

**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  
(Motion for Amended and Restated Initial Order  
and SISP Approval Order, returnable March 26, 2025)**

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## **PART I - INTRODUCTION**

1. Synaptive is a Canadian medical technology champion that obtained urgent initial CCAA relief from this Court on March 19, 2025. Its business is the development of remarkable, cutting-edge medical technology that enhances workflows for neurosurgeons before, during and after brain and spinal surgery, increasing the prospects that surgery, cancer and stroke patients not only survive these medical procedures—but thrive afterwards.

2. In its initial CCAA application, Synaptive previewed its map of the road ahead. Now, in this comeback motion, Synaptive seeks this Court’s green light to travel that road. Synaptive seeks two orders—an Amended and Restated Initial Order and a SISP Approval Order—which, if granted, would approve the two pillars of Synaptive’s proposed path forward in this CCAA proceeding.

3. The first pillar—access to the full \$7,000,000 of funding under the DIP facility provided by Export Development Canada as DIP Lender—will provide Synaptive with the necessary liquidity to travel that road. At the initial hearing on March 19, this Court authorized Synaptive to borrow an initial amount of \$1,000,000 under this DIP facility and granted a corresponding charge in favour of the DIP Lender. The remaining funding under the DIP term sheet will allow Synaptive to continue operating its business during this CCAA proceeding and pursue a proposed SISP. Synaptive also seeks to increase the Administration Charge from \$250,000 to \$500,000 and to extend the CCAA stay period from March 26 to June 20 to ensure that it has breathing room to implement the proposed SISP.

4. That proposed SISP—the second pillar—is the map of the road that Synaptive intends to traverse. Synaptive’s proposed SISP procedures provide for an efficient but robust process that

will allow the Monitor, with input from Synaptive's management and the DIP Lender, to canvass the niche market and solicit bids for a sale of, or investment in, Synaptive's assets, business and/or shares in a manner that builds upon the hard work already completed during the two years leading up to this CCAA proceeding. Those efforts include a robust investment solicitation process that Royal Bank of Canada commenced in 2023.

5. The proposed SISP is the only realistic path forward for Synaptive's business to continue as a going concern. The alternative is a liquidation of Synaptive's assets, which, due to their highly technical and specialized nature, would destroy significant value for Synaptive's secured creditors and economic stakeholders, along with the medical professionals and neurosurgery patients who rely on Synaptive's products before, during and after surgery.

6. Ultimately, the CCAA was designed to give debtor companies a 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 sought just that in its initial application, and it continues to seek that on this comeback motion. With continued breathing room, access to the full amount of its DIP funding and a green light to commence a robust SISP, Synaptive believes that this proposed path forward is the only viable means of finding a going-concern solution to its challenges.

## **PART II - SUMMARY OF FACTS**

7. Synaptive Medical Inc. ("**Synaptive**") is a Canadian medical technology company. It was incorporated in Ontario in 2012 with a vision of leveraging high-tech solutions to improve surgical outcomes and qualities of life for neurosurgery patients. Synaptive's products ensure that neurosurgeons and other healthcare professionals receive the right information at the right place

and the right time, before, during and after surgical procedures. Synaptive achieves this goal through its advanced software algorithms, robotics and optical technologies designed to improve efficiencies while focusing on clinical results.<sup>1</sup>

8. A detailed description of the factual background of Synaptive and its proposed path forward in this CCAA proceeding is set out in the initial affidavit of Magnus Momsen, sworn March 18, 2025 (the “**Initial Momsen Affidavit**”).

9. This factum provides a summary that focuses primarily on the two pillars of relief that are the subject of this motion:

- (a) access to the maximum amount of the DIP facility with Export Development Canada (“**EDC**”, or the “**DIP Lender**”), which would be approved through Synaptive’s proposed amended and restated initial order (the “**ARIO**”); and
- (b) efforts to unlock value through the proposed SISP, which would be approved through Synaptive’s proposed SISP approval order (the “**SISP Approval Order**”).

