



ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00739279-00CL

DATE: April 25, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: SYNAPTIVE MEDICAL INC. v. BDC CAPITAL INC. et al

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Adam Slavens Mike Noel	Counsel for Synaptive Medical Inc.	aslavens@torys.com mnoel@torys.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jennifer L. Caruso	Counsel for Export Development Canada	jcaruso@fasken.com
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Muhammad Shahid (Self Represented)	Self-Represented Creditor	Info@mediurge.com
Karen Kimel	The Monitor - Richter	kkimel@richter.ca

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicants seek approval of a KERP and corresponding priority charge as well as a sealing order, subject to further order of the Court.
2. The Service list was served with the materials on April 17, 2025. The relief sought today is unopposed. It is supported by BDC, the first ranking and fulcrum secured creditor and DIP Lender, and is recommended by the Court-appointed Monitor.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
4. The materials are clear that there is a serious and imminent risk that absent the KERP, many of the Participating Employees will seek employment opportunities elsewhere before the completion of the SISP. Indeed, six have already done so. The company has limited tools at its disposal to incentivize employees to remain.
5. The nature of the business of the company, the development of leading-edge medical technology, is such that it requires highly skilled employees who possess specialized expertise as well as familiarity with the company's own complex products. Employee flight would, it is submitted and I accept, be destructive to the maximization of value.
6. The KERP was contemplated in the cash flow forecast appended to the First Report of the Monitor.
7. I am satisfied that the KERP and corresponding charge should be approved pursuant to section 11 of the *CCAA* and the broad discretion granted to the Court thereunder. The factors established by the jurisprudence to be considered when assessing whether or not a KERP and corresponding KERP charge should be approved have been met here. See, for example, *Walter Energy Canada Holdings; Just Energy Group* and *Hudsons Bay Company*, among many others.
8. Finally, I am satisfied that the proposed sealing order is appropriate. The confidential KERP exhibit contains highly sensitive personal and commercial information about each of the Participating Employees. I am satisfied that the test set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* has been met here. The sealing order is limited, both in scope to that one document; and in time: it is effective only until further order of the Court.
9. For all of these reasons, the requested relief is granted. Order to go in the form signed by me today which has immediate effect without the necessity of issuing and entering.

Osborne J.