

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SYNAPTIVE MEDICAL INC.**

Applicant

**FACTUM OF THE APPLICANT  
(Application for Initial Order)**

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## **PART I - INTRODUCTION**

1. Synaptive faces a liquidity crisis. It is a Canadian medical technology champion whose mission is to improve outcomes for brain and spine surgery and cancer and stroke patients through spectacular, cutting-edge technology. But its business is not yet profitable—a result of high R&D costs, long sales lead times and costs associated with a bloated capital structure. Recent market uncertainty caused by the ever-looming threat of tariffs pushed these challenges over the edge.

2. In this application, Synaptive seeks an initial order under the CCAA. The question here is whether Synaptive will be granted breathing room to explore a strategic process for addressing its debt and finding a sustainable, long-term solution to its challenges so it can continue delivering life-changing value for neurosurgery patients and other stakeholders. This is the only result consistent with the purpose of the CCAA.

3. Synaptive owes in excess of US\$130 million to numerous creditors and is in default of approximately US\$104 million of secured debt obligations. It does not have the revenue generation, financial wherewithal or access to capital to provide a material source of income or funding to meet its obligations as they come due. Synaptive has already exhausted its out-of-court options over the last two years, including efforts to raise fresh capital, negotiate workouts with its key creditors, temporarily lay off 149 of its employees and pursue a lengthy pre-filing investment solicitation process. None of these efforts resulted in sustainable solutions.

4. Importantly, Synaptive comes prepared with a map of the road ahead and a desire to hit the ground running. It has worked extensively and diligently with Export Development Canada—a Crown corporation that helps Canadian exporters raise capital and seize global market opportunities—to prepare a proposed SISP and a DIP facility to provide necessary liquidity to

navigate this CCAA proceeding and pursue that SISP. The proposed monitor, Richter, is intimately familiar with Synaptive's business and supports this path forward.

5. On this day 1 application, Synaptive seeks strictly "keep the lights on" relief that is necessary to preserve the value of its business through to the comeback hearing, currently scheduled for March, 26, 2025. This includes a customary stay of proceedings, administration and D&O charges, the appointment of Richter as monitor, approval for Synaptive to draw an appropriately sized initial advance of \$1,000,000 under the DIP facility and a corresponding charge in favour of the DIP lender to secure the DIP obligations. Synaptive intends to return at the March 26 comeback hearing for SISP approval, authority to draw the remaining balance of the DIP and an increase to the administration charge, among other things.

6. Ultimately, the CCAA provides for preserving the *status quo* to give debtor companies the chance to develop a path forward for their business that resolves their operational and financial challenges and maximizes value for their creditors and stakeholders. Synaptive seeks just that. With breathing room, access to DIP funding and a map of the road ahead, Synaptive believes that these CCAA proceedings are the only viable means of finding a going-concern solution to its challenges.

## **PART II – SUMMARY OF FACTS**

7. The facts underlying Synaptive's business and decision to commence this CCAA proceeding are summarized in the affidavit of Magnus Momsen sworn March 18, 2025.

### **A. BUSINESS AND CORPORATE STRUCTURE**

8. Synaptive is a privately-held company organized under the laws of Ontario. Its registered

head office is located at 555 Richmond Street West, Toronto, Ontario, though it is in the process of moving its headquarters to 5055 Satellite Drive, Mississauga, Ontario.<sup>1</sup> Synaptive is the ultimate parent company of each of the other 8 entities in its corporate group (collectively, the “**Synaptive Group**”), which are incorporated in various foreign jurisdictions, including Delaware, the U.K. and Germany. Those other entities exist primarily for purposes of employing individuals in those entities’ jurisdictions of incorporation and do not otherwise have any material businesses or assets.<sup>2</sup>

9. Synaptive’s business is the development of cutting-edge neurosurgical devices that provide a complete neurosurgery solution—from pre-operative planning and diagnosis to surgical interventions and post-operative care. Synaptive’s products ensure that neurosurgeons and other healthcare professionals are delivered the right information at the right place and the right time, before, during and after surgical procedures.

10. Those products include: (i) Modus X—a next-generation robotic digital microscope that provides surgeons with hands-free 3D optics during brain and spine surgery; (ii) Modus Plan—a software solution designed to assist surgeons in creating surgery plans; (iii) Modus Nav— a software solution designed to complement Modus Plan by tracking a surgeon’s instruments in real time during surgery; and (iv) Synaptive MRI—an innovative magnetic resonance imaging platform that operates at a lower magnetic field strength than Synaptive’s competitors.<sup>3</sup>

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<sup>1</sup> Affidavit of Magnus Momsen sworn March 18, 2025, para 46, Tab 2 of the Application Record dated March 18, 2025 (“**Momsen Affidavit**”).

<sup>2</sup> Momsen Affidavit, para 20.

<sup>3</sup> Momsen Affidavit, paras 26-31.