#### **A. DIP Financing Facility**

10. The first pillar of this CCAA proceeding is access to additional DIP funding under the ARIO.

11. On March 18, 2025, to facilitate this CCAA proceeding, Synaptive entered into a DIP facility loan agreement (the “**DIP Term Sheet**”) with the DIP Lender, under which the DIP Lender

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<sup>1</sup> Affidavit of Magnus Momsen sworn March 18, 2025 (“**Initial Momsen Affidavit**”), paras 14, 24, Tab 2 of the Motion Record dated March 19, 2025, pp A23, A26 (“**MR**”). Page references to the Motion Record in these hyperlinked footnotes are to the “Current” page numbers on Caselines.

agreed to provide debtor-in-possession financing to Synaptive, subject to this Court's approval (the "**DIP Financing Facility**").<sup>2</sup> The DIP Term Sheet separates that financing into two amounts.

12. The first amount is the initial principal amount of \$1,000,000 (the "**Initial Amount**"), which the DIP Lender made available for Synaptive's immediate liquidity needs during the first 7 days of this CCAA proceeding through to the March 26 comeback hearing.<sup>3</sup> This Court authorized Synaptive under its initial order dated March 19, 2025 (the "**Initial Order**") to borrow that Initial Amount and granted the DIP Lender a charge (the "**DIP Lender's Charge**") to secure Synaptive's corresponding obligations.

13. The second amount is made available through subsequent advances up to the maximum aggregate principal amount of \$7,000,000 (the "**Maximum Amount**"), which the DIP Lender has agreed to make available to Synaptive upon certain conditions precedent, including the issuance of the ARIO.<sup>4</sup> Synaptive now seeks this Court's authorization to borrow up to the Maximum Amount (which, for greater certainty, is inclusive of the Initial Amount). The DIP Lender's Charge would continue to secure Synaptive's obligations under the DIP Term Sheet, including in respect of further advances authorized on this motion.

14. The key terms of the DIP Term Sheet are summarized as follows:

- (a) DIP Financing Facility and Maximum Amount: non-revolving, secured credit facility: (i) up to the Initial Amount of \$1,000,000 during the first 7 days of this

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<sup>2</sup> DIP Term Sheet dated March 18, 2025 ("**DIP Term Sheet**"), Exhibit "R" to the Initial Momsen Affidavit, MR, p A417.

<sup>3</sup> DIP Term Sheet, s 6, Exhibit "R" to the Initial Momsen Affidavit, MR, pp A417-A418; Initial Momsen Affidavit, para 114(a), MR, p A46.

<sup>4</sup> DIP Term Sheet, ss 5-6, Exhibit "R" to the Initial Momsen Affidavit, MR, pp A417-A418; Initial Momsen Affidavit, para 114(a), MR, p A46.

CCAA proceeding; and (ii) up to the Maximum Amount of \$7,000,000 following the issuance of the ARIO;<sup>5</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 (as defined in the DIP Term Sheet);<sup>6</sup>
- (c) Interest Rate: 15% per annum;<sup>7</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>8</sup>

15. As set out both in the cash flow statement appended to the First Report of Richter Inc., as the monitor (in such capacity, the “**Monitor**”) and the December 31, 2024 balance sheet appended to the Initial Momsen Affidavit, Synaptive cannot meet its obligations without accessing the funding provided under the DIP Financing Facility.<sup>9</sup> Synaptive requires the DIP Financing Facility to, among other things: (i) fund its ongoing operations to stabilize its business, including payments on account of wages payable from time to time to Synaptive’s approximately 119 employees; (ii)

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<sup>5</sup> DIP Term Sheet, s 6, Exhibit “R” to the Initial Momsen Affidavit, MR, pp A417-A418; Initial Momsen Affidavit, para 114(a), MR, p A46.

<sup>6</sup> DIP Term Sheet, s 6, Exhibit “R” to the Initial Momsen Affidavit, MR, pp A417-A418; Initial Momsen Affidavit, para 114(b), MR, p A46.

