

SEP 03 2020

S-208894

No. _____
Vancouver Registry

 IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
URTHECAST CORP., URTHECAST INTERNATIONAL CORP., URTHECAST USA INC,
1185729 B.C. LTD. AND THOSE OTHER PETITIONERS SET OUT ON THE ATTACHED
SCHEDULE "A"

Petitioners

PETITION TO THE COURT

This proceeding is brought by the Petitioners for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the Petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the Petitioners,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

(1)	<p>The address of the registry is:</p> <p>The Law Courts 800 Smithe Street Vancouver, British Columbia, V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioners is:</p> <p>Bennett Jones LLP 2500 Park Place, 666 Burrard Street, Vancouver, B.C. V6C 2X8</p> <p>Attention: David E. Gruber and Alexandra Andrisoi</p> <p>Fax number address for service of the petitioner: 604-891-5100</p> <p>E-mail address for service of the petitioner: gruberd@bennettjones.com and andrisoia@bennettjones.com</p>
(3)	<p>The name and office address of the petitioner's lawyer is:</p> <p>Bennett Jones LLP 2500 Park Place, 666 Burrard Street, Vancouver, B.C. V6C 2X8</p> <p>Attention: David E. Gruber & Alexandra Andrisoi</p>

Claim of the Petitioners

Part 1: ORDER SOUGHT

1. The Petitioners make an application for an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), substantially in the form attached hereto as Schedule "B" (the "**Initial Order**"), granting the following relief:
 - (a) declaring the CCAA applies to the Petitioners;

- (b) a stay of all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as otherwise set out in the Initial Order or otherwise permitted by law;
- (c) authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business during the CCAA proceeding;
- (d) appointing Ernst & Young Inc. ("EY") as monitor in these proceedings;
- (e) authorizing the Petitioners to file with the Court a plan or plans of compromise and arrangement; and
- (f) such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioner, UrtheCast Corp. ("**UrtheCast**") is a corporation existing under the laws of Ontario, Canada. It is a public company with its common shares listed on the Toronto Stock Exchange (the "**TSX**"). It is the parent corporation of the other Petitioners in these proceedings (collectively, the "**UrtheCast Group**" or the "**Petitioners**").

2. UrtheCast is a technology company developing world-first technologies in data services, geanalytics, machine learning and artificial intelligence. The UrtheCast Group currently owns and operates two earth observation satellites. In 2019, through the acquisition of Geosys (as defined below), the UrtheCast Group expanded its expertise to include agricultural analysis of satellite and weather data. The UrtheCast Group has been working towards the launch of UrtheDaily, the world's first earth observation system designed from the ground up to produce scientific-quality and analytics-ready imagery of the entire earth every day.

Corporate Structure

- 3. The UrtheCast Group comprises UrtheCast and its 16 subsidiaries.
- 4. The three active direct wholly-owned subsidiaries of UrtheCast are:

- (a) UrtheCast International Corp., a company incorporated under the federal laws of Canada;
- (b) 1185729 B.C. Ltd., a company incorporated under the laws of British Columbia; and
- (c) UrtheCast USA Inc. ("**UrtheCast USA**"), a company incorporated under the laws of Delaware.

5. UrtheCast also has two dormant wholly-owned subsidiaries. UrtheCast Barbados Holdings Inc. ("**UrtheCast Barbados**") and Space Video Company LLC ("**Space Video**") formed under the Russian Federation.

6. UrtheCast also indirectly owns a number of additional subsidiaries in several jurisdictions:

- (a) UrtheCast Imaging S.L.U., Deimos Imaging S.L.U. and DOT Imaging S.L.U, each formed under the laws of Spain (collectively, "**UrtheCast Spain**");
- (b) UrtheCast Holdings (Malta) Limited and UrtheCast Investments (Malta) Limited, each formed under the laws of Malta (collectively, "**UrtheCast Malta**");
- (c) UrtheDaily Corp. incorporated under the federal laws of Canada;
- (d) 1185781 B.C. Ltd. incorporated under the laws of British Columbia; and
- (e) the six Geosys entities: Geosys Holding, ULC existing under the laws of British Columbia, Geosys Intl Inc. formed under the laws of Delaware, United States of America, Geosys SAS formed under the laws of France, Geosys Australia PTY formed under the laws of Australia, Geosys Brasil Ltda. formed under the laws of Brazil, and Geosys Europe SARL formed under the laws of Switzerland (collectively, "**Geosys**").

