

**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***

**FACTUM OF THE COURT-APPOINTED RECEIVER,  
FTI CONSULTING CANADA INC.**

June 22, 2024

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## Contents

|                                            |    |
|--------------------------------------------|----|
| PART I - OVERVIEW .....                    | 1  |
| PART II - THE FACTS .....                  | 3  |
| A.    Background to the Receivership ..... | 3  |
| B.    Overview of the Property .....       | 4  |
| C.    The Proposed Sale Process .....      | 6  |
| D.    The Proposed Claims Procedure .....  | 7  |
| E.    The Ancillary Relief .....           | 9  |
| PART III - THE ISSUES .....                | 12 |
| PART IV - THE LAW .....                    | 13 |
| PART V - RELIEF REQUESTED .....            | 21 |
| SCHEDULE "A" LIST OF AUTHORITIES .....     | 23 |
| SCHEDULE "B" RELEVANT STATUTES .....       | 24 |

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**PART I - OVERVIEW<sup>1</sup>**

1. This factum is filed by FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (collectively, the “**Property**”) of Antibe Therapeutics Inc. (“**Antibe**”) acquired for, or used in relation to, a business carried on by Antibe, including all proceeds thereof, in support of the Receiver’s motion for an order for, among other things:

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<sup>1</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the first report of the Receiver dated June 18, 2024 (the “**First Report**”); Motion Record, Tab 2.

- (a) granting an order approving and authorizing the proposed sale process (the “**Sale Process**”, and the “**Sale Process Order**”) as described in the First Report and authorizing the Receiver, with Bloom Burton Securities Inc. (the “**Financial Advisor**”), to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process (a “**Transaction**”);
- (b) granting an order approving and authorizing the Receiver to conduct a claims procedure (the “**Claims Procedure**” and the “**Claims Procedure Order**”) to call for, adjudicate and determine claims against Antibe and authorizing, directing, and empowering the Receiver to administer the Claims Procedure in accordance with the terms of the proposed Claims Procedure Order;
- (c) approving and granting certain ancillary relief, including:
  - (i) approving the First Report and the actions, conduct and activities of the Receiver and the Receiver’s legal counsel, Thornton Grout Finnigan LLP (“**TGF**”) described therein;
  - (ii) approval of the fees and disbursements of the Receiver and TGF; and
  - (iii) recognizing an Arbitral Award in favour of Nuance against Antibe.<sup>2</sup>

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<sup>2</sup> The proposed relief does not contemplate approval of any Claim by Nuance at this time. The Receiver will adjudicate any Claim submitted by Nuance on its merits in the Claims Procedure at that time.

## PART II - THE FACTS

### A. Background to the Receivership

2. On April 9, 2024, Antibe made an application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), to the Court (the "**CCAA Proceeding**") for creditor protection. On the same day, the Court granted an initial order (the "**Initial Order**") which, among other things: (i) granted a stay of proceedings up to and including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe.<sup>3</sup>
3. On April 15, 2024, Nuance Pharma Ltd. ("**Nuance**") served a responding and cross-application record objecting to the CCAA Proceeding and seeking, *inter alia*:
  - (a) an order declaring the Upfront Payment amount included within the Arbitral Award is held in trust for Nuance (the "**Constructive Trust Claim**"); and
  - (b) an order appointing FTI as Receiver of the Property.<sup>4</sup>
4. On April 22, 2024, the Honorable Justice Osborne issued an endorsement terminating the CCAA Proceeding, appointing FTI as the Receiver, and determining that the Constructive Trust Claim could not be decided on the record before the CCAA Proceeding (the "**CCAA Termination Endorsement**").<sup>5</sup>

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<sup>3</sup> First Report, at para. 5.

<sup>4</sup> *Ibid*, at para. 7.

<sup>5</sup> *Ibid*, at para. 8.

