

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE WINDING UP OF
OXFORD ADVANCED IMAGING INC.**

**APPLICATION UNDER SECTION 207 OF THE
BUSINESS CORPORATIONS ACT, R.S.O. 1990, c. B.16**

**FOURTH REPORT OF KPMG INC. in its capacity as
SALES OFFICER OF OXFORD ADVANCED IMAGING INC.**

August 23, 2019

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I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. The Toronto-Dominion Bank (“**TD Bank**”) filed an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for interim relief pursuant to sections 207 and 209 of the *Business Corporations Act*, (Ontario) for among other things, an order for the sale of the assets and business of Oxford Advanced Imaging Inc. (“**OAI**”) and for the appointment of KPMG Inc. (“**KPMG**”) as sales officer of OAI (the “**Sales Officer**”).
2. The Application was heard on August 29, 2018 and KPMG was appointed Sales Officer pursuant to an Order (the “**Appointment Order**”) which, among other things, authorized and directed the Sales Officer carry out a process (the “**Sales Process**”) for the sale of the assets and business of OAI (the “**Property**”).
3. The Property consisted of all the assets, undertakings and properties acquired for, or used in relation to, OAI’s diagnostic imaging clinics. The operations of OAI consisted of two clinics, one is located in Mississauga, Ontario and the other one is located in Ajax, Ontario.
4. The Sales Officer issued its first report to the Court on November 12, 2018 (the “**First Report**”). A copy of the First Report (without appendices) is attached as **Appendix “A”** herein. As detailed in the First Report, the Sales Officer brought a motion returnable on November 20, 2018 seeking an Approval and Vesting Order (the “**Approval and Vesting Order**”) approving: (a) the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Sales Officer and 2659428 Ontario Inc. (the “**Purchaser**”) dated October 25, 2018 (the “**Asset Purchase Agreement**”), as amended by an amending agreement dated November 19, 2018 (the “**First Amendment**”) and a second amending agreement dated April 23, 2019 (the “**Second Amendment**”, and together with the Purchase Agreement and First Amendment, the “**Amended Asset Purchase Agreement**”) and vesting in the Purchaser, OAI’s right, title and interest in and to the assets described in the Amended Asset Purchase Agreement; and (b) the Sales Officer’s activities as set forth in the First Report.

5. On November 20, 2018, the Court granted the Approval and Vesting Order. A copy of the Approval and Vesting Order is attached as **Appendix “B”** herein.
6. The Sales Officer issued its second report to the Court on April 26, 2019 (the “**Second Report**”). A copy of the Second Report (without appendices) is attached as **Appendix “C”** herein. As detailed in the Second Report, the Sales Officer brought a motion returnable on May 2, 2019 seeking an Order approving: (a) the Second Amendment, and (b) approving the activities of the Sales Officer as set out in the Second Report and approving the fees and disbursements of the Sales Officer and the Sales Officer’s legal counsel, Dentons Canada LLP (“**Dentons**”), for the period up to January 30, 2019.
7. The Sales Officer issued its third report to the Court on June 12, 2019 (the “**Third Report**”). A copy of the Third Report (without appendices) is attached as **Appendix “D”** herein. As detailed in the Third Report, the Transaction closed on May 30, 2019 and the Sales Officer brought a motion returnable on June 18, 2019 seeking an Order (the “**First Distribution Order**”): (a) updating the Court with respect to the closing of the Transaction; (b) authorizing and approving the Sales Officer to make a distribution from the proceeds of the closing of the Transaction to TD Bank and ECN Financial Inc. (“**ECN**”) in full and final satisfaction of the indebtedness owing by OAI to each of TD Bank and ECN and to KPMG Corporate Finance Inc. (“**KPMG CF**”) and Blake, Cassels & Graydon LLP (“**Blakes**”) for the fees and disbursements incurred by OAI prior to the making of the Appointment Order; and (c) approving the activities of the Sales Officer as set out in the Third Report and approving the fees and disbursements of the Sales Officer and Dentons for the period of February 1, 2019 to May 31, 2019.
8. On June 18, 2019, the Court granted the First Distribution Order. A copy of the First Distribution Order is attached as **Appendix “E”** herein.