7. UrtheCast Barbados and Space Video are not petitioners in these proceedings and are currently in the process of being wound-up.

8. The UrtheCast Group operates as a functionally integrated group and is consolidated financially. The managerial decision making is primarily made out of the Vancouver head office and many of the operational functions are consolidated. The exception to the foregoing is with respect to Geosys, as given the recent timing of its acquisition, not all functions have been consolidated.

9. The UrtheCast Group's corporate headquarters is in Vancouver, British Columbia. UrtheCast also has offices in: (i) Minnesota, USA; (ii) Toulouse, France; and (iii) Boecillo, Madrid and Puertollano, Spain.

10. UrtheCast Group has 186 employees across its offices. The majority of the employees are highly specialized professionals consisting of aerospace engineers, mechanical and software engineers. The remainder are involved in the development of current and prospective customers and strategic partners, as well as corporate governance and administration.

The Business

11. UrtheCast Group generates revenues through (i) direct data sales to institutional users, (ii) the provision of engineering services, and (iii) the sale of other value-added services and imagery-related products. Its primary tangible assets are the earth observation (**EO**) assets that it currently operates in space, including two satellites, Deimos-1 and Deimos-2 (collectively, the "**Deimos Satellites**") which are held by UrtheCast Spain.

12. UrtheCast also owns two EO sensors and related equipment currently installed aboard the Russian module of the International Space Station (the "**ISS Cameras**", and collectively with the Deimos Satellites, the "**Orbital Assets**"); however, commercial and operational issues related to the ISS Cameras have resulted in the termination of the access and operation agreement with UrtheCast's Russian operating partner on the ISS, and the UrtheCast Group has not been able to access its ISS Cameras since November 2016.

13. UrtheCast Malta was established in connection with the Deimos Satellites acquisition, and has no operations or assets, other than small amounts of cash on hand and intercompany balances.

14. The UrtheCast Group generates revenue from the Orbital Assets by supplying data from the assets both to customers directly, and by processing and distributing imagery and value-added products to customers on behalf of the PanGeo Alliance, a network of eight EO satellite operators formed and led by Deimos Imaging S.L.U., one of the UrtheCast subsidiaries.

15. UrtheCast offers a number of additional value-added services to customers in relation to EO development and design including: (i) engineering services involving EO technology development, licensing, and training; (ii) paid research and development, and (iii) the creation of technology solutions to address specific customer requirements.

16. Geosys was acquired in January 2019. The transaction was structured such that the purchase price was to be paid in three installments. The first payment has been made and part of the second payment. Geosys generates revenue through providing scientific grade weather and satellite data and proven methodologies for monitoring and benchmarking crops. In addition to delivering geospatial information, it provides value added services and systems around the world and positions the UrtheCast Group as a fully vertically integrated geo-analytics provider for agriculture.

17. To date, UrtheCast's go-forward business plan has been focused on the development of two major EO projects, which are expected to generate significant revenue once operational.

18. UrtheCast has, along with its strategic partners, has been developing synthetic aperture radar ("**SAR**") technologies intended to lead the next generation of EO capabilities, with the intention of incorporating SAR sensory technology into a constellation of synchronized satellites known as the OptiSAR Constellation. UrtheCast and its strategic partners have developed significant SAR-related intellectual property to date.

19. Simultaneously, the UrtheCast Group has been pursuing the development of a second constellation of synchronized satellites equipped with optical EO sensors through a project referred to as the UrtheDaily Constellation, which would be the first earth observation system to provide scientific-quality, analytics-ready imagery of the entire earth (excluding Antarctica) every day.

20. The UrtheCast group is also developing software and related infrastructure to facilitate EO imagery processing and distribution, at scale (the "**UrthePipeline**"), which has started to offer

some services. Once completed, the technology will form an integrated part of the ground segment for the UrtheDaily Constellation.