<sup>7</sup> DIP Term Sheet, s 9, Exhibit “R” to the Initial Momsen Affidavit, MR, pp A419; Initial Momsen Affidavit, para 114(c), MR, p A46.

<sup>8</sup> DIP Term Sheet, s 11, Exhibit “R” to the Initial Momsen Affidavit, MR, pp A419; Initial Momsen Affidavit, para 114(d), MR, p A46.

<sup>9</sup> Balance Sheet dated December 31, 2024, Exhibit “D” to the Initial Momsen Affidavit, MR, p A142; Updated Cash Flow Forecast for the Period Ending June 20, 2025 (“**Cash Flow Forecast**”), Appendix “A” to the First Report of the Monitor dated March 24, 2025 (“**First Report**”).

implement the proposed SISP, if approved; and (iii) fund professional and other costs in respect of this CCAA Proceeding.<sup>10</sup>

**B. Proposed SISP<sup>11</sup>**

16. The second pillar of this CCAA proceeding is the proposed SISP.

17. The proposed SISP procedures (the “**SISP Procedures**”) set forth the process and procedures for soliciting bids from interested parties for transactions involving a sale of or investment in Synaptive’s assets, business and/or shares, or a reorganization, recapitalization, equity issuance or similar transaction.

18. Synaptive developed the SISP Procedures with input from the Monitor and the DIP Lender, taking into account both the groundwork that has already been laid as part of Synaptive’s extensive investment solicitation efforts since 2023—including its engagement of Royal Bank of Canada in 2023 to implement an investment solicitation process—and the specialized, technical nature of Synaptive’s business.<sup>12</sup>

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<sup>10</sup> Cash Flow Forecast, Appendix “A” of the First Report.

<sup>11</sup> Capitalized terms used in this section that are not otherwise defined have the meanings given to them in the SISP Procedures.

<sup>12</sup> Initial Momsen Affidavit, paras 103-104, MR, p A44.



19. The SISP Procedures contemplate a two-phase, 55-day timeline for soliciting bids (measured from SISP approval to the Phase II Bid Deadline) with the following key milestones:<sup>13</sup>

<b>Milestone</b>	<b>Deadline</b>
Commencement of SISP	March 26, 2025
Deadline to publish notice of SISP, deliver Teaser Letter and NDA to Known Potential Bidders	March 29, 2025
Deadline to set up the Data Room	April 2, 2025
Deadline for delivery of Secured Creditor Participation Notices and Insider Participation Notices	April 11, 2025
Deadline for submission of Phase I Non-Binding Letters of Intent	No later than 5:00 p.m. (Toronto time) on April 30, 2025
Determination of Qualified Bidders for Phase II	No later than 5:00 p.m. (Toronto time) on May 2, 2025
Deadline for submission of Phase II Bids	No later than 5:00 p.m. (Toronto time) on May 16, 2025
Determination of Selected Bidders	No later than 5:00 p.m. (Toronto time) on May 20, 2025
Selection of the Successful Bid(s) and Back-Up Bid(s), and Notification of Auction (if any)	No later than 5:00 p.m. (Toronto time) on May 23, 2025
Auction Date (if required)	May 27, 2025
Deadline for finalizing transaction documents based on Successful Bid(s)	June 3, 2025
Filing of motion to approve the Successful Bid(s)	No later than 5:00 p.m. (Toronto time) on June 5, 2025
Hearing of the Sale Approval Motion	No later than June 13, 2025, subject to the availability of the Court
Outside Date for the Closing of the Successful Bid(s)	June 20, 2025

<sup>13</sup> Proposed SISP Procedures, s 10, Schedule “A” to the proposed SISP Approval Order, MR, p A581.

