

**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 Approval and Reverse Vesting Order and
Stay Extension and Termination Order,
returnable June 18, 2025)**

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Adam Slavens (LSO#: 54433J)
416.865.7333 | aslavens@torys.com

Mike Noel (LSO#: 80130F)
416.865.7378 | mnoel@torys.com

Lawyers for Synaptive Medical Inc.

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PART I - INTRODUCTION

1. Synaptive is a home grown medical technology champion. Its business is the development of remarkable, cutting-edge medical devices and software that enhance 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 after.

2. Synaptive obtained relief from this Court under the CCAA on March 19, 2025. It faced a liquidity crisis—the 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.

3. From the outset of this proceeding, Synaptive’s objective was to implement a SISP and find a going-concern solution for its business that would allow it to continue manufacturing its important technology for the benefit of its creditors, surgery patients and other stakeholders. Synaptive has now found such a solution.

4. On this motion, Synaptive seeks this Court’s assistance with implementing the outcome of the SISP that Justice Osborne previously approved: a Subscription Agreement providing for the acquisition of Synaptive through the issuance of new shares under a reverse vesting structure. The Subscription Agreement provides at least US\$22,500,000 of cash consideration, along with new promissory notes in an aggregate principal amount of \$20 million, representing recoveries to Synaptive’s first- and second-ranking secured creditors. It also facilitates continued employment for at least 90% of current staff.

5. In connection with this transaction and the next steps, Synaptive seeks two orders:

- (a) an Approval and Reverse Vesting Order, which would approve and implement the Subscription Agreement through a reverse vesting structure; and
- (b) a Stay Extension and Termination Order, which provides for an efficient and cost-effective means of winding down this CCAA proceeding following the closing of the transaction.

6. It is appropriate in the present circumstances for this Court to grant these orders. Among other reasons:

- (a) **Approval and Reverse Vesting Order.** Synaptive is a quintessential candidate for an RVO. It holds licenses and regulatory clearances to sell its medical devices in multiple jurisdictions, it relies on its extensive portfolio of intellectual property to operate and it has expected tax attributes flowing from sustained operating losses—all critical items that would be prohibitively expensive, time-consuming or impossible to transfer to a different entity under an asset purchase structure. The Monitor extensively canvassed the market during the SISP, including by reaching out to approximately 228 potential bidders, and the Subscription Agreement was the only acceptable qualified bid submitted. Furthermore, counterparties to the Excluded Contracts will continue to have a forum— ResidualCo’s bankruptcy proceeding—to advance their claims and interests. No creditor would be worse off under the proposed RVO structure than any viable alternative transaction.
- (b) **Stay Extension and Termination Order.** The anticipated path to termination of this CCAA proceeding following closing of the Subscription Agreement is clear. Once the transaction is closed, Synaptive will be removed as an applicant from this

proceeding and ResidualCo will be added as an applicant. It is expected that ResidualCo, which will not have any material assets, will make an assignment in bankruptcy, at which point, subject to completion of any final administrative matters, there will be no further need for this CCAA proceeding. Synaptive requires an extension of the stay of proceedings from June 20 to September 30, 2025, to ensure sufficient flexibility for post-closing items to be completed.

7. The Subscription Agreement represents a remarkable outcome for Synaptive and the medical patients whose lives its technology improve and save. Synaptive submits that the relief it seeks on this motion is fair and reasonable and will advance this CCAA proceeding for the benefit of Synaptive's stakeholders. This Court should grant both of the proposed orders.

PART II - SUMMARY OF FACTS

A. Background

8. Synaptive Medical Inc. ("**Synaptive**") is a Toronto-based 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.¹

¹ Initial Affidavit of Magnus Momsen sworn March 18, 2025 ("**Initial Momsen Affidavit**"), para 24, Exhibit "B" to the Affidavit of Magnus Momsen dated June 12, 2025 (the "**Momsen Affidavit**"), Tab 2 of the Motion Record dated June 12, 2025 ("**MR**"), p [A114](#). Page references to the Motion Record and Third Report in these hyperlinked footnotes are to the "Current" page numbers on Caselines.

9. A detailed description of the factual background of Synaptive and the circumstances leading to it commencing this CCAA proceeding is set out in the Initial Momsen Affidavit.²

10. On March 19, 2025, Justice Osborne granted an initial order under the CCAA that, among other things, provided Synaptive a customary stay of proceedings until the comeback hearing on March 26, 2025 (the “**Stay Period**”), authorized Synaptive to make an initial draw under a debtor in possession facility term agreement dated March 18, 2025 (the “**DIP Term Sheet**”) with Export Development Canada (in such capacity, the “**DIP Lender**”) and granted a charge in favour of the DIP Lender to secure Synaptive’s obligations under the DIP Term Sheet.³

11. On March 26, 2025, Justice Osborne granted an amended and restated initial order (the “**ARIO**”) that, among other things, extended the Stay Period up to and including June 20, 2025, and authorized Synaptive to borrow up to the maximum principal amount under the DIP Term Sheet.⁴ That same day, Justice Osborne also granted an order (the “**SISP Order**”) that, among other things, approved a sale and investment solicitation process (the “**SISP**”) in respect of Synaptive and/or its assets.⁵

12. On April 25, 2025, Justice Osborne granted an order that, among other things, approved a key employee retention plan in favour of certain of Synaptive’s key employees and granted a corresponding charge in favour of those employees.⁶

² Initial Momsen Affidavit, Exhibit “A” to the Momsen Affidavit, MR, pp [A106](#).

