



Court File No. S-226773
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF MEDIPURE PHARMACEUTICALS INC. AND MEDIPURE HOLDINGS INC.

MONITOR'S FIRST SUPPLEMENT TO THE SECOND REPORT TO COURT

DELOITTE RESTRUCTURING INC.

OCTOBER 3, 2022

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INTRODUCTION AND BACKGROUND

- 1) On August 19, 2022 (the "**Initial Order Date**"), on application by Medipure Pharmaceuticals Inc. ("**MPI**") and Medipure Holdings Inc. ("**MHI**", together with MPI, "**Medipure**" or the "**Companies**"), the Supreme Court of British Columbia (the "**Court**") made an order (the "**Initial Order**") granting the Companies protection from their creditors pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985 as amended (the "**CCAA**"). Under the Initial Order, Deloitte Restructuring Inc. ("**Deloitte**") was appointed as the Monitor of the Companies with enhanced powers (the "**Monitor**") and the Monitor, counsel to the Monitor, counsel to the Companies, and counsel to SHP Capital LLC (with respect to the fees and disbursements incurred in the hearing of the Initial Order) were granted a \$300,000 charge on the Companies' assets (the "**CCAA Administration Charge**"). These proceedings (the "**CCAA Proceedings**") are a continuation of the proceedings (the "**BIA Proceedings**") which commenced on May 11, 2022 pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") under which Deloitte was appointed as the proposal Trustee of the Companies (the "**Proposal Trustee**"). The Initial Order discharges Deloitte as the Proposal Trustee of the Companies under the BIA Proceedings.
- 2) The Initial Order appointed the Monitor and granted an initial stay of proceedings until August 22, 2022 (the "**Initial CCAA Stay**") which, through various applications and Court orders, has been extended to October 17, 2022. The full background of the CCAA Proceedings up until September 28, 2022 is included in the second report of the Monitor dated September 28, 2022 under the CCAA Proceedings (the "**Monitor's Second Report**") and is not repeated here.
- 3) The Monitor's Second Report was prepared for the Court application by the Companies on September 29, 2022 (the "**September 29 Application**") to, among other things, obtain the approval of the Court of a proposed DIP facility and interim lender's charge pursuant to a DIP facility commitment letter dated September 27, 2022 as between MHI and the Peretz-Lalli Group (the "**Shareholder Group Proposed DIP Facility**") in order for the Peretz-Lalli Group (the "**Shareholder Group**") to obtain additional time to complete due diligence and assemble an offer for the Property under an extended Accelerated Sales Process. The Monitor also brought an application to Court at the September 29 Application to, among other things, obtain the approval of the Court of an asset purchase agreement for certain of the Property dated September 28, 2022 as between Apogee Pharmaceuticals, Inc. ("**Apogee**"), a company 100% owned by SHP Capital, LLC ("**SHP**"), and Medipure (the "**Apogee Proposed Sale Agreement**"). The Apogee Proposed Sales Agreement was the only offer conforming with the accelerated sales process run by the Monitor and CRO from September 15 to September 28, 2022 (the "**Accelerated Sales Process**").
- 4) As a result of the September 29 Application, and due to limited time to fully hear the matters, Mr. Justice Walker directed that the applications be continued on October 4, 2022 (the "**October 4 Application**"). Mr. Justice Walker also requested that evidence be provided to the Court around the details and conditions attached to the \$375,000 retainer provided to the Monitor by SHP as part of the CCAA Proceedings (the "**CCAA Retainer**").
- 5) This is the Monitor's first supplement to the Monitor's Second Report (the "**First Supplement to the Monitor's Second Report**") which has been prepared for the October 4 Application.

