

Deloitte.



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 MEDIPIRE PHARMACEUTICALS INC. AND MEDIPIRE HOLDINGS INC.

MONITOR'S SECOND SUPPLEMENT TO THE SECOND REPORT TO COURT

DELOITTE RESTRUCTURING INC.

OCTOBER 24, 2022

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Appendix A – Email from Clark Wilson to Borden Ladner Gervais dated October 21, 2022

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 31, 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 to address the Court applications by both the Monitor and the Companies on September 29, 2022 (the "**September 29 Applications**"). The September 29 Applications included the following:
 - a) The Monitor sought 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**"); and
 - b) The Companies sought to, among other things, obtain the approval of the Court of a proposed DIP facility of \$816,000 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 fund certain costs of the Companies while the Shareholder Group gained additional time to complete due diligence and assemble an offer for the Property under an extended Accelerated Sales Process.
- 4) As a result of the September 29 Applications, and due to limited time to fully hear the matters before the Court, Mr. Justice Walker directed that the applications be continued on October 4, 2022 (the "**October 4 Applications**"). 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) The Monitor's first supplement to the Monitor's Second Report (the "**First Supplement to the Monitor's Second Report**") was prepared for the October 4 Applications and included details and conditions around the CCAA Retainer, comments for the Court to consider around the Accelerated Sales Process and possible extension thereof, and the proposed terms and conditions and related timelines (the "**Amended Accelerated Sales Process**") for the Court to consider if the Court was to approve the Shareholder Group Proposed DIP Facility and extend the Accelerated Sales Process.
- 6) As a result of the October 4 Applications, Mr. Justice Walker indicated that he was willing to approve the Shareholder Group Proposed DIP Facility conditional on the CCAA Retainer being granted a charge in front of the Shareholder Group DIP charge (the "**CCAA DIP Charge**"), that the Amended Accelerated Sales Process be put in place, and that the parties funding the Shareholder Group Proposed DIP Facility consent to these conditions (the "**DIP Conditions**"). Mr. Justice Walker directed that the potential approval of the Shareholder Group Proposed DIP Facility be continued on October 6, 2022 (the "**October 6 Application**").
- 7) As a result of the October 6 Application and the DIP Conditions being met, Mr. Justice Walker granted an Order dated October 6, 2022 (the "**October 6 Order**") that approved, among other things, the following:
 - a) the activities of the Proposal Trustee, Monitor and CRO in the BIA and CCAA proceedings, as applicable;
 - b) the adjournment of the Monitor's application to approve the Apogee Proposed Sale Agreement to 2:00pm on October 24, 2022 (the "**October 24 Application**");
 - c) the securing of the CCAA Retainer as part of the existing BIA and CCAA administration charges of \$550,000 on a *pari passu* basis with the other beneficiaries of the charges;
 - d) \$816,000 in DIP financing from the Shareholder Group (the "**Shareholder DIP Financing**") and the CCAA DIP Charge;
 - e) the extension of the Accelerated Sales Process and CCAA stay of proceedings to October 31, 2022; and
 - f) the Amended Accelerated Sales Process provided that any bids for the Property need to be received in writing by the Monitor and CRO by no later than 10:00am PST on Monday, October 24, 2022 (the "**Updated Bid Deadline**").
- 8) This is the Monitor's second supplement to the Monitor's Second Report (the "**Second Supplement to the Monitor's Second Report**") which has been prepared for the October 24 Application.

PURPOSE

- 9) The purpose of the Second Supplement to the Monitor's Second Report is to provide information to this Honourable Court for the October 24 Application in respect of:
 - a) An update on the Shareholder DIP Financing;
 - b) An update on the Amended Accelerated Sales Process and the offers received and to respectfully recommend that this Honourable Court make an order to approve the Apogee Proposed Sales Agreement;

- c) Respectfully recommend that this Honourable Court make an order directing that the confidential supplement to this Second Supplement to the Monitor's Second Report (the "**First Confidential Supplement**") be sealed with the Court unless otherwise ordered by the Court, until such time as the Apogee Proposed Sale Agreement has been completed; and
- d) Respectfully recommend that this Honourable Court make an order providing such further or other relief that the Court considers just and warranted in the circumstances.