³ Momsen Affidavit, para 8, MR, p [A24](#).

⁴ Momsen Affidavit, para 9, MR, p [A24](#); Amended and Restated Initial Order dated November 15, 2024, Exhibit “B” to the Momsen Affidavit, MR, p [A145](#).

⁵ Momsen Affidavit, para 10, MR, p [A24](#); SISP Order dated November 15, 2024, Exhibit “C” to the Momsen Affidavit, MR, p [A170](#).

⁶ Momsen Affidavit, para 11, MR, p [A24](#).

B. The SISP

13. The SISP solicited interest in and opportunities for a sale of and/or investment in Synaptive's business and assets.⁷ The SISP was designed to build off Synaptive's extensive investment marketing efforts since 2023 (the "**Pre-Filing Process**"), which included contacting parties who were previously contacted about the offer.⁸

14. Richter Inc. ("**Richter**"), in its capacity as the monitor (in such capacity, the "**Monitor**") commenced the SISP on March 26, 2025. Its initial efforts included, among other things, distributing a teaser letter to 228 potential bidders, including more than 79 strategic companies, and published an advertisement in *The Globe and Mail (National Edition)* and the Canada Newswire.⁹ 24 of those potential bidders executed non-disclosure agreements and were provided access to a data room.¹⁰

15. The SISP afforded the Monitor, with the DIP Lender's consent, with flexibility to extend or modify certain deadlines.¹¹ In accordance with that flexibility, the Monitor, based on feedback from potential bidders requesting more time for diligence activities and bid formulation, extended certain of the SISP milestones.¹²

16. The SISP provided for two phases—a first phase for potential bidders to submit non-binding letters of interest and a second phase for bidders to submit binding bids.¹³ Six parties

⁷ SISP, para 4, Exhibit "D" to the Momsen Affidavit, MR, p [A177](#).

⁸ Third Report of the Monitor dated June 14, 2025 ("**Third Report**"), para 5.2(b), p [E12](#).

⁹ Third Report, paras 5.2(c) and (d), p [E13](#).

¹⁰ Third Report, 5.2(e), p [E13](#).

¹¹ SISP, para 11, Exhibit "D" to the Momsen Affidavit, MR, p [A179](#).

¹² Third Report, paras 5.3, 5.5, p [E14](#).

¹³ SISP, para 10, Exhibit "D" to the Momsen Affidavit, MR, p [A178](#).

submitted LOIs by the first phase deadline, three of which were determined to meet the qualification criteria under the SISP.¹⁴

17. By the second phase deadline on May 27, the Monitor received one bid from 1001253954 Ontario Inc. (the “**Purchaser**”) that was determined to meet the qualification criteria under the SISP.¹⁵ Following discussions and negotiations between the Monitor, the Purchaser, Synaptive and the DIP Lender, on June 2, the Monitor designated the Purchaser to be the “Successful Bidder” under the SISP.¹⁶ On June 12, 2025, Synaptive and the Purchaser entered into a subscription agreement (the “**Subscription Agreement**”) that provides for, among other things, the acquisition of Synaptive’s shares and, through that equity interest, substantially all of Synaptive’s assets through a reverse vesting structure.¹⁷

C. The Subscription Agreement¹⁸

18. The transaction contemplated by the Subscription Agreement (the “**Transaction**”) employs a “reverse vesting” share transaction structure whereby, among other things:

- (a) Synaptive will issue the Subscribed Shares to the Purchaser, being newly-issued common shares in the capital of Synaptive, and all other Equity Interests, including the Existing Common Shares, will be cancelled for no consideration; and
- (b) all Excluded Liabilities, Excluded Assets and Excluded Contracts will be transferred from Synaptive to ResidualCo and, as a result, Synaptive will retain its

¹⁴ Third Report, para 5.4, p [E14](#).

¹⁵ Third Report, para 5.6, p [E14](#).

¹⁶ Third Report, para 5.6, p [E14](#).

¹⁷ Subscription Agreement, Exhibit “A” to the Momsen Affidavit, MR, p [A38](#).

¹⁸ Capitalized terms used in this section that are not otherwise defined have the meanings given to them in the Subscription Agreement.

Retained Assets, including its Retained Contracts, free and clear of all Claims and Encumbrances, other than the Permitted Encumbrances.¹⁹

19. As a result of the foregoing, the Purchaser will become the sole shareholder of Synaptive, thereby acquiring Synaptive’s business on a “free and clear” basis, subject to the Permitted Encumbrances.²⁰

20. The key terms of the Subscription Agreement are summarized in the following table:²¹

Term	Details
Seller/Issuer	Synaptive Medical Inc.
Purchaser	1001253954 Ontario Inc.
Transaction Structure	<p>Pursuant to the Approval and Reverse Vesting Order and the Subscription Agreement, as applicable:</p> <ol style="list-style-type: none"> 1. the Excluded Assets, Excluded Liabilities, Excluded Contracts and Subsidiary Equity shall be transferred to ResidualCo; 2. Synaptive will issue the Subscribed Shares to the Purchaser free and clear of all Encumbrances; 3. all Equity Interests of Synaptive (other than the Subscribed Shares) will be cancelled for no consideration; and 4. as a result of the foregoing, the Purchaser will be the sole owner of 100% of the issued and outstanding shares in the equity of Synaptive.²²
Purchase Price (Cash Component)	<p>The aggregate of:</p> <ol style="list-style-type: none"> 1. cash in an amount equal to the United States dollar equivalent of C\$9,610,000, being an amount contemplated under the CCAA Charges (the “Cash Consideration”); and 2. cash in a minimum amount equal to US\$22,500,000 and a

¹⁹ Momsen Affidavit, para 22, p [A30](#).