PURPOSE

- 6) The purpose of the First Supplement to the Monitor's Second Report is to provide information to this Honourable Court for the October 4 Application in respect of:
 - a) The details and conditions around the CCAA Retainer;
 - b) Comments for the Court to consider in regards to the Accelerated Sales Process, and possible extension thereof, with the Shareholder Group Proposed DIP Facility; and
 - c) Proposed general terms and conditions and related timelines for the Court to consider if the Court was to approve the Shareholder Group Proposed DIP Facility and extend the Accelerated Sales Process.

TERMS OF REFERENCE

- 7) In preparing the First Supplement to the Monitor's Second Report, the Monitor has relied upon unaudited financial and other information supplied, and representations made to it, by certain senior management of the Companies ("**Management**") and the Companies' legal counsel, Boughton Law Corporation ("**Boughton**" or "**Companies' Counsel**"). Although this information has been reviewed, Deloitte has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information prepared by Management or otherwise provided by the Companies in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook*. Accordingly, Deloitte expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information contained in, or otherwise used to prepare this report.
- 8) Certain of the information referred to in this report consists of financial forecasts and/or projections prepared by Management. An examination or review of financial forecasts and projections and procedures as outlined by the *Chartered Professional Accountants of Canada* has not been performed. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from those forecasts and/or projections and the variations could be significant.
- 9) All monetary amounts contained in this report are expressed in Canadian dollars, unless otherwise indicated.
- 10) Terms not defined in the First Supplement to the Monitor's Second Report are defined in the Monitor's First Report, the First Supplement to the Monitor's First Report, Second Supplement to the Monitor's First Report, the Monitor's Second Report, Initial Order, ARIO or Second ARIO.
- 11) The Monitor's reports and other information in respect of the CCAA Proceedings are posted on the Monitor's website at www.insolvencies.deloitte.ca/en-ca/Pages/Medipure.

CCAA RETAINER

- 12) The Monitor, as part of accepting the role as Monitor under the CCAA Proceedings, agreed by email on August 21, 2022 (the "**August 21 Acknowledgement Email**")

to accept a retainer from SHP on the conditions (the "**CCAA Retainer Conditions**") that "the amount of the retainer will either be rolled up into the DIP or repaid out of the first DIP advance." A copy of the August 21 Acknowledgement Email is attached hereto as **Appendix "A"**.

- 13) At the time of accepting the CCAA Retainer Conditions, the Monitor assumed that some form of DIP financing would be received in the CCAA Proceedings from either Wealth Management Experts Inc. (the "**WMEI Proposed DIP Facility**") who, as of August 22, 2022, had assembled \$3.0 million of funds which were being held in trust by Boughton to be used as a potential DIP financing facility in the CCAA Proceedings, or through another party such as SHP. The intention was that the CCAA Retainer would be either repaid or secured by a charge against Medipure's assets.
- 14) Due to the largest participating shareholder in the WMEI Proposed DIP Facility retracting his funds and SHP not being able to have its conditions satisfied around a DIP facility, there has been no DIP financing secured to meet the CCAA Retainer Conditions.
- 15) The CCAA Retainer Conditions became an issue at the Court application on August 24, 2022 (the "**August 24 Application**") where the Court granted an order to approve \$216,000 in DIP financing, along with a DIP interim financing charge (the "**Payroll DIP Financing Order**"), to cover the Medipure employee arrears at that time. As the CCAA Retainer Conditions could not be met, counsel agreed at the August 24 Application that the Payroll DIP Financing Order could only be granted if the CCAA Retainer amount was included in the existing administration charge of \$200,000 from the BIA Proceedings (the "**BIA Administration Charge**") and the \$300,000 CCAA Administration Charge (collectively with the BIA Administration charge, the "**Total Administration Charges**") and the CCAA Retainer amount would not be diluted if the professional fees were to exceed the Total Administration Charges. Due to a lack of agreement amongst counsel around the form of the order pronounced at the August 24 Application, the Payroll DIP Financing Order was subsequently revoked by Mr. Justice Walker and no DIP funds were advanced.
- 16) The CCAA Retainer Conditions were again raised at the September 29 Application as the Shareholder Group Proposed DIP Facility does not include any provision for the repayment of the CCAA Retainer from the first advance of any DIP financing. The Monitor proposes to apply to have the Court grant an administration charge for \$375,000, ranking only behind the Total Administration Charges, CRO charge of \$50,000, and liquidation charge of \$200,000. In this scenario, SHP can either credit bid the CCAA Retainer amount or be repaid the amount through another successful purchaser of Medipure's Property.
- 17) The Monitor proposes to bring an application for the new administration charge for the CCAA Retainer on proper notice to HFS Management Inc., the Canada Revenue Agency ("**CRA**"), SHP, and other parties who will be impacted by the charge.

