

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

COMMERCIAL DIVISION

(Sitting as a court designated under the  
*Companies' Creditors Arrangement Act*)

NO: 500-11-022623-041

The Honourable Paul Chaput J.C.S., presiding

IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF :

**QBIOGÈNE INC.**

Petitioner

and

**RICHTER & ASSOCIÉS INC.**

Monitor

**ORDER**

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- [1] **WHEREAS** the Court has taken knowledge of the Petition to establish the claims procedure and the procedure applicable to the meeting of creditors and to approve certain restructuring measures, the affidavit of Steve Perrone sworn on April 15, 2004, the exhibits, and the submissions of counsel for Qbiogène Inc.;

**FOR THESE REASONS, THE COURT:**

- [2] **GRANTS** the present Motion;
- [3] **EXEMPTS** the Petitioner from the service of this Motion and of any notice or delay of presentation;

**FILING AND VALUATION OF CLAIMS**

**Definitions**

- [4] **ORDERS** that the following terms shall have the following meanings ascribed thereto:
- (a) "Business Day" means a day, other than a Saturday or a Sunday, on which chartered banks are generally open for business in Montreal, Quebec;

- (b) "Petitioner" means Qbiogene Inc.
- (c) "CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;
- (d) "Claim" means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind of the Petitioner owed to such Person and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to March 9, 2004, and which would have been a claim provable in bankruptcy had the Petitioner become bankrupt on March 9, 2004;
- (e) "Claims Bar Date" means 5:00 p.m. (Eastern Standard Time) on May 21, 2004, or such later date as may be ordered by this court;
- (f) "Creditor" means any Person having a Claim;
- (g) "Information Package" means a collection of documents which shall include a copy of the Instruction Sheet, a Proof of Claim, a Notice to Creditors, a copy of the order to be rendered, and such other materials as the Monitor may consider appropriate or desirable;
- (h) "Information Sheet" means the information sheet provided to Creditors as part of the Information Package, regarding completion of a Proof of Claim by a Creditor;
- (i) "Initial Order" means the Initial Order rendered on March 9, 2004 by the Honourable Paul Chaput J.S.C., as amended, restated or varied from time to time;
- (j) "Known Creditors" means:
  - i) those creditors of the Petitioner which, according to the books and records of the Petitioner, were owed monies by the Petitioner as of March 9, 2004, and which monies remain unpaid in whole or in part, and those creditors of the Petitioner listed in the Register of Personal and Movable Real Rights; and

- ii) any Person who commenced a legal proceeding in any court in respect to a cause of action which arose prior to March 9, 2004, notice of which was duly served on the Petitioner, and any Person listed in the docket of the Superior Court or Quebec Court, district of Montreal, as a plaintiff in a proceeding against the Petitioner;
- (k) "Monitor" means Richter & Associés Inc., in its capacity as the court-appointed monitor of the Petitioner;
- (l) "Notice of Disallowance" means the notice delivered by the Monitor to a Creditor with respect to a Claim in accordance with paragraph [12];
- (m) "Notice to Creditors" means the notice to Creditors of the bar date relating to the filing of claims, which shall be published in accordance with paragraph [6];
- (n) "Person" shall have the meaning attributed thereto in section 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (o) "Plan" means the plan(s) of compromise or arrangement to be filed by the Petitioner pursuant to the CCAA;
- (p) "Proof of Claim" means the form to be completed and filed by a Creditor setting forth its purported Claim, which shall be part of the Information Package;

**Monitor's role relating to the Claims process**

- [5] **ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, shall assist the Petitioner in connection with the administration of the claims procedure provided for herein, including the determination of Claims of Creditors, as requested by the Petitioner from time to time, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this order;

**Notice to Creditors**

- [6] **ORDERS** that:
- (a) the Monitor shall send a copy of the Information Package to each Known Creditor by ordinary mail as soon as practicable, but in no event later than by 11:59 p.m. (Eastern Standard Time) on April 21, 2004;
  - (b) the Monitor shall cause the Notice to Creditors to be published on two (2) separate days on or before May 8, 2004, in the national edition of The

