

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

THE HONOURABLE MR.)

WEDNESDAY, THE 31st

JUSTICE ~~HANEY~~ **WILTON-SIEGEL**)

DAY OF OCTOBER, 2018 



BETWEEN:

STRONACH CONSULTING CORP.

Applicant

-and-

BIONX CANADA INC.

Respondent

ORDER

(Approving Assignment Agreement, Bankruptcy, Distribution and Fees)

THIS MOTION, made by Grant Thornton Limited in its capacity as the Court-appointed receiver and receiver and manager (the “**Receiver**”) of the assets, undertakings and property of BionX Canada Inc. (“**BionX**”), for an order, *inter alia*, approving: (i) an Assignment Agreement between the Receiver and the Applicant with respect to the intercompany receivables of BionX and vesting the such intercompany receivables in the Applicant free and clear of any claims and encumbrances; (ii) additional distributions by the Receiver to the Applicant on account of fees and expenses of the Applicant in enforcing its security; (iii) the assignment of BionX into bankruptcy;

and (iii) the fees and activities of the Receiver and its independent legal counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Receiver dated October 25, 2018 and on hearing the submissions of counsel for the Receiver and any other parties appearing as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Caitlin Fell sworn October 25, 2018 filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ASSIGNMENT AGREEMENT

2. **THIS COURT ORDERS** that the Assignment Agreement dated October 4, 2018, between Stronach Consulting Corp. and the Receiver (the “**Assignment Agreement**”) be and is hereby approved and the Receiver is authorized to carry out and perform its obligations thereunder.

3. **THIS COURT ORDERS** that, on the effective date of the Assignment Agreement, all right, title and interest in and to the Intercompany Receivables (as defined in the Assignment Agreement) shall vest absolutely in SCC, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the

foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated February 27, 2018 appointing the Receiver; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and this Court orders that all of the Encumbrances affecting or relating to the Intercompany Receivables are hereby expunged and discharged as against the Intercompany Receivables.

4. **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) (the "**BIA**") in respect of BionX and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made in respect of BionX;

the (i) distributions made to SCC pursuant to this Order and the Order dated June 14, 2018 and; (ii) the vesting of the Intercompany Receivables in SCC pursuant to this Order, shall be binding on any trustee in bankruptcy that may be appointed in respect of BionX and shall not be void or voidable by creditors BionX, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SEALING

5. **THIS COURT ORDERS** that the Confidential Supplement to the Fourth Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened following closing of the transaction with Amego Vehicles Inc.

DISTRIBUTION

6. **THIS COURT ORDERS AND DECLARES** that the Order dated June 14, 2018 be and is hereby amended to authorize the Receiver to make distributions to SCC, above \$1,421,000, in respect of all reasonable fees and expenses incurred by of SCC in connection with the enforcement of its rights under the Grid Note and Security Agreement (as those terms are defined in the Assignment Agreement), including the reasonable fees and expenses incurred by SCC in connection with these receivership proceedings.

BANKRUPTCY OF BIONX

THIS COURT ORDERS that the Receiver be and is hereby authorized to assign BionX into bankruptcy under the BIA.

ACTIVITIES OF THE RECEIVER

7. **THIS COURT ORDERS** that the Fourth Report of the Receiver and the activities of the Receiver described therein are hereby approved; provided, however, that only the Receiver, in its

personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

APPROVAL OF FEES

8. **THIS COURT ORDERS** that the fees in the amount of \$305,137.36 (plus HST in the amount of \$39,667.86, for a total of \$344,805.22) of Grant Thornton Limited for the period from May 1, 2018 to September 30, 2018 as further set out and described in the Affidavit of Michael Creber sworn October 3, 2018, be and are hereby approved.

9. **THIS COURT ORDERS** that the fees in the amount of \$55,587.20 (plus HST in the amount of \$7,226.34, for a total of \$62,813.54) of Stikeman Elliott LLP for the period from April 2, 2018 to June 8, 2018 as further set out and described in the Affidavit of Lee Nicholson sworn September 6, 2018, be and are hereby approved.

10. **THIS COURT ORDERS** that the professional fees in the amount of \$44,912.50 and disbursements in the amount of \$260.00 (plus HST in the amount of \$5,872.42, for a total of \$51,044.92) of Brauti Thorning Zibarras LLP, in its capacity as independent counsel to the Receiver, for the period from May 1, 2018 to August 31, 2018, as further set out and described in the Affidavit of Caitlin Fell sworn October 4, 2018, be and are hereby approved.

SHAREHOLDERS RESOLUTION

11. **THIS COURT ORDERS** that the Receiver be and is hereby authorized *nunc pro tunc* to execute a resolution as the shareholder of BionX GmbH in order to appoint Mr. Peter Obermeier as Managing Director of BionX GmbH and the Receiver shall incur no liability in respect of the execution of such resolution (the “**Shareholders Resolution**”).

SHARES HELD BY BIONX

12. **THIS COURT ORDERS** that from and after the date of the execution of the Shareholder's Resolution, the Receiver be and is hereby authorized to abandon the shares held by BionX in all of the subsidiaries of BionX, including the shares of BionX of America Inc., BionX GmbH, BionX Europe GmbH, and Innovator Propulsion Systems Co. Ltd.

W. J. Dunlop

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

NOV 01 2018

PER / PAR:

mlh

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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

STRONACH CONSULTING CORP.
Applicant

-and-

BIONX INC.
Respondent

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

Proceeding Commenced at Toronto

ORDER

(Approving Assignment Agreement, Bankruptcy, Distribution and Fees)

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