable Court grant the relief provided for in the Initial Order in accordance with the terms of the CCAA.

⁸⁵ s 11.7, CCAA.

⁸⁶ s 11.7(2)

⁸⁷ Rombouts Affidavit at para 176, Application Record, Tab 2, p 79.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of March, 2022.

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. Re Stelco Inc. (2004), 48 CBR (4th) 299 (Ont Sup Ct J [Commercial List])
2. First Leaside Wealth Management Inc., Re, 2012 ONSC 1299
3. Re Lydian International Limited, 2019 ONSC 7473
4. Target Canada Co., 2015 ONSC 303
5. Re Clover Leaf Holdings Company, 2019 ONSC 6966
6. 8440522 Canada Inc., Re, 2013 ONSC 6167
7. Canwest Publishing Inc, Re, 2010 ONSC 222
8. Canwest Global Communications Corp. (Re), [2009] OJ No 4286 (Ont Sup Ct J [Commercial List])
9. Jaguar Mining Inc. (Re), 2014 ONSC 494
10. 167986 Canada Inc. v. GMAC Commercial Finance Corporation-Canada/Société Financière Commerciale GMAC-Canada, 2009 CanLii 65819
11. Amended and Restated Initial Order, Re SAAN Stores Ltd. – Les Magasins SAAN Ltée, Court File No. 05-CL-5695,
12. Tamerlane Ventures Inc. and Pine Point Holding Corp., 2013 ONSC 5461

SCHEDULE “B” RELEVANT STATUTES

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Definitions

2(1) In this Act...

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

...

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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 10 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

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and 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 the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of 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.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross

negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- (b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

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

Interpretation

Definitions

2 In this Act...

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

...

trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act.

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

**AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF EVE & CO
INCORPORATED, NATURAL MEDCO LTD., EVE & CO INTERNATIONAL HOLDINGS
LTD.**

Court File No.:

Applicants

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

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