Globe and Mail and The Gazette (in English) and La Presse (in French);  
and

- (c) The Monitor shall dispatch by ordinary mail, courier, facsimile transmission or by electronic mail, as soon as practicable following receipt of a request therefor, a copy of the Information Package to any Person claiming to be a Creditor and requesting such material;

**Filing of proofs of claim**

- [7] **ORDERS** that any Person asserting a Claim shall file a Proof of Claim with the Monitor on or before the Claims Bar Date;
- [8] **ORDERS** that subject to the next paragraph any Creditor that does not file a Proof of Claim as provided for in paragraph [7] hereof so that such Proof of Claim is received by the Monitor on or before the Claims Bar Date, or such later date as the Monitor and the Petitioner may agree in writing or this court may otherwise order:
  - (a) shall be and is hereby forever barred from making or enforcing any Claim against the Petitioner;
  - (b) shall not be entitled to any further notice; and
  - (c) shall not be entitled to participate as a Creditor in these proceedings;

**Form of proofs of claim**

- [9] **ORDERS** that the Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance of the manner in which Proofs of Claim are completed and executed and may, where the Monitor is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this order as to completion and execution of Proofs of Claim;
- [10] **ORDERS** that any Claim denominated in any currency other than Canadian dollars shall, for the purposes of this order, be converted to and shall constitute obligations in Canadian dollars, such calculation to be effected using the Bank of Canada noon spot rate on March 9, 2004;

**Determination of the claims**

- [11] **ORDERS** that the Monitor, in conjunction with the Petitioner, shall review each Proof of Claim received by the Claims Bar Date, and shall either accept, revise or reject the amount claimed for voting and/or distribution purposes under the Plan;

### **Notices of Disallowance**

- [12] **ORDERS** that if the Monitor, after consultation with the Petitioner, disputes the Claim set forth in a Proof of Claim, the Monitor may, in conjunction with the Petitioner, attempt to resolve the Claim with the Creditor, and/or send a Notice of Disallowance to the Creditor no later than 15 days prior to the first date approved by this court for the Meeting of Creditors;
- [13] **ORDERS** that if the Monitor does not deliver a Notice of Disallowance in accordance with paragraph [12] hereof, then subject to further order of this court, such Creditor's Proof of Claim shall be deemed to be accepted as final and binding for voting and distribution purposes under the Plan;

### **Appeals**

- [14] **ORDERS** that any Creditor who intends to dispute a Notice of Disallowance may appeal to this court within five Business Days of the receipt of the Notice of Disallowance by serving upon the Monitor, and filing with this court, a motion presentable on a date to be fixed by this court. If an appeal is not filed within such period then the disallowance of the Claim shall, subject to further order of this court, be deemed to be final and binding;

### **Service and notice**

- [15] **ORDERS** that the Monitor may deliver the Information Package, any letters, notices or other documents to Creditors or other interested Persons by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile transmission or electronic mail to such Persons at the address last shown in the books and records of the Petitioner, and that any such service or notice by courier, personal delivery, facsimile transmission or electronic mail shall be deemed to be received on the next Business Day following the date of forwarding thereof, or if sent by ordinary mail on the third Business Day after mailing to an address within Quebec, the fifth Business Day after mailing to an address outside Quebec but within Canada, and the tenth Business Day after mailing to an address outside Canada;
- [16] **ORDERS** that any notice or other communication (including without limitation, Proofs of Claim) to be given under this order by a Creditor to the Monitor shall be in writing in substantially the form, if any, provided for in this order and will be sufficiently given only if delivered by registered mail, courier, personal delivery, facsimile transmission or electronic mail addressed:

to the Monitor: RICHTER & ASSOCIÉS INC., acting in its capacity as court-appointed Monitor of Qbiogene Inc.  
C/O Mr. Benoit Gingues, CA  
2 Place Alexis Nihon, 22<sup>nd</sup> Floor  
Montréal QC H3Z 3C2  
Tel: (514) 934-3514  
Fax: (514) 934-3504  
Email: [bgingues@richter.ca](mailto:bgingues@richter.ca)

Any such notice or other communication delivered by a Creditor shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day;

- [17] **ORDERS** that if during any period during which notices or other communications are being given pursuant to this order a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further order of this court, be effective and notices and other communication given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or facsimile transmission in accordance with this order.

