

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

NUANCE PHARMA LTD.

Applicant

- and -

**1001138302 ONTARIO INC.
(formerly ANTIBE THERAPEUTICS INC., in receivership)**

Respondent

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

FACTUM OF THE RECEIVER

April 1, 2025

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PART I - NATURE OF THE MOTION

1. On this motion, FTI Consulting Canada Inc. (“**FTI**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of 1001138302 Ontario Inc. (“**ResidualCo**”, and formerly Antibe Therapeutics Inc., in receivership, “**Antibe**”) effective April 22, 2024 pursuant to an order of this Court issued on April 30, 2024 (the “**Receivership Order**”) seeks, *inter alia*, an order (the “**Interim Distribution Order**”) approving various interim distributions (collectively, the “**Interim Distribution**”) to creditors with Proven Claims subject to a holdback (the “**Holdback Reserve**”) for certain amounts including Unresolved Claims (defined below) and costs to complete the administration of the Receivership (defined below).
2. The Interim Distribution should be granted because, in conjunction with the proposed Holdback Reserve, it facilitates timely recoveries to creditors with Proven Claims without prejudicing other creditors with Unresolved Claims. The Receiver’s proposed Holdback

Reserve also represents an adequate reserve from which it can satisfy Unresolved Claims should they later become Proven Claims, as well as the costs to complete the administration of the Receivership. As part of the Interim Distribution Order, the Receiver is also seeking approval to pay Unresolved Claims from the Holdback Reserve should those claims become Proven Claims.

3. All capitalized terms not defined herein have the same meaning ascribed to them in the First Report of the Receiver dated June 18, 2024, the Second Report of the Receiver dated January 15, 2025 (the “**Second Report**”), the First Supplemental Report dated March 26, 2025 (the “**First Supplemental Report**”), the Claims Procedure Order dated June 24, 2024 (the “**Claims Procedure Order**”), and the Transaction Agreement executed on January 15, 2025 (the “**Transaction Agreement**”) between the Receiver and Taro Pharmaceuticals Inc., as the case may be.

PART II - THE FACTS

The License Agreement and the Arbitral Award

4. On February 9, 2021, Antibe entered into a licensing agreement (the “**License Agreement**”) with Nuance Pharma Ltd. (“**Nuance**”) that licensed Nuance to sell a drug named ATB-346 in China, Hong Kong, Macau, and Taiwan. The License Agreement included an upfront payment of US\$20 million (the “**Upfront Payment**”), which was paid by Nuance to Antibe on February 19, 2021.¹
5. In January 2022, Nuance commenced an arbitration proceeding against Antibe before an arbitral tribunal at the Singapore International Arbitration Centre (the “**Tribunal**”), alleging that Antibe had improperly induced Nuance to enter into the License Agreement.²
6. On March 1, 2024, the Tribunal determined that Antibe’s omission of certain documents from the virtual data room setup for Nuance during the License Agreement diligence period

¹ Second Report at para 7.

² Second Report at para 2.

amounted to fraudulent misrepresentation. The Tribunal confirmed the rescission of the License Agreement and ordered Antibe to return the Upfront Payment to Nuance, plus Nuance's costs and interest (cumulatively, the "**Arbitral Award**"). The Arbitral Award ordered Antibe to pay Nuance approximately CAD\$33.8 million.³

7. On March 28, 2024, Nuance served Antibe with an application for the enforcement of the Arbitral Award in Ontario.⁴ The Arbitral Award was recognized by this Court pursuant to the Ancillary Order granted on June 24, 2024.⁵

Procedural History

8. On April 9, 2024, Antibe made an application pursuant to the *Companies' Creditors Arrangements Act*, R.S.C., 1985, c. C-36, as amended, to this Court for creditor protection (the "**CCAA Proceeding**"). On the same day, this Court granted an initial order pending the comeback hearing.⁶
9. On April 12, 2024, Antibe served motion materials to seek the granting of an Amended and Restated Initial Order and a continuation of the CCAA Proceeding. On April 15, 2024, Nuance served a responding and cross-application record objecting to the CCAA Proceeding and seeking, *inter alia*:
 - (a) an order declaring that the Upfront Payment amount included within the Arbitral Award is held in trust for Nuance (the "**Proprietary Claim**"); and
 - (b) an order appointing the Receiver, without security, of the assets, undertakings and properties of Antibe.⁷

³ Second Report at para 3.