²⁰ Momsen Affidavit, para 22, p [A30](#).

²¹ Momsen Affidavit, para 19, MR, p [A27](#).

²² Subscription Agreement, s 6.2, Exhibit “A” to the Momsen Affidavit, MR, p [A66](#).

Term	Details
	<p>maximum amount of up to US\$50,000,000, in each case less the Cash Consideration, to be injected into Synaptive for working capital purposes.²³</p>
Rollover Notes	<p>Synaptive shall issue the following new promissory notes:</p> <ol style="list-style-type: none"> 1. the Senior Rollover Note, which shall be issued to Export Development Canada in satisfaction of all amounts outstanding under the senior-ranking Espresso Facility, which Senior Rollover Note shall provide for the terms outlined in Schedule “J” of the Subscription Agreement; and 2. the Junior Rollover Notes, which shall be issued to holders of the second-ranking EDC Convertible Notes in satisfaction of all amounts outstanding under such notes (allocated as between the Junior Rollover Notes <i>pari passu</i> as to the amount outstanding under each holder’s EDC Convertible Note) in accordance with the terms outlined in Schedule “J” of the Subscription Agreement.²⁴
Assumed Liabilities	<p>Synaptive will retain:</p> <ul style="list-style-type: none"> • the Liabilities specifically and expressly designated by the Purchaser as assumed Liabilities in Schedule “A” of the Subscription Agreement; and • Liabilities that relate to the Business under any Retained Contracts and Permitted Encumbrances (in each case, to the extent forming part of the Retained Assets) arising out of events or circumstances that occur after Closing (which includes Liabilities in respect of the Continuing Employees except as otherwise set out in the Subscription Agreement).²⁵ <p>The Purchaser confirmed its intention for Synaptive to retain all accrued and future liabilities under each Retained Contract.²⁶</p>
Employees	<p>The Purchaser shall, or shall cause a subsidiary to, make offers of employment in writing to the Subsidiary Employees (i.e., employees of Synaptive’s Subsidiaries) such that the number of Company Employees (i.e., employees of Synaptive) plus the number of</p>

²³ Subscription Agreement, s 2.2, Exhibit “A” to the Momsen Affidavit, MR, p [A55](#).

²⁴ Subscription Agreement, s 6.2(e) and Schedule “J”, Exhibit “A” to the Momsen Affidavit, MR, pp [A66](#), [A100](#) and [A101](#).

²⁵ Subscription Agreement, s 1.1 (“Assumed Liabilities” definition) and Schedule “A”, Exhibit “A” to the Momsen Affidavit, MR, pp [A44](#) and [A82](#).

²⁶ Third Report, para 5.8(e), p [E17](#).

Term	Details
	<p>Subsidiary Employees who receive offers of employment equals, in the aggregate, <u>at least 90%</u> of the aggregate number of Employees as of the date of the Subscription Agreement.</p> <p>Notwithstanding any other provision of the Subscription Agreement, the Purchaser has no obligation to offer employment to any particular Subsidiary Employee.</p> <p>All liabilities owing to any Terminated Employees as a result of, or in respect of, their termination shall be deemed to be Excluded Liabilities.²⁷</p>
As Is, Where is	<p>The Subscribed Shares will be issued to the Purchaser on an “as is, where is” basis, subject to representations and warranties contained in the Subscription Agreement.²⁸</p>
Key Conditions to Closing	<ul style="list-style-type: none"> • the Purchaser raising equity financing from its investors in an aggregate amount equal to at least US\$22,500,000; • this Court granting the Approval and Reverse Vesting Order; and • customary closing deliverables (e.g., bring-down certificates, no breach, no Material Adverse Effect, etc.).²⁹
Closing Date	<p>Target Closing Date: June 20, 2025</p> <p>Outside Date: June 25, 2025</p>

D. Approval of the Monitor’s Activities and Fees

21. Synaptive seeks approval of the Pre-Filing Report of the Proposed Monitor dated March 18, 2025, the First Report of the Monitor dated March 24, 2025, the Second Report of the Monitor dated April 22, 2025, and the Third Report of the Monitor dated June 14, 2025 (the “**Third Report**”, and collectively with the foregoing, the “**Reports**”), along with the activities of the Monitor described therein.

²⁷ Subscription Agreement, s 5.7, Exhibit “A” to the Momsen Affidavit, MR, p [A64](#).

²⁸ Subscription Agreement, ss 4.1, 4.2 and 4.4, Exhibit “A” to the Momsen Affidavit, MR, pp [A56](#), [A58](#) and [A59](#).

²⁹ Subscription Agreement, s 7.1-7.3, Exhibit “A” to the Momsen Affidavit, MR, p [A68](#).

22. Synaptive also seeks approval of the fees and disbursements of: (i) the Monitor for the period from March 7, 2025 through to June 6, 2025 (the “**Monitor Fee Period**”); and (ii) the Monitor’s legal counsel, McMillan LLP (“**McMillan**”), for the period from March 11, 2025 through to June 9, 2025 (the “**McMillan Fee Period**”).