20. The Monitor is ultimately responsible for overseeing and conducting the SISP, subject to the terms of the SISP Procedures. The Monitor's responsibilities include selecting and evaluating Qualified Bids (i.e., Phase I LOIs that comply with the Phase I requirements), Selected Bids (i.e., Phase II bids that comply with the Phase II requirements) and the Successful Bid(s) (i.e., the winning bid(s)). The Monitor is required to seek appropriate input from and consult with Synaptive and the DIP Lender in respect of certain decisions and actions, including its selection and evaluation of Phase I LOIs and Phase II Bids.<sup>14</sup> Certain decisions and actions also require the Monitor to obtain the prior written consent of the DIP Lender, such as designating the Selected Bid(s) and the Successful Bid(s).<sup>15</sup>

21. As is typical of a SISP of this nature, interested parties must enter into a non-disclosure agreement and agree to the additional measures that are required by Synaptive to protect competitively sensitive information.<sup>16</sup> Bidders must submit non-binding letters of intent in Phase I and a binding offer in Phase II that meet the requirements set out for those respective phases of the SISP, as determined by the Monitor in consultation with Synaptive and the DIP Lender. If the Monitor, in consultation with Synaptive and with the prior written consent of the DIP Lender, designates two or more Selected Bids, then the Monitor may proceed with an Auction as proposed in the SISP Procedures.<sup>17</sup>

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<sup>14</sup> Proposed SISP Procedures, s 7-9, Schedule "A" to the draft SISP Approval Order, MR, pp A580-A581.

<sup>15</sup> Proposed SISP Procedures, s 23 and 37, Schedule "A" to the draft SISP Approval Order, MR, pp A580 and A590.

<sup>16</sup> Proposed SISP Procedures, s 12, Schedule "A" to the draft SISP Approval Order, MR, p A583.

<sup>17</sup> Proposed SISP Procedures, ss 36-42, Schedule "A" to the draft SISP Approval Order, MR, p A590.

22. The SISP Procedures authorize both Synaptive's secured creditors, including the DIP Lender, and any of Synaptive's insiders (i.e., officers, directors, employees and those persons not dealing at arm's length with Synaptive) to participate in the SISP as Bidders. Secured creditors are permitted to credit bid their outstanding secured indebtedness, so long as, among other requirements, such credit bid provides for the payment in full of all secured debt which ranks senior to that of the bid creditor.<sup>18</sup>

23. Secured creditors or insiders who intend to participate in the SISP must notify the Monitor of their intention to do so by April 11, 2025. Importantly, upon providing such notice, the secured creditor loses its consent and consultation rights under the SISP, and the insider will be subject to such restrictions that the Monitor determines are necessary to ensure that such party does not receive any unfair advantage.<sup>19</sup>

### **C. Increased Administration Charge**

24. Finally, the ARIO provides for an increase to the maximum amount of the Administration Charge to \$500,000 (from \$250,000 in the Initial Order). This increase reflects the increased potential exposure to the beneficiaries of that charge as compared to the potential exposure that was previously quantified for the first 7 days of this CCAA proceeding.

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<sup>18</sup> Proposed SISP Procedures, ss 51-56, Schedule "A" to the draft SISP Approval Order, MR, pp A593-A594.

<sup>19</sup> Proposed SISP Procedures, ss 51-56, Schedule "A" to the draft SISP Approval Order, MR, pp A593-A594.

### **PART III - ISSUES**

25. The issues on this motion are whether this Court should grant orders:
- (a) authorizing Synaptive to borrow up to a maximum principal amount of \$7,000,000 under the DIP Term Sheet (with the corresponding obligations secured by the DIP Lender's Charge);
  - (b) approving the SISP Procedures and authorizing the Monitor and Synaptive to implement the SISP in accordance with the SISP Procedures;
  - (c) increasing the Administration Charge to \$500,000; and
  - (d) extending the stay period to and including June 20, 2025.

### **PART IV - LAW AND ARGUMENT**

#### **A. Full DIP Funding is Necessary to Continue this CCAA Proceeding and Implement the SISP**

26. In the Initial Order, this Court previously authorized Synaptive to borrow up to the Initial Amount under the DIP Term Sheet of \$1,000,000 and granted a corresponding DIP Lender's Charge to secure Synaptive's obligations under the DIP Term Sheet. Synaptive is now seeking authorization to borrow up to the total maximum amount of \$7,000,000. For clarity, the corresponding obligations associated with such new borrowings would continue to be secured by the DIP Lender's Charge.

