

IN THE MATTER OF THE BANKRUPTCY OF  
IMPOPHARMA INC.

of the City of Concord in the Province of Ontario

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS  
ON PRELIMINARY ADMINISTRATION**

**I BACKGROUND**

Impopharma Inc. ("**Impopharma**" or the "**Company**") was a research and development pharmaceutical company specializing in generic pulmonary and nasally delivered drug products.

Impopharma was formed under the Ontario Business Corporations Act in 1996. The Company operated from leased premises located at 255 Spinnaker Way, Concord, Ontario in a 15,000 square foot facility that included a laboratory, a small pilot manufacturing facility, document storage, sample storage and office spaces.

Over the years, Impopharma had equipped itself with highly specialized equipment, key scientists as well as expertise in end-to-end product development that included formulation, analysis, quality control, documentation, facility and metrology. Impopharma's product offerings included solution and suspension sprays, pressurized metered-dose inhalers and dry powder inhalers. The Company also provided topical products that included creams, gels and solutions.

Impopharma employed 29 full-time employees, 1 part-time employee, as well as 1 individual under a consulting contract. None of the employees were unionized and the Company did not sponsor any pension plan for any of its employees.

The Company had experienced significant net operating losses since inception. These losses were primarily funded by equity injections from the Company's shareholders as well as certain loans extended to the Company by the Secured Lender (as defined herein).

MidCap Funding VIII Trust (the "**Secured Lender**") was the only secured lender of the Company and MidCap Financial Trust ("**MidCap**") was its administrative agent.

On July 12, 2018, MidCap issued to the Company a notice of default (the "**Notice of Default**"). The Notice of Default was accompanied by a Notice of Intention to Enforce Security pursuant to Section 244(1) of the BIA.

On July 25, 2018, Impopharma and MidCap agreed to the terms of a forbearance agreement (the "**Forbearance Agreement**"), pursuant to which MidCap agreed, subject to certain terms and conditions, to forbear from enforcing on its security until September 30, 2018, to provide the Company with an opportunity to, among other things:

- (a) file a Notice of Intention to Make a Proposal ("**NOI**");
- (b) implement a sales process to identify one or more parties interested in purchasing Impopharma's business or assets; and

- (c) implement further cost reduction initiatives to reduce the Company's cash requirements during the NOI period.

Furthermore, in accordance with the terms and conditions of the Forbearance Agreement, Impopharma agreed to (i) make a payment to MidCap on July 25, 2018 in the amount of \$2.28 million and (ii) pay MidCap any amount received related to the Scientific Research and Experimental Development tax incentive claim (the "**SR&ED Claim**") for the application against the outstanding indebtedness (the "**Interim MidCap Distributions**").

As a result of the Company's continuing net operating losses, declining liquidity position, and in accordance the Forbearance Agreement, on July 25, 2018, Impopharma filed an NOI, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**"), and Richter Advisory Group Inc. ("**Richter**") was named as trustee (the "**Proposal Trustee**") under the NOI.

On August 2, 2018, Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an order that, among other things, approved a sale and investment solicitation process ("**SISP**") , and extended the stay of proceedings and the time for the Company to file a proposal to September 30, 2018.

The SISP, which provided a means for testing the market and gauging interest in the Company and/or its assets, resulted in an asset purchase agreement ("**APA**") being entered into on September 21, 2018 between Impopharma and Pharmaserve (North West) Development Company Limited ("**Pharmaserve**" or the "**Purchaser**") for substantially all of the Company's assets (the "**Transaction**"). The Transaction realized gross proceeds of \$1.9 million (the "**Transaction Proceeds**"). The Interim MidCap Distributions along with the Transaction Proceeds provided sufficient funds to repay the Secured Lender in full with respect to its secured claims against the Company. As noted in Section V, there were no known secured creditors as at the date of the bankruptcy.

On October 3, 2018 the Court granted an order approving, among other things, the Transaction and the Company's request to extend the stay of proceedings to November 23, 2018 to permit a transition period between the Company and Purchaser. Additional time was required for the transition period and the stay of proceedings was further extended and granted by the Court to January 7, 2019.

During the NOI proceedings, the Proposal Trustee filed two reports with the Court, which among other things, provided the Court with background information on the Company, the Company's cash-flow, the SISP process and the results thereof, the Transaction and the Proposal Trustee's activities and conduct. Copies of these reports and the orders granted by the Court during the NOI proceedings can be obtained from the Proposal Trustee's website at <https://www.richter.ca/insolvencycase/Impopharma-Inc/>.

As a proposal must give creditors more than they would receive in a bankruptcy, following the closing of the Transaction and the completion of the transition period, Impopharma had no material assets with which to satisfy its obligations or present a viable proposal to its creditors. As Impopharma failed to present a viable proposal to its creditors within the time period required by the Court, pursuant to section 50.4(8) of the BIA, Impopharma was deemed to have made an assignment in bankruptcy on January 8, 2019. Richter was appointed to act as trustee in bankruptcy of the Company (the "**Trustee**").

