



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ANTIBE THERAPEUTICS INC. (the "Applicant")

Applicant

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant.
The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (choose one of the
following)

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 9th Floor
Toronto, ON M5G 1R7
(videoconference details to be provided)

on Tuesday, April 9th, 2024, at 9:45 a.m., (or on such other day and time as the court
may direct)

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any
step in the application or to be served with any documents in the application, you or an
Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form
38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or,
where the applicant does not have a lawyer, serve it on the applicant, and file it, with
proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar
Address of 330 University Ave., 7th Floor
court office: Toronto, ON M5G 1R7

APPLICATION

1. The Applicant makes an application for:
 - (a) an initial order (the "**Proposed Initial Order**") substantially in the form included in the Application Record, inter alia:
 - (i) abridging and validating the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
 - (ii) declaring that the Applicant is a company to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;
 - (iii) declaring that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**");
 - (iv) declaring that the Applicant shall be entitled but not required to pay all outstanding and future wages and similar entitlements after the date of this Order, incurred in the ordinary course of its Business;

- (v) declaring the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation payment for goods or services actually supplied to the Applicant following the date of this Order;
- (vi) appointing Deloitte Restructuring Inc. ("**Deloitte**") as court-appointed monitor in these proceedings (in such capacity, the "**Monitor**") in respect of the business and affairs of the Applicant;
- (vii) staying, for an initial period of not more than ten (10) days (the "**Stay**"), all proceedings and remedies taken or that might be taken in respect of the Applicant, the Monitor or affecting the Applicant's business or any of their assets, undertakings and properties (the "**Property**"), except with the written consent of the Applicant and the Monitor, or with leave of this Court;
- (viii) granting the following priority charges (the "**Charges**") on the Property, such Charges to rank in the priority set out in the Proposed Initial Order:
 - 1) first, the Administration Charge (as defined below) up to a maximum of \$250,000; and

- 2) second, the Directors' Charge (as defined below) up to a maximum of \$150,000; and
- (ix) ordering that the Charges shall rank in priority to all other claims and encumbrances on the Property.
- (b) If the proposed Initial Order is granted, the Applicant intends to seek an amended and restated initial order (an "**ARIO**") within 10 days of the Initial Order being granted, for an order:
 - (i) extending the Stay to May 24, 2024;
 - (ii) increasing the amount of the Administration Charge to \$500,000;
 - (iii) increasing the amount of the Directors Charge to \$385,000;
 - (iv) granting such other relief as may be requested in the Applicant's further Notice of Motion; and,
- (c) such further and other relief as may be requested by the Applicant and which this Honourable Court deems appropriate and just.

2. The grounds for the application are:

Background

- (a) The Applicant is a company incorporated pursuant to the laws of Ontario;
- (b) The Applicant's registered office is 15 Prince Arthur Avenue, Toronto, Ontario;

The Business and the Insolvency Event

- (c) The Applicant is a publicly-traded clinical stage biotechnology company that develops novel pain and inflammation-reducing drugs. Antibe's objective is to leverage its proprietary hydrogen sulfide platform to develop safer pain-relief drugs (i.e., drugs that target inflammation arising from a wide range of medical conditions) (the "**Business**");
- (d) Antibe has been developing its lead drug, a nonsteroidal anti-inflammatory drug ("**NSAID**") termed ATB-346 or otenaproxesul (the "**Drug**"), since 2004. The Drug represents an innovation in the class of NSAID-based compounds. It exhibits equal or greater efficacy than currently marketed NSAIDs while drastically reducing adverse GI side effects (one of the most common issues with NSAIDs);
- (e) Once approved, Antibe believes the Drug can become the oral non-opioid pain reliever of choice for acute (short-term) pain, such as post-operative pain, and shows great promise for the treatment of chronic (long-term) pain, such as arthritis—this will be of significant societal value given the opioid crisis that the world is currently facing;
- (f) As part of its Business, Antibe has entered into licensing arrangements with larger pharmaceutical companies whereby, among other terms, the licensees have agreed to help fund the development of the Drug in exchange for the rights to commercialize and market the Drug in the licensed territory (once developed);

- (g) One such License Agreement was entered into by Antibe in February 2021 with a company called Nuance Pharma Limited (“**Nuance**”) for the territory of the Greater China Region (the “**Nuance License Agreement**”);
- (h) The Nuance License Agreement included a non-refundable and non-creditable upfront payment of USD\$20 million, which Nuance paid to Antibe at the time of the Nuance License Agreement;
- (i) In January of 2022, Nuance commenced an arbitration against Antibe (the “**Arbitration**”), alleging, among other things, that Antibe had improperly failed to include certain documents (the “**Health Canada Correspondence**”) in its data room, thereby inducing Nuance to enter into the Nuance License Agreement;
- (j) Antibe defended Nuance’s claim on the basis that the clinical results that had formed the basis for the Health Canada Correspondence had been included in the data room, rendering the Health Canada Correspondence irrelevant to Nuance’s investment decision, and that Nuance had inadequately performed its due diligence;
- (k) Pursuant to the terms of the Nuance License Agreement, the hearing of the Arbitration took place in May, 2023, in Singapore;
- (l) On March 1, 2024, Antibe received the arbitral tribunal’s award (the “**Award**”);