SALES PROCESS

- 18) The Monitor Second's Report outlined the steps taken by the Monitor and CRO with respect to the Accelerated Sales Process and the resulting offers received, provided the details of the Apogee Proposed Sale Agreement, outlined the factors for the Court to consider in approving the Apogee Proposed Sale Agreement, and provided details of the Shareholder Group Proposed DIP Facility.

- 19) Further to the September 29 Application, the Monitor has the following comments for the Court to consider in regards to the Accelerated Sales Process, and possible extension thereof, with the Shareholder Group Proposed DIP Facility.
- a) An extension of the Accelerated Sales Process will allow the Shareholder Group more time to complete due diligence, but there is no guarantee that the Shareholder Group will make a better, or any, offer on the Medipure Property following due diligence.
 - b) The Shareholder Group was given limited time for due diligence, but had access to the virtual data room ("**VDR**") since September 20, 2022 and has only spent a total of 66 minutes in the VDR up until October 2, 2022. The VDR was largely populated on September 20, 2022 with various financial and other information about Medipure that was contained in 78 documents. The only additional documents added to the VDR since then were a total of 10 new or amended contracts, leases, and agreements on September 27, 2022.
 - c) If a higher offer is received from the Shareholder Group as is being proposed in their expression of interest, this will benefit additional stakeholders compared to the offer price in the Apogee Proposed Sale Agreement which is at the lower end of the range of the estimated net realizable value of the Property. This is detailed in the Monitor's Second Report.
 - d) The Accelerated Sales Process had a very compressed timeline as there were no funds or DIP financing in place at the time the process started and the Court was fully apprised of the Monitor and CRO's intentions to liquidate the Property. This situation has now changed with the Shareholder Group Proposed DIP Facility, but the interests and impacts to all parties, including SHP, need to be considered as part of any DIP financing charge. This is detailed in the Monitor's Second Report.
 - e) Apogee followed the Accelerated Sales Process, was the only party with a conforming bid, and the Apogee Proposed Sale Agreement was disclosed as part of the September 29 Application. As a result, it can be argued that Apogee will be prejudiced if the Accelerated Sales Process is extended.
 - f) An extended Accelerated Sales Process, with the Shareholder Group Proposed DIP Facility in place, should not have a significant impact on the value of the Property as the landlord of Medipure's Burnaby lab (the "**Medipure Lab**") has agreed to extend the lease that expired on September 30, 2022 by an additional seven days at a cost of 125% of the last base rent amount, as outlined in the lease. Based on discussions that have taken place between the CRO and the landlord, the landlord also appears agreeable to extend the lease until October 31, 2022 if the September and October arrears are paid as contemplated in the Shareholder Group Proposed DIP Facility. The remaining employees, who include Mr. Rman Walia, the Chief Financial Officer, and Mr. Nihar Pandey, the Chief Executive Officer and Chief Scientific Officer, have also agreed to remain with Medipure until October 31, 2022 if the Shareholder Group Proposed DIP Facility is in Place. The continuity of the Medipure Lab premises, along with the continued employment of Mr. Pandey, will help to keep the Health Canada Licence in place which is of critical value to the intellectual property of Medipure. The Monitor understands that it can take up to six months to apply for a new licence. The Shareholder Group Proposed DIP Facility also includes the funding for ongoing animal studies being conducted by a third party which will help to continue to move the scientific research forward.