5. The initiation of the receivership proceeding (the “**Receivership**”) and appointment of FTI as the Receiver were confirmed to be effective April 22, 2024 (the “**Date of Appointment**”) pursuant to an order of the Court issued on April 30, 2024 (the “**Receivership Order**”).<sup>6</sup>

## **B. Overview of the Property**

6. Antibe was a Canadian biotechnology company incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009, to develop pain and inflammation-reducing drugs.<sup>7</sup> The Company was publicly held and traded on the Toronto Stock Exchange (TSX: ATE). Trading was suspended on April 9, 2024, on the initiation of the CCAA Proceeding and the stock was delisted on May 24, 2024.<sup>8</sup>
7. Antibe’s lead drug, a nonsteroidal anti-inflammatory drug named ATB-346, or otenaproxesul (the “**Drug**”), has been in development in different iterations and formulations since 2004.<sup>9</sup>
8. On March 28, 2024, the United States Food and Drug Administration (the “**FDA**”) met with Antibe and advised that it was placing a clinical hold on the abdominoplasty clinical trial being proposed by the Company (the “**FDA Hold**”).<sup>10</sup>

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<sup>6</sup> *Ibid*, at para. 9.

<sup>7</sup> *Ibid*, at para. 18.

<sup>8</sup> *Ibid*, at para. 19.

<sup>9</sup> *Ibid*, at para. 20.

<sup>10</sup> *Ibid*, at para. 22.

9. On April 26, 2024, the FDA issued a formal letter to Antibe that outlined and provided information with respect to the resolution of the deficiencies (the “**FDA Letter**”). The FDA Letter provided a list of deficiencies stating, among other things, that the clinical data did not adequately characterize an injury risk observed in certain studies of the Drug, and the injury risk must be addressed through nonclinical/pharmacokinetic data before proceeding with a clinical study.<sup>11</sup>
  
10. The Receiver, in consultation with the Financial Advisor, is engaging with industry experts and the FDA to understand the various paths forward in the Receivership with respect to the FDA Hold and continues to weigh the costs to address these issues with a view of maximizing recoveries to all stakeholders.<sup>12</sup>
  
11. The Receiver is not aware of any secured creditors who currently hold a security interest in the Property of Antibe; however, the Receiver understands that Nuance intends to pursue recognition of some or all of the Upfront Payment by way of a Constructive Trust Claim. As at the Date of Appointment, the total amount due to Nuance in respect of the Arbitral Award was approximately \$33.8 million, or approximately 82% of total known unsecured claims of approximately \$40.9 million.<sup>13</sup>

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<sup>11</sup> *Ibid*, at para. 23.

<sup>12</sup> *Ibid*, at paras. 24 to 28.

<sup>13</sup> *Ibid*, at para. 30.

12. Based on information as at the Date of Appointment, the amount owing to the Company's other unsecured creditors totaled approximately \$7.1 million, or approximately 18% of total known unsecured claims of approximately \$40.9 million.<sup>14</sup>

**C. The Proposed Sale Process**

13. The Sale Process<sup>15</sup> contemplates two-phases whereby interested parties are required to first submit letters of interest by the Phase 1 Bid Deadline (as defined below) and then binding offers by the Phase 2 Bid Deadline (as defined below).<sup>16</sup>
14. The Financial Advisor is engaged to conduct the Sale Process in all respects, and, is subject to the oversight, supervision, and ultimate discretion of the Receiver.<sup>17</sup>
15. The following are the key milestones under the Sale Process:
- (a) Phase I Bid Deadline of July 31, 2024;<sup>18</sup>
  - (b) Phase II Bid Deadline of September 3, 2024;<sup>19</sup>
  - (c) Auction (if applicable), no later than September 11, 2024;<sup>20</sup>
  - (d) Outside Date for closing of September 27, 2024.<sup>21</sup>

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<sup>14</sup> *Ibid*, at para. 31.

<sup>15</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Sale Process Order; Motion Record, Tab 3.

<sup>16</sup> *Ibid*, at para. 41.

<sup>17</sup> *Ibid* at para. 12

<sup>18</sup> *Ibid* at para. 46

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid*.



16. The Receiver will review and evaluate each offer received by considering factors such as the proposed purchase price, net value, deposit amount, the counterparties to such transactions, transaction speed and certainty, transaction costs, and the feasibility and timing of transaction completion, and such other matters as the Receiver may consider.<sup>22</sup>
17. The Receiver may extend the Sale Process if it deems such extension necessary, with a view to conducting an equitable sales process and generating the best value for the Property.<sup>23</sup>
18. The Receiver is of the view that the Sale Process is appropriate in the circumstances and will result in a fair and competitive bidding process in furtherance of a value maximizing Transaction for the benefit of Antibe's stakeholders.<sup>24</sup>

**D. The Proposed Claims Procedure**

19. The Receiver has developed the proposed Claims Procedure to determine the nature, quantum, and validity of claims against Antibe in a flexible, fair, comprehensive, and expeditious manner.
20. The key steps of the Claims Procedure Order are summarized below:

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<sup>22</sup> *Ibid*, at paras. 48 to 57.