27. This Court's jurisdiction to approve interim financing and related priority charges is codified in section 11.2 of the CCAA.<sup>20</sup> The primary consideration in granting such relief is what

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<sup>20</sup> [CCAA, s 11.2](#).

will best serve the interests of all of the debtor company's stakeholders.<sup>21</sup> Courts must also consider the factors in section 11.2(4) of the CCAA.<sup>22</sup>

28. Here, the authority for Synaptive to draw the maximum amount available under the DIP Term Sheet serves the best interests of creditors. The DIP Financing Facility will provide the gas required for Synaptive to traverse the only road with a reasonable prospect of generating a value-maximizing transaction or investment in Synaptive's business: the proposed SISP. Without access to the full amount available under the DIP Term Sheet, the only realistic alternative is a "fire sale" liquidation of Synaptive's assets—a particularly value-destructive outcome, given the highly technical, specialized and patent-heavy nature of Synaptive's assets.

29. Additionally, EDC is an ideal DIP lender for Synaptive. EDC has provided critical support to Synaptive throughout its pre-filing efforts to find sustainable financing. Indeed, EDC was prepared under a term sheet with Synaptive signed in November 2024 to participate as a co-lead investor in a proposed equity financing transaction that would have raised at least US\$25 million for Synaptive.<sup>23</sup> EDC's continued financial support during the proposed SISP will be vital to its success.

30. Finally, the Monitor performed a market comparison between the economic terms of the DIP Term Sheet and those terms of comparable debtor-in-possession financing facilities that have been approved in other insolvency proceedings. The Monitor found that, while the interest rate and exit fee of the DIP Financing Facility fall within the higher end of previously approved DIP

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<sup>21</sup> *Great Basin Gold Ltd., Re*, [2012 BCSC 1459, para 15](#).

<sup>22</sup> [CCAA, s 11.2](#).

<sup>23</sup> Initial Momsen Affidavit, para 104, MR, p A44.

facilities, the DIP Financing Facility is nonetheless reasonable and appropriate in the circumstances.<sup>24</sup>

31. Additionally, each of the section 11.2(4) factors weighs in favour of approval:

- (a) The period during which the company is expected to be subject to CCAA proceedings. The anticipated timeline for this CCAA Proceeding is driven by the SISP Procedures, which contemplate a target date for closing any binding transaction by June 20, 2025.<sup>25</sup> This 86-day timeline (measured from SISP approval to that target closing date) is necessary for Synaptive to pursue a going-concern transaction for the benefit of its stakeholders.
- (b) How the company's business and financial affairs are managed during the proceedings. Synaptive's management is actively engaged in this business—a result of, among other things, their passion for the vital, life-saving technology of which they have been overseeing Synaptive's development, in some cases for many years. Management is also being advised by counsel and restructuring and financial professionals with substantial experience in CCAA proceedings of this nature. The proposed cash flow reflects expenditures necessary to operate, and preserve the value of, the business during the proposed SISP, including the wages of Synaptive's 119 active employees.<sup>26</sup>
- (c) Whether the company's management has the confidence of its major creditors. Synaptive has been working diligently and in good faith to unlock solutions with

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<sup>24</sup> First Report, paras 5.7 and 5.8.

<sup>25</sup> [Proposed SISP Procedures, s 10, Schedule "A" to the draft SISP Approval Order, MR, pp A582.](#)

<sup>26</sup> Cash Flow Forecast, Appendix "A" to the First Report.

its secured creditors to result in their buy-in. Synaptive is hopeful that such buy-in can be achieved before the hearing for this motion. Additionally, the DIP Lender believes in the value of Synaptive's business and product and has provided additional capital (in addition to the considerable secured debt it previously funded) to demonstrate its continued support.