- g) An extended Accelerated Sales Process could include a transparent and fair auction process to allow Apogee to participate if a competing offer is made by the Shareholder Group.
- 20) If the Court was to approve the Shareholder Group Proposed DIP Facility and extend the Accelerated Sales Process, then the Monitor proposes the following terms and conditions and related timelines for the Court to consider.
- a) The Accelerated Sales Process would be extended to October 31, 2022 along with the CCAA stay of proceedings.
 - b) The only two parties to be included in the sales process would be the Shareholder Group and SHP / Apogee (the "**Participating Parties**") as the Major Stakeholders have all been solicited through the CRO's sales notices and none expressed any serious interest to date. The Major Stakeholders were determined to be the only logical buyers in this situation and no third parties have been solicited, as further detailed in the Monitor's Second Report.
 - c) Binding and sealed offers would be due by the Participating Parties on or before Monday, October 24, 2022.
 - d) If more than one binding offer is received, an auction process could take place between the Participating Parties on or before Wednesday, October 26, 2022. The terms of the auction process would be finalized before the auction.
 - e) The winning offer would be finalized and executed on or before Friday, October 28, 2022 with a closing by no later than Monday, October 31, 2022.

CONCLUSION AND RECOMMENDATION

- 21) The Monitor takes no position with respect to the October 4 Application and remains of the view that, absent any special circumstances such as Court approval of the Shareholder Group Proposed DIP Facility, the Apogee Proposed Sale Agreement should be approved by Court.

All of which is respectfully submitted to this Honourable Court this 3rd day of October, 2022.

DELOITTE RESTRUCTURING INC.

In its capacity as CCAA Monitor of
Medipure Holdings Inc. and Medipure Pharmaceuticals Inc.
and not in its personal or corporate capacity.



Per: Jeff Keeble, CPA, CA, CIRP, LIT, CBV
Senior Vice-President

Appendix A

August 21, 2022 email from the Monitor to Bennett Jones LLP

From: Keeble, Jeff
Sent: Sunday, August 21, 2022 7:37 PM
To: 'David Gruber' <GruberD@bennettjones.com>
Cc: Katie Mak <KMak@cwilson.com>; Christopher Ramsay <CRamsay@cwilson.com>
Subject: RE: Medipure retainer

Hi David,

We acknowledge that the amount of the retainer will either be rolled up into the DIP or repaid out of the first DIP advance. Attached are the account details for the retainer wire to be sent to Deloitte Restructuring Inc.

Regards,

Jeff Keeble, CPA, CA, CIRP, LIT, CBV
Deloitte
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I would like to acknowledge with gratitude, that I live and work on the traditional, ancestral and unceded territory of the Coast Salish peoples—Sḵwxwú7mesh (Squamish), Stó:lō and Sañilwata?/Selilwitulh (Tseil-Waututh) and xʷməθkʷəy̓əm (Musqueam) Nations

From: David Gruber GruberD@bennettjones.com
Sent: Sunday, August 21, 2022 6:27 PM
To: Keeble, Jeff jkeeble@deloitte.ca
Cc: Katie Mak KMak@cwilson.com; Christopher Ramsay CRamsay@cwilson.com
Subject: [EXT] Medipure retainer

Jeff,

Can you please give me wire instructions so that I can have Crowe MacKay send over the retainer funds tomorrow? As discussed on Friday these will be sent on condition that the amount of the retainer will either be rolled up into the DIP or repaid out of the first DIP advance. I'm going to instruct Crowe to send \$375,000 tomorrow as we want to hold a bit back to make sure they aren't out of pocket for the court attendances at which Fasken attended.

Best,



David Gruber
Partner, Bennett Jones LLP

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