<sup>23</sup> *Ibid*, at para 48.

<sup>24</sup> *Ibid*, at para. 65.

- (a) the Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice (the “**Claims Package**”) will be posted on the Receiver’s Website as soon as practicable;
- (b) the Notice to Claimants will be published in the Globe and Mail (National Edition) as soon as practicable;
- (c) any Claimant wishing to dispute the Notice to Claimants must file a Notice of Dispute by the Claims Bar Date of August 30, 2024, or any later date ordered by this Court. The Receiver will review the Notices of Dispute and shall advise a Claimant in writing if the Receiver does not accept all or any part of the Claim asserted in the Notice of Dispute;
- (d) Claimants wishing to file a Proof of Claim may obtain a copy of the relevant forms from the Receiver’s website or by contacting the Receiver and requesting that copies of the relevant forms be provided;
- (e) any Person not receiving a Notice to Claimants and wishing to assert a Claim must file a Proof of Claim by the Claims Bar Date, or any later date ordered by this Court, failing which such Claim shall be extinguished;
- (f) Proofs of Claim shall be reviewed by the Receiver, in consultation with Antibe, and the Receiver shall either: (i) accept the claim; or, (ii) revise or disallow the claim, in whole or in part, by issuing a Notice of Revision or Disallowance if it disagrees with the Claim set out in the Proof of Claim;

- (g) if a Claimant disagrees with the assessment of the Claim as set out in the Notice of Revision or Disallowance, it must deliver a Dispute Notice within 14 calendar days of the Notice of Revision or Disallowance, or any later date as ordered by this Court, failing which the Claimant shall be deemed to accept the amount of the Claim as set out in the Notice of Revision or Disallowance;
- (h) upon receipt of a Dispute Notice, the Receiver may:
  - (i) attempt to consensually resolve the classification and the amount of the Claim with the Claimant;
  - (ii) refer the Disputed Claim to a Claims Officer;
  - (iii) deliver a further Notice of Revision or Disallowance; or
  - (iv) accept the claim as a Proven Claim and advise the Claimant accordingly;
- (i) if a claim is referred to the Claims Officer for determination, such determinations remain subject to an appeal to this Court.<sup>25</sup>

## **E. The Ancillary Relief**

### ***Approval of the Receiver's Activities***

21. The Receiver's conduct and activities to date are described in the First Report, which include, among other things<sup>26</sup>:

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<sup>25</sup> *Ibid*, at para. 67

<sup>26</sup> *Ibid* at para. 32

- (a) attending before the Court on April 22, 2024, in respect of Nuance's cross-application record;
- (b) securing the Company's Property, including the Company's Bank Accounts, the Premises, the Company's books and records, among other things;
- (c) opening new estate trust accounts under the Receiver's name;
- (d) engaging Kroll Consulting Canada Co. to assist with preserving the Company's digital records;
- (e) segregating funds related to the administrative reserve, and directors' and officers' reserve pursuant to paragraphs 26 to 29 of the Receivership Order;
- (f) preparing the Notice and Statement of Receiver pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended, the "BIA");
- (g) engaging with the Company's subtenants in relation to the Premises, and exiting the Premises;
- (h) terminating employees and independent contractors;
- (i) compiling the payroll and employee information required to administer claims pursuant to the Wage Earners Protection Plan Act for eligible terminated employees;

- (j) reviewing the Company's books and records, with particular import to accounting and financial records;
  - (k) engaging with the Canada Revenue Agency regarding an audit of the Company's payroll remittances;
  - (l) reviewing the Company's intellectual property and engaging with TGF, Management, and the Financial Advisor to develop a realization strategy in respect of same;
  - (m) corresponding and communicating with several stakeholders and/or their counsel; and
  - (n) preparing the First Report.
22. In addition to the Receiver's activities, the Receiver and TGF have charged the fees and disbursements set out the First Fee Affidavits attached to the First Report.<sup>27</sup>

### ***The Arbitral Award***

23. On February 9, 2021, Antibe entered into a licensing agreement (the "**License Agreement**") with Nuance, which licensed Nuance to sell the Drug in China. The License Agreement included the Upfront Payment of US\$20 million which was paid by Nuance to Antibe on February 19, 2021.<sup>28</sup>

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<sup>27</sup> *Ibid* at Appendix "F" and "G".