- (m) Contrary to Antibe's expectation, the Award found in favour of Nuance, ordered that the Nuance License Agreement was rescinded, and ordered that Antibe repay Nuance the USD\$20 million upfront payment, plus Nuance's costs and interest. In total, the Nuance Arbitration Award ordered Antibe to pay Nuance approximately CAD\$33 million;
- (n) Antibe has engaged in discussions with Nuance in an attempt to agree on terms for the payment of the Award, including Antibe putting forth a good faith proposal to pay Nuance back in full;
- (o) Nuance did not respond to Antibe's proposal but, on March 28, 2024, Nuance served Antibe with an application for enforcement of the Award in Ontario (the "**Enforcement Application**");
- (p) Antibe is unable to pay the Award, at this time in full, having regard to its other liabilities and contingent liabilities;
- (q) If pursued and completed at this time, the Enforcement Application would lead to a shut down of Antibe's business and efforts to develop the Drug. Further, the Enforcement Application appears to effectively request a liquidation of Antibe, which would not be value maximizing;
- (r) The Drug has societal value, and there is a reasonable prospect that allowing Antibe to continue to engage in respect of the next phase of the Drug's development will maximize value for Antibe's creditors, including Nuance, and significant benefit social stakeholders;

Outstanding Obligations

- (s) Antibe has current liabilities totalling CAD\$40.3 million, including the following:
 - (i) a debt to Nuance in the approximate amount of CAD\$33 million, pursuant to the Award;
 - (ii) trade payables in the approximate amount of CAD\$6.7 million owing to various suppliers in connection with the Phase 2 Trial; and
 - (iii) other payables and accrued liabilities in the approximate amount of CAD\$0.6 million;

- (t) Additional liabilities that could crystalize in the event of the cessation of operations and liquidation include, among others, the following:
 - (i) contract claims in respect of the development of the Drug of up to approximately USD\$5.4 million;
 - (ii) employee claims for severance and termination in the approximate amount of CAD\$2.7 million based on Antibe's obligations under the contracts to termination pay and/or one month's pay per calendar year;
 - (iii) contractor claims for termination in the approximate amount of CAD\$500,000, based on Antibe's obligations under the contracts to termination pay;

- (iv) contingent claims by Antibe's other licensees, which are not presently quantifiable, alleging breach of their licence agreements or in tort; and
- (v) a claim in respect of Antibe's lease agreement in the approximate amount of CAD\$101,000;
- (u) Antibe's current assets are limited to its cash position and the value of its intellectual property;

CCAA Proceedings

- (v) As noted above, the Applicant is on the verge of an imminent liquidity crisis and has been or will shortly be unable to meet its obligations as they come due;
- (w) The Applicant is requesting a stay of proceedings for an initial period of not more than 10 days (the "**Stay Period**") to be granted to provide it time to pursue its restructuring options in a stabilized environment and on notice to all stakeholders;
- (x) To assist it in the identification and pursuit of its restructuring options, the Applicant has retained the services of Edward Sellers through Black Swan Advisors Inc. as its Restructuring Advisor (the "**RA**");

Appointment of Monitor

- (y) The Applicant seeks to appoint Deloitte as the monitor (in such capacity, the “**Proposed Monitor**”) in the CCAA proceedings;
- (z) Deloitte is qualified, competent and has consented to act as the Monitor in these proceedings, should the Initial Order be granted;

Administration Charge

- (aa) The Proposed Initial Order contemplates a super priority charge over its property, assets and undertaking in the initial maximum amount of \$250,000 to secure the fees and disbursements of the Proposed Monitor, its counsel and counsel to the Applicant, and its RA, incurred both before and during the CCAA proceedings (the “**Administrative Charge**”);
- (bb) The expertise and participation of the proposed beneficiaries of the Administration Charge are crucial to the completion of the Applicant’s restructuring;
- (cc) The proposed Administrative Charge is proportionate with the risk of non-payment being assumed by the proposed beneficiaries having regard to the Applicant’s cashflow statements;

Directors and Officers

- (dd) To facilitate the ongoing stability of the Applicant’s business during the CCAA period and the efficient implementation of these restructuring

proceedings, the Applicant requires the continued participation of its directors and officers who oversee the management of the Business and commercial activities of the Applicant;

- (ee) The Applicant is concerned that those directors and officers may not continue their service in this restructuring unless the Proposed Initial Order grants the Directors' Charge (as defined below) to secure the Applicant's indemnity obligations to the directors and officers that arise post-filing;
- (ff) The Applicant maintains directors' and officers' liability insurance (the "**D&O Insurance**"), which policies provide a total of up to \$5 million in primary coverage;
- (gg) The Proposed Initial Order contemplates the establishment of a charge in the amount of \$150,000 (the "**Directors' Charge**"), which has been reviewed by the Proposed Monitor;
- (hh) The benefit of the Directors' Charge will only be available to the extent that a liability is not covered by the D&O Insurance;
- (ii) The Applicant is unlikely to have sufficient funds available to satisfy any contractual indemnities to the directors and officers should the directors or officers need to call upon those indemnities;

Priority of Charges

- (jj) The proposed ranking of the Charges is as follows:
 - (i) First, the Administration Charge (up to a maximum of \$250,000);
 - (ii) Second, the Directors' Charge (up to a maximum of \$150,000).

Other Grounds

- (kk) the provisions of the CCAA, including sections 3(1), 10(1),(2), 11, 11.02(1), (3), 11.03, 11.51(1), (2), 11.52(1), (2), 11.7(1), and the inherent and equitable jurisdiction of this Honourable Court;
 - (ll) Sections 97 and 106 of the *Courts of Justice Act, RSO 1990, c. C.43*;
 - (mm) Rules 2.03, 3.02, 14.05(2) 16, and 38 of the *Rules of Civil Procedure, RRO 1990, Reg 194*; and
 - (nn) Such further and other grounds as counsel for the Applicant may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Scott Curtis, affirmed on April 8, 2024;
 - (b) the pre-filing report of Deloitte as proposed Monitor, dated April 8, 2024;
 - (c) the Consent of Deloitte to act as Monitor in these proceedings; and

(d) such further and other material as counsel may advise and this Honourable Court may permit.

April 8, 2024

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Lawyers for the Applicant

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