Cause of Financial Difficulties and Need to Restructure

21. The Petitioners have a history of significant recurring operating losses, shareholders' deficit, working capital deficiencies and insufficient cash flow to meet its obligations. As at December 31, 2019, UrtheCast had a working capital deficiency of \$47,446,000 and as at March 31, 2020, UrtheCast had a working capital deficiency of \$54,240,000. UrtheCast's working capital deficiency has continued to increase and as of June 30, 2020 was \$59,858,000.
22. The financial difficulties experienced by the Petitioners are primarily attributable to the funding requirements for the development of the UrtheDaily and OptiSAR Constellation projects and the delay in being able to generate revenue from these projects as they are still in development. These financial difficulties were further exacerbated by the COVID-19 pandemic, which has negatively impacted sales, the collection of receivables from customers, and timely completion of milestones under its engineering and services contracts.
23. To address these challenges, the UrtheCast Group has explored options for deferring maturity and principal repayments under its debt facilities, reducing costs, obtaining additional financing and the sale of certain assets.
24. For the last few years, UrtheCast has been able to manage this cash drain by obtaining secured bridge financing from its current group of debt holders. The premise of these funding rounds was that there would be a larger refinancing in connection with the UrtheDaily project, which would enable UrtheCast to be recapitalized, and that the UrtheDaily business will generate sufficient revenue that future cashflow would be positive. UrtheCast has made progress in obtaining refinancing in connection with the UrtheDaily project, but with several false starts along the way, the refinancing has been delayed beyond expectations.
25. The UrtheCast Group is insolvent and requires CCAA protection at this time.

26. The Initial Order is urgently required to provide much needed breathing space for the UrtheCast Group to address its solvency issues and avoid potential unilateral action by its creditors that might result in the liquidation of the Petitioners and their assets.

27. One of the creditors of Geosys SAS has advised of its intention to commence a safeguard procedure in Toulouse, France. The Initial Order is necessary to avoid a multiplicity of proceedings and avoid disruption to the continuity of the Geosys services. To the extent that multiple proceedings are necessary, the Initial Order is the necessary first step to ensure cooperation and coordination between proceedings.

Stakeholders

(a) Unsecured Creditors

28. The unsecured creditors of the Petitioners primarily consist of: (a) Convertible debenture holders; (b) Canadian Ministry of Industry; (c) Unsecured trade creditors; (d) Professional services firms including accounting and insurance firms; (e) certain UrtheCast Directors and Officers who agreed under unsecured grid notes to defer their salaries in connection with the January 2019 financing; and (f) Inter-company indebtedness.

29. The unsecured creditors of the Petitioners are owed approximately \$59,461,038.

(b) Investors

30. The operations of the UrtheCast Group were historically financed primarily through equity offerings made at the parent level by UrtheCast. Proceeds generated through such equity financings have been used to fund the working capital needs of the entire UrtheCast Group, and cash is flowed through the various UrtheCast subsidiaries as needed through inter-company loan transactions.

31. On May 3, 2018, UrtheCast closed a private placement of 76,217,260 subscription receipts, which were sold at a price of \$0.35 per subscription receipt and subsequently converted to non-interest bearing, unsecured senior convertible debentures in the aggregate principal amount of \$21,675,416 and 33,867,826 share purchase warrants.

32. On September 11, 2019, UrtheCast completed a \$6,600,000 financing consisting of two unsecured convertible debentures, as amended and restated on October 31, 2019, and on January 29, 2020, UrtheCast completed a \$2,025,773 financing consisting of an unsecured convertible debenture.

33. As at August 28, 2020, UrtheCast had 142,929,507 common shares issued and outstanding. As at September 2, 2020, the closing price of UrtheCast's common shares on the TSX was \$0.07.

(c) Secured Creditors

34. As of August 31, 2020, the UrtheCast Group had approximately \$55,842,034 owing to secured creditors. A summary of the secured amounts owing as of August 31, 2020 is set out in the first affidavit of Sai Chu made in support of the Petitioners application for relief under the CCAA.

35. UrtheCast has been continuing discussions with its secured lenders to secure further deferrals of payment.

36. On August 27, 2020, UrtheCast entered into a term loan for up to \$1,000,000 USD with 1262743 B.C. Ltd. \$500,000 USD has been advanced under the term loan, which accrues interest at a rate of 18% per annum, has a maturity date of November 30, 2020 and is secured by all the assets owned by UrtheCast (the "**August 2020 Term Loan**").

