

COURT FILE NO.

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C C-8, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF BR CAPITAL LP, BR CAPITAL INC., ICE
HEALTH SYSTEMS LP, ICE HEALTH SYSTEMS GP LP, ICE
HEALTH SYSTEMS INC., HEALTH EDUCATION LP, HEALTH
EDUCATION GP LP, HELP INC., FIRST RESPONSE
INTERNATIONAL LP, FIRST RESPONSE INTERNATIONAL GP
LP, FIRST RESPONSE INTERNATIONAL INC., ICE HEALTH
SYSTEMS LTD., ICE HEALTH SYSTEMS LTD. AND SESCO
HEALTH SERVICES INC.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF
HEALTH SYSTEMS INC., HELP INC., FIRST RESPONSE
INTERNATIONAL INC., ICE HEALTH SYSTEMS LTD AND
SESCO HEALTH SERVICES INC. UNDER THE *BUSINESS
CORPORATIONS ACT*, RSA 2000, CH B-9, AS AMENDED

APPLICANTS

BR CAPITAL LP, BR CAPITAL INC., ICE HEALTH SYSTEMS
LTD., ICE HEALTH SYSTEMS GP LP, ICE HEALTH SYSTEMS
INC., HEALTH EDUCATION LP, HEALTH EDUCATION GP LP,
HELP INC., FIRST RESPONSE INTERNATIONAL LP, FIRST
RESPONSE INTERNATIONAL GP LP, FIRST RESPONSE
INTERNATIONAL INC., ICE HEALTH SYSTEMS INC. AND
SESCO HEALTH SERVICES INC.

DOCUMENT

AFFIDAVIT

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

Gowling WLG (Canada) LLP

1600, 421 – 7th Avenue S.W.

Calgary, AB T2P 4K9

Telephone (403) 298-1938 / (403) 298-1018

Facsimile (403) 263-9193

File No. A167833

Attention: Tom Cumming / Stephen Kroeger

SUPPLEMENTAL AFFIDAVIT OF DR. MARK GENUIS
SWORN ON OCTOBER 6, 2022

I, DR. MARK GENUIS, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Chief Executive Officer of the Applicants, BR Capital LP ("**BR LP**"), BR Capital Inc. ("**BR GP**"), Ice Health Systems LP ("**ICE LP**"), Ice Health Systems GP LP ("**ICE GP LP**"), Ice Health Systems Inc. ("**ICE AB Inc.**"), Health Education LP ("**HE LP**"), Health Education GP LP ("**HE GP LP**"), Help Inc. ("**HE Inc.**"), First Response International LP ("**FRI LP**"), First Response International GP LP ("**FRI GP LP**"), First Response International Inc. ("**FRI Inc.**"), ICE Health Systems Ltd. ("**ICE Ltd.**"), and SESCO Health Services Inc. ("**SESCI**") (collectively, the "**Applicants**"), and a director of BR GP, ICE AB Inc., FRI Inc., HE Inc. ICE Ltd. and SESCO, and as such have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. I am authorized to swear this Affidavit as corporate representative of the Applicants.
3. In preparing this Affidavit, I have consulted with legal, financial and other advisors of the Applicants and members of the Applicants' management teams. I have also reviewed the business records of the Applicants relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
4. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.
5. This Affidavit is sworn in support of an Application by the Applicants in their proposal proceedings initiated by notices of intention to make proposals (each, a "**NOI**") filed on September 15 and 16, 2022 under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), and is supplemental to the Affidavit of Dr. Mark Genuis, the Chief Executive Officer of the Applicants, sworn on October 5, 2022 (the "**First Affidavit**"), and provides some additional financial background to the financial difficulties

being suffered by the Applicants. Unless otherwise defined in this Affidavit, capitalized terms have the meanings set out in the First Affidavit.

Background with respect to the Software

6. The Software permits the cloud-based collection, organization, management and storage of data, information and records of dental, medical and educational clinics and institutions and permits such data, information and records to be shared on a real time basis by licensees, medical professionals and their patients and clients. The Software permits patients, who ultimately own their health information and records, to give different medical practitioners access to their health records on a real time basis, permitting more efficient and better quality treatment, and giving patients living in one area access to specialists in another area. In absence of a cloud based system to collect, manage and give access to health information, it can be difficult for patients to ensure that multiple health care providers have access to that information.
7. The Software was developed over a number of years, by ICE LP, HE LP and FRI LP. ICE LP indirectly employed highly qualified programmers, software engineers and quality assurance experts to work with leading educational and practicing professionals in the oral health field. Although it was developed initially for the oral health field, the Software was flexible enough to be adaptable to other medical and health practices.
8. The Software also had to be adapted to for each private or institutional licensee because they were often in different jurisdictions, were required to comply with different regulatory regimes, and had different types of health information to be collected, managed, stored and disseminated. This would require ICE LP's programmers and software engineers to adapt the Software to the specific needs of the individual licensees, and was a time consuming, complex process.
9. From the origin of the BR Capital Group, the development and implementation costs for the Software were significant. Of the \$31,487,000 raised from subscriptions by BR LP's limited partners, and \$6,923,921 borrowed from the BR Noteholders, approximately \$29.0 million was expended on the development, collaboration and implementation of the Software.