11. Synaptive's largest customer base is hospitals with neurosurgery centers in the U.S. market. This is an important market segment, because U.S. surgeons are often viewed as leaders in their field. Synaptive has also provided equipment to leading hospitals in Canada, Europe, Australia, Pakistan and South-East Asia.<sup>4</sup>

12. Synaptive relies on a number of suppliers for components, materials, equipment, and services related to its products and programs, including, among others, JENOPTIK Medical GmbH, Sony Electronics Inc., VadaTech, IPro, Universal Robotics, Beckoff, MDA, Advance Medical Designs, Advance Motion, Harbec Inc., QSDM Inc., Uniserve Communications, Inc. and Pacer Air Freight Ltd.<sup>5</sup>

13. Synaptive has developed an incredibly strong portfolio of owned and leased intellectual property. To date, Synaptive has filed over 1,275 patent applications in a number of key jurisdictions, including Canada, the U.S., Europe, China and Japan. Synaptive has received 839 patents, with over 330 grants in the U.S. alone. Synaptive also licenses 43 patents, 37 of which have been granted.<sup>6</sup>

14. Synaptive also has key regulatory authorizations that allow its products to be developed, distributed and operated in a large number of markets, including from Health Canada and the U.S. Food and Drug Administration, along with regulators in the European Union, Switzerland and the United Kingdom.<sup>7</sup>

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<sup>4</sup> Momsen Affidavit, para 33.

<sup>5</sup> Momsen Affidavit, para 34.

<sup>6</sup> Momsen Affidavit, para 50.

<sup>7</sup> Momsen Affidavit, paras 38-42.

15. Synaptive currently operates with an active staff of 40 individuals. As a result of its turnaround efforts, Synaptive recently made the difficult decision to temporarily lay off 149 of its valued employees.<sup>8</sup>

**B. THE FINANCIAL POSITION OF THE SYNAPTIVE GROUP**

16. Synaptive is deeply insolvent and in default of approximately US\$103 million of secured debt. Absent its ability to access immediate funding through the DIP Financing Facility (as defined below), it will not have adequate liquidity to operate its business in the ordinary course.

*(i) Secured Obligations*

*(a) Espresso Facility*

17. On or around December 23, 2020, Synaptive entered into a loan facility and security agreement (as amended from time to time, the “**Espresso Loan Agreement**”) with Espresso Capital Ltd. (“**Espresso Capital**”), pursuant to which Espresso Capital committed, subject to the terms and conditions therein, to advance US\$5,000,000 to Synaptive (the “**Espresso Facility**”).<sup>9</sup>

18. In connection with the Espresso Facility, Synaptive granted Espresso Capital a security interest in all of its personal property, including its intellectual property. The Espresso Facility is guaranteed by Synaptive USA, which granted Espresso Capital a security interest in all of its intellectual property as security for those guarantee obligations.<sup>10</sup>

19. On August 30, 2023, the Espresso Loan Agreement, the Synaptive USA guarantee and all

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<sup>8</sup> Momsen Affidavit, para 88.

<sup>9</sup> Momsen Affidavit, para 54.

<sup>10</sup> Momsen Affidavit, paras 55-56.

security in respect of the foregoing was assigned to Export Development Canada (“EDC”). On July 22, 2024, EDC and Synaptive entered into an amendment of the Espresso Loan Agreement, pursuant to which, among other things, the Espresso Facility was separated into two tranches. The Espresso Facility currently bears interest at a rate of 20% and matured on March 12, 2025.<sup>11</sup> As of March 10, 2025, Synaptive’s indebtedness under the Espresso Facility is approximately US\$6,020,000.<sup>12</sup>

**(b) EDC Convertible Notes**

20. Between November 1, 2022 and December 23, 2024, Synaptive issued a total of 75 convertible promissory notes (collectively, the “EDC Convertible Notes”) to various investors in an aggregate amount of US\$49,684,800. EDC acted as the lead investor under the EDC Convertible Notes and advanced an aggregate principal amount of US\$40,000,000 thereunder.<sup>13</sup>

21. The EDC Convertible Notes bear interest at a rate of 10% per annum, subject to the terms thereof, and matured on March 12, 2025. Each EDC Convertible Note is convertible into shares of Synaptive if the conditions described therein have been met. As security for its obligations under the EDC Convertible Notes, Synaptive granted each holder a security interest in substantially all of its personal property.<sup>14</sup> As at March 10, 2025, Synaptive’s aggregate indebtedness under the EDC Convertible Notes, including accrued and unpaid interest, was approx. US\$59,778,028.<sup>15</sup>

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<sup>11</sup> Momsen Affidavit, paras 58-59.

<sup>12</sup> Momsen Affidavit, para 61.

<sup>13</sup> Momsen Affidavit, para 62.

<sup>14</sup> Momsen Affidavit, para 63.

<sup>15</sup> Momsen Affidavit, para 66.