- (d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made. Synaptive will not be able to continue operating its business or pursue a going concern solution for the benefit of its stakeholders unless full access to the DIP Financing Facility is authorized.<sup>27</sup> As noted, the only realistic alternative is value-destructive liquidation.
- (e) The nature and value of the company's property. Synaptive's property is mostly comprised of highly specialized and technical intangible assets, such as its patents, trademarks, Canadian and international permits and licenses, know-how and contractual arrangements.<sup>28</sup> These assets would be incredibly challenging to monetize in a liquidation scenario, meaning the efforts to find a going-concern transaction under the SISP with involvement from Synaptive's management represent the only realistic way to maximize value for stakeholders. This can only be achieved if Synaptive is granted access to the full DIP Financing Facility.
- (f) Whether any creditor would be materially prejudiced as a result of the security or charge. The DIP Term Sheet provides up to \$7,000,000 of funding—an appropriately sized amount relative to Synaptive's approximately US\$103 million

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<sup>27</sup> Cash Flow Forecast, Appendix "A" to the First Report.

<sup>28</sup> Initial Momsen Affidavit, paras 48-51, MR, p A33.

of secured indebtedness and US\$130 million of liabilities more broadly. Importantly, the DIP Financing Facility will ensure the greatest likelihood that a value-maximizing transaction will be reached through the SISP—which would mean, among other things, that secured creditors can receive maximum value for their collateral.

- (g) The monitor’s report in respect of the reasonableness of the company’s cash flow statement. The 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 maximum amount to be made available under the DIP Term Sheet.<sup>29</sup> As noted, the Monitor compared the interest rate and exit fee of the DIP Financing Facility to debtor-in-possession finance approved in similar insolvency proceedings and concluded that the DIP Financing Facility is reasonable and appropriate in the circumstances.<sup>30</sup>

32. In sum, it is appropriate for this Court to authorize Synaptive to draw the full \$7,000,000 availability under the DIP Term Sheet.

**B. The Proposed SISP is the Only Realistic Path to Generate Maximum Value**

33. The proposed SISP provides a road map of the only realistic path forward for Synaptive. It makes effective use of the runway paved by Synaptive’s pre-filing investment solicitation efforts to launch a robust and thorough process that will be overseen by the Monitor and supported by Synaptive’s management with the involvement of the DIP Lender. A sale or investment in

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<sup>29</sup> First Report, paras 5.14 and 6.4.

<sup>30</sup> First Report, paras 5.7 and 5.8.



Synaptive's business would benefit not only Synaptive's economic stakeholders, but also, importantly, neurosurgery patients who rely on its critical technology.

34. It is well recognized that this Court has jurisdiction to approve a sale and investment process in relation to a debtor company's business and assets "to establish the boundaries of the playing field and act as a referee in the process," prior to the development (or even in the absence) of a plan of compromise or arrangement.<sup>31</sup> Such court approval adds additional certainty that the process will be honoured.<sup>32</sup> This Court has recently approved a number of two phase sale and investment solicitation processes of a similar nature and duration.<sup>33</sup>

35. In approving a sales process, this Court has considered, among other things, the following factors:<sup>34</sup>

- (a) Is a sale or investment warranted at this time? A sale or investment resulting in a continuation of Synaptive's business as a going concern represents the best

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<sup>31</sup> *Stelco Inc (Re)*, [\[2005\] 75 O.R. \(3d\) 5, 253 D.L.R. \(4th\) 109](#) (ONCA), [para 44](#). See also, *Nortel Networks Corp (Re)*, [\[2009\] O.J. No. 3169, 55 C.B.R. \(5th\) 229](#) (Ont. Sup. Ct. J. (Commercial List)), [para 48](#).

<sup>32</sup> Once a sale process has been approved by the Court, it has an interest in maintaining the integrity of that process: see, for example, *Brainhunter Inc., Re*, [2010 ONSC 1035, para 47](#).

