

Superior Court
(Commercial Division)

Canada
Province of Québec
District of Montréal
No: 500-11-062636-234

In the matter of the Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 of :

**BRUNSWICK HEALTH GROUP INC.
BRUNSWICK MEDICAL CENTER INC.
DMSC REAL ESTATE INC.
THE CHILDREN'S CLINIC @ POINTE-CLAIRE INC.
SANOMED SOLUTIONS INC.
BRUNSWICK MEDICAL CENTRE @ GLEN INC.
BRUNSWICK RESEARCH INC.
BRUNSWICK MINOR SURGERY CENTER INC.
BRUNSWICK ENDOSCOPY INC.
6892094 CANADA INC.
8981515 CANADA INC.**

Debtors / Applicants

-and-

C.S. ADJAMI INC.

NOI Trustee

Motion for an Order Extending the NOI Proceedings and Increasing the Administration Charge

(Bankruptcy and Insolvency Act, RSC 1985, c B-3, s 50.4)

To one of the Honourable Judges of the Superior Court, sitting in the Commercial Division for the District of Montréal, the Debtors / Applicants respectfully submit:

I. Order Sought

1. The Debtors/Applicants, Brunswick Health Group Inc. (**Brunswick Health Group**), Brunswick Medical Center Inc. (**BMC**), DMSC Real Estate Inc. (**DMSC**), The Children's Clinic @ Pointe-Claire Inc. (**TCC Pointe-Claire**), SanoMed Solutions Inc. (**SanoMed**), Brunswick Medical Centre @ Glen Inc. (**BMC Glen**), Brunswick Research Inc. (**Brunswick Research**), Brunswick Minor Surgery Center Inc. (**Brunswick Minor Surgery**), Brunswick Endoscopy Inc. (**Brunswick Endoscopy**), 6892094 Canada Inc. (**689 Canada**) and 8981515 Canada Inc. (**TCC Montréal** and collectively, **Brunswick Group** or the **Applicants**) operate a full-service medical center that includes its own medical clinics, third party medical clinics and medical-related tenants. Brunswick Group is one of the largest medical centers in Québec, and one of the largest in Canada, with 120,000 square feet of operations located in its own state of the art medical facility located in Pointe-Claire.
2. Pursuant to the present *Motion for an Order Extending the NOI Proceedings and Increasing the Administration Charge* (the **Motion**), the Debtors/Applicants are seeking an order (i) extending the limit to file a proposal and the corresponding stay of proceedings until and including the first date on which the Court will be available to hear a motion for the approval of a transaction and to be confirmed with the Court during the hearing on the Motion (the **Extension Date**) and (ii) increasing the Administration Charge (as such term is defined hereinafter) to \$200,000, in the form of the draft Order Extending the NOI Proceedings and Increasing the Administration Charge, filed in support hereof as **Exhibit P-1**.

II. Procedural History

3. On July 14, 2023, the Debtors each signed a Notice of intention to make a proposal (**NOI**) under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the **BIA**) and, on the same day, C.S. Adjami Inc. filed the NOI with the Office of the Superintendent of Bankruptcy and was appointed as trustee thereto (the **NOI Trustee**), as appears from the Court record.
4. Absent the commencement of proceedings under the BIA by filing NOIs (the **NOI Proceedings**) and the protection afforded to it by the automatic stay of proceedings, Brunswick Group would have been unable to continue its operations while it completed the implementation of its restructuring plan, for the benefit of all of its stakeholders including its creditors, employees, the physicians affiliated to Brunswick Group (the **Physicians**) and the thousands of patients who visit its clinics every year.
5. On August 9, 2023, the Debtors filed a *Motion for an Order Consolidating the NOI Proceedings for Administrative Purposes and Extending the Time Limit to File a Proposal*, pursuant to which they requested, *inter alia*, a first extension of the stay period. The short extension was requested to give sufficient time to the parties involved to negotiate the terms of an interim financing facility.
6. On August 11, 2023, the Honourable Christian Immer, J.S.C. issued an *Order Consolidating the NOI Proceedings for Administrative Purposes and Extending the Time Limit to File a Proposal* which, *inter alia* :