23. As set out in the fee affidavits of Karen Kimel and Tushara Weerasooriya attached as Appendices “C” and “D” to the Third Report, respectively: (i) the total fees and disbursements (excluding HST) of the Monitor during the Monitor Fee Period are \$367,030.16; and (ii) the total fees and disbursements (excluding HST) of McMillan during the McMillan Fee Period are \$241,612.81.³⁰ The Monitor estimates aggregate additional fees and disbursements for the Monitor and its counsel to the completion and termination of this CCAA proceeding in the amount of approximately \$150,000, exclusive of HST.³¹

E. Termination of CCAA Proceeding

24. The proposed Stay Extension and Termination Order also contemplates that this CCAA proceeding would be terminated upon the Monitor filing a termination certificate in accordance with that order.³² Following the closing of the Transaction contemplated in the Subscription Agreement, ResidualCo is not anticipated to have any material assets, and the only anticipated material step in the CCAA proceeding following closing, subject to any final administrative matters, would be for ResidualCo to make an assignment in bankruptcy.

25. Upon filing of the termination certificate, Richter will be released and discharged as the

³⁰ Third Report, paras 10.2-10.3 and Appendices “C” and “D”, p [E31](#).

³¹ Third Report, para 10.5, p [E32](#).

³² Draft Stay Extension and Termination Order, para 8, Tab 4 of the MR, p [A224](#).

Monitor, and each of the Court-ordered charges will be discharged.

26. To facilitate the orderly wind-up of ResidualCo, the proposed Stay Extension and Termination Order authorizes ResidualCo to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*³³ prior to the termination of the CCAA proceeding.³⁴

PART III - ISSUES

27. The issues for this Court to determine on this motion are:

- (a) Should this Court approve the Subscription Agreement and the Transaction?
- (b) Should this Court grant the Approval and Reverse Vesting Order?
- (c) Should this Court grant the requested releases?
- (d) Should this Court grant the Stay Extension and Termination Order?

PART IV - LAW AND ARGUMENT

A. This Court should approve the Subscription Agreement and the Transaction

28. On this motion, Synaptive seeks the proposed Approval and Reverse Vesting Order, which would approve and implement the Subscription Agreement and the transactions contemplated therein (collectively, the “**Transaction**”). This section describes how the Subscription Agreement and the Transaction satisfy the *Soundair* test, and the next section describes how a reverse vesting structure is appropriate in these circumstances under the *Harte Gold* analysis.

29. The Subscription Agreement is the product of robust, transparent and extensive marketing efforts that commenced with the Pre-Filing Process as early as 2023 and continued under the

³³ [R.S.C. 1985, c. B-3](#).

³⁴ Draft Stay Extension and Termination Order, para 14, Tab 4 of the MR, p [A226](#).

Court-approved SISP. The Subscription Agreement represents the only viable going-concern option for Synaptive’s business, thereby benefitting its various stakeholders. Those stakeholders include neurosurgery, cancer and stroke patients—the ultimate beneficiaries of Synaptive’s cutting-edge medical technology.

30. The Monitor supports the Subscription Agreement and notes that a liquidating bankruptcy—the only realistic alternative—would result in worse overall recoveries for stakeholders.³⁵ It is appropriate in these circumstances for this Court to approve the Subscription Agreement and the Transaction.

31. Synaptive notes that it served its motion record by email on the service list on June 12, 2025, and by mail the following day for parties without email contact information.³⁶ The service list was updated for this motion to include over 350 of Synaptive’s noteholders, contractual counterparties and other economic stakeholders based on Synaptive’s books and records. Synaptive’s counsel received “bounceback” emails indicating that its service email was not received by approximately 40 of those new parties and is working to find alternative contact information for those parties.

32. The prevailing test for the approval of a sale transaction is the *Soundair* test, which has been codified through the six factors set out in section 36(3) of the CCAA.³⁷ Each of those factors has been met in the circumstances:

³⁵ Third Report, para 5.9, p [E19](#).

³⁶ Lawyer’s Certificate of Service of Mike Noel dated June 13, 2025; Affidavit of Service of Kunalan Shelvarajah sworn June 16, 2025.

³⁷ *Royal Bank of Canada v Soundair Corp.*, [\[1991\] 4 OR \(3d\) 1, 83 DLR \(4th\) 76](#) (Ont. C.A.), [para 16](#); *Companies’ Creditors Arrangement Act*, [R.S.C. 1985, c. C-36, s 36\(3\)](#) [CCAA].

- (a) **Whether the process leading to the Subscription Agreement and Transaction was reasonable in the circumstances.** The Monitor extensively canvassed the market during the SISP. These efforts include the Monitor reaching out to approximately 228 strategic and financial parties with a teaser about the opportunity and placing advertisements in *The Globe and Mail (National Edition)* and Canada Newswire.³⁸ The SISP was developed in consultation with the Monitor and the Monitor implemented the SISP in accordance with its terms. This process was reasonable in the circumstances.
- (b) **Whether the Monitor supported the process leading to the proposed sale or disposition.** The Monitor notes in its Third Report that the Subscription Agreement arose from a process that was conducted in a commercially reasonable manner in accordance with the terms of the SISP order, having regard in particular for the breadth of the Monitor's market canvassing efforts.³⁹ The Monitor further notes that it supports the approval of the Subscription Agreement and the Transaction, and recommends that this Court grant the Approval and Reverse Vesting Order.⁴⁰
- (c) **Whether the Monitor filed a report stating that in its opinion the Subscription Agreement and Transaction would be more beneficial to creditors than a sale or disposition under a bankruptcy.** The Third Report concludes that a liquidation of Synaptive's assets or a bankruptcy scenario would produce worse overall recoveries than the Subscription Agreement provides for stakeholders.⁴¹

³⁸ Third Report, paras 5.2(c)-(d), p [E13](#).

