

CANADA / JUDGMENT

Angiotech Pharmaceuticals Ltd. (Re)

2011 BCSC 115

COURT

Supreme Court of British Columbia

DECIDED

28 January 2011

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2011 BCSC 115 Angiotech Pharmaceuticals Ltd. (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Angiotech Pharmaceuticals Ltd. (Re), 2011 BCSC 115 Date: 20110128 Docket: S110587 Registry: Vancouver In the Matter of the Companies' Creditors Arrangement Act, R.S.C., 1985,

- c. C-36, as amended And In the Matter of a Plan of Compromise or Arrangement of Angiotech Pharmaceuticals, Inc. and the other Petitioners Listed on Schedule "A" Petitioners Before: The Honourable Mr. Justice Walker Oral Reasons for Judgment In Chambers Counsel for Angiotech Pharmaceuticals J. Dacks M. Wasserman R. Morse Counsel for Alvarez & Marsal Canada Inc. Counsel for Consenting Noteholders J. Grieve R. Chadwick L. Willis Counsel for Wells Fargo B. Kaplan P. Rubin Place and Date of Hearing: Vancouver, B.C. January 28, 2011 Place and Date of Judgment: Vancouver, B.C. January 28, 2011
- [1] I am satisfied that the initial CCAA order should be granted. I am also satisfied that the order will permit the petitioners a reasonable time to reorganize their affairs in order to allow them to operate as going concerns.
- [2] The plan contemplated by the petitioners is aggressive in terms of time frame. The petitioners are to be complimented on their efforts to seek the Court's assistance in a very timely way, for taking an expedited approach in the face of failed efforts to avoid invoking protection under the CCAA regime.
- [3] The proposed timetable appears to reflect the petitioners' efforts to provide protection to their creditors, to maintain their employment contracts with their employees, and to continue to provide their valuable medical and pharmaceutical products to the global public.
- [4] I am satisfied that I have the jurisdiction to make the order, and I will grant the initial CCAA order.
- [5] I have been asked by counsel to speak to the issue of the "centre of main interest" because I am told that an application is to be made to the U.S. District Court, in Delaware, which will be filed this Sunday, January 30, 2011, and brought on Monday, January 31, 2011.

- [6] The petitioners' intention in that regard is reflected in the evidence. It is well described at para. 65 of their written submissions: Although the Petitioners intend that this Court be the main forum for overseeing their financial and operational restructuring, the Petitioners also intend to file petitions under Chapter 15 of the United States Bankruptcy Code seeking recognition of this proceeding as a "Foreign Main Proceeding". The Petitioners would file such petitions on the basis that British Columbia is their "centre of main interest" ("COMI"). The Petitioners intend that A&M, as proposed Monitor, would be the foreign representative in the Chapter 15 proceedings[.]
- [7] The factors considered by the courts in Canada that are relevant to the centre of main interest issue are:
- (a) the location where corporate decisions are made;
 - (b) the location of employee administrations, including human resource functions;
 - (c) the location of the company's marketing and communication functions;
 - (d) whether the enterprise is managed on a consolidated basis;
 - (e) the extent of integration of an enterprise's international operations;
 - (f) the centre of an enterprise's corporate, banking, strategic and management functions;
 - (g) the existence of shared management within entities and in an organization;
 - (h) the location where cash management and accounting functions are overseen;
 - (i) the location where pricing decisions and new business development initiatives are created; and
 - (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable. See *Re Nortel Networks Corp.*, 50 C.B.R. (5th) 77, (2009) O.J. No. 154 (S.C.J.); and *Re Fraser Papers Inc.*, 56 C.B.R. (5th) 194, (2009) O.J. No. 2648 (S.C.J.).
- [8] The petitioners submit that the centre of main interest is British Columbia for a number of reasons. These are set out in their written submissions and in the affidavit of Mr. Bailey, the chief financial officer, sworn today.
- [9] At para. 66 of their written submissions, the petitioners state: The Petitioners are part of a highly integrated international enterprise that is directed from Angiotech's head office in Vancouver, British Columbia. British Columbia is therefore the Petitioners' COMI [centre of main interest].

- [10] Mr. Bailey's affidavit deposes to the following at para. 234: As noted previously, the Petitioners are part of an integrated business enterprise with primary operations in Canada and the United States. The Petitioners' COMI is British Columbia notwithstanding their substantial operations in the United States:
- (a) all of the Petitioners have assets in Canada and each of the companies comprising Angiotech U.S. has a bank account at the Royal Bank of Canada in Vancouver containing \$1,000 on deposit;
 - (b) the operations of the Petitioners are directed from Angiotech's head office in Canada;
 - (c) all of the Petitioners report to Angiotech;
 - (d) corporate governance for the Petitioners is directed from Canada;
 - (e) strategic and key operating decisions and key policy decisions for the Petitioners are made by Angiotech staff located in Vancouver;
 - (f) the Petitioners' tax, treasury and cash management functions are managed from Vancouver and local plant finance staff report to senior finance management in Vancouver;
 - (g) the Petitioners' human resources functions are administered from Vancouver and all local human resources staff report into Vancouver;
 - (h) primary research and development functions including new product conceptions and development, regulatory and clinical development, medical affairs and quality control are directed from and carried out in Vancouver;
 - (i) the Petitioners' information technology and systems are directed from Vancouver;
 - (j) plant management and senior staff of the Petitioners regularly attend meetings in Vancouver;
 - (k) all public company reporting and investor relations are directed from Vancouver; and
 - (l) Angiotech's chief executive officer (the "CEO") is based in Vancouver and in addition to the Senior Management referred above, all sales, manufacturing, operations and legal staff report to the CEO.
- [11] I have had an opportunity to read through the evidence contained in Mr. Bailey's affidavit filed in support of the application. I am satisfied on the evidence before me that the centre of main interest is British Columbia. I accept the petitioners' submissions.
- [12] Now I wish to address the point raised by Mr. Grieve concerning the monitor.
- [13] The monitor is an officer of the Court. The monitor owes its duties to the Court and does not represent the interests of the petitioners, any creditor, or any other interested party. I wish the monitor to be appointed as representative of any foreign main proceedings, instead of the petitioners (or anyone acting on their behalf) or any other party, in order to ensure that

the U.S. creditors are as fairly treated as any of the other creditors in this case. I wish my request in that regard be put before the U.S. District Court in Delaware when the application concerning the foreign main proceeding is heard. "P. Walker J."

The Honourable Mr. Justice Paul Walker

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