<sup>28</sup> *Ibid* at para. 22

24. In January 2022, Nuance commenced an arbitration proceeding against Antibe at the Singapore International Arbitration Centre alleging that the Company had improperly induced Nuance to enter into the License Agreement. Antibe defended such claim. Pursuant to the terms of the License Agreement, an arbitration hearing was scheduled before the arbitral tribunal (the “**Tribunal**”) in May 2023.<sup>29</sup>
25. On March 1, 2024, the Tribunal determined that Antibe’s omission of certain documents from the virtual data room setup for Nuance during the Licence Agreement diligence period 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.<sup>30</sup>
26. Further, Antibe publicly disclosed to the market that it accepted “in good faith” the Arbitral Award, which is final and binding.<sup>31</sup>
27. On March 28, 2024, Nuance served Antibe with an application for the enforcement of the Arbitral Award in Ontario.<sup>32</sup>

### **PART III - THE ISSUES**

28. The issues to be determined on this motion are:

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<sup>29</sup> *Ibid* at para. 23

<sup>30</sup> *Ibid* at para. 24

<sup>31</sup> CCAA Termination Endorsement, para. 96.

<sup>32</sup> *Ibid* at para. 25

- (a) whether the Sale Process should be approved;
- (b) whether the Claims Procedure should be approved; and
- (c) whether the ancillary relief should be granted.

#### **PART IV - THE LAW**

##### ***The Sale Process Should be Approval***

29. The reasonableness and adequacy of any sale process proposed by a court-appointed receiver must be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair*<sup>33</sup>, namely:
- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) whether the interests of all parties have been considered;
  - (c) the efficacy and integrity of the process by which offers are obtained; and
  - (d) whether there has been unfairness in the working out of the process.
30. Accordingly, when reviewing a sale and marketing process proposed by a receiver, a court should assess:

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<sup>33</sup> [\*Royal Bank of Canada v. Soundair Corp.\*](#), 1991 CanLII 2727 (ONCA).

- (a) the fairness, transparency and integrity of the proposed process;
  - (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
  - (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>34</sup>
31. The proposed sale process need not be perfect, only reasonable, and a court should also give significant weight to the recommendation of its receiver, a court-appointed officer with significant expertise in insolvency proceedings.<sup>35</sup>
32. The Receivership Order authorizes the Receiver to, among other things, market and sell the Property.
33. As discussed above, in developing a Sale Process for the Property, the Receiver sought and obtained a Financial Advisor to assist in assessing the potential value and marketing strategies considering the industry-specific Property.
34. The Receiver is engaging with the FDA to ascertain the value of addressing the FDA Letter and associated FDA Hold on the Drug with the view of maximizing the value of the Property vis-à-vis the costs required to do so.

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<sup>34</sup> *Choice Properties Limited Partnership v Penady (Barries) Ltd.*, 2020 ONSC 3517 at [para 16](#).

<sup>35</sup> *Marchant Realty Partners Inc v 2407553 Ontario Inc*, 2021 ONCA 375 at paras [10](#), [15](#) & [19](#).



35. The duration of the Sale Process is reasonable and will provide all potential bidders sufficient time to bid on the Property. The Sale Process balances the need to have a sale accomplished in a reasonable timeframe to limit the carrying costs associated with the Property with the desire to properly expose the Property to the marketplace to maximize recoveries for the stakeholders.
36. For all of the foregoing reasons, it is commercially reasonable and appropriate to approve the Sale Process in the circumstances.

***The Claims Procedure Should be Approved***

37. While the Receiver was appointed pursuant to section [101\(1\)](#) of the *Court of Justice Act* (“CJA”),<sup>36</sup> Courts have consistently applied the factors considered pursuant to section [243\(1\)\(c\)](#) of the *BIA*, where the Receiver may, *inter alia*, “take any other action that the court considers advisable.”<sup>37</sup>
38. This section has been interpreted to give supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise.<sup>38</sup> The Canadian insolvency system supports flexibility to deal with a debtor’s assets while ensuring that third party interests are not inappropriately violated.<sup>39</sup>

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<sup>36</sup> R.S.O. 1990, c. C.4., s. 101(1).