³⁹ Third Report, para 5.9(a), p [E19](#).

⁴⁰ Third Report, para 5.9, p [E19](#).

⁴¹ Third Report, para 5.9(f), p [E20](#).

- (d) **The extent to which creditors were consulted.** The Monitor provided regular updates to the DIP Lender—Synaptive’s first-ranking senior secured creditor and DIP lender—regarding the SISP and its market outreach activities. The DIP Lender was also consulted during the Subscription Agreement negotiations with the Purchaser. Those negotiations resulted in the Subscription Agreement providing for the issuance of new promissory notes in an aggregate principal amount of US\$20 million to Synaptive’s first- and second-ranking secured creditors, meaning real recoveries for those creditors.⁴²
- (e) **The effects of the proposed sale or disposition on the creditors and other interested parties.** As discussed in the next section below, Synaptive’s stakeholders are no worse off than they would have been under any other viable alternative structure.
- (f) **Whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently.** The Monitor undertook extensive solicitation efforts during the SISP, and it resulted in a competitive process for Synaptive’s business and, subject to this Court’s approval, a path forward for Synaptive to continue as a going concern. Further, prior to the commencement of this CCAA proceeding, Synaptive pursued a Pre-Filing Process that unsuccessfully resolved Synaptive’s liquidity issues.

33. In sum, the Subscription Agreement meets the *Soundair* test and is supported by the

⁴² Subscription Agreement, Schedule “J”, Exhibit “A” to the Momsen Affidavit, MR, pp [A100](#) and [A101](#).

Monitor. This Court should approve the Subscription Agreement.

B. This Court should grant the Approval and Reverse Vesting Order

34. While this Court has held that reverse vesting orders (“RVOs”) should not be the “norm” in CCAA proceedings, this Court and other courts across the country have recognized that RVOs can be an appropriate judicial tool to drive value for stakeholders where the circumstances warrant such a structure.⁴³ Such circumstances have been found to include, among others, where:

- (a) the debtor operates in a highly-regulated environment in which its existing permits, licenses or similar rights are difficult or impossible to assign to a purchaser;
- (b) the value of the debtor’s business is derived largely from “soft” assets, including patents or other intellectual property, that would be time-consuming to transfer; and
- (c) maintaining the existing legal entity would preserve certain tax attributes that would otherwise be lost under an asset purchase structure.⁴⁴

35. Each of those three scenarios applies to the proposed Approval and Reverse Vesting Order. With reference to the *Harte Gold* factors, the Approval and Reverse Vesting Order is necessary in this case to give effect to the only going-concern restructuring of Synaptive’s business:

- (a) **Why is an RVO necessary in this case?** Synaptive’s business is the development

⁴³ See, e.g., *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#); *Harte Gold Corp. (Re)*, [2022 ONSC 653](#); *Arrangement relatif à Nemaska Lithium inc.*, [2020 QCCA 1488](#); *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#); *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#); *Quest University Canada (Re)*, [2020 BCSC 1883](#).

⁴⁴ *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#), [paras 114-116](#); *Harte Gold Corp. (Re)*, [2022 ONSC 653](#), [para 71](#); *Quest University Canada (Re)*, [2020 BCSC 1883](#), [paras 136 and 142](#).

and sale of cutting-edge medical devices and software in a highly regulated environment. Among other things, Synaptive holds various licenses and regulatory clearances to sell its devices and systems in numerous jurisdictions, including Canada, the United States and the European Union.⁴⁵ Synaptive also relies on its portfolio of intellectual property, including: (i) over 1,275 patent applications in a number of key jurisdictions, including Canada, the U.S., Europe, China and Japan; (ii) 839 patents, with over 330 patents in the U.S. alone; and (iii) 43 licensed patents, 37 of which have been granted.⁴⁶ Further, Synaptive expects that there may be valuable tax attributes in Synaptive, including operating losses, that would be lost in an asset purchase structure.⁴⁷

Under an asset purchase structure, Synaptive would need to incur considerable time, effort, cost and risk to transfer these licenses, clearances and intellectual property registrations to a different entity, to the extent that such transfers are even possible.⁴⁸ This would be an incredibly value-destructive result in a situation where Synaptive is subject to significant liquidity constraints. Indeed, Synaptive does not have sufficient liquidity to undertake these efforts, which would include services from both Canadian and foreign professionals, given the international nature of the underlying registrations and clearances.⁴⁹ Additionally, any valuable tax losses and similar attributes in Synaptive would likely be lost in an asset purchase transaction.

An RVO structure bypasses each of these issues and allows Synaptive to continue

⁴⁵ Momsen Affidavit, para 24, MR, p [A31](#).

⁴⁶ Momsen Affidavit, para 24, MR, p [A31](#).

⁴⁷ Third Report, para 5.10(d), p [E21](#); Momsen Affidavit, para 26, p [A31](#).

⁴⁸ Momsen Affidavit, para 25, p [A31](#).

⁴⁹ Third Report, para 6.3, p [E22](#); Momsen Affidavit, para 25, p [A31](#).

to enjoy the benefits of these items following closing without incurring considerable costs.