(c) *BDC Convertible Notes*

22. Between December 23, 2020 and February 1, 2021, Synaptive issued a total of 66 convertible promissory notes (collectively, the “**BDC Convertible Notes**”) to various investors in an aggregate amount of US\$14,792,678.46. BDC Capital Inc. (“**BDC**”) acted as the lead investor under the BDC Convertible Notes and advanced a principal amount of US\$5,000,000 thereunder.<sup>16</sup>

23. The BDC Convertible Notes bear interest at a rate of 8.55% and matured on March 12, 2025. Each of the BDC Convertible Notes are convertible into shares of Synaptive if the conditions described therein have been met. As security for its obligations under the BDC Convertible Notes, Synaptive granted each holder a security interest in substantially all of its personal property.<sup>17</sup>

24. In June 2021, holders of 61 BDC Convertible Notes, with an aggregate principal amount of US\$9,911,678.46, converted into Class B Preferred shares of Synaptive (and which were subsequently converted to Common shares on February 6, 2023), leaving 5 BDC Convertible Notes outstanding, with an aggregate principal amount of US\$5,119,000.<sup>18</sup> As at March 10, 2025, Synaptive’s aggregate indebtedness under the BDC Convertible Notes, including accrued and unpaid interest, was approximately US\$7,231,496.<sup>19</sup>

(d) *Subordinated Convertible Notes*

25. Between October 5, 2021 and December 10, 2024, Synaptive issued a total of 109 subordinated convertible promissory notes (collectively, the “**Subordinated Convertible Notes**”)

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<sup>16</sup> Momsen Affidavit, para 67.

<sup>17</sup> Momsen Affidavit, para 68.

<sup>18</sup> Momsen Affidavit, para 69.

<sup>19</sup> Momsen Affidavit, para 71.

to approximately 95 investors in an aggregate amount of US\$23,711,493. The Subordinated Convertible Notes bear interest at a rate of 10% per annum and matured on March 12, 2025. Each Subordinated Convertible Note is convertible into shares of Synaptive if the conditions described therein have been met.<sup>20</sup>

26. As security for its obligations under the Subordinated Convertible Notes, Synaptive granted each holder a security interest in substantially all of its personal property. The security interest of each Subordinated Convertible Note was postponed and subordinated to the EDC Convertible Notes.<sup>21</sup>

27. As at March 10, 2025, Synaptive's aggregate indebtedness under the Subordinated Convertible Notes, including accrued and unpaid interest, was approximately US\$30,875,636.<sup>22</sup>

*(e) Credit Card Facility*

28. Synaptive is also indebted to Royal Bank of Canada ("**RBC**") under two credit card facilities. RBC holds cash collateral as security for Synaptive's obligations under that facility.<sup>23</sup>

*(ii) Unsecured Obligations*

29. Synaptive also has significant unsecured obligations, including:

(a) Accounts Payable. As of December 31, 2024, the Synaptive Group had accounts payable and other liabilities of approximately US\$15.2 million, most of which is

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<sup>20</sup> Momsen Affidavit, para 72.

<sup>21</sup> Momsen Affidavit, para 73.

<sup>22</sup> Momsen Affidavit, para 75.

<sup>23</sup> Momsen Affidavit, para 76.

owed to trade creditors.<sup>24</sup>

- (b) Regional Relief Recovery Loan. As of March 10, 2025, Synaptive owed approximately C\$291,667 to the Federal Economic Development Agency for Southern Ontario in respect of amounts advanced pursuant to the Regional Relief and Recovery Fund (a pandemic-era relief program).<sup>25</sup>
- (c) Employee Liabilities. The Synaptive Group's gross bi-weekly payroll is approximately US\$220,000 and C\$650,000. As at March 14, 2025, Synaptive owed US\$139,276 and C\$527,152 of wages in arrears, US\$562,600 of accrued vacation pay and C\$44,297 of Canadian Pension Plan and Employment Insurance contributions in respect of its current and temporarily laid off employees.<sup>26</sup>
- (d) Taxes. Synaptive expects that, while not presently due and payable, source deductions will be triggered when above-noted unpaid employee wage amounts are paid. Synaptive is otherwise current on its Canadian tax obligations.<sup>27</sup>
- (e) Landlords. As noted above, Synaptive is a tenant under a lease for its office located in 555 Richmond Street, Toronto. Synaptive is approximately two months behind on rental payments (i.e., it did not make a payment for February rent and has not prepaid March rent).<sup>28</sup>

## C. FINANCIAL DIFFICULTIES

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<sup>24</sup> Momsen Affidavit, para 77.

<sup>25</sup> Momsen Affidavit, paras 78-79.

<sup>26</sup> Momsen Affidavit, para 80.

<sup>27</sup> Momsen Affidavit, para 81.

<sup>28</sup> Momsen Affidavit, para 82.

30. Synaptive has faced significant and growing financial difficulties in recent years. Its sales have not adequately supported its cost structure, leading to a deterioration in its financial position combined with mounting losses. The Synaptive Group had an approximate net loss of US\$29.6 million in the year ended December 31, 2024.<sup>29</sup>

31. Numerous factors have caused a substantial drain on Synaptive's cash position, including costs associated with Synaptive's ongoing R&D efforts and maintaining Synaptive's substantial IP portfolio and significant employee base. Those costs are often not matched to Synaptive's sales, which require long lead times and are dependent on third-party payers whose own cost-reduction measures can reduce demand for Synaptive's products.<sup>30</sup>

32. These problems have been compounded in recent months by the market uncertainty caused by the threat of tariffs with and against the U.S.—the largest market for Synaptive's products. These tariffs have a significant impact on the cost of Synaptive's products, which are manufactured exclusively in Canada and compete with other companies that manufacture in the U.S. or other countries not subject to equivalent tariffs.<sup>31</sup>

33. Indeed, Synaptive has been in default of its obligations under its secured facilities since October 2022 when it first defaulted under the Espresso Facility. While Synaptive has been a party to forbearance arrangements since that time, which have been amended from time to time, it has not been able to cure those defaults. The most recent forbearance period expired on March 12,

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<sup>29</sup> Momsen Affidavit, para 92.

