

**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.**

**MOTION RECORD  
(Returnable on November 23, 2018)**

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Lawyers for the Applicant

TO: THE ATTACHED SERVICE LIST

ONTARIO  
SUPERIOR COURT OF JUSTICE  
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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.

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(AS OF NOVEMBER 20, 2018)

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**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.**

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1	Notice of Motion
2	Affidavit of Theron E. Odlaug sworn November 20, 2018

TAB 1



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.

NOTICE OF MOTION

(Returnable on November 23, 2018)

(Re: Motion for the Issuance of an Order Extending the Stay Period)

Impopharma Inc. ("**Impopharma**" or the "**Applicant**"), will make a motion to a judge presiding over the Commercial List on November 23, 2018 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order, substantially in the form attached hereto as Schedule "A", pursuant to, *inter alia*, section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"):
  - (i) abridging the time for delivery of this Motion, if necessary; and
  - (ii) extending the stay of proceedings resulting from the filing by Impopharma Inc. ("**Impopharma**") of a *Notice of Intention to Make a Proposal* ("**NOI**") under section 50.4(1) of the *BIA*, from November 23, 2018 to January 7, 2019;
- (b) such other relief as may seem just to this Honourable Court.

**THE GROUNDS FOR THIS MOTION ARE:**

- (a) On July 25, 2018, Impopharma filed an NOI, and appointed Richter Advisory Group Inc. as its proposal trustee (the "**Trustee**");
- (b) On August 2, 2018, the Honourable Justice Dow of the Ontario Superior Court of Justice (Commercial List) rendered an order approving, *inter alia*, a sale, refinancing and investment solicitation process (the "**SISP**") in respect of Impopharma's assets, as well as

an extension for the stay of proceedings resulting from Impopharma's filing of the abovementioned NOI until September 30, 2018 (the "**Stay Period**");

- (c) Following the issuance of the above-mentioned order, Impopharma, with the assistance of the Trustee, initiated the SISP and invited potentially interested parties to submit their offers by no later than August 30, 2018 (the "**Bid Deadline**"), which Bid Deadline was thereafter extended, with the consent of Impopharma and the Trustee, until August 31, 2018;
- (d) On September 20, 2018, this Court rendered an order Extending the Stay Period until October 9, 2018, in order to allow Impopharma to complete the SISP.
- (e) On September 21, 2018, Impopharma executed an asset purchase agreement (the "**Pharmaserve APA**") with Pharmaserve (North West) Development Company Limited ("**Pharmaserve**"), providing for the sale and transfer of all or substantially of its assets.
- (f) On October 3, 2018, the Court rendered an order approving the transaction contemplated in the Pharmaserve APA (the "**Pharmaserve Transaction**") and extended the Stay Period until November 23, 2018.
- (g) Today, although substantially all of Impopharma's assets have been sold and transferred to Pharmaserve, Impopharma still owns certain assets which it may be able to monetize.
- (h) In fact, Impopharma was recently approached by certain parties, including Pharmaserve, potentially interested in acquiring its tax attributes, which would require Impopharma to remain in existence for such purpose;
- (i) Since the Stay Period is currently scheduled to expire on November 23, 2018, Impopharma hereby requests an extension of same, until January 7, 2018, so as to avoid a deemed bankruptcy;
- (j) Impopharma has acted, and is acting in good faith and with due diligence, and, depending on its ability to monetize its remaining assets, Impopharma may potentially be able to make a viable proposal to its creditors, if the extension being applied for is granted;
- (k) Finally, no creditor will be materially prejudiced if the extension being applied for is granted;
- (l) The Trustee supports the extension of the Stay Period, as requested herein.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) the Affidavit of Theron E. Odlaug, executive chairman of Impopharma, sworn November 20, 2018; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

November 20, 2018

*Stikeman Elliott LLP*

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Counsels to the Applicant

**SCHEDULE A  
FORM OF EXTENSION ORDER**

*(See attached)*

Estate/Court File No. 31-458512

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) FRIDAY, THE 23<sup>RD</sup>  
JUSTICE ) DAY OF NOVEMBER, 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.

ORDER

**THIS MOTION** made by Impopharma Inc. ("**Impopharma**"), pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Danny Duy Vu sworn September 17, 2018 and on hearing the submissions of counsel presents for the hearing of this motion, and no one else appearing although duly served as appears from the affidavit of service of Amanda Santache sworn November 20, 2018:

**SERVICE**

**THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**STAY OF PROCEEDINGS**

**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 the BIA is extended from until January 7, 2018.

**THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**ONTARIO  
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Proceeding commenced at Toronto

**NOTICE OF MOTION**

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Lawyers for the Applicant

TAB 2





Estate/Court File No. 31-458512

ONTARIO  
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IMPOPHARMA INC.