- (b) **Does the RVO structure produce an economic result at least as favourable as any other viable alternative?** An RVO structure allows for a far more advantageous transfer of Synaptive’s business to the Purchaser than an asset purchase structure would. Without an RVO, there would be substantial delay, cost and risk associated with transferring Synaptive’s licenses, clearances and intellectual property, along with the loss of any tax attributes in Synaptive.⁵⁰ The Purchaser has insisted on an RVO structure, and no other bids materialized under the SISP. The Subscription Agreement represents the best and only viable outcome for Synaptive, its creditors and its other stakeholders, including the medical patients who benefit from Synaptive’s neurosurgery tools and systems.
- (c) **Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?** As discussed above, there is no viable going-concern alternative to the Subscription Agreement and the Transaction. The only realistic alternative is a liquidation, which would produce a worse, or no better, result for all stakeholders, including medical patients who rely on Synaptive’s devices and systems. Much of the value of Synaptive’s business is derived from “soft” assets, including Synaptive’s contractual arrangements, intellectual property, technical know-how and regulatory licenses and clearances that permit it to develop and sell its products—assets that would be incredibly difficult, if not impossible, to

⁵⁰ Momsen Affidavit, para 25, p [A31](#).

monetize in a liquidation.

Furthermore, any contractual counterparties with Excluded Contracts that are transferred to ResidualCo by the Approval and Reverse Vesting Order will have a forum to resolve their claims and other issues flowing from their contracts in ResidualCo's bankruptcy proceeding. The Approval and Reverse Vesting Order does not purport to adjudicate such issues; rather, it would merely transfer those Excluded Contracts to ResidualCo for adjudication in that bankruptcy proceeding.

- (d) **Does the consideration to be paid for the debtor's business reflect the importance and value of the licenses, permits and other intangible assets being preserved under the RVO structure?** The aggregate value under the Transaction is expected to consist of at least US\$22,500,000 of cash consideration, along with new promissory notes in an aggregate principal amount of \$20 million, representing recoveries to Synaptive's first- and second-ranking secured creditors.⁵¹ This was the highest offer that materialized in the SISP. This consideration is fair, reasonable and is directly attributable to the value and importance of Synaptive's permits, licenses and intellectual property, taking into account their market value and the broad canvassing of potentially interested parties during the SISP.

36. Finally, the Monitor supports the proposed Approval and Reverse Vesting Order, noting that it represents the best opportunity to maximize recoveries for Synaptive's creditors and provide the greatest benefit to Synaptive's stakeholders.⁵²

⁵¹ Subscription Agreement, s 2.2 and Schedule "J", Exhibit "A" to the Momsen Affidavit, MR, pp [A55](#), [A100](#) and [A101](#).

⁵² Third Report, para 5.9(g), p [E20](#).

C. This Court should grant the releases

37. The proposed Approval and Reverse Vesting Order includes releases in favour of, among others: (i) Synaptive and its directors, officers, employees and representatives; (ii) the director of ResidualCo and its representatives; (iii) the Purchaser and its directors, officers, employees and representatives; (iv) the Monitor and its representatives; and (v) the DIP Lender and its directors, officers, employees and representatives (collectively, the “**Released Parties**”).⁵³

38. The released claims cover, among other things, any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of, among other things, this CCAA proceeding, the Subscription Agreement, the completion of the Transaction and/or the Applicant’s or Purchaser’s assets, business or affairs (collectively, the “**Released Claims**”). The Released Claims do not release claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA, claims for fraud or wilful misconduct or any obligation of any Released Party in connection with the Subscription Agreement or Transaction.⁵⁴

39. While releases for directors, officers and advisors to debtor companies are a common feature of a CCAA plan, the absence of a plan does not deprive this Court of jurisdiction under section 11 of the CCAA to approve releases for such parties.⁵⁵

40. In *Lydian*, Chief Justice Morawetz set out the following list of non-exhaustive factors for this Court to consider when determining if a release is appropriate in the circumstances: (a) the claims to be released are rationally connected to the purpose of the plan; (b) the plan can succeed

⁵³ Draft Approval and Reverse Vesting Order, para 26, Tab 3 to the MR, p [A212](#).

⁵⁴ Draft Approval and Reverse Vesting Order, para 26, Tab 3 to the MR, p [A213](#).

⁵⁵ *Re Green Relief Inc.*, [2020 ONSC 6837](#), [paras 23 and 25](#).

without the releases; (c) the parties being released contributed to the plan; (d) the releases benefit the debtors as well as the creditors generally; (e) the creditors voting on the plan have knowledge of the nature and effect of the releases; and (f) the releases are fair, reasonable and not overly broad.⁵⁶ This Court has separately held that it is not necessary for each of the above factors to apply for releases to be granted.⁵⁷

41. In the present case, the Released Claims contained in the Approval and Reverse Vesting Order are appropriate and should be granted for the following reasons:

- (a) **The Released Claims are rationally connected to the purpose of the restructuring.** The Released Claims only include claims that flow from this CCAA proceeding, the Subscription Agreement, the Transaction or the business or affairs of Synaptive or the Purchaser (a special purpose “newco” incorporated for purposes of acting as the purchaser under the Subscription Agreement)—the release is thus rationally connected to the restructuring efforts.
- (b) **The Released Parties contributed to the restructuring.** The Released Parties each made significant contributions to Synaptive’s restructuring, both prior to and throughout this CCAA proceeding. In particular, Synaptive’s management and employees, the Purchaser, the Monitor, the DIP Lender and the parties’ counsel each provided substantial time, energy, expertise and, in the case of the DIP Lender, funding in this CCAA proceeding. These contributions were instrumental in

⁵⁶ *Lydian International Limited (Re)*, [2020 ONSC 4006](#), [para 54](#); see also *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, [2008 ONCA 587](#), [para 70](#).