⁴ Second Report at para 4.

⁵ Second Report at para 11(c).

⁶ Second Report at para 5.

⁷ Second Report at paras 6-7.

10. On April 22, 2024, the Honorable Justice Osborne issued an endorsement terminating the CCAA Proceeding,⁸ appointing the Receiver, and determining that the Proprietary Claim could not be decided on the record before the CCAA Proceeding.⁹
11. The initiation of the receivership proceedings (the “**Receivership**”) and appointment of the Receiver were confirmed to be effective retroactively to April 22, 2024, pursuant to the Receivership Order.¹⁰
12. On June 24, 2024, this Court granted:
 - (a) an Order (the “**Sale Process Approval Order**”) which, among other things:
 - (i) approved a sale process in respect of all or substantially all of Antibe’s assets (the “**Sale Process**”); and
 - (ii) appointed Bloom Burton Securities Inc. as financial advisor to assist the Receiver in carrying out the Sale Process;
 - (b) the Claims Procedure Order approving a claims process, which among other things, authorized the Receiver to carry out a claims process involving, *inter alia*, the solicitation, review, and allowance and/or disallowance of proof of claims; and
 - (c) an Ancillary Order approving the accounts of the Receiver and TGF, approving the activities, conduct, and decisions of the Receiver and TGF, and recognizing the Arbitral Award.¹¹
13. On January 29, 2025, this Court granted:

⁸ The CCAA Proceeding was terminated effective April 22, 2024 pursuant to an order of this Court issued on May 1, 2024.

⁹ Second Report at para 8.

¹⁰ Second Report at para 9.

¹¹ Second Report at para 11.

- (a) an Approval and Reverse Vesting Order authorizing the Transaction Agreement between Taro Pharmaceuticals Inc. (the “**Purchaser**”) and Antibe, and the transaction contemplated therein.
- (b) an Ancillary Order approving:
 - (i) the Second Report, the activities of the Receiver and TGF, and the fees and disbursements of the Receiver and TGF as set out in the Second Report and the fee affidavits appended thereto;
 - (ii) an immediate distribution of US \$519,000.00 plus accrued interest, converted to Canadian dollars at the prevailing foreign exchange rate on the date of transfer, to Nuance as a permanent paydown and indefeasible repayment of the indebtedness and obligations secured by the Proprietary Claim (the “**Nuance Distribution**”); and
- (c) an endorsement (the “**Endorsement**”) requesting that particularized information regarding interim distributions (excluding the Nuance Distribution) be provided to satisfy the Court that no creditors will be prejudiced, and that sufficient holdbacks or reserves are made for any Unresolved Claims and the administration of the Receivership to completion.¹²

The Sale Process and Transaction

14. The Receiver conducted the Sale Process in accordance with the Sale Process Approval Order. The Sale Process culminated in the Receiver selecting the Purchaser as the successful bidder and negotiating the Transaction Agreement, which was ultimately executed on January 15, 2025.¹³ The transaction contemplated therein (the “**Transaction**”) closed on March 17, 2025.¹⁴

¹² First Supplemental Report at para 3, Tab 2 of the Motion Record dated March 26, 2025 [the “**Motion Record**”].

¹³ Second Report at para 39.

¹⁴ First Supplemental Report at para 16, Tab 2 of the Motion Record.