AFFIDAVIT OF THERON E. ODLAUG  
(SWORN NOVEMBER 20, 2018)

I, THERON E. ODLAUG, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the executive chairman of Impopharma Inc. ("**Impopharma**"), and as such, I am familiar with the business and affairs of Impopharma.
2. Except as otherwise indicated herein, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or my opinion based upon my experience, knowledge and information concerning the operations of Impopharma and the industry in which it operates its business. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do believe it to be true.



## I. BACKGROUND

3. Impopharma was formed under the Ontario *Business Corporations Act*, and has its principle place of business located at 255 Spinnaker Way, Concord, Ontario, Canada.

4. On July 25, 2018, Impopharma filed a *Notice of Intention to Make a Proposal* (the "NOI") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "BIA"), and appointed Richter Advisory Group Inc. ("Richter") as its proposal trustee (the "Trustee").

5. On August 2, 2018, the Ontario Superior Court of Justice (Commercial List) (the "Court") rendered an order approving, *inter alia*, (a) a sale and investment solicitation process (the "SISP") and its related milestones, (b) the various priority charges sought by Impopharma (i.e. Administration Charge, D&O Charge and KERF Charge, collectively, the "Charges") and (c) an extension of the stay of proceedings resulting from Impopharma's filing of the NOI until September 30, 2018 (the "Stay Period"), which Stay Period was subsequently extended until October 9, 2018 in order to allow the completion of the SISP.

6. On September 21, 2018, Impopharma executed an asset purchase agreement (the "Pharmaserve APA") with Pharmaserve (North West) Development Company Limited ("Pharmaserve"), providing for the sale and transfer of all or substantially of its assets.

7. On October 3, 2018, the Court rendered an order approving the transaction contemplated in the Pharmaserve APA (the "Pharmaserve Transaction") and extended the Stay Period until November 23, 2018.

8. Impopharma hereby seeks the issuance of an order extending the Stay Period until January 7, 2018, in order to complete certain post-closing matters and, more particularly, attempt to sell its remaining assets, including its tax losses, which, ultimately, would allow to increase creditor recovery.



## 2. DESCRIPTION OF IMPOPHARMA'S BUSINESS AND AFFAIRS

### 2.1 Overview


9. Founded in 1996 by Hanna Piskorz and Harold Wulffhart, Impopharma was a company based in Concord, Ontario, which operated as a research and development pharmaceutical company that developed nasal and pulmonary products.

10. Over the past 20 years, Impopharma had grown its operations which were initially conducted from a 150 square feet single office, to now being conducted in a 15,000 square feet facility in Concord, Ontario, comprised of a laboratory, a small pilot manufacturing, document storage, sample storage and office space that staffs all of its employees.

11. Over the years, Impopharma acted as an extension of its clients' laboratory, including Top 20 global Rx pharma companies, and had equipped itself with highly specialized equipment, key scientists as well as expertise in many product development strategies in line with current regulatory expectations.

12. As part of its product offering, Impopharma offered dry powder inhalers, metered nasal sprays, metered sublingual sprays, injectable products, ophthalmic products, and oral products. It also provides topical products that include creams, gels, solutions, and suspensions, as well as ophthalmic products.

13. In addition to such products, Impopharma also offered various services that included testing of branded products; formulation development of generic and innovative products; product development; method development and validation; stability studies; characterization studies; in-vitro bioequivalence studies; production process development and scale-up manufacturing; production coordination of stability/clinical batches; clinical trial management support; technology transfer; regulatory support for FDA, TPD, EMEA, and MCA submissions; and delivery device design and development, including blinding devices.



22 Impopharma's Financial Situation

14. As at July 23, 2018, Impopharma's total indebtedness to its creditors amounted to an aggregate sum of approximately \$4.009 million, of which approximately US\$1,950,000 (approximately CA\$2,521,000) was owed to MidCap Financial Trust ("MidCap"), Impopharma's only secured creditor.

15. In light of its financial situation, Impopharma believed that the conduct of the SISP constituted, in the circumstances, the best alternative for the sale of its assets, and the maximization of its creditors' recovery, as it would allow to test the market, gauge interest in Impopharma and/or its assets and determine whether a transaction was possible that would be advantageous to Impopharma and its stakeholders in comparison to a bankruptcy liquidation or sale by a receiver.

3. **THE SISP**

16. On August 2, 2018, the Ontario Superior Court of Justice (Commercial List) authorized the SISP, as well as various milestones related thereto, which were the result of discussions between Impopharma, its advisors, the Trustee and MidCap:

17. As part of the SISP, all prospective purchasers interested in submitting an offer in respect of all or part of Impopharma's assets were invited to do so by no later than August 30, 2018, which deadline was thereafter extended until August 31, 2018 (the "Bid Deadline"), at the request of several prospective purchasers, and with the consent of Impopharma and the Trustee.

18. By the Bid Deadline, seven (7) offers (each an "LOI" and collectively, the "LOIs") had been submitted to Impopharma.

19. After review and consideration, Impopharma, together with the Trustee, decided to pursue their discussions with three (3) of the prospective purchasers which had submitted an LOI and which had proposed the highest purchase price for Impopharma's assets.