- (a) consolidated, for administrative purposes only, the NOI Proceedings in a single proceeding under the Court file number 500-11-062636-234; and
 - (b) extended the time limit to file a proposal and the corresponding stay of proceedings until and including August 18, 2023.
7. On August 16, 2023, the Debtors filed a *Motion for an Order (i) Extending the NOI Proceedings, (ii) Approving an Administration Charge, an Interim Financing, an Interim Financing Charge and a Financial Advisor Charge, (iii) Appointing a Representative Counsel, (iv) Appointing an Interim Receiver and (v) Related Relief (the **NOI Relief Motion**)*.
8. On August 17, 2023, the Honourable Christian Immer, J.S.C. issued an Order which, *inter alia* :
- (a) extended the time limit to file a proposal and the corresponding stay of proceedings until and including October 2, 2023;
 - (b) authorized the Debtors to borrow from the The Toronto-Dominion Bank (**TD Bank**) and Business Development Bank of Canada (**BDC** and together with TD Bank, the **Interim Lenders**) up to a maximum principal amount of \$1,000,000 on the terms and conditions set forth in the Interim Financing Terms Sheet dated August 16, 2023 (the **Interim Financing Term Sheet**) and created a priority charge on all of the Debtors' assets, property and undertakings (the **Property**) in the aggregate amount of \$1,250,000 in favour of the Interim Lenders (the **Interim Financing Charge**);
 - (c) authorized the Debtor to pay an amount of \$700,000 representing the billings collected by Brunswick Group prior to the filing of the NOIs from the RAMQ as well as from hospital and private billing, which was scheduled to be paid to the Physicians on July 21, 2023 (the **Cycle 28 Payment**) in installments as provided in the Interim Financing Term Sheet, and pay amounts due to each Physician in connection therewith subject to each Physician undertaking to continue to provide medical services at the clinics owned by the Debtors until (i) the closing of a transaction or (ii) the date on which it is determined that no transaction in respect of the Debtors' medical operations will occur;
 - (d) appointed C.S. Adjami Inc., trustee, to act as interim receiver (the **Interim Receiver**) in connection with the payment of RAMQ and private billings to occur during the NOI Proceedings to certain Physicians;
 - (e) created an administration charge in the amount of \$150,000 (the **Administration Charge**) over all of the Debtors' Property to secure the payment of the professional fees and disbursements of the Applicants' legal counsel, the NOI Trustee and the Interim Receiver (collectively, the **Professionals**), which charge ranks in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a demerit trust, except for the Interim Financing Charge; and
 - (f) appointed Stein & Stein Inc. as representative counsel in the NOI Proceedings to represent the interest of the Physicians.

9. On September 29, 2023, the Debtors filed a *Motion for an Order Extending the NOI Proceedings*.
10. On October 2, 2023, Me Patrick Gosselin, Registrar issued an *Order Extending the NOI Proceedings* which extended the time limit to file a proposal and the corresponding stay of proceedings until and including October 10, 2023.
11. On October 6, 2023, the Debtors filed a second *Motion for an Order Extending the NOI Proceedings*.
12. On October 10, 2023, Me Vincent-Michel Aubé, Registrar, issued an *Order Extending the NOI Proceedings* which, *inter alia*, extended the limit to file a proposal and the corresponding stay of proceedings until and including November 3, 2023.

III. Background and Context

13. Brunswick Group's business and operations are more fully detailed in the NOI Relief Motion which is filed herewith as **Exhibit P-2**.
14. Brunswick Group is a full-service medical center that includes its own medical clinics, third party medical clinics and medical-related tenants. It is one of the largest medical centers in Québec, and one of the largest in Canada, with 120,000 square feet of operations located in its own state of the art medical facility located in Pointe-Claire (the **Pointe-Claire Facility**).
15. As at the date hereof, Brunswick Group employs approximately 150 employees and approximately 170 physicians are affiliated with its various clinics. Brunswick Group has and intends to continue its operations during the NOI proceedings and consequently has not laid-off its employees.
16. Brunswick Group's operations are centered around two distinct operating segments: (i) operation of medical clinics and (ii) real estate management.
17. Prior to initiation the NOI Proceedings, Brunswick Group, in consultation with TD Bank and BDC, implemented certain restructuring measures in the past year with a view to restructuring its business informally.
18. On April 14, 2022, the management of Brunswick Group hired Mr. Carl Adjami as a consultant (the **Consultant**) to support the management of the company with, among other things cash-flow management, the preparation of a restructuring plan, the execution of the restructuring plan, and to negotiate and communicate with various stakeholders.
19. Unfortunately, despite the efforts expended by Brunswick Group to implement the recommendation of the Consultant included in the restructuring plan, some of the measures were not timely implemented. Ultimately, the implementation of the restructuring plan by Brunswick Group did not gain sufficient traction to convince TD Bank and BDC that an alternative other than a sale and investment solicitation process was appropriate in the circumstances for the benefit of all stakeholders.

