



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
ENDORSEMENT**

**COURT FILE
NO.:**

CV-24-00719237-00CL

DATE: April 3, 2025

NO. ON LIST: 2

**TITLE OF
PROCEEDING:**

NUANCE PHARMA LTD v. ANTIBE THERAPEUTICS INC

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Rebecca Kennedy	Lawyer for FTI Consulting Canada Inc. in its capacity as Receiver	rkennedy@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jesse Mighton	Lawyer for Nuance Pharma	mightonj@bennettjones.com
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ENDORSEMENT OF JUSTICE OSBORNE

[1] The Receiver moves for approval of and authority to implement the Interim Distribution subject to maintaining a Holdback Reserve in the amount of \$2.5 million from existing cash on hand to address estimated costs to complete the administration of the Receivership, bankruptcy costs if required, and finally, Unresolved Claims.

[2] The Service List has been properly served. The relief sought today is unopposed.

[3] The Receiver relies upon the Second Report dated January 15, 2025, together with Appendices thereto. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

[4] This Court has approved interim distributions by Receivers, and has where appropriate directed that those distributions be subject to an appropriate holdback reserve, in many cases. See, for example: *GE Canada Real Estate*, 2014 ONSC 1173, at para. 53; *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322 at para 16.

[5] In *Maple Bank GmbH (Re)*, 2017 ONSC 2536, this Court held that interim distributions to creditors with proven claims are appropriate where such distributions do not cause prejudice to other creditors. While the Receiver in that case had been appointed pursuant to the *Winding-Up and Restructuring Act*, the same principles apply to this receivership.

[6] I am satisfied that here, there is no prejudice to other creditors, given the Holdback Reserve which is sufficient to complete the administration of the estate and to secure payment for Unresolved Claims that become Proven Claims. I must balance that prejudice, if any, against the potential prejudice to creditors with Proven Claims that would result from a delay in distribution. The proposed course of action here strikes the appropriate balance.

[7] I am also satisfied that the Receiver should be given the authorization to distribute from the Holdback Reserves, without further order, amounts to Claimants with Unresolved Claims that crystallize into Proven Claims at a later date. This will minimize additional receivership costs. This Court and other courts in insolvency proceedings regularly authorize Court officers to make such distributions, particularly where reserve funds have been set aside for that purpose. See, for example, *Carillion Canada Inc., Re*, Interim Distribution Order dated August 4, 2021, CV-18-590812-00 CL.

[8] That is appropriate here. Moreover, the authorization sought today will not result in any prejudice to any creditor since such distributions form a component of the Holdback Reserve and would be calculated on the same *pro rata* distribution rate as other Proven Claims.

[9] Should there be surplus funds in the Holdback Reserve following the completion of the Receivership, the Receiver will seek further Court approval for a final distribution to creditors.

[10] The motion is granted. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

A handwritten signature in green ink, appearing to read "Osborne J.", is written above a horizontal line.

Osborne, J