<sup>33</sup> See, e.g., [SISP Approval Order of Justice Osborne dated November 15, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, CV-24-00730836-00CL (Ontario Superior Court of Justice (Commercial List)); [Sale Process Approval Order of Justice Cavanagh dated September 18, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of 2675970 Ontario Inc. et al.*, CV-24-00726584-00CL (Ontario Superior Court of Justice (Commercial List)); [SISP Approval Order of Justice Penny dated July 26, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Atlas Global Brands Inc. et al.*, CV-24-00722386-00CL (Ontario Superior Court of Justice (Commercial List)).

<sup>34</sup> *Nortel Networks Corp (Re)*, [\[2009\] O.J. No. 3169, 55 C.B.R. \(5th\) 229](#) (Ont. Sup. Ct. J. (Commercial List)), [para 49](#). Although *Nortel* was decided prior to the 2009 amendments to the CCAA, which incorporated provisions on asset sales including section 36, the factors set out in *Nortel* continue to apply: *Brainhunter Inc (Re)*, [\[2009\] O.J. No. 5578, 62 C.B.R. \(5th\) 41](#) (Ont. Sup. Ct. J. (Commercial List)), [paras 13-19](#); *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc.*, [2020 ONSC 3565, para 61](#).

available outcome for stakeholders. Synaptive has already exhausted all realistic out-of-court options, including making the difficult decision to reduce a significant portion of its valued staff, implementing a multi-year pre-filing investment process and negotiating with its creditors and other stakeholders.<sup>35</sup> There is no other realistic option available for Synaptive to continue to operate as a going concern or maximize value for its business, given its acute liquidity challenges.

- (b) Will the sale or investment be of benefit to the whole “economic community”? The proposed SISP will benefit not only the economic community as a whole, but also the many patients who rely on Synaptive’s technology for improved surgical outcomes both immediately following surgery and in the long-term. The SISP Procedures are designed to canvas the market to solicit competitive bids while allowing this business to continue helping patients.
- (c) Do any of the debtors’ creditors have a bona fide reason to object to a sale or investment? The only realistic alternative to the proposed SISP is a value-destructive liquidation. Synaptive is not aware of any bona fide reason to prefer that alternative to the proposed SISP. It is expected that any distributable proceeds from a transaction executed in accordance with the SISP Procedures, after satisfaction of priority amounts, would flow to the benefit of one or more of Synaptive’s senior creditors, given the significant secured obligations owing to them.
- (d) Is there a better viable alternative? The SISP is the only realistic path forward for Synaptive’s business to continue as a going concern. Given the runway provided

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<sup>35</sup> Initial Momsen Affidavit, paras 100-105, MR, p A43-A44.

by the DIP Term Sheet, it must be undertaken expeditiously to prevent the value of the business from eroding.

36. In addition, this Court is entitled to consider whether the proposed SISP is likely to satisfy the requirements of section 36 of the CCAA, even though a sale is not yet proposed. Those requirements include:<sup>36</sup>

- (a) That the process is fair and that the best price will be obtained. The SISP is fair, transparent, and objective. In particular, it is designed to facilitate a process to market Synaptive's business to obtain the best possible transaction and achieve a going concern solution for the benefit of all stakeholders, without unduly prolonging the process. Synaptive is of the view that the SISP will adequately canvass the market to maximize value for stakeholders in the circumstances.
- (b) Whether the Monitor supports the SISP. The Monitor has expressed its support for the SISP, noting that, in its view, the SISP provides sufficient notice of the opportunity to potential bidders and adequate time for the Monitor to market the opportunity and engage with those potential bidders. The Monitor concludes that the SISP provides appropriate flexibility to explore all value-enhancing operations for Synaptive's assets and business.<sup>37</sup>
- (c) The extent to which creditors were consulted. Synaptive has been working diligently and in good faith to consult with its secured creditors and find solutions to alleviate their concerns, if any, with the proposed SISP. Synaptive is hopeful that

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<sup>36</sup> *Brainhunter Inc (Re)*, [2009] O.J. No. 5578, 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. (Commercial List)), paras 15-19; CCAA, s 36(3).