20. On January 25, 2023, in accordance with the recommendation of the Consultant and with the support of TD Bank and BDC, Brunswick Group retained the services of PricewaterhouseCoopers Corporate Finance Inc. (**PwC**) to act as its financial advisor in connection with a potential transaction to sell Brunswick Group's business and/or assets.
21. PwC conducted a sale and investment solicitation process (**SISP**) to solicit offers for a transaction in respect of: (i) the medical operations of Brunswick Group or (ii) both the medical operations and the Pointe-Claire Facility.
22. In consultation with the NOI Trustee and PwC, and in light of the offers received in the context of the SISP, Brunswick Group determined that efforts should be focused on closing one or more transaction(s) with respect to Brunswick Group's medical operations first, and then to a transaction with respect to the Pointe-Claire Facility given that a transaction with a stable operator would allow Brunswick Group to subsequently maximize the value for the Pointe-Claire Facility.
23. On or about October 4, 2023, Brunswick Group signed a binding term sheet (the **Binding TS**) with a purchaser (the **Purchaser**) with respect to the sale of its medical operations which serves as the basis for the share purchase agreement to be submitted to this Court for approval.

IV. Restructuring Efforts Since the Commencement of the NOI Proceedings

24. Since the filing of the NOIs on July 14, 2023, Brunswick Group, in consultation with the NOI Trustee, has *inter alia*:
 - (a) taken measures to stabilize their business and operations;
 - (b) been involved, with the assistance of the NOI Trustee, in ongoing discussions with its stakeholders, including suppliers, creditors, the Physicians and employees, regarding the NOI Proceedings and responded to requests for information from certain of such parties;
 - (c) worked to resolve issues arising with its stakeholders;
 - (d) worked, in consultation with the NOI Trustee, to review and update its cash flow projections for its receipts and disbursements;
 - (e) secured the Binding TS with the Purchaser for a transaction in respect of its medical operations and is currently finalizing a share purchase agreement (the **Share Purchase Agreement**) with the Purchaser;
 - (f) continued discussions with an interested party regarding a potential transaction in respect of the business and assets of TCC Montréal;
 - (g) generally advanced the restructuring process; and
 - (h) worked towards formulating a proposal to its creditors, as the case may be.

V. Extension of the NOI Proceedings

25. As outlined in the NOI Relief Motion, the principal objective of the NOI Proceedings was to allow Brunswick Group to maintain its going concern and preserve and maximize the value of its business and assets for the benefit of all of its stakeholders while it continued to build on the results of the SISP and work towards securing a transaction for its medical operations first, and then to a transaction with respect to the Pointe-Claire Facility.
26. Brunswick Group is now seeking an extension of the time limit to file a proposal and of the corresponding stay of proceedings until and including the Extension Date in order to continue its restructuring efforts and finalize a transaction to be submitted to this Court for approval in the coming weeks.
27. Since the last extension order, Brunswick Group has been negotiating the terms of the Share Purchase Agreement with the Purchaser. Although the Parties are close to reaching an agreement on the terms and conditions of the Share Purchase Agreement, they require additional time to finalize same and be able to give adequate notice to the parties affected by the transaction contemplated by the Share Purchase Agreement prior to seeking this Court's approval of the transaction.
28. Given the significant progress made to date, it is respectfully submitted that the continuation of the NOI Proceedings is necessary and reasonable in the circumstances in order to allow Brunswick Group to continue the implementation of its restructuring plan, which is articulated around the implementation of a transaction in respect of its medical operations.
29. In the alternative, if Brunswick Group is forced into a receivership or a bankruptcy pursuant to the BIA, the sale of the assets by a receiver or trustee is unlikely to result in a better return. The sale of Brunswick Group's business and/or assets as a going concern will produce a higher return for the stakeholders than if the assets are liquidated.
30. A liquidation of Brunswick Group's assets would be catastrophic for the 150 employees who rely on this paycheck for their livelihood and would lead to the closure of this health establishment which provides, *inter alia*, family medicine services to more than 300 000 patients in a province with a severe healthcare capacity deficit.
31. It is respectfully submitted that:
 - (a) Brunswick Group has acted and is continuing to act in good faith and with due diligence;
 - (b) the requested extension would enhance the prospects of a viable proposal and further the objectives of the BIA; and
 - (c) no creditor would be materially prejudiced if the extension is granted and, to the contrary, all stakeholders of Brunswick Group will benefit from the continuation of the NOI Proceedings.

32. Brunswick Group's has sufficient financial resources to continue its operations up to and including the Extension Date, as appears from the cash flow prepared by the NOI Trustee for the period from October 21, 2023, to December 15, 2023 (the **Cash Flow**) filed herewith as **Exhibit P-3**.
33. The NOI Trustee is supportive of the extension sought and TD and BDC, in their capacity as secured creditors and Interim Lenders, consent to the extension.