<sup>30</sup> Momsen Affidavit, paras 93-95.

<sup>31</sup> Momsen Affidavit, para 97.

2025, meaning EDC is now in a position to enforce its security against Synaptive's property.<sup>32</sup>

34. In response to these challenges, Synaptive has undertaken extensive efforts to cut costs, seek additional sales, and raise additional financing. Those cost cutting efforts include reductions to R&D costs initiatives as well as other discretionary spending, consolidation of Synaptive's operating facilities and sub-leased redundant space and a difficult decision to temporarily lay off 149 valued employees.<sup>33</sup>

35. Synaptive has also made efforts to secure funding and raise additional capital, but these efforts have been largely unsuccessful. Those efforts include engaging RBC to implement an investment solicitation process in October 2023, and independent discussions with various investor groups. While those efforts almost resulted in an injection of US\$25 million of new funds, the uncertainties caused by tariff threats, among other things, derailed discussions with investors.<sup>34</sup>

36. Synaptive is deeply insolvent. It does not have the means to repay amounts owing under its debt instruments and requires additional funding to continue as a going concern. It will only be able to receive this funding through these CCAA proceedings. The only financing available to Synaptive is the debtor-in-possession credit facility described below, which cannot be finalized until Synaptive obtains the Initial Order it seeks in these proceedings.<sup>35</sup>

#### **A. Cash Flow Statement**

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<sup>32</sup> Momsen Affidavit, para 98.

<sup>33</sup> Momsen Affidavit, para 101.

<sup>34</sup> Momsen Affidavit, paras 103-104.

<sup>35</sup> Momsen Affidavit, para 105.

37. Synaptive has developed a cash flow statement (the “**Cash Flow Statement**”) with Richter Inc., as proposed monitor (the “**Proposed Monitor**”) and EDC which illustrates Synaptive’s liquidity crisis. The Cash Flow Statement, along with Synaptive’s balance sheet as at December 31, 2024, indicate that, absent an immediate injection of funds under the DIP Term Sheet (as defined below), Synaptive will be unable to continue operating its business.<sup>36</sup>

## **B. Roadmap Ahead**

38. Importantly, Synaptive has worked diligently with EDC and the Proposed Monitor to prepare a path forward in this CCAA proceeding. That path forward has two key components: (i) a DIP facility to provide Synaptive with liquidity; and (ii) a SISP to seek a value-maximizing sale transaction or investment in Synaptive.

### **(i) DIP Financing Facility**

39. To facilitate this CCAA proceeding, on March 18, 2025, EDC, as lender (in such a capacity, the “**DIP Lender**”), and Synaptive, as borrower, entered into a DIP facility loan agreement (the “**DIP Term Sheet**”), under which the DIP Lender has agreed to provide financing to Synaptive (the “**DIP Financing Facility**”) in two amounts, subject to this Court’s approval. First, the DIP Lender would make an initial amount of up to \$1,000,000 for Synaptive’s liquidity needs during the first 7 days of this CCAA proceeding (the “**Initial Amount**”). Second, the DIP Lender would make available subsequent advances of up to a maximum of \$7,000,000 following the March 26,

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<sup>36</sup> Cash Flow Statement, Appendix “B” to the Pre-Filing Report of the Proposed Monitor dated March 18, 2025 (“**Pre-Filing Report**”); December 31, 2024 Balance Sheet, Exhibit “D” to the Momsen Affidavit; Momsen Affidavit, paras 107, 44-45.

2025 comeback hearing (the “**Maximum Amount**”).<sup>37</sup> The DIP Lender requires as a condition to such advances that it be granted the DIP Lender’s Charge to secure payment of all amounts owing and obligations under the DIP Term Sheet.<sup>38</sup>

40. The DIP Term Sheet provides for Synaptive to borrow from the DIP Lender on, among other things, the following commercial terms:

- (a) DIP Financing Facility and Initial Amount: non-revolving, secured credit facility:
  - (i) up to the Initial Amount of \$1,000,000 during the first 7 days of this CCAA proceeding; and (ii) up to the Maximum Amount of \$7,000,000 following the issuance of the ARIO;<sup>39</sup>
- (b) Term: earlier of: (i) June 20, 2025; (ii) the closing of any sale of substantially all of the Property or Business; (iii) the implementation of a plan of compromise or arrangement in respect of Synaptive; (iv) the date on which the Initial Order or the ARIO expires without extension, or on which the CCAA proceeding is terminated; and (v) the occurrence of an Event of Default;<sup>40</sup>
- (c) Interest Rate: 15% per annum;<sup>41</sup> and
- (d) Fees: exit fee in the amount of \$350,000 (i.e., 5% of the Maximum Amount), fully earned and payable on the Maturity Date (as defined in the DIP Term Sheet).<sup>42</sup>

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<sup>37</sup> Momsen Affidavit, para 112; DIP Term Sheet, ss 5-6, Exhibit “R” to the Momsen Affidavit.