On January 15, 2019, all known creditors of Impopharma were provided with notice of the first meeting of creditors and a link to the Trustee's website to access a list of creditors, a proof of claim form and a form of proxy. On January 17, 2019, notice of the bankruptcy and the first meeting of creditors was published in the Globe and Mail.

The activities of the Trustee since its appointment have primarily consisted of statutory work in accordance with the provisions of the BIA.

## **II CAUSES OF BANKRUPTCY**

As noted previously in this report, Impopharma had experienced significant net losses and by June 2018 the Company had an accumulated retained earnings deficit of approximately \$32.4 million. The losses sustained were the result of several factors, including project delays and an increasing competitive landscape.

Furthermore, the Trustee understands that based on management's forecast, the Company would have exhausted its cash reserves in the near term if it had continued as a going concern and did not raise additional capital. The Company, with the assistance of an external business development consultant, attempted to raise capital with a number of strategic and financial parties; however, despite the Company's efforts, the Company was unable to secure any commitments or funds.

As noted in section I, on July 25, 2015, Impopharma elected to file an NOI and restructure its business pursuant to the provisions of the BIA. On January 8, 2019 Impopharma was deemed to have made an assignment in bankruptcy pursuant to subsection 50.4(8) of the BIA as a consequence of not filing a proposal within the required time period.

## **III FINANCIAL POSITION/ASSETS**

As detailed in the Statement of Affairs, the Company's assets as at the date of bankruptcy was approximately \$409,942 in cash and cash equivalents held in the Company's bank as well as approximately \$150,000 in SR&ED receivable. The timing of the receipt related to the SR&ED receivable is currently unknown.

A claims process has been initiated by the Trustee and it is anticipated that there will be funds available for distribution to the Company's proven creditors.

## **IV COURT-ORDERED CHARGES**

On August 2, 2018, the Court granted an order approving a charge (the "**Administration Charge**") in the amount of \$100,000 as security for the professional fees and disbursements of the Proposal Trustee and its counsel as well as the Company's legal counsel (collectively the "**Insolvency Professionals**") incurred as part of the Company's NOI proceedings. The Administration Charge formed a first charge over all of the Company's assets.

The Trustee is in the process of reviewing and determining what amounts, if any, are owed to the Insolvency Professionals pursuant to the Administration Charge.

**V SECURED CREDITORS**

The Company's Statement of Affairs indicates that there were no known secured creditors as at the date of bankruptcy.

**VI SECURITY FOR UNPAID WAGES – S.81.3 CLAIMS**

The Trustee is not aware of any potential claims pursuant to section 81.3 of the BIA. Based on the Company's books and records, all amounts owing in respect of wages and/or vacation pay to the Company's former employees were paid by Impopharma on or prior to January 8, 2019.

The Trustee will, however, comply with the requirements of the *Wage Earner Protection Program Act*, where applicable.

**VII PREFERRED CREDITORS**

The Company's Statement of Affairs indicates that there are no known preferred creditors as at the date of the bankruptcy.

**VIII UNSECURED CREDITORS**

The Company's Statement of Affairs indicates that there are approximately 57 unsecured creditors with claims totalling approximately \$862,000.

**IX CLAIMS FILED**

As at 8:00 a.m. on the date of this report, the Trustee has recorded Proof of Claims filed, as follows:

	<b>Claims Filed (#)</b>	<b>Amount (\$)</b>	<b>Proxies in Favour of Trustee (#)</b>	<b>Amount (\$)</b>
Secured	Nil	Nil	Nil	Nil
Preferred	Nil	Nil	Nil	Nil
Unsecured	7	169,361.76	3	3,139.29
<b>TOTAL</b>	<b>24</b>	<b>\$169,361.76</b>	<b>4</b>	<b>\$3,139.29</b>

**X PREFERENCE PAYMENTS AND TRANSFERS UNDER VALUE**

The Trustee has not performed a review of the Company's books and records, with respect to potential fraudulent preferences, settlements or transfers at undervalue, as defined in the BIA. It is the intention of the Trustee to discuss the scope of its review with the inspectors.

**XI TRUSTEE'S FEES**

In consideration for consenting to act in these proceedings, Impopharma has provided a deposit to the Trustee in the amount of \$34,215 (the "**Deposit**") to guarantee payment of the Trustee's fees and disbursements including the fees and disbursements of its legal counsel, for statutory work in accordance with the provisions of the BIA,

**XII OTHER**

Further information relating to the Company's bankruptcy or NOI proceedings may be obtained from Richter's website at <https://www.richter.ca/insolvencycase/Impopharma-Inc/>

Dated at Toronto, Ontario, this 29<sup>th</sup> day of January, 2019.

**RICHTER ADVISORY GROUP INC.**

in its capacity as Trustee of the estate of  
Impopharma Inc.,  
and not in its personal capacity



Paul van Eyk, CA·CIRP, CA·IFA, LIT  
Senior Vice President



Duncan Lau, CPA, CIRP  
Vice President