ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-24-717410-00CL** **DATE:** **April 9, 2024**

NO. ON LIST: **2**

TITLE OF PROCEEDING: **NUANCE PHARMA LTD. v. ANTIBE THERAPEUTICS INC.**

BEFORE JUSTICE: **Justice / Associate Justice**
JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
BENNETT JONES LLP : Lincoln Caylor Alex Payne Sidney Brejak Jesse Mighton	Nuance Pharma Ltd. (Applicant)	 caylorl@bennettjones.com paynea@bennettjones.com brejaks@bennettjones.com mightonj@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP: Ken Rosenberg Max Starnino Kartiga Thavaraj Evan Snyder Dillo Gohil (Articling Student)	Antibe Therapeutics Inc.	 ken.rosenberg@paliareroland.com max.starnino@paliareroland.com kartiga.thavaraj@paliareroland.com evan.snyder@paliareroland.com dillon.gohil@paliareroland.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Edward Sellers	For Antibe	esellers@blackswanadvisors.ca
Nigel Meakin Deloitte	Proposed Monitor	nmeakin@deloitte.ca
Evan Cobb	Counsel for Deloitte as Proposed Monitor	evan.cobb@nortonrosefulbright.com

ENDORSEMENT:

[1] This matter was initially to be before me as a scheduling appointment, sought by Nuance Pharma Ltd. ("Nuance"), to set an early date for its proposed motion. In its proposed motion, Nuance, which is a Hong-Kong incorporated biopharmaceutical company and a subsidiary of CBC Group, the largest healthcare-focused investment firm in Asia, seeks an order for the recognition and enforcement of an arbitral award it has obtained against Antibe Therapeutics Inc. ("Antibe"), a publicly traded Canadian biotechnology company, for the preservation of assets held by Antibe, and the appointment of a receiver over Antibe.

[2] The relevant background, briefly put, is that Nuance and Antibe entered into a license agreement dated February 9, 2021. Under the agreement, Nuance provide an upfront payment to Antibe in the amount of U.S. $20 million, in exchange for an exclusive license to develop and commercialize the drug Otenaproxesul (sometimes referred to hereinafter as the "Drug"), on which Antibe had been working for a number of years (since 2004).

[3] Otenaproxesul is described, at least by Antibe, as a non-steroidal anti-inflammatory ("NSAID") with potential to provide significant pain relief for various chronic and/or acute conditions, including osteoarthritis, without – or at least with a substantial reduction of - some of the side effects, including liver impacts and gastrointestinal issues, frequently associated with NSAID use.

[4] Antibe maintains that Otenaproxesul can become the oral non-opioid of choice for various conditions, thereby providing considerable societal benefit.

[5] Antibe has had both ups and downs, in terms of the development and trial results for Otenaproxesul. It ran into complications in the development and approval of the Drug in September of 2021, leading to Nuance rescinding the license agreement and demanding the immediate return of its U.S. $20 million investment.

[6] Antibe did not return the $20 million, leading to the arbitration, leading to the arbitral award dated February 27, 2024, that Nuance seeks to enforce.

[7] While it has not sought to overturn or appeal the arbitral award in court, Antibe maintains the position that certain aspects of the award were incorrect or inaccurate.

[8] It has continued, in parallel to the arbitration proceedings, its effort to develop and seek approval for the Drug, including recently commencing a "Phase 2" clinical trial in the United States, said to be a critical milestone in the drug development and approval process.

[9] Just recently, however, on March 28, 2024, the U.S. Food and Drug Administration ("FDA"), the relevant regulator, verbally advised Antibe that it was putting a hold on the Phase 2 trial, and that within 30 days the FDA would send a letter providing details of the FDA's decision to put the trial on hold.

[10] Antibe confirms that it is currently unable to pay the arbitral award in favour of Nuance, in part as a result of its other liabilities and contingent liabilities. It has no secured creditors, but has various trade debts and employee expenses, and debts to other biopharmaceutical companies who have also licensed the Drug. It says in its materials that it has about CAD $19.6 million in cash (noting that the arbitral award alone, in Canadian dollars, is approximately CAD $33 million).

[11] Antibe says, however, that it is at a critical juncture in the development of the Drug, that it expects to be able to address whatever concerns are raised in the FDA hold letter (to be forthcoming within 30 days of March 28), and that "the enforcement proceedings in respect of the Award risk destroying stakeholder value and the societal benefits of the Drug which has been some 20 years and $124 million in the making".

[12] In the result, on the eve of the appointment to schedule Nuance's motion, Antibe advised that it would be seeking protection under the *Companies' Creditors Arrangement Act* ("CCAA") and served materials to that end overnight.

[13] To their credit, counsel for Nuance and Antibe (and counsel for other relevant participants), had discussions leading up to the appointment before me, and advised me at the outset that they believed that it would likely be possible for them to work out an initial order on consent. In the circumstances, after hearing brief overarching submissions, I stood the matter down to see if the parties could agree on a form of order.

[14] The parties were able to do so, and then walked me through the agreed form of order (attached).

[15] I confirmed to the parties that I am prepared to issue the agreed order, and I do so.

[16] Apart from the parties' consent to the order, it is evident that Antibe qualifies as a "debtor company" under section 2 of the CCAA, inasmuch as claims against it exceed five million dollars, and that it is insolvent by reference to the definition set out in the *Bankruptcy and Insolvency Act* (to which definition of "insolvency" resort is often made for purposes of the CCAA), inasmuch as it is not paying its current obligations as they come due, and is facing a looming liquidity crisis.

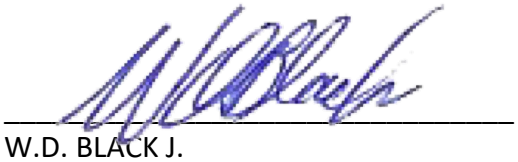
[17] In my view, Antibe's circumstances also justify ordering an initial 10-day stay to allow Antibe a little "breathing room" to continue to carry on business, and to strive to avoid the social and economic costs of liquidating its assets.

[18] In that regard, while I have granted the initial 10-day stay on the terms set out in the agreed order, in my view, it will be important for Antibe to demonstrate that the Drug is likely viable, and that there is a realistic basis to expect that it will be approved for use in the foreseeable future.

[19] It appears that Antibe has had some encouraging results for the Drug in some clinical trials, but also some setbacks, and it will be important to understand as soon as possible the FDA's current concerns, and whether Antibe is able to furnish an answer to allay those concerns and to allow the Drug to continue to progress through clinical trial milestones. The Drug as described clearly has enormous potential societal benefit, but it remains for Antibe to demonstrate that the Drug's performance will match that potential.

[20] Nuance takes the position that, given the findings in the arbitral award, and the arbitral panel's finding that the license agreement was rescinded based on fraudulent misrepresentations on the part of Antibe, its interest in the U.S. $20 million is proprietary. Subject to developments over the next 10 days, counsel for Nuance has advised that his client expects to be pressing that position (and presumably its competing claim to appoint a receiver), when this matter is next before the court.

[21] That 10-day comeback appointment is scheduled for a full day on April 18, 2024. I advised the parties that it appears that Osborne J. will hear the matter on that day, but that if there are procedural or other developments between now and then they may arrange to attend before me if helpful.



W.D. BLACK J.

DATE: April 9, 2024