<sup>37</sup> First Report, paras 4.5 and 7.16.

those discussions will result in mutually-beneficial outcomes that ultimately result in a stronger SISP.

37. Synaptive submits that the totality of these factors weigh in favour of this Court approving the proposed SISP and authorizing the Monitor and Synaptive to implement the proposed SISP in accordance with its terms.

**C. The Stay Extension is Appropriate and Necessary to Implement the SISP and any Resulting Transaction**

38. On an application other than an initial application, section 11.02(2) of the CCAA gives this Court discretion to grant a stay of proceedings for any period that it considers necessary, provided it is satisfied that such an extension is appropriate and that the debtor company has acted and continues to act in good faith and with due diligence.<sup>38</sup> The requested stay extension meets these criteria.

39. The requested stay extension up to and including June 20, 2025—which coincides with the target outside date for consummating any transaction(s) resulting from the SISP—is necessary and appropriate. It provides Synaptive with enough runway to, among other things, continue to operate and stabilize its business and see the SISP through, if approved. During the initial stay period, Synaptive has been acting and continues to act in good faith and with due diligence and is working hard to advance this CCAA proceeding for the benefit of its stakeholders.

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<sup>38</sup> [CCAA, s 11.02\(2\), \(3\)](#).

**D. The Increased Administrative Charge is Appropriate**

40. 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>39</sup> This Court has recognized that, unless professional advisor fees are protected with the benefit of an administration charge, the objectives of the CCAA would be frustrated.<sup>40</sup> The factors to be considered are well established in the caselaw.<sup>41</sup>

41. The increase of the Administration Charge to \$500,000 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 increase to the Administration Charge has been determined with guidance from the Monitor; and (iv) the DIP Lender and the Monitor support the Administration Charge.<sup>42</sup>

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<sup>39</sup> [CCAA, s 11.52](#).

<sup>40</sup> *Timminco Limited (Re)*, [2012 ONSC 506, para 66](#).

<sup>41</sup> Courts 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](#).

<sup>42</sup> First Report, para 7.3.

**PART V - ORDER REQUESTED**

42. For all of the reasons above, Synaptive requests that this Court grant the requested ARIO and SISP Approval Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of March, 2025.



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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Great Basin Gold Ltd., Re*, [2012 BCSC 1459](#)
2. *Stelco Inc (Re)*, [\[2005\] 75 O.R. \(3d\) 5, 253 D.L.R. \(4th\) 109](#) (ONCA)
3. *Nortel Networks Corp (Re)*, [\[2009\] O.J. No. 3169, 55 C.B.R. \(5th\) 229](#) (Ont. Sup. Ct. J. (Commercial List))
4. *Brainhunter Inc., Re*, [2010 ONSC 1035](#)
5. [SISP Approval Order of Justice Osborne dated November 15, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, CV-24-00730836-00CL (Ontario Superior Court of Justice (Commercial List))
6. [Sale Process Approval Order of Justice Cavanagh dated September 18, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of 2675970 Ontario Inc. et al.*, CV-24-00726584-00CL (Ontario Superior Court of Justice (Commercial List))
7. [SISP Approval Order of Justice Penny dated July 26, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Atlas Global Brands Inc. et al.*, CV-24-00722386-00CL (Ontario Superior Court of Justice (Commercial List))
8. *Brainhunter Inc (Re)*, [\[2009\] O.J. No. 5578, 62 C.B.R. \(5th\) 41](#) (Ont. Sup. Ct. J. (Commercial List))
9. *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc.*, [2020 ONSC 3565](#)
10. *Timminco Limited (Re)*, [2012 ONSC 506](#)
11. *Canwest Publishing Inc. / Publications Canwest Inc., Re*, [2010 ONSC 222](#)

**SCHEDULE “B”**

**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

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

**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.

...

**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.

...

**Factors to be considered**

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

...

**Stays, etc. – initial application**

[11.02\(2\)](#) 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.

...

**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.

**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**  
**(Motion for Amended and Restated Initial Order**  
**and SISP Approval Order,**  
**returnable March 26, 2025)**

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