<sup>38</sup> Momsen Affidavit, para 113; DIP Term Sheet, s 14(a), Exhibit “R” to the Momsen Affidavit.

<sup>39</sup> Momsen Affidavit, para 114(a); DIP Term Sheet, ss 5-6, Exhibit “R” to the Momsen Affidavit.

<sup>40</sup> Momsen Affidavit, para 114(b); DIP Term Sheet, s 18, Exhibit “R” to the Momsen Affidavit.

<sup>41</sup> Momsen Affidavit, para 114(c); DIP Term Sheet, s 9, Exhibit “R” to the Momsen Affidavit.

<sup>42</sup> Momsen Affidavit, para 114(d); DIP Term Sheet, s 11, Exhibit “R” to the Momsen Affidavit.

(ii) **SISP**

41. At the comeback hearing, Synaptive intends to seek this Court’s approval of a SISP, which Synaptive developed with input from the Proposed Monitor and the DIP Lender. The SISP contemplates a two-phase, 55-day timeline (from SISP approval to the selection of any successful bid(s)) with targeted dates of June 13 and June 20, 2025, for, respectively, a hearing for the sale approval motion and the outside closing date.<sup>43</sup>

**PART III - ISSUES**

42. The principal issues on this Application are whether:

- (a) Synaptive meets the criteria to obtain relief under the CCAA;
- (b) an initial stay of proceedings should be granted in respect of Synaptive (the “**Initial Stay Period**”);
- (c) this Court should authorize Synaptive to borrow the Initial Amount under the DIP Term Sheet;
- (d) Richter should be appointed as Monitor; and
- (e) this Court should grant the Administration Charge, the DIP Lender’s Charge and the Directors’ Charge.

**PART IV - LAW AND ARGUMENT**

**A. SYNAPTIVE MEETS THE CCAA STATUTORY REQUIREMENTS**

(i) *The CCAA Applies to Synaptive*

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<sup>43</sup> Momsen Affidavit, para 141; Proposed SISP, Exhibit “S” To the Momsen Affidavit.



43. The CCAA applies to a “debtor company” if the total claims against it exceed \$5 million.<sup>44</sup> Section 2 defines a “debtor company” as a company that, among other things, is insolvent.<sup>45</sup> A “company”, in turn, includes any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province.<sup>46</sup>

44. Synaptive meets each of these requirements. First, the total claims against it exceed the CCAA’s \$5 million threshold.<sup>47</sup> Second, it is incorporated under the Ontario *Business Corporations Act* and is therefore a “company.”<sup>48</sup>

45. Third and finally, Synaptive is insolvent. The CCAA does not define the meaning of “insolvent,” however, courts generally use the definition of “insolvent person” under the *Bankruptcy and Insolvency Act* (“**BIA**”),<sup>49</sup> which is defined as a person: (i) who is for any reason unable to meet his obligations as they generally become due; (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (iii) whose aggregate 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.<sup>50</sup>

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<sup>44</sup> *Companies’ Creditors Arrangement Act*, [R.S.C. 1985, c. C-36, ss 2\(1\)](#) “company”, “debtor company”, [3\(1\)](#) [CCAA]; *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3, s 2](#) “insolvent person” [BIA]; *Stelco Inc., Re*, [2004 CanLII 24933](#) (ONSC), [paras 21-26](#).

<sup>45</sup> [CCAA, s 2](#).

<sup>46</sup> [CCAA, s 2](#).

<sup>47</sup> Momsen Affidavit, paras 52-53; December 31, 2024 Balance Sheet, Exhibit “D” to the Momsen Affidavit.

<sup>48</sup> Momsen Affidavit, para 18.

<sup>49</sup> [R.S.C. 1985, c. B-3](#).

<sup>50</sup> [BIA, s 2](#) (“insolvent person”).

46. Additionally, in *Re Stelco Inc.*, Justice Farley expanded the understanding of the term insolvent in the CCAA context to reflect Parliament’s emphasis on the “rescue” purposes of the CCAA. This expanded understanding includes situations where a corporation is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.<sup>51</sup>

47. Synaptive is currently insolvent under both the BIA’s “insolvent person” test and the *Stelco* test. As demonstrated in Synaptive’s balance sheet dated December 31, 2024, it is insolvent on a balance sheet basis and is generally unable to meet its obligations as they come due.<sup>52</sup> Synaptive will also immediately run out of liquidity.<sup>53</sup>

48. In sum, Synaptive is an “insolvent person” and a “debtor company” to which the CCAA applies.

***(ii) This Court is the Appropriate Forum for this Proceeding***

49. A debtor company may bring an application under the CCAA in the province within which its head office or chief place of business is located.<sup>54</sup> Synaptive maintains its head office and many of its remaining employees in Toronto and the Greater Toronto Area.<sup>55</sup> Accordingly, this Court is the appropriate forum.

