

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 30 th
	)	
JUSTICE WILTON-SIEGEL	)	DAY OF APRIL, 2018
	)	

BETWEEN:

STRONACH CONSULTING CORP.

Applicant

- and -

BIONX CANADA INC.

Respondent



ORDER
(Re: Employee Entitlements)

THIS MOTION, made by Grant Thornton Limited ("GTL") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of BionX Canada Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, for an order, among other things, authorizing and directing the Receiver to make distributions in respect of certain Termination Entitlements and Contract Worker Arrears (as defined herein) was heard on Monday, April 30, 2018, at 330 University Ave, Toronto, Ontario.

ON READING the Second Report of the Receiver to the Court dated April 16, 2018 (the "**Second Report**") and on hearing the submissions of the lawyer(s) for the Receiver and for Stronach Consulting Corp. ("**SCC**"), no other parties present, although

properly served as appears from the Affidavit of Service of Monica Palko sworn April 19, 2018,

1. THIS COURT ORDERS AND DECLARES that capitalized terms not defined herein have the meaning set out in the Second Report.

2. THIS COURT ORDERS AND DECLARES that the Second Report and the activities of the Receiver set out therein, including the distribution \$56,359 to Employees in respect of Outstanding Wages, are hereby approved.

3. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to receive and hold in a separate account funds advanced by SCC for the benefit of the Employees set out in the Employee Entitlement Schedule included with the Second Report as Confidential Appendix "1" (the "**Termination Entitlements**"), pending distribution.

4. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to distribute on behalf of the Debtor funds advanced by SCC in the aggregate amount of \$1,450,187, of which \$101,006 will be in respect of Priority Employee Claims, to Employees in complete satisfaction of the Termination Entitlements, and subject to such reasonable variations as the Receiver deems necessary or appropriate pursuant to paragraph 7, below.

5. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to receive and hold in a separate account funds advanced by SCC for the benefit of the Contract Workers set out in the Contract Worker Arrears Schedule included with the Second Report as Confidential Appendix "2" (the "**Contract Worker Arrears**") pending distribution.

6. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to receive, hold separately and distribute on behalf of the Debtor funds advanced by SCC in the aggregate amount \$77,976 to Contract Workers in satisfaction of the Contract Worker Arrears, and subject to such reasonable variations as the Receiver deems necessary or appropriate pursuant to paragraph 7, below.

7. THIS COURT ORDERS AND DECLARES the Receiver is authorized to vary the quantum of the distributions set out in paragraphs 4 and 6 above as the Receiver deems necessary or appropriate, including but not limited to ensuring that the calculation of the Termination Entitlements conforms with statutory obligations and to correct any minor errors with respect to Contract Employee Arrears, without further authorization of this Court.

8. THIS COURT ORDERS that the Receiver is authorized and directed to return any amounts advanced by SCC that are not paid to Employees or Contract Workers as a result of variances pursuant paragraph 7.

9. THIS COURT ORDERS AND DECLARES that amounts advanced by SCC in respect of distributions made in respect of Priority Employee Claims to a maximum amount of \$101,006 shall be granted priority under the Receiver's Borrowings Charge (as defined in the Order of Justice McEwen dated February 27, 2018). The remaining balance of the amounts advanced by SCC in respect of Employee Entitlements and Contract Worker Arrears, in the amount of \$1,427,157, subject to paragraph 7 above, shall be unsecured claims against the Debtor's estate.

10. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the receipt, holding and distributions of funds authorized pursuant to this Order (the "**Distributions**") shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the

Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation nor shall the Distributions, or advance of funds by SCC in respect of same, constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that the Receiver and SCC shall not be liable for any employee-related liabilities, including or successor employer liabilities as provided for in section 14.06(1.2) of the BIA, or co-employer liabilities, other than such amounts as the Receiver or SCC may specifically agree in writing to pay, as a result of the receipt, holding and distributions of funds authorized pursuant to this Order.

12. THIS COURT ORDERS that GTL, the Receiver and SCC shall incur no liability or obligation as a result of the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

13. THIS COURT ORDERS that Confidential Appendices "1" and "2" of the Second Report are sealed until further Order of the Court.

W. J. H. J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 30 2018

PER / PAR:

NB

STRONACH CONSULTING CORP.
Applicant

and

BIONX CANADA INC.
Respondent

Court File No.: CV-18-592741-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(RE: EMPLOYEE ENTITLEMENTS)**

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