**Miscellaneous**

- [18] **ORDERS** that this order and the filing of any Claim shall be entirely without prejudice to the position of any Person as to the existence, validity or characterization of any particular Claim, including as to the Claim being affected or unaffected under the Plan when filed;
- [19] **ORDERS** that notwithstanding any other provision of this order, the solicitation of Proofs of Claim by the Monitor or the Petitioner, and the filing by any Creditor of any Proof of Claim, shall not in themselves grant any Person any standing or rights under the Plan;
- [20] **ORDERS** that nothing in this order shall constitute or be deemed to constitute an allocation or assignment of Claims into particular classes and the determination of classes of creditors for voting and distribution purposes shall be subject to the terms of the Plan or further order of this court;
- [21] **ORDERS** that in the event that the Plan is not approved by this court, the Claims Bar Date shall be of no effect in a subsequent proceeding or distribution with respect to any and all Claims made by Creditors;

## **MEETING OF CREDITORS**

- [22] **ORDERS** that the Meeting of Creditors to consider and vote upon the Plan be held in Montreal, for all Creditors together or for each Class of Creditor individually as may be provided for in the Plan, the whole at a date to be determined by the Monitor and approved by further order of this court (the "Meeting of Creditors");
- [23] **ORDERS** that the following procedure shall govern the Meeting of Creditors:
- (a) the Monitor will send to all the known Creditors a notice of Meeting of Creditors called to approve the Plan, accompanied by a copy of the Plan, a proxy, and a voting letter;
  - (b) the Meeting of Creditors shall be conducted by the Monitor and all Proofs of Claim shall be delivered in accordance with the provisions of this order;
  - (c) a representative of the Monitor shall preside as the chairperson of the Meeting of Creditors and shall decide all matters relating to the conduct of the Meeting of Creditors, from which such decision any creditor may appeal to the court within five (5) days;
  - (d) the only persons entitled to attend a Meeting of Creditors are those Persons, including the holders of proxies, entitled to vote at the Meeting of Creditors and their legal counsel and the officers, directors, auditors and legal counsel of the Petitioner; any other Person may be admitted on invitation of the chairperson of the Meeting of Creditors or with the unanimous consent of the Creditors at the Meeting of Creditors;
  - (e) each Creditor shall be entitled to attend and to vote in person or by proxy at the Meeting of Creditors if, prior to the Claims Bar Date, such Creditor files with the Monitor a Proof of Claim (together with a statement of account, an invoice or an affidavit in support of its Claim) acceptable to the Monitor;
  - (f) each Creditor not present or not represented by proxy at the appropriate meeting of its class of Creditors must cast its vote on the Plan by filing with the Monitor a duly completed voting letter form indicating his vote prior to the commencement of the Meeting of Creditors failing which he will not have the right to vote;
  - (g) each Creditor who is entitled to vote shall be entitled to a number of votes at the Meeting of Creditors equal to the dollar value of its claim as accepted by the Monitor or otherwise determined by the court;