20. Each of these three (3) of the prospective purchasers mentioned above were re-invited to submit binding offers by September 14, 2018 in the form of a marked-up executed asset purchase agreement prepared by Impopharma (an "APA").

21. On September 14, 2018, Impopharma received an executed APA from only two (2) of the above-mentioned prospective purchasers, one of which ultimately withdrew its offer, and the second one being Pharmaserve, a company specialized in developing and manufacturing respiratory medicines and which sits within the pharmaceutical division of the O'Brien Group (OBG), a privately owned company based in Liverpool, England.

22. On or about September 18, 2018, Impopharma and the Trustee, after having informed MidCap of the results of the SISP and having obtained its consent to move forward with a sale transaction involving Pharmaserve, advised the latter that it had been designated as the successful bidder in the context of the SISP.

23. On September 21, 2018, after discussions and negotiations, Impopharma and Pharmaserve executed a binding APA (i.e. the Pharmaserve APA).

**4. THE PHARMASERVE APA**

24. Pursuant to the Pharmaserve APA, Pharmaserve agreed to purchase and acquire, on an "as is where is" basis, in consideration of the purchase price payable thereunder (the "Purchase Price"), substantially all of Impopharm's property, assets and undertakings.

25. As part of the Pharmaserve APA, Impopharma agreed to remain in existence following the closing of the Pharmaserve Transaction for a limited period of time (the "Transition Period") so as to be able to provide to Pharmaserve, at its sole cost, certain transition services (collectively, the "Transition Services") aimed at ensuring that transfer of all purchased assets (the "Purchased Assets") and the assignment of all contracts which Pharmaserve elected to assume (the "Assumed Contracts"). Impopharma also agreed to extend, from time to time, and up until January 25, 2019, at the latest, the Transition Period and seek an equivalent extension of the Stay Period in order to remain in existence and avoid a deemed bankruptcy, to the extent deemed necessary by Pharmaserve.



- 26. On October 3, 2018, the Court rendered an order (the "Approval and Vesting Order") approving the Pharmaserve APA, and extending the Stay Period until November 23, 2018.
- 27. In the week following the issuance of the Approval and Vesting Order, the Pharmaserve Transaction closed, and Midcap was reimbursed in full.

**5. THE EXTENSION OF THE STAY PERIOD**

- 28. Today, although substantially all of Impopharma's assets have been sold and transferred to Pharmaserve, Impopharma still owns certain assets which it may be able to monetize.
- 29. In fact, Impopharma was recently approached by certain parties, including Pharmaserve, potentially interested in acquiring its tax losses, which would require Impopharma to remain in existence for such purpose.
- 30. Impopharma submits that no creditor will be materially prejudiced as a result of the extension of the Stay Period, particularly in light of the fact that it does not expect to conduct any operations or incur any further debts past that date.
- 31. Rather, Impopharma submits that its creditors could benefit from the extension of the Stay Period sought, as it will allow it the opportunity to monetize its remaining assets, and, ultimately, increase its creditors' recovery.
- 32. Throughout this entire process, Impopharma has acted in good faith and with due diligence.
- 33. Impopharma understands that the Trustee is supportive of the proposed extension of the Stay Period.

**6. CONCLUSIONS**

- 34. This Affidavit is sworn in support of Impopharma's Motion for the Issuance of Order Extending the Stay Period, and for no other or improper purpose.

*JES*



SWORN before me in the City of \_\_\_\_\_ on this 20<sup>th</sup> day of November, 2018.

*[Handwritten Signature]*  
THERON E. ODLAUG

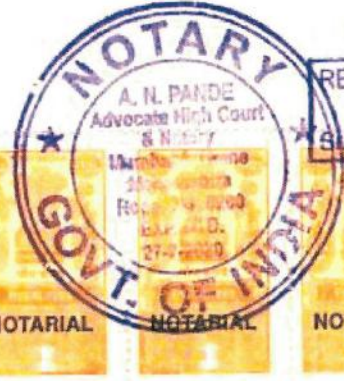
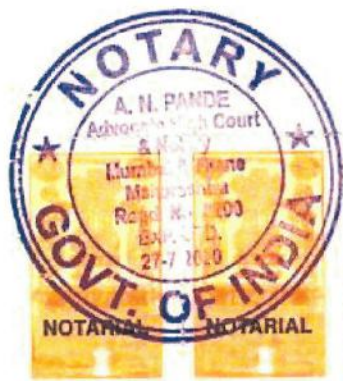
Commissioner for Taking Affidavit

Passport No. 48889356  
Issued on 30/01/2012  
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BEFORE ME

*[Handwritten Signature]*  
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NOTARY, MUMBAI & THANE  
MAHARASHTRA  
GOVT. OF INDIA

20 NOV 2018



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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.

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**(SWORN ON NOVEMBER 20, 2018)**

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