TERMS OF REFERENCE

- 10) In preparing the Second 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.
- 11) 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.
- 12) All monetary amounts contained in this report are expressed in Canadian dollars, unless otherwise indicated.
- 13) Terms not defined in the Second Supplement to the Monitor's Second Report are defined in the Monitor's First Report, the First Supplement to the Monitor's First Report, the Second Supplement to the Monitor's First Report, the Monitor's Second Report, the First Supplement to the Monitor's Second Report, Initial Order, ARIO or Second ARIO.
- 14) 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.

SHAREHOLDER DIP FINANCING

- 15) Pursuant to the October 6 Order approving the Shareholder DIP Financing, Boughton advanced the equivalent of \$766,728 in Canadian funds to MHI on October 11, 2022 on behalf of the Shareholder Group. The Monitor understands that the shortfall of approximately \$49,000 (the "**DIP Financing Shortfall**") from the total Shareholder DIP Financing approval of \$816,000 was due to foreign exchange differences and a miscalculation of the funds being held in trust. In any event, the full amount will likely

not be required as some of the uses of funds outlined in the Shareholder Group Proposed DIP Facility (as outlined below) are no longer required.

- 16) The following table outlines the proposed and actual uses of funds from the Shareholder DIP Financing and the related variances.

Shareholder DIP Financing

All amounts in CAD

Description	Proposed Amount	Actual Amount	Variance
Deloitte Restructuring Inc. fees	\$ 125,000	\$ 125,000	\$ -
Boughton Law Corporation legal fees	125,000	125,000	-
MP-20X animal trials (paid in USD)	120,000	129,560	(9,560)
Payroll arrears for 2 remaining employees	107,692	129,287	(21,594)
BDO forensic audit	50,000	50,000	-
BCIT lab lease security deposit (4 mos.)	45,170	-	45,170
Payroll for 4 weeks for 2 remaining employees	43,077	-	43,077
BCIT lab and North Vancouver office - rent	39,113	36,059	3,054
Croatia expenses	20,000	20,000	-
Gowling WLG - patent lawyers	15,000	15,000	-
Farris LLP - security lawyers	15,000	15,000	-
Critical expense reimbursement	13,350	13,350	-
Employee benefits	12,000	11,795	205
Critical supplier payments	7,500	4,839	2,661
Contingency	78,000	52,945	25,055
Total	<u>\$ 815,902</u>	<u>\$ 727,835</u>	<u>\$ 88,067</u>

Note: All USD amounts converted to CAD using exchange rate of 1.3713

- 17) The Monitor has the following comments in regards to the larger Shareholder DIP Financing variances outlined above:
- a) The negative variance of \$9,560 for the MP-20X animal trials is a permanent variance and is due to the change in foreign exchange rates as the payment was made in USD;
 - b) The negative variance of \$21,594 for the payroll arrears for the Remaining Employees is a permanent variance as the number of weeks in arrears was underestimated due to the timing of the approval of the DIP financing. This variance will need to be funded from the contingency if the amount is approved by the Shareholder Group;
 - c) The positive variance of \$45,170 for the BCIT lab lease security deposit is a permanent variance as the lease will not be renegotiated and a deposit will not be required until a new owner is in place;
 - d) The positive variance of \$43,077 for the payroll of the Remaining Employees for October 2022 is a timing variance as these amounts still need to be paid; and
 - e) The actual contingency amount of \$52,945 is made up of the DIP Financing Shortfall and a payment of approximately \$3,400 to extend the property insurance coverage on the Canadian assets for two months. The positive variance of \$25,055 is likely a timing difference as the payroll arrears variance for the Remaining Employees may be paid from this amount.

- 18) There are additional costs that will come due on November 1, 2022 (including rent) so the closing of a sale on or around October 31, 2022 is important with only approximately \$88,000 in remaining DIP funding in place, which is largely needed to address the unpaid October 2022 expenses.