**Role of the Monitor relating to Meetings of Creditors**

- [24] **ORDERS** that the Monitor, in addition to any power or obligation provided for by the CCAA, shall and is empowered to:
- (a) send, at least ten (10) days prior to the Meeting of Creditors, by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic mail, to all of the known Creditors of the Petitioner, a copy of the Plan to be submitted to the Creditors, together with a notice of convocation, a proxy, and a voting letter;
  - (b) cause to be published, at least ten (10) days prior to the holding of the Meeting of Creditors, a notice to Creditors in the national edition of The Globe and Mail and The Gazette (in English) and La Presse (in French) concerning the Meeting of Creditors;
  - (c) preside over the Meeting of Creditors and decide any question or dispute arising at the meeting, from which such decision any Creditor may appeal to the court within five (5) days;
  - (d) subject to the Claims Bar Date, allow each Creditor having a Claim to attend and to vote in person or by proxy at the Meeting of Creditors if, such Creditor files its Proof of Claim with the Monitor;
  - (e) hold and record the vote of the Creditors at the Meeting of Creditors;
  - (f) file and present to the court any proceeding, petition, or any other demand, required or appropriate, or that it may feel to be appropriate or required with respect to:
    - i) the affairs of the Petitioner;
    - ii) the Plan;
    - iii) the determination of any right of the Petitioner or any of their Creditors, co-contractants or shareholders;
    - iv) any advice or instructions it may require or to seek the help of this court; or
    - v) any other matter it feels is required or appropriate;
  - (g) hire and retain, with the consent of the Petitioner, the services of any professional required or desired, including, without limiting the generality of the foregoing, any accountant, lawyer or notary, etc.;



- (h) delegate, if required or necessary, to any person duly qualified in the sole opinion of the Monitor, the powers enumerated herein or any thereof provided the Monitor remains liable as set forth in any Order;
- (i) obtain from the Petitioner the information which it shall judge useful regarding the evolution of its financial situation and the progress of its restructuring plan;
- (j) make any payments provided by the Plan;
- (k) execute any deed, contract or agreement or do anything necessary or required in order to give full effect to the Plan;
- (l) assist and help the Petitioner in its discussions with any of their Creditors, shareholders or any other parties;
- (m) assist the Petitioner in negotiating and settling Creditors' Claims;
- (n) file or oppose any Claim or proceeding filed with respect to any of the assets of Petitioner, the whole after consulting with the Petitioner;
- (o) certify as a true copy, any copy of the Order to be rendered herein and any modification, renewal of same or any other Order;
- (p) send notices of stay of proceedings, as if it were a trustee in bankruptcy, with respect to any proceedings or claim whether judicial, administrative or otherwise;
- (q) do anything or enter into any agreement whatsoever with a view to protecting the Petitioner, its assets, its creditors, or to give effect to the Plan; and
- (r) exercise any and all powers of a trustee acting pursuant to a notice of intention or a proposal under the Bankruptcy and Insolvency Act with a view to helping and assisting the Petitioner in the filing and implementation of the Plan;

#### **KEY EMPLOYEE RETENTION PROGRAMME**

[25] **DECLARES** that the Petitioner is authorized to enter into the agreements with its Chief Financial Officer and Chief Operating Officer attached to the present motion as Exhibit R-2 *en liasse*;

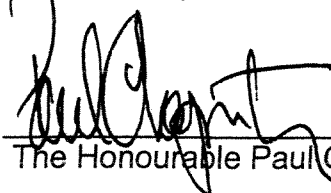
**GENERAL**

- [26] **RESERVES** the right of the Petitioner and the Monitor to file any motion in order to modify the procedure relating to the filing and valuation of claims;
- [27] **RESERVES** the right of the Petitioner and the Monitor to file any motion in order to establish the date of the meeting of creditors;
- [28] **RESERVES** the right of the Petitioner and the Monitor to file any motion in order to modify the procedure relating to the meeting or meetings of creditors;
- [29] **RESERVES** the right of the Petitioner and the Monitor to file any motion in order to expand, modify or clarify the powers and obligations of the Monitor;
- [30] **RENDERS** any and all additional measures that may be appropriate in the circumstances;
- [31] **ORDERS** the provisional execution of the order notwithstanding appeal;
- [32] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA), the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province, and any court or any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America and of any other nation or state, to act in aid of and to be complementary to this court in carrying out the terms of the order;
- [33] **THE WHOLE WITHOUT COSTS**, unless contested.

**COPIE CONFORME**

  
Greffier adjoint

Montreal, April 15, 2004.

  
The Honourable Paul Chaput J.C.S.