

COURT FILE NUMBER **1639 of 2015**
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF **SASKATOON**
APPLICANT **GOLDEN OPPORTUNITIES FUND INC.**
RESPONDENT **PHENOMENOME DISCOVERIES INC. and
PHENOMENOME LABORATORY SERVICES INC.**

FILED IN THE OFFICE OF THE
LOCAL REGISTRAR, THE 13th
DAY OF July 2016
~~FILED IN THE OFFICE OF THE~~
~~LOCAL REGISTRAR, THE~~
~~DAY OF~~ ~~July~~ ~~2016~~
DEPUTY LOCAL REGISTRAR

APPLICATION WITHOUT NOTICE

This application is being made without notice to the Honourable Mr. Justice Meschishnick.

Provisions authorizing the application to be made without notice:

1. Rule 6-9 provides that unless the Court gives special leave, without notice, there must be at least 14 days between the service and filing of a notice of application and the day named in the notice for the hearing of the application.

Remedy claimed or sought:

2. An Order (the "**Order**") allowing the Notice of Application (the "**NOA**") attached as Schedule "**A**" to this Application, filed with this Application Without Notice, to be heard on July 18, 2016.
3. Such other terms as are set out in the Order attached as Schedule "**B**" to this Application, filed herewith.

Respecting opposite parties:

4. The Applicant and Respondents are aware that this application has been pending.
5. All parties on the Service List attached as Schedule "**C**" to this Application will be served with a copy of this Application upon filing.

Applicable Rules:

6. The Receiver will rely upon and refer to the following during the making of the Application:
 - (a) *The Queen's Bench Rules*, as amended; and
 - (b) such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

7. The Receiver will rely upon and refer to the following during the making of the Application:
 - (a) *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01; and
 - (b) such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Applicable cases relied on:

8. None.

Grounds for Seeking the Order:

9. FTI Consulting Canada Inc., the court-appointed receiver (the "**Receiver**"), is seeking to obtain an order approving its activities and seeks advice and direction from this Honourable Court as set out in the NOA.
10. On July 6, 2016 (the "**Booking Date**"), counsel to the Receiver and counsel for certain interested parties contacted Glen Metivier, the Local Registrar, to book a hearing date (the "**Hearing Date**") to address the MLD Dispute (as defined in the Second Report).
11. On July 8, 2016, Mr. Justice Meschisnick confirmed his availability to hear this matter on the Hearing Date.
12. Only 12 days will have passed between the Booking Date and the Hearing Date.
13. As a result, the Receiver cannot comply with Rule 6-9 and seeks the Order in order to abridge the service requirements.

DATED at Saskatoon, Saskatchewan, this 13th day of July, 2016.

KMP LAW NORTH

Per: 

Ryan Pederson
Agent for the solicitors for the Receiver

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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File number: 79294/11

Schedule "A"

The NOA
(see attached)

Schedule "B"

Form of Order

(see attached)

Schedule "C"

Service List
(see attached)

Clerk's stamp:

FILED IN THE OFFICE OF THE
LOCAL REGISTRAR, THE 13th
DAY OF July 2016
DEPUTY LOCAL REGISTRAR

COURT FILE NUMBER Q.B. 1639 of 2015

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT GOLDEN OPPORTUNITIES FUND INC.

RESPONDENTS PHENOMENOME DISCOVERIES INC. and
PHENOMENOME LABORATORY SERVICES INC.

IN THE MATTER OF THE RECEIVERSHIP OF PHENOMENOME DISCOVERIES INC. AND
PHENOMENOME LABORATORY SERVICES INC.

NOTICE OF APPLICATION

**NOTICE TO ALL RESPONDENTS – ALL PERSONS NAMED ON THE SERVICE LIST FOR
THESE PROCEEDINGS ATTACHED AT SCHEDULE "A" HERETO (THE "SERVICE LIST")**

This application is made against you. You are a respondent. You have the right to state your side of
this matter before the Court.

To do so, you must be in Court when the application is heard as shown below

Where: Court House, 520 Spadina Crescent East,
Saskatoon, Saskatchewan, S7K 3G7
Date: Monday, July 18, 2016
Time: 1:30 p.m.

Remedy claimed or sought:

1. FTI Canada Consulting Inc., in its capacity as court-appointed receiver (the "**Receiver**") of Phenomenome Discoveries Inc. ("**PDI**") and Phenomenome Laboratory Services Inc. ("**PLSI**") and together with PDI, the "**Company**"), seeks an order substantially in the form attached hereto as Schedule "**B**":
 - (a) abridging the time for service of this application and declaring that this motion is properly returnable today, if necessary, and further service of this Application, other than to those listed on the Service List is hereby dispensed with;

- (b) approving the actions, conduct and activities of the Receiver as outlined in the Second Report of the Receiver (the "**Second Report**") dated July 13, 2016;
 - (c) approving the Receiver's Statement of Receipts and Disbursements for the period from February 25, 2016 to July 8, 2016 as set out in the Second Report;
 - (d) sealing the Confidential Supplement to the Second Report dated July 13, 2016 (the "**Confidential Supplement**") and the appendices thereto, on the Court file; and
 - (e) such further and other relief as counsel may request and this Honourable Court may deem appropriate.
2. Additionally, the Receiver is seeking advice and direction in respect of the proposed disclaimer of the agreement (the "**MLD Agreement**") that is the subject of the MLD Dispute (as defined in the Second Report) or, in the alternative, an appropriate resolution to the MLD Dispute as set out in the Confidential Supplement.