37. Among other things, in consideration for the August 2020 Term Loan, UrtheCast entered into an agreement with 1262743 B.C. Ltd. whereby UrtheCast agreed amongst other things to:

- (a) use commercially reasonable efforts to obtain a court order for interim financing (the "**DIP Financing**"), secured by a first priority charge over the assets of UrtheCast and its relevant subsidiaries and affiliates, which DIP financing would be used by UrtheCast to refinance the Loan;
- (b) acknowledge that 1262743 B.C. Ltd. proposes to submit a "stalking-horse" bid of USD \$10,000 per camera for each of the ISS Cameras as part of the CCAA process and to cooperate with the lender in respect of such bid;

- (c) not to terminate certain named employees without cause while there are amounts outstanding under the August 2020 Term Loan or DIP financing; and
- (d) permit 1262743 B.C. Ltd. to appoint one nominee to act as an observer at meetings of the board of directors of UrtheCast.

38. As of August 28, 2020, the following entities have registered financing statements in the British Columbia Personal Property Registry ("**PPR**") against UrtheCast:

- (a) Royal Bank of Canada, which had previously provided a revolving credit facility but terminated the revolving credit facility following December 31, 2018; the company maintains Letters of Guarantees with RBC in the aggregate amount of approximately \$ 9.4 million in relation to certain contracts;
- (b) Export Development Canada in relation to funding provided as part of Innovation, Science and Economic Development Canada's Industrial Technologies Office as part of its Aerospace & Defence Initiative (SADI) Program; and
- (c) WO-C2FO SPV, LLC with respect to a facility that is not currently in use.

(d) *Intercorporate Indebtedness and Guarantees*

39. Based on the information that appears on the general ledgers of UrtheCast as of the date of this Affidavit, the intercompany indebtedness:

- (a) owed to UrtheCast from its various subsidiaries is approximately \$21,365,735. This indebtedness relates to funds advanced by UrtheCast to certain of its subsidiaries to fund operations. Certain subsidiaries are offsetting management fees owed to UrtheCast against the intercompany indebtedness;
- (b) owed by UrtheCast to certain of its subsidiaries is approximately \$14,237,393, relating to funds provided to UrtheCast for general operations.

40. UrtheCast Corp. has also provided bank guarantees in relation to the funding facility provided by Export Development Canada, as well as additional guarantees for several other secured facilities.

(e) Litigation

41. On August 9, 2018, AWA Quattro Holdings Inc. and Humberto Aquino filed a civil claim with the Supreme Court of British Columbia naming UrtheCast Corp, UrtheCast International Corp. and UrtheCast Spain as defendants. The claim alleges amongst other things a breach of contract as a result of the termination of certain consulting agreements and a retention contract. Damages in excess of \$750,000 are sought by the plaintiffs.

42. On August 9, 2018, William Holland and Eastwood Capital Corp. (the "**Plaintiffs**"), filed a civil Claim with the Supreme Court of British Columbia naming UrtheCast Corp. and certain of its current and former directors as defendants (the "**Defendants**"). The claim alleges amongst other things a breach of contract under a subscription agreement, misrepresentation and oppression under the Ontario *Business Corporations Act*. The Plaintiffs commenced parallel proceedings in British Columbia and Ontario seeking \$3,545,500. The defendants have obtained a permanent stay of the contract claim in the Ontario proceeding and a temporary stay of the oppression claim in the Ontario proceeding pending the outcome of the contract claim.

43. In April 2019, EMN Consulting commenced a claim for breach of contract against UrtheCast Corp. under an Investor Relations services agreement. An arbitration was commenced and EMN Consulting obtained a judgment in the amount of \$41,909.

Anticipated restructuring

44. Should the Initial Order be granted, the UrtheCast Group intends to address its insolvency through a number of steps including: (i) immediately commencing a sale and investment solicitation process (a "**SISP**"), to be overseen by the proposed Monitor, that would seek to monetize core and non-core assets, (ii) finalizing interim financing arrangements in order to obtain much-needed short term liquidity, (iii) continuing the performance improvement initiatives already commenced to streamline and focus the go-forward operations of the UrtheCast Group,

and (iv) pursuing discussions with potential financiers in order to secure long-term funding for the projects that may form the basis of the UrtheCast Group's go-forward business (subject to the SISP), all under the supervision of the Court and with the assistance of the proposed Monitor.