15. As a result of the Transaction, which proceeded by way of a reverse vesting structure, the Receiver incorporated ResidualCo, which now owns all Excluded Assets and Excluded Liabilities.¹⁵
16. In connection with the Transaction, the Receiver collected cash receipts in the amount of \$4.075 million in addition to a previously collected deposit of approximately \$425,000.00.¹⁶

Claims Process and Cash on Hand

17. Since the date of the Endorsement, the Receiver has adjudicated all of the Claims filed by the Claims Bar Date, save for certain Unresolved Claims. The Receiver has reviewed all Unresolved Claims and has issued Notices of Revision or Disallowance (for which the dispute period has not fully lapsed), or they are subject to further adjudication.¹⁷
18. As described further in the First Supplemental Report, the Receiver has accepted various Claims to be Proven Claims, with a total value of approximately \$42.4 million. The Proven Claims are comprised of:
 - (a) Nuance's claim in respect of the Arbitral Award, excluding the Proprietary Claim, totaling approximately \$33.5 million;
 - (b) twenty-nine (29) unsecured Proven Claims from trade creditors totaling approximately \$5.9 million;
 - (c) twelve (12) employee-related unsecured Proven Claims totaling approximately \$2.9 million, including \$2,000.00 of preferred claims; and

¹⁵ Second Report at para 42. See also: Transaction Press Release dated March 18, 2025, Appendix "A" to the First Supplemental Report, Tab 2 of the Motion Record.

¹⁶ First Supplemental Report at para 19, Tab 2 of the Motion Record.

¹⁷ First Supplemental Report at para 10, Tab 2 of the Motion Record.

- (d) six (6) unsecured Proven Claims from Antibe's former directors and officers totaling approximately \$80,900.00.¹⁸
19. The Receiver's remaining cash on hand as at the date of the First Supplemental Report is approximately \$20.3 million. The Receiver's proposed Interim Distribution, which is subject to a proposed Holdback Reserve of \$2.5 million, includes:
- (a) \$2,000.00 to priority Proven Claims; and
- (b) approximately \$17.765 million to unsecured Proven Claims.
20. The Holdback Reserve of \$2.5 million includes up to \$500,000.00 for distributions to Claimants with Unresolved Claims at present that subsequently become Proven Claims.¹⁹ The Receiver is seeking approval to make a distribution for any Unresolved Claim that subsequently becomes a Proven Claim from this component of the Holdback Reserve.

PART III - THE ISSUES

21. The sole issue to be determined on this motion is whether this Court should approve the proposed Interim Distribution and Holdback Reserve.

PART IV - THE LAW

- (a) **The Interim Distribution to Unsecured Creditors with Proven Claims Should Be Approved**
22. The Receiver seeks authorization to make the Interim Distribution. Orders authorizing interim distributions are routinely granted by courts in insolvency proceedings, including

¹⁸ First Supplemental Report at paras 11, 13, Tab 2 of the Motion Record.

¹⁹ First Supplemental Report at paras 27, 30, Tab 2 of the Motion Record.

receiverships.²⁰ In *GE Canada Real Estate*, Brown J. approved an interim distribution by a receiver, subject to the receiver maintaining sufficient reserves to complete the administration of the receivership, to maximize efficiency and avoid the need for further motions.²¹

23. Similarly, in *Maple Bank GmbH (Re)*, a case under the *Winding-Up and Restructuring Act*, Morawetz J. (as he then was) held that interim distributions to creditors with proven claims are appropriate where such distributions do not cause prejudice to other creditors. In that case, as is the case here, the Court found that no creditor would suffer prejudice if there were a sufficient holdback reserve for funds required to pay out potential future claims.²²
24. In this case, there is no prejudice to other creditors because the Interim Distribution is subject to the Holdback Reserve. The Holdback Reserve is proposed to be \$2.5 million, which as set out is comprised of an amount to complete the administration of the estate and to secure payment for Unresolved Claims that become Proven Claims. The Unresolved Claims have a maximum exposure value of approximately \$500,000.²³ The Holdback Reserve is sufficient to cover the proposed distribution to Unresolved Claims (if such claims become Proven Claims), as well as all costs to complete the administration of this Receivership.²⁴
25. Conversely, the court must consider the potential prejudice to creditors with Proven Claims that would result from a delay in distribution if the Interim Distribution were not approved.²⁵ The Interim Distribution contemplated by the Receiver will prevent delay to Claimants with Proven Claims, while the Unresolved Claims continue to be determined.