SALES PROCESS UPDATE AND PROPOSED NEXT STEPS

- 19) Pursuant to the October 6 Order, the Amended Accelerated Sales Process was approved and the only two parties to be included in the sales process are the Shareholder Group and SHP / Apogee (the "**Participating Parties**"). The Shareholder Group was given until the Updated Bid Deadline to submit a binding and sealed offer along with a 20% deposit. It should be noted that Apogee previously submitted an offer, that formed the Apogee Proposed Sale Agreement, by the original deadline outlined in the Accelerated Sales Process. The details of the Apogee Proposed Sale Agreement were included in the Monitor's Second Report and the Apogee Proposed Sales Agreement is before the Court for approval as part of the October 24 Application.
- 20) The Monitor received a binding letter of intent from the Shareholder Group (the "**PPI Offer**") through Perlli Pharmaceuticals Inc. ("**PPI**") as of the Updated Bid Deadline with the only condition being Court approval. A copy of the PPI Offer is included in Appendix "A" of the First Confidential Supplement.
- 21) The PPI Offer is higher than the \$925,000 purchase price included in the Apogee Proposed Sale Agreement and was received at 10:59am on October 24, 2022. However, the email from PPI's legal counsel, Borden Ladner Gervais LLP ("**BLG**"), that accompanied the PPI Offer, indicated that PPI was still in the process of being incorporated as of the Updated Bid Deadline. PPI also did not provide a deposit representing 20% of the proposed purchase price that was required by the Updated Bid Deadline. The requirement for this deposit was made clear to BLG through an email from the Monitor's legal counsel, Clark Wilson LLP ("**Clark Wilson**"), to BLG on October 21, 2022 (the "**October 21 Email**") whereby it was also stated that if the deposit was not received by the Updated Bid Deadline then the Monitor would be seeking the approval of the Apogee Proposed Sale Agreement at the October 24 Application. The Monitor understands that the deposit is in the process of being made by PPI, but it has not been received by Clark Wilson as of the time of the finalization of this Second Supplement to the Monitor's Second Report. A copy of the October 21 Email is attached hereto as "**Appendix A**".
- 22) As a result of PPI failing to meet the terms of the Amended Accelerated Sales Process and not providing a deposit by the Updated Bid Deadline, the Monitor is recommending that the Court approve the Apogee Proposed Sale Agreement in its form included in Appendix "D" of the Monitor's Second Report, subject to any minor changes for dates and updated information that do not impact the significant terms and conditions and purchase price.

CONCLUSION AND RECOMMENDATIONS

- 23) Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief detailed in section 9b) and 9(c) of this Second Supplement to the Monitor's Second Report and such further and other relief as this Honourable Court deems appropriate in the circumstances.

All of which is respectfully submitted to this Honourable Court this 24th 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.

A handwritten signature in blue ink, appearing to read "Jeff Keeble". The signature is fluid and cursive, with the first name "Jeff" being more prominent than the last name "Keeble".

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

Appendix A

Email from Clark Wilson to Borden Ladner Gervais dated October 21, 2022

From: chrisramsayvancouver <chrisramsayvancouver@gmail.com>
Sent: Friday, October 21, 2022 9:13 AM
To: Laity, Ryan <RLaity@blg.com>
Cc: Jaime Landa <JLanda@cwilson.com>; Keeble, Jeff <jkeeble@deloitte.ca>
Subject: [EXT] Medipure

Hello Ryan. A follow up from my earlier email. I expect that your client has provided you with all of the earlier communications received from the CRO/Monitor regarding the sales process and the requirement for a 20% deposit to be received by Clark Wilson. If this is not the case we can forward to you directly. Please ensure that if a bid is being submitted that the 20% deposit is received by Clark Wilson by 10AM on Monday. If this deposit is not received Monday morning, the Monitor will be seeking to approve the Apogee bid at 2PM Monday afternoon. My assistant Jaime Landa will forward the Clark Wilson wiring details o you this morning.

Chris

Sent from my Galaxy