VI. The Administration Charge Should be Increased

34. Pursuant to the Proposed Order, the Applicants are seeking an increase of the Administration Charge from \$150,000 to \$200,000.
35. Absent the increase sought to the Administration Charge, the protection afforded to the Professionals under same may prove to be insufficient to achieve its purpose, which is to ensure that the restructuring professionals continue to provide their services notwithstanding any sign of trouble.
36. The Applicants have spared no efforts in order to comply with the budgeted cash flow, and the shareholders have committed to funding any deficit in the Cash Flow to ensure that the Applicants continue to meet their obligations throughout the NOI Proceedings. Nonetheless, the payment of the Professionals' fees and disbursements has been deferred to ensure the payment of other post-filing obligations. The Professionals have tolerated this temporary deferral, but have advised Brunswick Group that they are willing to continue to provide their professional services only if the Administration Charged is increased to \$200,000.
37. The Professionals are essential to Brunswick Group's restructuring, are playing a central role in the drafting and negotiation of the Share Purchase Agreement and ancillary transactional documents and will be instrumental in the implementation of the transaction contemplated by the Share Purchase Agreement should it be approved by this Court.
38. In this context, Brunswick Group respectfully submits that it is appropriate to increase the amount of the Administration Charge to \$200,000.
39. The secured creditors likely to be affected by the increase of the Administration Charge have been notified.
40. The NOI Trustee is supportive of the increase sought to the Administration Charge and TD and BDC, in their capacity as secured creditors of the Debtors, consent to the increase sought.

VII. Execution notwithstanding appeal

41. In order to advance the restructuring process as quickly and efficiently as possible, it is essential that execution of the order requested be granted notwithstanding appeal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

RENDER an Order substantially similar to the Proposed Order, Exhibit P-1;

THE WHOLE without legal costs, save in case of contestation.

Montréal, October 31, 2023

McCarthy Tétrault, s.é.n.c.r.l., s.r.l.

McCarthy Tétrault LLP

Lawyers for the Debtors / Applicants

M^{re} Hugo Babos-Marchand

M^{re} François Alexandre Toupin

M^{re} Pierre-Gabriel Grégoire

2500 - 1000 De La Gauchetière St. West

Montréal, QC H3B 0A2

Telephones: 514.397.4156

514.397.4210

514.397.4245

E-mails: hbmarchand@mccarthy.ca

fatoupin@mccarthy.ca

pgregoire@mccarthy.ca

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-and-

C.S. ADJAMI INC.

NOI Trustee

Affidavit

I, the undersigned, Vince Trevisonno, President of the Applicants, domiciled for the purpose hereof at 955 St-Jean Boulevard, Suite 308, Pointe-Claire, Québec, H9R 5K3, solemnly affirm that all the facts alleged in the present *Motion for an Order Extending the NOI Proceedings and Increasing the Administration Charge* are, to the best of my knowledge, true.

AND I HAVE SIGNED, BY TECHNOLOGICAL MEANS
AT MONTRÉAL,



Vince Trevisonno

SOLEMNLY AFFIRMED TO BEFORE ME BY
TECHNOLOGICAL MEANS AT MONTREAL, this
31st day of October, 2023

Shantal Delisle #230820
COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC

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NOI Trustee

Notice of Presentation

TO: The Service List

TAKE NOTICE that the present *Motion for an Order Extending the NOI Proceedings and Increasing the Administration Charge* will be presented for adjudication before the Quebec Superior Court, sitting in the commercial division for the district of Montréal, **in room 15.04** of the Montréal Courthouse located at 1, Notre-Dame Street East, Montreal, Québec, H2Y 1B6 **on November 1, 2023 at 10:00 a.m.**, or as soon as counsel may be heard.

Montréal, October 31, 2023

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Lawyers for the Applicants

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List of Exhibits

EXHIBITS	DESCRIPTION
Exhibit P-1	Proposed Order
Exhibit P-2	NOI Relief Motion
Exhibit P-3	Cash Flow

Montréal, October 31, 2023

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M^{re} Hugo Babos-Marchand - 514.397.4156
hbmarchand@mccarthy.ca
M^{re} François Alexandre Toupin - 514.397.4210
fatoupin@mccarthy.ca
M^{re} Pierre-Gabriel Grégoire – 514.397.4245
pgregoire@mccarthy.ca

BC0847
McCarthy Tétrault LLP
Avocats ● Agents de brevets et marques de commerce
Barristers & Solicitors ● Patent & Trade-mark Agents

Suite 2500
1000 De La Gauchetière Street West
Montréal (Québec) H3B 0A2
Tel. : 514 397-4100
Fax : 514 875-6246
notification@mccarthy.ca

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