²⁰ See, for example, *GE Canada Real Estate*, 2014 ONSC 1173, at [para. 53](#) [*“GE Canada Real Estate”*]; *American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322 at [para 16](#).

²¹ *GE Canada Real Estate* at [para. 53](#)

²² [2017 ONSC 2536](#) at para [34](#) [*“Maple Bank ”*].

²³ First Supplemental Report at paras 28-29, Tab 2 of the Motion Record.

²⁴ First Supplemental Report at paras 28-29, Tab 2 of the Motion Record.

²⁵ *Maple Bank* at para [35](#).

26. For all of the foregoing reasons, the Interim Distribution is reasonable and appropriate in the circumstances.

(b) The Receiver Should be Authorized to Distribute to Future Proven Claims

27. The Receiver also seeks authorization to distribute from the Holdback Reserve, without further Order of this Court, amounts to Claimants with Unresolved Claims that crystallize into Proven Claims on a later date.

28. Courts in insolvency proceedings will commonly authorize a court-appointed officer to make such distributions where unresolved claims later become proven claims, particularly where reserve funds have been set aside for the eventual payment of such claims. For example, in *Carillion Canada Inc., Re*, the Ontario Superior Court approved an Interim Distribution Order which authorized the Monitor to make *pro rata* distributions to unresolved claims that later become proven claims without further order of the Court.²⁶ In her endorsement, Dietrich J. noted that this distribution methodology was both fair and efficient.²⁷ Similar decisions have been reached by other insolvency courts in Canada.²⁸

29. In this case, such authorization is appropriate because it will maximize efficiency and avoid the need for further motions.²⁹ As well, this authorization would not result in any prejudice to any creditor, as such distributions form a component of the Holdback Reserve and would be calculated on the same *pro rata* distribution rate as other Proven Claims.³⁰

²⁶ *Carillion Canada Inc.*, [Interim Distribution Order of Justice Dietrich dated August 4, 2021](#), Court File No. CV-18-590812-00CL.

²⁷ *Carillion Canada Inc.*, [Endorsement of Justice Dietrich granted on August 4, 2021](#), Court File No. CV-18-590812-00CL.

²⁸ See, for example, [Arrangement relatif à Bloom Lake General](#), Amended and Restated Plan Filing and Meetings Order of Justice Hamilton granted May 18, 2018, Court File No. 500-11-048114-157.

²⁹ *GE Canada Real Estate* at para 53.

³⁰ First Supplemental Report at paras 29-30, Tab 2 of the Motion Record.

30. Should there be surplus funds in the Holdback Reserve following the completion of the Receivership, the Receiver will seek further Court approval to deliver a final distribution to creditors.³¹

PART V - RELIEF REQUESTED

31. For the reasons set out above, the Receiver respectfully submits that the Court grants the relief requested by the Receiver in the Motion Record.

The undersigned lawyer certifies that they are satisfied as to the authenticity of every authority cited in this factum, the content of which is respectfully submitted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of April, 2025.

April 1, 2025

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³¹ First Supplemental Report at para 32, Tab 2 of the Motion Record.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *GE Canada Real Estate*, [2014 ONSC 1173](#)
2. *American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, [2023 ONSC 3322](#)
3. *Maple Bank GmbH (Re)*, [2017 ONSC 2536](#)
4. *Carillion Canada Inc.*, [Endorsement of Justice Dietrich dated August 4, 2021](#), Court File No. CV-18-590812-00CL.
5. *Arrangement relatif à Bloom Lake General*, [Amended and Restated Plan Filing and Meetings Order](#), Court File No. 500-11-048114-157.

**SCHEDULE “B”
RELEVANT STATUTES**

[Courts of Justice Act, R.S.O. 1990, c. C.43](#)

Injunctions and receivers

101.(1)In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2)An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

[Bankruptcy and Insolvency Act \(R.S.C., 1985, c. B-3\)](#)

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that

was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

[...]

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