⁵⁷ *Re Green Relief Inc.*, [2020 ONSC 6837](#), [para 28](#).

achieving the going-concern outcome for Synaptive's business before this Court.⁵⁸

- (c) **The release is fair, reasonable and not overly broad.** Synaptive is not aware of any statutory liabilities in respect of the Released Parties and, to date, no person has indicated to Synaptive that they intend to assert a claim against any of the Released Parties, save for Synaptive itself, in respect of any claims covered by the release. The release is designed to allow Synaptive and the Released Parties to move forward with the Subscription Agreement and the Transaction and work to conclude this CCAA proceeding. The release also carves out claims that are not permitted to be released under section 5.1(2) of the CCAA.
- (d) **Creditors have knowledge of the nature and effect of the release.** All creditors on the service list for this CCAA proceeding were served with Synaptive's motion record on June 12, 2025. A specific claims process to ascertain claims against the Released Parties in these circumstances would only result in additional costs and delay without any corresponding benefit.

D. This Court should grant the Stay Extension and Termination Order

42. Finally, Synaptive seeks the proposed Stay Extension and Termination Order, which was designed to provide an efficient means of bringing this CCAA proceeding to an end following closing of the Transaction without the need to reappear before this Court.

(a) The Stay Period should be extended

43. The Stay Period currently expires on June 20, 2025. Synaptive requests an extension of the

⁵⁸ Momsen Affidavit, para 32, MR, p [A33](#).

Stay Period to September 30, 2025.⁵⁹ This extension is appropriate in the circumstances to provide sufficient flexibility to ensure that all post-closing matters, including the anticipated bankruptcy of ResidualCo, can be attended to without the need to return before this Court.⁶⁰

44. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the stay period for any period it considers necessary.⁶¹ The Court must be satisfied that appropriate circumstances exist for the extension and that Synaptive has acted, and is acting, in good faith and with due diligence.

45. Synaptive has acted and is continuing to act in good faith and with due diligence in this CCAA proceeding to, among other things, stabilize the business, implement the SISP and negotiate the Transaction.⁶² Extending the Stay Period to September 30, 2025, would minimize the costs associated with an additional hearing. It would also provide sufficient time for Synaptive and the Purchaser, with the Monitor's assistance, to close the Transaction and for all post-closing matters, including ResidualCo's anticipated assignment in bankruptcy, to be completed.⁶³ The Monitor is supportive of the proposed extension of the Stay Period.⁶⁴

(b) The Monitor's reports and fees should be approved

46. Chief Justice Morawetz has recognized that a request for approval of a monitor's reports and activities is not unusual; in most cases, there is no opposition to such a request and this relief

⁵⁹ Draft Stay Extension and Termination Order, para 2, Tab 4 to the MR, p [A223](#).

⁶⁰ Third Report, para 11.2(f), p [E34](#); Momsen Affidavit, para 43, MR, p [A35](#).

⁶¹ [CCAA, s. 11.02\(2\)](#).

⁶² Third Report, para 11.2(e), p [E34](#); Momsen Affidavit para 39, MR, p [A34](#).

⁶³ Third Report, para 11.2(f), p [E34](#).

⁶⁴ Third Report, para 11.2, p [E33](#).

is routinely granted.⁶⁵ Synaptive submits that the Monitor's Reports and the conduct and activities of the Monitor described therein should be approved.

47. The ARIO entitles the Monitor and its counsel to be paid their reasonable fees and disbursements, each at their standard rates and charges, and requires the Monitor and its counsel to pass their accounts from time to time.⁶⁶

48. In *Laurentian University*, Chief Justice Morawetz held that this Court's role on a motion to pass accounts is to evaluate those accounts on the "overriding principle of reasonableness." The predominant consideration is the overall value contributed by the Monitor and its counsel.⁶⁷

49. Chief Justice Morawetz further reiterated the following non-exhaustive list of factors to be considered when evaluating the fairness and reasonableness of a court-appointed officer's fees: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.⁶⁸

50. Synaptive submits that, when viewed through the lens of these factors, Richter's and McMillan's fees meet the criteria for this Court's approval. Richter's and McMillan's efforts in this CCAA proceeding were critical to Synaptive's restructuring efforts, including the going-concern outcome before this Court today. Among other things, the Monitor and its counsel

⁶⁵ *Target Canada Co. (Re)*, [2015 ONSC 7574](#), para 2.

⁶⁶ Amended and Restated Initial Order, paras 31-32, Momsen Affidavit, Exhibit "C", MR, p [A159](#).

⁶⁷ *Laurentian University of Sudbury*, [2022 ONSC 2927](#), para 9.

⁶⁸ *Laurentian University of Sudbury*, [2022 ONSC 2927](#), para 10.

implemented and conducted the SISP, assisted with the negotiation of the Subscription Agreement and helped Synaptive address various issues with respect to its operations and its stakeholders throughout this CCAA proceeding.