The Financial Difficulties of the BR Capital Group

10. As described in paragraphs 35 to 37 of the First Affidavit, in 2018 and 2019, the BR Capital Group negotiated with a number of governmental bodies and private companies in Mexico to license the Software. The potential licensees were attracted to the Software because it could give patients living in rural areas and smaller urban centres access to specialists practicing in the large cities. Early in 2018, ICE LP entered into three licenses of the Software to private companies, which received funding under contracts with Mexican State governments, who were in turn funded through programs provided by Mexico's federal government. Each license provided for a multi-year term over which the licensee would pay an annual license fee to ICE LP. For the first year, the annual license fee was US \$105,000 for each clinic operated by the licensee, with a minimum requirement of four clinics. The annual license fees reduced over time as the majority of the work adapting the Software was up front. However, in July of 2018 a new President came into office in Mexico who initially suspended funding for the programs that provided for the private licensees' health care services, and then terminated the funding. As a result, the license agreements were cancelled.
11. In my capacity as Chief Executive Officer, I had discussions throughout 2018 and 2019 with governmental and institutional health care providers in the Mexican States of Durango, Agascalientes, Campeche, Yucatan, Sunoro and Baja California Sur, and with the health care provider for the State of Jalisco's employee pension fund ("IPEJAL"). These discussions reached an advanced stage and a number of license agreements were prepared. Our programmers and software engineers did a great deal of work to adapt the Software to the needs of the potential licensees, and ICE LP retained counsel in Mexico City to register the intellectual property underlying the Software in Mexico. This upfront work was necessary because licensees would generally not enter into license agreements unless the Software could be brought into operation almost immediately. To perform the programming work, additional programmers and software engineers had to be hired. The BR Capital Group also incorporated SHS MX and carried out a reorganization in order to permit the receipt of license fees from Mexican organization in a tax efficient manner.
12. Unfortunately, the negotiations described in paragraph 11 were suspended at a very late stage as a result of the onset of the COVID-19 pandemic. The aggregate expenditures of the BR Capital Group doubled in 2018 and 2019, and BR LP financed these expenditures through the issuance

of the BR Notes to approximately 40 BR Noteholders, of which half were existing limited partners in BR LP. These loans had short terms, ranging from three to twelve months, because management and the BR Directors believed the licenses could be quickly brought into operation and would generate sufficient license revenue to repay the BR Notes as they became due. However, because of the cancellations and suspensions described above, the BR Capital Group did not have sufficient funding available to permit the repayment of the BR Notes.

13. Jim Lawson, the Chief Financial Officer, and I were able to negotiate forbearance agreements with many of the BR Noteholders, but the forbearance agreements expired in 2021. In the last two years, BR LP has relied upon additional funding from a small, core group of investors who held large numbers of limited partnership units in BR LP. Also, both Jim Lawson and I agreed to defer payment of our compensation until the financial condition of the BR Capital Group improved.
14. During the last two years, the BR Capital Group has focussed on maintaining its existing client base and was able to enter into new licenses with two large dental service organizations and an American University. However, because there was insufficient capital to invest in developing and implementing the Software for these licensees, two the new licenses were cancelled. The BR Capital Group has also prepared a license agreement with a Canadian University, but will not be able to proceed with that license unless a Proposal is successfully implemented.
15. The BR Capital Group has also attempted to resolve its financial difficulties through either raising capital or disposing of all or part of its business. However, given the current level of indebtedness, potential investors or purchasers have been unwilling to advance discussions.
16. As a result of the forgoing, the BR Capital Group currently has no means to repay the principal and accrued interest under the BR Notes, of which \$9,713,052 is currently due and payable, or pay the other obligations and liabilities summarized in paragraph 45 of the First Affidavit. Management and the BR Directors therefore concluded that it was necessary to commence the Proposal Proceedings under the BIA for the benefit of the creditors, limited partners, employees, licensees and other stakeholders in the business.

Working Capital Requirements of the Applicants during the Proposal Proceedings

17. During the 13-week period set out in the initial Cash Flow Projections of the Applicants, the opening cash balance is \$2,000, the projected cash receipts are approximately \$231,000, and the

projected operating costs are \$163,000, leaving a positive cash balance of \$70,000 at the end of the 13 week period. However, the fees and disbursements of the Administrative Professionals and the priority claims are projected to be \$325,000 and \$260,000 respectively, for a total of \$585,000. Hence, the cash receipts are insufficient to pay these amounts, together with any other cash distributions which might be paid under a Proposal.

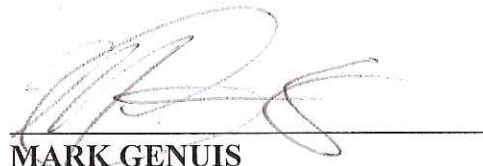
18. In these circumstances, I believe that in order to maintain the continued willingness of the Administrative Professionals and Directors to act and of the Interim Lenders to make available the Interim Financing Facility, it is critical that the *BIA* Charges be created and be given priority to all other security, charges and interests.
19. While there is currently insufficient funding available under the Interim Financing Facility to fund distributions of the priority payables described above, the Interim Financing Agreement permits the quantum of financing available to be increased, with the Court's approval, in order to permit such distributions.
20. I swear this Affidavit in support of an Application for the relief set out in paragraph 6 of the Genuis Affidavit and for no other or improper purpose.

Sworn before me at the City of Calgary, in
the Province of Alberta, on this 6th day of
October, 2022



A Commissioner of Oaths in
and for the Province of Alberta

}



MARK GENUIS

David Isilebo
Student-at-Law