<sup>37</sup> *BIA*, s. 243(1)(c).

<sup>38</sup> *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras [57-58](#).

<sup>39</sup> *Ibid* at [para. 86](#).

39. The Drug is on hold by the FDA, and Antibe is not operating as its only major asset is the Drug. The facts available at present as outlined in the First Report suggest that there will be a distribution available to unsecured creditors, and accordingly, it is appropriate in these circumstances for the Receiver to call for Claims and efficiently run the Claims Procedure in parallel with the Sale Process to ensure an orderly, timely, and efficient distribution process to unsecured creditors once a Transaction has closed, subject to any unforeseen developments.
40. The proposed Claims Procedure is a fair, open and transparent method to enable the Receiver to call on Claims from potential creditors so they can be identified and settled in an orderly fashion to the benefit of both Antibe and their stakeholders. Further, the proposed Claims Bar Date provides a sufficient opportunity for parties to file a Proof of Claim with the Receiver.
41. When speaking of the court’s power under section 243(1) of the BIA, the Ontario Court of Appeal, in quoting Justice Farley, described it as permitting the Court to do not only “what justice dictates” but also what “practicality demands.”<sup>40</sup> The same is true of insolvency proceedings under section 101(1) of the CJA.
42. In this case, practicality demands that the Court permit the Receiver to conduct the Claims Procedure.

***The Receiver’s Activities Should be Approved***

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<sup>40</sup> *Ibid* at [paras. 53](#) and [57](#).

43. The Receiver and TGF seek approval of its activities as set out in the First Report. There are good policy and practical reasons to do so. In *Target Canada*<sup>41</sup>, I Morawetz RSJ (as he then was) accepted that the approval of a court officer's, in this case a Monitor's, activities:
- (a) allows all stakeholders to move forward confidently with next steps in the proceeding;
  - (b) brings their activities before the court, “allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;”
  - (c) provides certainty and finality, as all parties have an opportunity to raise specific objections and concerns;
  - (d) enables the court to satisfy itself that the court officer's activities have been conducted prudently and diligently;
  - (e) provides for protection for the court officer not otherwise offered by statute; and
  - (f) protects creditors from delay in distribution that would be caused by the re-litigation of steps taken to date and/or potential indemnity claims by the court officer.
44. The same principles apply in a receivership.<sup>42</sup>

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<sup>41</sup> *Re Target Canada Co*, 2015 ONSC 7574 at [paras 12](#) and [22-23](#) [Target Canada]. See also [Laurentian University of Sudbury](#), 2022 ONSC 2927 at paras 13-14 [“Laurentian”].

<sup>42</sup> *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161 at [para. 15](#).

45. Where a court-appointed receiver demonstrates that it has acted reasonably, prudently, and not arbitrarily, this Court has the inherent jurisdiction to approve the receiver's activities as set out in its reports.<sup>43</sup>
46. The activities of the Receiver described in the First Report were undertaken in good faith and in furtherance of the Receiver's mandate. For example, those activities include: (a) engaging various experts with knowledge in the pharmaceutical industry; (b) carrying out its obligations under the Receivership Order; (c) preparing for a Sale Process, Claims Procedure and assessing its position as to the Constructive Trust Claim; (d) taking initial steps in the proposed Sale Procedure; and (e) bringing this motion.
47. The activities of the Receiver and TGF as described in the First Report ought to be approved.

***The Fees of the Receiver and TGF Should be Approved***

48. The Receiver seeks approval of the fees and disbursements set out in the Fee Affidavits.<sup>44</sup>
49. In *Laurentian*, Morawetz CJ accepted that on a motion for fee approval the "overriding principle" is reasonableness. The Court should not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of the professional

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<sup>43</sup> *Lang Michener v. American Bullion Minerals Ltd.*, 2005 BCSC 684 at [para. 21](#).