51. The Monitor's estimated fees and disbursements to be incurred until this CCAA proceeding terminates of \$150,000 should also be approved. Approval of such estimate on this motion would avoid the cost and inefficient use of judicial resources associated with a separate hearing. To the extent the actual amount of the Monitor's and McMillan's fees are less than that amount, the Subscription Agreement requires the Monitor to return the balance to Synaptive.⁶⁹

(c) The proposed WEPPA relief is necessary

52. The proposed Stay Extension and Termination Order includes a declaration that, in accordance with section 5(5) of the WEPPA, Synaptive meets the criteria under section 3.2 of the WEPPA Regulations.⁷⁰ Because the proposed reverse vesting structure would transfer the claims of Synaptive's recently terminated employees to ResidualCo, those employees' claims are separated from the legal entity that employed them, thereby potentially preventing them from recovering on their eligible claims under the WEPPA. The proposed language in the Stay Extension and Termination Order is thus necessary to ensure those terminated employees can seek recourse for those claims under the WEPPA.⁷¹

(d) The CCAA proceeding should be terminated upon filing of the Termination Certificate

⁶⁹ Subscription Agreement, s 2.5, Exhibit "A" to the Momsen Affidavit, MR, p [A56](#).

⁷⁰ Stay Extension and Termination Order, para 7, Tab 4 to the MR, p [A224](#); *Wage Earner Protection Program Act*, SC 2005, c 47, s 1, [s 5\(5\)](#); *Wage Earner Protection Program Regulations*, SOR/2008-222, s [3.2](#).

⁷¹ See, e.g., *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#), paras [32-35](#).

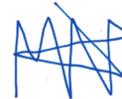
53. The proposed Stay Extension and Termination Order provides for the automatic termination of this CCAA proceeding and the Monitor's discharge upon the Monitor's filing of the Termination Certificate. This Court has jurisdiction to grant such relief under section 11 of the CCAA and regularly exercises such relief in similar circumstances as those present on this motion.

54. Following the closing of the Transaction, Synaptive will be removed as an applicant in this CCAA proceeding and ResidualCo will be added as an applicant.⁷² Subject to completion of final administration matters, there will be no further need for this CCAA proceeding following ResidualCo's anticipated bankruptcy. This Court's pre-authorization to terminate this CCAA proceeding is intended to avoid the costs and judicial time associated with a further hearing.

PART V - ORDER REQUESTED

55. For all of the reasons above, Synaptive requests that this Court grant the requested Approval and Reverse Vesting Order and Stay Extension and Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June, 2025.



Adam Slavens / Mike Noel

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Adam Slavens (LSO#: 54433J)
416.865.7333 | aslavens@torys.com

Mike Noel (LSO#: 80130F)
416.865.7378 | mnoel@torys.com

Lawyers for Synaptive Medical Inc.

⁷² Draft Approval and Reverse Vesting Order, paras 5(a), 17 and 29, Tab 3 to the MR, pp [A203](#), [A208](#) and [A213](#).

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Royal Bank of Canada v Soundair Corp.*, [\[1991\] 4 OR \(3d\) 1, 83 DLR \(4th\) 76](#) (Ont. C.A.)
2. *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#)
3. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
4. *Arrangement relatif à Nemaska Lithium inc.*, [2020 QCCA 1488](#)
5. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#)
6. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
7. *Quest University Canada (Re)*, [2020 BCSC 1883](#)
8. *Re Green Relief Inc.*, [2020 ONSC 6837](#)
9. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
10. *Metcalf & Mansfield Alternative Investments II Corp., (Re)*, [2008 ONCA 587](#)
11. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
12. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
13. *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY – LAWS

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

Assignment for general benefit of creditors

[49 \(1\)](#) An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person’s property for the general benefit of the insolvent person’s creditors.

...

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

Restriction on disposition of business assets

[36 \(1\)](#) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

[\(2\)](#) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

[\(3\)](#) 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.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

...

Stays, etc. — other than 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.

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1

Conditions of eligibility

[5 \(1\)](#) An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
 - (i) the former employer is bankrupt,
 - (ii) the former employer is subject to a receivership,
 - (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and
 - (A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - (B) a trustee is appointed, or
 - (iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and
- (c) the individual is owed eligible wages by the former employer.
- (d) [Repealed, 2009, c. 2, s. 343]

Prescribed criteria — foreign proceeding

(2) On application by any person, a court may, in a proceeding under Part XIII of the Bankruptcy and Insolvency Act, determine that the foreign proceeding meets the criteria prescribed by regulation. If the court determines that the foreign proceeding meets the prescribed criteria, the court may appoint a trustee for the purposes of this Act.

Employment in Canada

(3) An individual who is eligible to receive a payment because of subparagraph (1)(b)(iii) is only eligible to receive a payment in respect of eligible wages earned for employment in Canada and termination pay and severance pay that relate to that employment.

Deemed bankruptcy

(4) For the purposes of this Act, if all of the conditions set out in subparagraph (1)(b)(iii) are met, the former employer is deemed to be bankrupt and the date of the bankruptcy is deemed to be the day on which all of those conditions are met.

Prescribed criteria — other proceedings

(5) On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

Wage Earner Protection Program Regulations, SOR/2008-222

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

[3.2](#) For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

**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 Approval and Reverse Vesting Order
and Stay Extension and Termination Order,
returnable June 18, 2025)

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Adam Slavens (LSO#: 54433J)
416.865.7333 | aslavens@torys.com

Mike Noel (LSO#: 80130F)
416.865.7378 | mnoel@torys.com

Lawyers for Synaptive Medical Inc.