

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

NUANCE PHARMA LTD.

Applicant

and

ANTIBE THERAPEUTICS INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101
OF THE *COURTS OF JUSTICE ACT***

**AIDE MEMOIRE OF RODERICK FLOWER,
ROBERT HOFFMAN, AMAL KHOURI, WALT MACNEE,
JENNIFER NCNEALEY, and YUNG WU
(Motion Returnable January 29, 2025)**

January 28, 2025

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and Yung Wu

TO: **SERVICE LIST**

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(as at December 18, 2024)**

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1. Roderick Flower, Robert Hoffman, Amal Khouri, Walt MacNee, Jennifer McNealey and Yung Wu are the former directors of the Respondent Antibe Therapeutics Inc. (the “**Former Directors**”). This aide memoire is submitted on their behalf in response to the Receiver’s motion to approve an interim distribution to creditors of Antibe.

2. The Former Directors are not opposed to the concept of an interim distribution. However, they are concerned that the Receiver’s Second Report does not provide any details concerning the Receiver’s estimate of the value of unresolved claims or details of the proposed amount of the interim distribution and holdback.

3. As disclosed in the Second Report at paragraph 58, there are claims against the Former Directors that were made under the Court-approved claims process (the “**D&O Claims**”). Those claims are not yet resolved. The Former Directors have an unresolved claim against Antibe for contribution and indemnity in connection with the D&O Claims. That unresolved claim is not specifically referenced in the Second Report.

4. The Former Directors asked the Receiver to meet with them to discuss the interim distribution and holdback, to ensure that it is holding back sufficient funds for the Former Directors’ unresolved claims. The Receiver did not agree to meet. Instead, it responded, “The Receiver is holding back the appropriate amounts.”

5. Respectfully, the Former Directors are not reassured by this approach to their unresolved claims. In its factum, the Receiver relies on the *Maple Bank* liquidation and wind-up proceeding in support of the order it seeks. However, in that case, the Liquidator’s report filed in support of its interim distribution order included actual values of the total assets available for distribution (\$820.1 million) and unresolved claims (\$82.4 million), thereby demonstrating to stakeholders

through certain dollar values that the proposed interim distribution would not prejudice claimants' unresolved claims.¹

6. Unfortunately, the same cannot be said about the Receiver's reporting in support of the proposed interim distribution. The Receiver is asking the Court for unfettered discretion to determine the amount of an interim distribution and holdback without providing the Court the same level of detailed information that the Liquidator provided the Court in *Maple Bank*.

7. The Former Directors therefore respectfully request that the Receiver be directed by this Court to provide claimants with two weeks' notice of the proposed amount of any interim distribution and holdback prior to the making of any interim distribution. This will give claimants a reasonable opportunity to seek further directions from this Court if they believe that the interim distribution risks prejudicing their ability to receive a fair and proper final distribution for any unresolved claims that may later be determined in their favour.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of January, 2025.



Andrew Winton & Hovsep Afarian

¹ Excerpt from KPMG's Eleventh Report to the Court re Maple Bank dated March 10, 2017, attached at **Tab 1**.

January 28, 2025

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

THE

ELEVENTH REPORT OF KPMG INC. IN ITS CAPACITY AS

COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

37. As at February 28, 2017, the Toronto Branch held approximately \$820.1 million of cash and cash equivalents which is comprised of approximately \$171.9 million in various cash accounts and \$648.2 million in liquid securities in the Toronto Branch's RBC DS accounts as summarized in the table below.

In the matter of the winding up of Maple Bank GmbH (Toronto Branch)		
Summary of Assets available for distribution to stakeholders		
As at February 28, 2017		
Amounts in CAD millions		
Cash ⁽¹⁾	\$	80.5
Net U.S. Asset Realizations ⁽²⁾		91.4
Liquid Securities ⁽³⁾		648.2
Total Assets available for distribution	\$	820.1

Notes:

- ⁽¹⁾ Represents cash held at Toronto Branch accounts and includes Euro 49 million (CAD\$68.9 million) held in a Euro denominated account at CIBC.
- ⁽²⁾ Consists of approximately US\$69.0 million in a USD Escrow account that is subject to a protocol agreed to between the Liquidator and the GIA for administering the Toronto Branch's Assets which reside in the U.S.
- ⁽³⁾ Consists of liquid securities held at RBC DS with various rates of return and maturity dates.

Remaining Estimated Realizations

38. At the date of the Eleventh Report, the realization process for all of the assets of the Toronto Branch is almost entirely complete. The Toronto Branch assets that remain to be realized are limited to the collection of a loan payable by Pacific Mortgage Group Inc. ("PMGI"), an assignee of Radius Financial Inc. ("Radius") to Toronto Branch, in the amount of \$7,335,701 (consisting of outstanding principal of \$7,126,931 and unpaid interest of \$208,770) (the "PMGI Loan"). The PMGI Loan was a warehouse facility used to finance PMGI's initial funding of mortgages which would in turn be sold to Toronto Branch.

3. CLAIMS PROCEDURE UPDATE

39. The table below summarizes the Proofs of Claim filed in accordance with the Claims Procedure and the status of the Claims as at February 28, 2017, at amounts as filed by the claimants.

Maple Bank GmbH, Toronto Branch								
Filed Proofs of Claims ⁽¹⁾								
As at February 28, 2017								
Creditor	Claim						Unresolved Claims	
	#	Value	Admitted	Disallowed	Paid ⁽²⁾	#	Value	
GIA	1	\$ 791.3	\$ -	\$ 791.3	\$ -	-	\$ -	
GDPF	23	686.1	686.1	-	686.1	-	-	
Vendors and Canada Revenue Agency	8	12.2	0.3	-	0.3	3	11.9	
Employees	19	20.9	-	-	-	19	20.9	
Non-vendors (contract counter parties, other)	6	76.1	-	26.4	-	2	49.6	
Related Party	1	0.4	0.4	-	0.4	-	-	
Total Claims	58	\$ 1,587.0	\$ 686.8	\$ 817.8	\$ 686.8	24	\$ 82.4	

Notes:

⁽¹⁾ Amounts are in millions of Canadian dollars.

⁽²⁾ Excludes payment of statutory interest in accordance with the WURA.

40. As noted above, 29 Claims, including those of the GDPF, with a total value of approximately \$686.8 million were paid on or about December 19, 2016. The Liquidator disallowed four Claims filed by counter parties to MBS business contracts as these contracts were assumed in accordance with the Equitable Transaction.

41. As described in the Ninth Report, the Liquidator reached an agreement with the GIA pursuant to which the Claim filed by the GIA (the “GIA Claim”), to the extent that it is valid, shall be permanently reduced to the extent of any distribution made to the GIA in respect of the GIA Claim. The GIA has further agreed that such corresponding portion of the GIA Claim shall be extinguished and released by such distribution. In addition, the remaining portion of the GIA Claim, to the extent that it is valid, after taking into account any distributions, shall be capped at an amount (which amount may from time to time increase or decrease) that results in the Toronto Branch having assets in excess of its liabilities. Accordingly, Creditors with existing proven Claims will receive 100% of their Claim amounts, plus interest to the date of any distributions to those Creditors. This agreement is

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Respondent

Court File No. CV-24-00719237-00CL

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PROCEEDING COMMENCED AT TORONTO

**AIDE MEMOIRE OF RODERICK FLOWER,
ROBERT HOFFMAN, AMAL KHOURI, WALT
MACNEE, JENNIFER NCNEALEY, AND YUNG WU
(MOTION RETURNABLE JANUARY 29, 2025)**

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