45. The Petitioners require a stay of proceedings to maintain the status quo and protect and preserve the value of their business for their benefit and the benefit of their creditors and stakeholders while they restructure their affairs and pursue a value maximizing sales process.

Appointment of Monitor

46. EY has consented to act as Monitor in these proceedings.

Administration Charge

47. It is contemplated that the proposed Monitor, counsel for the proposed Monitor and counsel to the Petitioners would be granted a first priority Court-ordered charge on the assets, property and undertaking of the Petitioners, in priority to all claims, up to the maximum amount of \$500,000 in respect of their respective fees and disbursements, incurred at standard rates and charges (the "**Administration Charge**").

48. The Petitioners believe the Administration Charge is reasonable and necessary to ensure these professionals' continued assistance in the restructuring of the UrtheCast Group.

Directors' and Officers' Charge

49. It is contemplated that a charge in the maximum amount of \$350,000 be granted (the "**Directors' Charge**"), subordinate to the Administration Charge, to indemnify the current directors and officers of the Petitioners against obligations and liabilities that they may incur as directors or officers after the commencement of the proposed CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or willful misconduct.

50. The Directors and Officers would only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent such coverage is insufficient to pay an indemnified amount as described above.

Interim Lending Facility

51. The Cash-Flow Statement contemplates that the Petitioners will require interim financing in order to facilitate an efficient and orderly restructuring. The Petitioners are working with the proposed Monitor, EY to finalized debtor-in-possession financing (the "**DIP Facility**").

52. It is expected that the terms of the DIP Facility will require that any funds advanced be secured by a second-ranking charge (subordinate only to the proposed Administration Charge) secured against the property of the Petitioners in accordance with the terms of the Initial Order (the "**DIP Facility Charge**").

53. The DIP Facility and the DIP Facility Charge are necessary to facilitate the restructuring activities of the Petitioners in these CCAA proceedings, as access to the funds proposed to be advanced under the contemplated DIP Facility would enhance the prospect of a viable compromise or arrangement being made in respect of the Petitioners.

54. The Petitioners are working diligently with EY with respect to securing a DIP facility.

Conclusion

55. The Petitioners are currently unable to meet their obligations as they come due, including amounts owing to their secured and unsecured creditors. The Petitioners are seeking a stay of proceedings under the CCAA in order to maintain the status quo and provide the Petitioners with much needed breathing room to explore restructuring opportunities with the assistance of the Monitor.

56. The Petitioners believe that this CCAA proceeding is the best means of maximizing the recovery to the Petitioners' creditors and stakeholders.

Part 3: LEGAL BASIS

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, as amended;
2. *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended;
3. The inherent and equitable jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. At the hearing of this Petition, the Petitioners will rely on:
 - (a) Affidavit #1 of Sai Chu, made September 3, 2020 and filed herein;
 - (b) The pre-filing report of the proposed Monitor; and
 - (c) Such further and other materials as counsel may advise and this Honourable Court may allow.

The petitioners estimate that the hearing of the petition will take 2 hours.

Date: September 3, 2020.



(for) **David E. Gruber**
Lawyer for the Petitioners

THIS PETITION is prepared and delivered by **David E. Gruber** of Bennett Jones LLP, whose place of business and address for service is 2500-666 Burrard St, Vancouver, British Columbia, V6C 2X8 Phone: (604) 891-5150 Fax: (604) 891-5100

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

Date: August __, 2020

Signature of Judge Master

**"Schedule "A"
List of Petitioners**

1185729 B.C. Ltd.

1185781 B.C. Ltd.

Deimos Imaging S.L.U.

DOT Imaging S.L.U.

Geosys Australia PTY

Geosys Brasil Sistemas de Informacao Agriocola Ltda.

Geosys Europe Sarl

Geosys Holding, ULC (was Geosys Technology Holding LLC)

Geosys-Int'l, Inc.

Geosys S.A.S.

UrtheCast International Corp.

UrtheCast Corp.

UrtheCast Holdings (Malta) Limited

UrtheCast Imaging S.L.U.

UrtheCast Investments (Malta) Limited

UrtheCast USA Inc.

UrtheDaily Corp.