

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)



THE HONOURABLE  
JUSTICE

MR  
McGowan )  
)  
)

WEDNESDAY, THE 3<sup>rd</sup>

DAY OF OCTOBER, 2018

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED OF

IMPOPHARMA INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant, Impopharma Inc. ("**Impopharma**"), for an order approving, *inter alia*, the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement (the "**APA**") between Impopharma and Pharmaserve (North West) Development Company Limited ("**Pharmaserve**") dated September 21, 2018 (filed, under seal, as Exhibit "A" to the affidavit of David Mayers sworn on September 25, 2018 (the "**Mayers Affidavit**")), and vesting in Impopharma Canada Limited (the assignee of Pharmaserve, as is permitted in the APA) (the "**Purchaser**"), Impopharma's right, title and interest in and to the assets described in the APA (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Mayers Affidavit, the Second Report to the Court of Richter Advisory Group Inc. (the "**Trustee**") dated September 28, 2018 (the "**Report**") and on hearing the submissions of the respective counsel for Impopharma, the Trustee, MidCap Financial Trust ("**MidCap**") and of Pharmaserve, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Santache sworn September 26, 2018 filed:

## CAPITALIZED TERMS

1. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the APA.

## SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record herein and the Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected, such service is hereby dispensed with.

## STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the stay of proceedings resulting from the filing by Impopharma of its *Notice of Intention to Make a Proposal* (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**") is extended until November 23, 2018.

## APPROVAL OF TRANSACTION & ASSIGNMENT OF ASSUMED CONTRACTS

4. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA is hereby authorized and approved, with such minor amendments as Impopharma and the Purchaser may deem necessary. Impopharma and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate by the Trustee to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of Impopharma's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including,

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Dow dated August 2, 2018, (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (iii) and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that upon delivery of the Trustee's Certificate, all of the rights and obligations of Impopharma under the agreements set out in **Schedule "D"** hereto (each an "**Assumed Contract**", and collectively, the "**Assumed Contracts**") shall thereafter be effectively assigned to the Purchaser pursuant to Article 2.2 of the APA and sections 66(1) and 84.1 of the BIA, provided, however, that the Purchaser shall have paid to the counterparties to the Assumed Contracts any existing monetary defaults in relation to any such Assumed Contracts which may be owing to said counterparties at the time of the filing of the Trustee's Certificate to effect such assignment.

7. **THIS COURT ORDERS** that, with respect to the Assigned Contracts that are real property leases (collectively the "**Real Property Leases**"), upon delivery of the Trustee's Certificate, thereafter the Purchaser shall be entitled and subject to all of the rights and obligations as tenant pursuant to the terms of the Real Property Leases and to the registrations thereof, if any, and may enter into and enjoy each premises contemplated by the Real Property Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Leases, without any interruption from the landlords under the Real Property Leases or any person whomsoever claiming through or under any of the landlords under the Real Property Leases.

8. **THIS COURT ORDERS** that the assignment to the Purchaser of the rights and obligations of Impopharma under the Assumed Contracts to the Purchaser in accordance with this Order is valid and binding upon all of the counterparties to the Assumed Contracts notwithstanding any restriction or prohibition contained in any such Assumed Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

9. **THIS COURT ORDERS** that each counterparty to the Assumed Contracts is prohibited from exercising any right or remedy under the Assumed Contracts by reason of Impopharma's insolvency, the commencement of these BIA proceedings, or any failure of Impopharma to perform a non-monetary obligation under the Assumed Contracts unless such non-monetary breach arises after the Assumed Contracts are assigned to the Purchaser.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

11. **THIS COURT ORDERS** that upon Closing of the Transaction and receipt of the Proceeds in accordance with the terms and conditions of the APA and this Order, the Trustee shall be authorized to effect a distribution of same, including to Midcap, on account of its secured claim against Impopharma, in accordance with the estimated Statement of Receipts and Disbursements (the "**Statement of Receipts and Disbursements**") attached as Confidential Appendix 3 to the Report, which Statement of Receipts and Disbursements is hereby approved by this Court.

12. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in Impopharma's records pertaining to Impopharma's past and current employees, including personal information of those employees to be engaged by the Purchaser. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Impopharma.

14. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Impopharma and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Impopharma;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Impopharma and shall not be void or voidable by creditors of Impopharma, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. **THIS COURT ORDERS** that Impopharma is authorized, following the completion of the Transaction and pursuant to the instructions of the Purchaser, to execute, deliver and file any document, including without limitation, any articles of amendment, required in order to effect a change of its corporate name, and this Court waives any third party requirement, required consent or solvency requirement pursuant to any Canadian federal or provincial legislation relating to same.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist Impopharma and the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Impopharma and the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Impopharma and the Trustee and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that Impopharma and the Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

#### **SEALING**

18. **THIS COURT ORDERS** that the following documents filed with the Court shall be kept confidential and under seal with the Court until the closing of the Transaction or further order of this Court: (i) the non-redacted copy of the APA (Exhibit "A" to the Mayers Affidavit and Confidential Appendix 2 to the Report), (ii) the LOI Summary (Confidential Appendix 1 to the Report); and (iii) the Trustee's Statement of Receipts and Disbursements (Confidential Appendix 3 to the Report).

#### **APPROVAL OF THE TRUSTEE'S REPORTS**

19. **THIS COURT ORDERS** that the First and Second Report of the Trustee dated July 31, 2018 and September 28, 2018, respectively, and the activities of the Trustee referred to therein are hereby approved.



A handwritten signature in black ink, appearing to be 'M. J. S.', is written over a horizontal line.

Schedule A - Trustee's Certificate

Estate/Court File No. 31-458512

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED OF

IMPOPHARMA INC.

TRUSTEE'S CERTIFICATE

RECITALS

A. On July 25, 2018, Impopharma Inc. ("**Impopharma**") filed a *Notice of Intention to Make a Proposal* pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Richter Advisory Group Inc. was appointed as Impopharma's proposal trustee (the "**Trustee**").

B. Pursuant to an Order of the Court dated October 3, 2018, the Court approved an Asset Purchase Agreement made as of September 21, 2018 (the "**APA**") between Impopharma and Pharmaserve (North West) Development Company Limited (the "**Pharmaserve**"), provided for the vesting in Pharmaserve or any assignee of Pharmaserve, as is permitted in the APA (the "**Purchaser**"), of Impopharma's right, title and interest in and to the Purchased Assets, and ordered the assignment of Impopharma's rights and obligations under the Assumed Contracts, which vesting and assignment are to be effective upon the delivery by the Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 9 of the APA have been satisfied or waived by Impopharma and/or the Purchaser (as applicable); (iii) the Transaction has been completed to the satisfaction of the Trustee; and the Purchaser has paid all cure costs, if any, relating to the Assumed Contracts.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

**THE TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and Impopharma has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APA;
2. The conditions to Closing as set out in section 9 of the APA have been satisfied or waived by Impopharma and/or the Purchaser, as applicable; and
3. The Trustee has been advised that the Transaction has been completed to the satisfaction of the Parties.
4. This Certificate was delivered by the Trustee at \_\_\_\_\_ on \_\_\_\_\_.

**RICHTER ADVISORY GROUP INC.,**  
in its capacity as Trustee of Impopharma Inc.,  
and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

## Schedule B - Claims

### **Schedule C - Permitted Encumbrances**

1. Encumbrances registered in favour of Goldcard Inc. in accordance with and pursuant to a Lease Agreement entered into between Goldcard Inc. and Impopharma Inc. for the Alliance HPLC Systems;

## Schedule D - Assumed Contracts

1. Lease Agreement for the Alliance HPLC Systems entered into with Goldcard Inc.;
2. Development Agreement entered into with Novocol Healthcare Inc.;
3. Master Development Agreement entered into with Pharmaserve Northwest Limited; and
4. Lease Agreement entered into with Villarboit Holdings Limited.

03-Oct-2018

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3 OF IMPOPHARMA INC.

Estate/Court File No.: 31-458512

3 Oct 18.

Approval + vesting order to go as per draft filed + signed. The sales process has been adequate. The transaction is fair + reasonable. All interested parties have been served. There is no objection. No entity affected by the assent of assumed  $\text{\$}$ 's objects + counsel tell me that discussions between the capman have disclosed no problems.

The transaction also appears to be beneficial to the debtors + stakeholders.

The sealing order say it is reasonable + the Sierra Club concerns have been met.

Attribution of the ~~Assets~~ <sup>Trustee</sup> are also being approved re: 1st + 2nd report as are ~~assets~~ <sup>statement of receipts</sup> of FSbs.

McEnt

ONTARIO  
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COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD

STIKEMAN ELLIOTT LLP  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

Danny Duy Vu  
Tel: (514) 397-6495  
Email: [ddvu@stikeman.com](mailto:ddvu@stikeman.com)

Sanja Sopic LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)

Lawyers for the Applicant