Grounds for making this application:

3. The grounds upon which the Receiver relies in making the within Application are as follows:

The Receivership Proceedings:

- (a) on February 25, 2016, the Company became subject to these receivership proceedings pursuant to an Order granted by the Honourable Mr. Justice B.J. Scherman (the "**Receivership Order**");
- (b) pursuant to the Receivership Order, the Receiver was authorized to, *inter alia*, market any or all of the Property (as defined in the Receivership Order), sell the Property or any parts thereof, and apply for any vesting order necessary to convey the Property or any parts thereof, free and clear of any liens or encumbrances;
- (c) on May 2, 2016, the Receiver obtained court approval of the sales procedures (the "**Sales Procedures**") set out in the First Report of the Receiver filed April 11, 2016 (the "**First Report**");
- (d) since receiving the Court's approval of the sales procedures, the Receiver has conducted an extensive marketing process, as described in detail in the Second

Report, in order to sell the business of the Company on a basis which maximizes any proceeds of sale;

The MLD Agreement:

- (e) PDI and Med-Life Discoveries LP by its general partner Med-Life Discoveries GP Inc. ("**MLD**") entered into the MLD Agreement made effective June 30, 2015;
- (f) pursuant to the MLD Agreement, MLD acquired an interest in certain drug assets and diagnostic test assets (the "**Revenue Assets**"), whereby PDI continues to own the Revenue Assets and MLD's Revenue Interests consist of an approximate 50% ownership interest in the revenue generated from the Revenue Assets;
- (g) the Receivership Order provides that the Receiver is authorized and empowered to, among other things, disclaim contracts;
- (h) additional details surrounding the MLD Dispute are set out in the Confidential Supplement; and
- (i) as a result, the Receiver requires a determination as to whether it can disclaim the MLD Agreement or some other resolution can be reached with MLD in respect of the MLD Dispute.

Material or evidence to be relied on:

- 4. The Receiver intends to rely upon the following materials:
 - (a) Receivership Order, filed;
 - (b) First Report of the Interim Receiver dated January 19, 2016, filed;
 - (c) First Report, filed;
 - (d) Confidential Appendix I to the First Report;
 - (e) Second Report, filed;
 - (f) Confidential Supplement;
 - (g) pleadings and proceedings herein; and

- (h) such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 5. The Receiver will rely upon and refer to the following during the making of the Application:
 - (a) *The Queen's Bench Rules*, as amended; and
 - (b) such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

- 6. The Receiver will rely upon and refer to the following during the making of the Application:
 - (a) the provisions of the *Bankruptcy & Insolvency Act*, RSC 1985, c B-3, as amended;
 - (b) *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01; and
 - (c) such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

DATED at Saskatoon, Saskatchewan, this 13th day of July, 2016.

**BLAKE, CASSELS & GRAYDON LLP, Agents and
Solicitors for FTI CONSULTING CANADA INC.**

per: _____

Ryan Zahara

Counsel to FTI Consulting Canada Inc.

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	Blake, Cassels & Graydon LLP
Lawyer in charge of file:	Ryan Zahara
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E-mail address:	ryan.zahara@blakes.com
File number:	729294/11

Schedule "A"

Service List

(see attached)

Schedule "B"

Form of Order

(see attached)

COURT FILE NUMBER **1639 of 2015**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE OF **SASKATOON**

APPLICANT **GOLDEN OPPORTUNITIES FUND INC.**

RESPONDENT **PHENOMENOME DISCOVERIES INC. and
PHENOMENOME LABORATORY SERVICES INC.**

FILED IN THE OFFICE OF THE
LOCAL REGISTRAR, THE 13th
DAY OF July 2016
~~DEPUTY LOCAL REGISTRAR~~
DEPUTY LOCAL REGISTRAR

ORDER

Before the Honourable Mr. Justice Meschishnick on the 13th of July, 2016

Upon Application by Ryan Pederson, Agent for the counsel to the court-appointed receiver, FTI Consulting Canada Inc. (the "**Receiver**"), and upon having read the Application Without Notice, and the Order.

The Court orders:

1. The time for service of the Receiver's application materials for an Order approving the activities of the Receiver and seeking advice and direction, as described in the Second Report and the Confidential Supplement, is abridged; and
2. The Application may be made returnable at 1:30 p.m. on the 18th of July, 2016.
3. A copy of this Order shall be served upon the Respondents and others on the service list on the same day this Order is granted.
4. No costs are awarded.

ISSUED at Saskatoon, Saskatchewan, this 13th day of July, 2016.

(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: Blake, Cassels & Graydon LLP
Lawyer in charge of file: Ryan Zahara
Address of firm: 3500, 855 – 2nd Street SW, Calgary, Alberta T2P 4J8
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Facsimile number: 403-260-9700
E-mail address: ryan.zahara@blakes.com
File number: 79294/11

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
 JUDICIAL CENTRE OF SASKATOON

FILED IN THE OFFICE OF THE
 LOCAL REGISTRAR, THE 13th
 DAY OF ~~July~~ August 2016
 DEPUTY LOCAL REGISTRAR

BETWEEN:

GOLDEN OPPORTUNITIES FUND INC.

Plaintiff
 (Applicant)

- and -

PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC.

Defendant
 (Respondent)

SERVICE LIST

(Updated as of July 6, 2016)

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