***(iii) The Requested Relief is Reasonably Necessary***

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<sup>51</sup> *Stelco Inc., Re* (2004), 48 C.B.R. (4<sup>th</sup>) 299, [2004 CanLII 24933](#) (ONSC), para 40.

<sup>52</sup> Momsen Affidavit, para 52; December 31, 2024 Balance Sheet, Exhibit “D” to the Momsen Affidavit.

<sup>53</sup> Momsen Affidavit, paras 11; December 31, 2024 Balance Sheet, Exhibit “D” to the Momsen Affidavit.

<sup>54</sup> [CCAA, s 9\(1\)](#).

<sup>55</sup> Momsen Affidavit, paras 21, 46.

50. Under section 11.001 of the CCAA, the relief sought on an initial application must be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.<sup>56</sup>

51. Synaptive has worked with the Proposed Monitor to limit the relief in the proposed Initial Order to only what is reasonably necessary in the circumstances for the continued operation of its business. In each case, Synaptive considered whether the requested relief is necessary for the immediate stabilization of its business to protect it and the interests of its various stakeholders. The Proposed Monitor is supportive of this relief.<sup>57</sup>

## **B. THE STAY OF PROCEEDINGS IS APPROPRIATE**

### ***(i) The Stay of Proceedings for Synaptive is Necessary***

52. Section 11.02 of the CCAA allows this Court to grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate; and (ii) Synaptive has acted in good faith and with due diligence.<sup>58</sup> In exercising its discretionary authority to grant a stay under the CCAA, this Court must take into consideration the purpose of the CCAA, which should be broadly and liberally interpreted.<sup>59</sup>

53. The threshold for a stay is low. A debtor company only has to satisfy this Court that a stay of proceedings would “usefully further” its efforts to reorganize.<sup>60</sup> The Supreme Court of Canada

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<sup>56</sup> [CCAA, s 11.001](#).

<sup>57</sup> Pre-Filing Report, para 12.1.

<sup>58</sup> [CCAA, ss. 11.02\(1\), \(3\)](#).

<sup>59</sup> *Stelco Inc. (Bankruptcy), Re*, [2005 CanLII 8671](#) (ONCA), [para 32](#); *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) (ONSC), [para 47](#); *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#), [para 40](#).

<sup>60</sup> *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), [para 70](#) [*Century Services*]; *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, [2018 SKCA 36](#), [para 21](#).

and this Court have made clear that those reorganization efforts can include the pursuit of a sale process.<sup>61</sup>

54. Synaptive requires a stay of proceedings to provide it with the necessary breathing room to, among other things: (i) pursue a court-approved sale process that maximizes value for the benefit of its creditors and other stakeholders; (ii) maintain its business operations; and (iii) compromise the various obligations that are causing Synaptive's liquidity crisis.

55. Without the protections of the CCAA, Synaptive will be unable to meet its obligations as they become due. If Synaptive is not afforded the protection of the CCAA, it is likely that there will be significant disruptions that force it to shut down its operation, causing significant value destruction to the detriment to its creditors and other stakeholders.

**C. SYNAPTIVE REQUIRES AN IMMEDIATE INJECTION OF FUNDS UNDER THE DIP FINANCING FACILITY**

56. The Initial Amount of \$1,000,000 under the DIP Financing Facility is necessary to ensure that Synaptive has sufficient liquidity to avoid value destruction prior to the March 26 comeback hearing.

57. This Court's jurisdiction to approve interim financing and related priority charges is codified in section 11.2 of the CCAA.<sup>62</sup> The primary consideration in granting such relief is what will best serve the interests of all of the debtor company's stakeholders.<sup>63</sup> Courts must also

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<sup>61</sup> *9354-9186 Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#), paras 42, 43 [*Callidus*]; *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#), para 32. See also *North American Tungsten Corporation Ltd., Re*, [2015 BCSC 1376](#), paras 27, 30.

<sup>62</sup> [CCAA, s 11.2](#).

<sup>63</sup> *Great Basin Gold Ltd., Re*, [2012 BCSC 1459](#), para 15.

consider the factors in section 11.2(4) of the CCAA.<sup>64</sup>

58. Importantly, Synaptive is not seeking this Court's approval to draw the full amount of the DIP Financing Facility. Rather, Synaptive only seeks this Court's approval of an appropriately sized Initial Amount in the amount of \$1,000,000 and a DIP Lender's Charge to secure Synaptive's corresponding obligations. Synaptive determined that this amount was necessary with the assistance of the Proposed Monitor and in consultation with the DIP Lender.

59. It is not uncommon for this Court to allow a debtor company to access interim funding on day 1 of a CCAA proceeding where, as is the case here, the company's cash flow projections demonstrate a clear need for the interim financing to provide a measure of stability and to fund operations during the initial stay period.<sup>65</sup> Indeed, this Court has previously recognized that doing so can "enhanc[e] the prospects of a viable compromise or arrangement."<sup>66</sup>

60. Additionally, each of the section 11.2(4) factors under the CCAA weighs in favour of this Court approving the Initial Amount:

- (a) The period during which the company is expected to be subject to CCAA proceedings. The Initial Amount is limited to the liquidity that Synaptive requires up to the March 26 comeback hearing.