<sup>44</sup> Motion Record, Tab 2F and Tab 2G.

services rendered may not be instructive when viewed in isolation. The focus should be on what was accomplished, and not how much time it took.<sup>45</sup>

50. The following factors provide guidance regarding evaluating the quantum of fees<sup>46</sup>:
- (a) the receiver's knowledge, experience and skill;
  - (b) the diligence and thoroughness displayed;
  - (c) the responsibilities assumed;
  - (d) the results of the receiver's efforts; and
  - (e) the cost of comparable services when performed in a prudent and economical manner.
51. The fees were necessarily incurred in connection with the Receiver's duties under the Receivership Order. The fees incurred are also reasonable given the uniqueness of this proceeding in respect of the complex pharmaceutical Property being canvassed for marketing and sale, understanding the nature of the Constructive Trust Claim, the significant efforts undertaken in order to retain appropriate experts with the knowledge of pharmaceutical industry and drugs, engaging with the FDA, and the other matters attended to by the Receiver and its counsel.

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<sup>45</sup> *Laurentian* at [para 9](#) citing *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) ["Nortel"] and *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at [para 45](#).

<sup>46</sup> *Confectionately Yours Inc (Re)*, 2002 CanLII 45059 at [paras 42-54](#); *Laurentian* at [para 10](#); *Nortel* at [para 14](#).

52. It is reasonable in the circumstances to approve the activities and fees of the Receiver and TGF in the circumstances.

***The Arbitral Award Should be Recognized by this Court***

53. Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by *The Enforcement of Foreign Arbitral Awards Act*, 1996, SS 1996, c E-9.12 recognizes arbitral awards as binding amongst Contracting States and to be enforced in accordance with the rules of procedure of the territory where the award is relied on, subject to certain conditions.
54. Article 35 of the UNCITRAL Model Law on International Commercial Arbitration as adopted by *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2 recognizes arbitral awards as binding, irrespective of the country it was made, upon application in writing to this Court.
55. As particularized above, Antibe entered in the License Agreement on February 9, 2021, with Nuance. Pursuant to the License Agreement, Nuance delivered the Upfront Payment.
56. In January 2022, Nuance commenced an arbitration proceeding against Antibe at the Singapore International Arbitration Centre alleging that the Company had improperly induced Nuance to enter into the License Agreement. On March 1, 2024, the Tribunal

found in favour of Nuance on the basis of rescission of the License Agreement and ordered Arbitral Award of approximately CAD\$33.8 million.

57. Further, and as outlined in the CCAA Termination Endorsement, Antibe does not dispute the Arbitral Award and, in fact, accepted the Arbitral Award as final and binding.<sup>47</sup>
58. Accordingly, the Arbitral Award should be recognized by this Court, as a matter of law pursuant to *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2.

#### **PART V - RELIEF REQUESTED**

59. The Receiver respectfully requests, and recommends, that this Court grant the orders substantially in the form of the draft orders enclosed in the Motion Record at Tabs 3, 4 and 5.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of June, 2024.

*Thornton Grout Finnigan LLP*

June 22, 2024

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<sup>47</sup> CCAA Termination Endorsement, para. 96.

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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [Bank of Nova Scotia v Diemer](#), 2014 ONCA 851
2. [Choice Properties Limited Partnership v Penady \(Barries\) Ltd.](#), 2020 ONSC 3517
3. [Confectionately Yours Inc \(Re\)](#), 2002 CanLII 45059
4. [Lang Michener v. American Bullion Minerals Ltd.](#), 2005 BCSC 684
5. [Laurentian University of Sudbury](#), 2022 ONSC 2927
6. [Marchant Realty Partners Inc v 2407553 Ontario Inc](#), 2021 ONCA 375
7. [Re Nortel Networks Corporation et al](#), 2017 ONSC 673
8. [Re Hangfen Evergreen Inc.](#), 2017 ONSC
9. [Re Target Canada Co](#), 2015 ONSC 7574
10. [Royal Bank of Canada v. Soundair Corp.](#), 1991 CanLII 2727 (ON CA)
11. [Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.](#), 2019  
ONCA 508

**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.

[Bankruptcy and Insolvency Act](#), RSC 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.

[The Enforcement of Foreign Arbitral Awards Act](#), 1996, SS 1996, c E-9.12

**Article III**

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied on, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

[The International Commercial Arbitration Act](#), SS 1988-89, c I-10.2

*Article 35. Recognition and enforcement*

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration

agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

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

**NUANCE PHARMA LTD.**

- and -

**ANTIBE THERAPEUTICS INC.**

Applicant

Respondent

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

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at Toronto, Ontario

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**FACTUM OF THE COURT-APPOINTED RECEIVER,  
FTI CONSULTING CANADA INC.**

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