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<sup>64</sup> [CCAA, s 11.2](#).

<sup>65</sup> [Endorsement of Justice Osborne dated March 10, 2025](#), *In the Matter of a Plan of Compromise or Arrangement of Hudson's Bay Company ULC et al.*, Court File No. CV-25-00738613-00CL, paras 83-97; [Endorsement of Justice Black dated April 26, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Ted Baker Canada Inc. et al.*, Court File No. CV-24-718993-00CL, [paras 32-33](#); *Re Just Energy Corp.*, [2021 ONSC 1793](#), [para 66](#); *Trees Corporation*, [2023 ONSC 7265](#), [paras 40-42](#).

<sup>66</sup> *Re Just Energy Corp.*, [2021 ONSC 1793](#), [para 66](#).

- (b) How the company's business and financial affairs are managed during the proceedings. Synaptive's management is actively engaged and receiving advice from advisors with extensive experience in CCAA proceedings. The proposed cash flow reflects expenditures necessary to operate the business until the comeback period.
- (c) Whether Synaptive's management has the confidence of its major creditors. The urgent nature of this application has precluded Synaptive from discussing the path forward in these proceedings with most of its creditors. It intends to engage with key creditors prior to the March 26 comeback hearing.
- (d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made. The Initial Amount is necessary to prevent potentially serious value destruction of Synaptive's business during the period leading up to the March 26 comeback hearing.
- (e) The nature and value of the company's property. Synaptive's property is mostly comprised of intangible assets, such as its patents, trademarks, permits and licenses, know-how and contractual arrangements. The Initial Amount will help ensure that the value of these assets is preserved through to the March 26 comeback hearing.
- (f) Whether any creditor would be materially prejudiced as a result of the security or charge. The Initial Amount is \$1,000,000—an appropriately sized amount relative to Synaptive's approximately US\$130 million of liabilities. Additionally, the Initial Amount will ensure that Synaptive's assets are preserved through to the March 26

comeback hearing, which directly benefits creditors.

- (g) The monitor's report in respect of the reasonableness of the company's cash flow statement. The Proposed Monitor is of the view that Synaptive's cash flow statement is reasonable as required by the CCAA, and that it is supportive of the Initial Amount and the corresponding DIP Lender's Charge.<sup>67</sup>

61. On March 26, at the comeback hearing, Synaptive intends to seek authorization to draw on the remaining balance of the DIP Financing Facility and a corresponding increase to the DIP Lender's Charge. Synaptive will provide appropriate submissions for such relief at that time.

#### **D. RICHTER SHOULD BE APPOINTED AS MONITOR**

62. Synaptive seeks the appointment of Richter as the Monitor in this CCAA proceeding. Richter meets the requirements under section 11.7 of the CCAA to act as the Monitor. Richter is a licensed trustee within the meaning of section 2 of the BIA and has signed a consent to act as the Monitor of Synaptive. Richter does not fit any of the exceptions provided under section 11.7(2). None of Richter or any of its affiliates have ever acted as Synaptive's auditor.<sup>68</sup>

63. Additionally, Synaptive supports Richter's appointment as Monitor. Among other reasons, Richter has been engaged as Synaptive's financial advisor since August 2023 and, since that time, has become intimately familiar with Synaptive's business and challenges. Richter has retained McMillan LLP to act as its independent counsel.

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<sup>67</sup> Pre-Filing Report, para 8.5.

<sup>68</sup> Momsen Affidavit, para 121.

64. For these reasons, this Court should appoint Richter as Monitor.

**E. THE CHARGES ARE APPROPRIATE**

65. Synaptive is seeking charges that are usual and customary for a proceeding of this nature. The proposed Initial Order provides for the following three charges (collectively, the “**Charges**”), in order of their requested priority:

- (a) First – an administration charge (the “**Administration Charge**”) up to a maximum initial amount of C\$250,000 to secure payment of the professional fees of the Monitor, its legal counsel and Synaptive’s legal counsel;
- (b) Second – a DIP lender’s charge (the “**DIP Lender’s Charge**”); and
- (c) Third – a directors’ and officers’ charge (the “**Directors’ Charge**”) up to a maximum amount of C\$1,100,000 to secure the indemnity that Synaptive gave to its directors and officers.

66. For the reasons set out below, each Charge is appropriate and necessary for Synaptive to successfully restructure its operations.

*(i) Administration Charge*

67. The CCAA authorizes this Court to grant a priority charge over a debtor company’s assets for professional fees and disbursements on notice to affected secured creditors.<sup>69</sup> This Court has recognized that, unless professional advisor fees are protected with the benefit of an administration

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<sup>69</sup> [CCAA, s. 11.52.](#)



charge, the objectives of the CCAA would be frustrated.<sup>70</sup> The factors to be considered are well established in the caselaw.<sup>71</sup>

68. Synaptive seeks the Administration Charge against the Property in the maximum amount of C\$250,000 to secure the fees and disbursements incurred both before and after the commencement of these proceedings by legal counsel for Synaptive, the Proposed Monitor, and legal counsel for the Proposed Monitor.

69. The Administration Charge is fair and reasonable given: (i) the beneficiaries of the Administration Charge will provide essential legal and financial advice throughout this CCAA proceeding without any anticipated duplication of roles; (ii) Synaptive's advisors have engaged in a significant amount of work on a pre-filing basis in preparing for this application, which has gone unpaid; (iii) the amount of the Administration Charge has been determined with guidance from the Proposed Monitor; (iv) the amount of the Administration Charge is limited to what is necessary for the Initial Stay Period; and (v) the DIP Lender and the Proposed Monitor support the Administration Charge.

**(ii) DIP Lender's Charge**

70. As discussed at length in paragraphs 58 to 61 above, the DIP Lender's Charge meets the applicable factors under section 11.2(4) of the CCAA.

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<sup>70</sup> *Timminco Limited (Re)*, [2012 ONSC 506, para 66](#).

<sup>71</sup> Court have considered: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the Monitor: *Canwest Publishing Inc. / Publications Canwest Inc., Re*, [2010 ONSC 222, para 54](#).

**(iii) Directors' Charge**

71. The CCAA also authorizes this Court to grant a priority charge to indemnify a debtor company's directors and officers on notice to its secured creditors.<sup>72</sup> Directors' charges encourage directors and officers to remain in place, providing a potential stabilizing force for the company.<sup>73</sup> In deciding whether to grant a directors' charge, Courts must be satisfied that: (i) notice has been given to secured creditors likely to be affected; (ii) the amount is appropriate; (iii) the applicant could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.<sup>74</sup>

72. Synaptive seeks the Directors' Charge against Synaptive's Property in favour of the Directors and Officers in the amount of \$1,100,000 to protect the Directors and Officers from the risk of significant personal exposure. The Directors' Charge is appropriate and necessary because, among other reasons: (i) Synaptive will benefit from the active involvement of the directors and officers, who have vast institutional knowledge of Synaptive's highly technical business; (ii) Synaptive cannot be certain whether existing insurance will be sufficient; (iii) the Directors' Charge does not secure amounts incurred due to gross negligence or wilful misconduct; (iv) absent the Directors' Charge, the director and officers may resign.

73. Synaptive has worked with the Proposed Monitor to calculate the quantum of the Directors'

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<sup>72</sup> [CCAA, s. 11.51](#).

<sup>73</sup> *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114](#) (ONSC), [para 48](#).

<sup>74</sup> *Jaguar Mining Inc., Re*, [2014 ONSC 494](#), [para 45](#).

Charge. The DIP Lender and the Proposed Monitor support the Directors' Charge.<sup>75</sup>

**PART V - ORDER REQUESTED**

74. For all of the reasons above, Synaptive submits that this Court should grant the relief requested and issue an order substantially in the form of the draft Initial Order included in the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 18th day of March, 2025.



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<sup>75</sup> Pre-Filing Report, para 9.9.

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Stelco Inc., Re*, [2004 CanLII 24933](#) (ONSC)
2. *Stelco Inc. (Bankruptcy), Re*, [2005 CanLII 8671](#) (ONCA)
3. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) (ONSC)
4. *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#)
5. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
6. *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, [2018 SKCA 36](#)
7. *9354-9186 Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
8. *Wealth Management Inc. (Re)*, [2012 ONSC 1299](#)
9. *North American Tungsten Corporation Ltd., Re*, [2015 BCSC 1376](#)
10. *Great Basin Gold Ltd., Re*, [2012 BCSC 1459](#)
11. [Endorsement of Justice Black dated April 26, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Ted Baker Canada Inc. et al.*, Court File No. CV-24-718993-00CL
12. *Re Just Energy Corp.*, [2021 ONSC 1793](#)
13. *Trees Corporation*, [2023 ONSC 7265](#)
14. *Timminco Limited (Re)*, [2012 ONSC 506](#)
15. *Canwest Publishing Inc. / Publications Canwest Inc., Re*, [2010 ONSC 222](#)
16. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114](#) (ONSC)
17. *Jaguar Mining Inc., Re*, [2014 ONSC 494](#)

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

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

**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; (personne insolvable)

...

**Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36**

**Definitions**

[2\(1\)](#) In this Act, ...

*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.

...

## **Jurisdiction of court to receive applications**

[9 \(1\)](#) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

...

## **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.

## **Burden of proof on application**

[\(3\)](#) The court shall not make the order unless

- a) Synaptive satisfies the court that circumstances exist that make the order appropriate; and
- b) in the case of an order under subsection (2), Synaptive also satisfies the court that Synaptive has acted, and is acting, in good faith and with due diligence.

...

### **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.

...

### **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.

...

### **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.



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

Court File No. CV-25-00739279-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SYNAPTIVE MEDICAL INC.**

**Applicant**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO.

**FACTUM OF THE APPLICANT**  
**(Application for Initial Order)**

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