II. PURPOSE OF THIS FOURTH REPORT

9. The purpose of the Sales Officer’s fourth report to the Court dated August 23, 2019 (the “**Fourth Report**”) is to:

- (a) update this Honourable Court with respect to the status of distributions made pursuant to the First Distribution Order;
 - (b) update this Honourable Court with respect to status of certain post-closing matters in respect of the conclusion of the Transaction;
 - (c) provide this Honourable Court with the necessary information to support an Order (the “**Claims Procedure Order**”):
 - (i) approving the activities of the Sales Officer as set out in the Fourth Report;
 - (ii) approving and authorizing the Claims Procedure (as defined herein); and
 - (iii) authorizing, directing and empowering the Sales Officer to administer the Claims Procedure in accordance with the terms of the Claims Procedure Order.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
11. The information contained in this Fourth Report has been obtained from the books and records and other information of OAI. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Sales Officer, and the Sales Officer does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Sales Officer in preparing this Fourth Report.
12. Future oriented financial information reported or relied on in preparing this Fourth Report is based on OAI management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.

III. UPDATE ON FIRST DISTRIBUTION AND POST-CLOSING MATTERS

13. Since the granting of the First Distribution Order, the Sales Officer has:

- (a) made a distribution to TD Bank in the amount of \$9,252,708.44 and to ECN in the amount of \$11,280,690.39, in accordance with the First Distribution Order;
- (b) made a distribution to KPMG CF in the amount of \$1,041,288.91 and Blakes in the amount of \$425,310.89, in accordance with the First Distribution Order;
- (c) continued to work with the Purchaser and its counsel regarding the completion of the transfer of certain patient data pursuant to the Amended Asset Purchase Agreement;
- (d) finalized the reconciliation of the working capital adjustment to the purchase price as provided for in the Amended Asset Purchase Agreement. In this regard, the Sales Officer paid an adjustment in favour of the Purchaser in the amount of \$236,505 on August 7, 2019;
- (e) continued discussions with the Ontario Ministry of Health and Long Term Health regarding any claims they may have against OAI in respect of OAI's terminated funding agreement, or otherwise; and
- (f) held discussions with OAI regarding distribution options in respect of the Remaining Funds (as defined herein);

IV. CLAIMS PROCEDURE ORDER

- 14. Capitalized terms not otherwise defined in this section of the Fourth Report are defined in the proposed Claims Procedure Order attached to the Motion Record of the Sales Officer dated August 23, 2019 (the "**Motion Record**") at **Tab "3"**.
- 15. As detailed in the Third Report, on May 30, 2019, the Sales Officer received the balance of the purchase price, being \$26,250,000 from the Purchaser for the purchase of the Property, and \$18,108.05 representing certain security deposits previously paid by OAI in respect of commercial leases that were reimbursed by the Purchaser, in accordance with the Amended Asset Purchase Agreement (collectively, the "**Sale Proceeds**").

16. Following the distributions made pursuant to the First Distribution Order, as set out above, there remains a surplus in the Sale Proceeds in the amount of approximately \$2,995,488.16, including accrued interest up to August 22, 2019 (the “**Remaining Funds**”).
17. Pursuant to paragraphs 16 and 17 of the Appointment Order, all proceedings, rights and remedies against OAI or affecting the Property were stayed and suspended, except with the written consent of the Sales Officer or leave of the Court (the “**Stay**”).
18. The Sales Officer is aware of certain persons (the “**Known Creditors**”) asserting or having a Claim against OAI or an interest in the Remaining Funds, and believes that there may be other Creditors of which it is not presently aware of, each of which has been affected by the Stay.
19. At this time, the Sales Officer is of the view that there are three options for dealing with the Remaining Funds and the Claims of all Creditors, including Known Creditors, against OAI or relating to the Remaining Funds:
 - (a) pay the Remaining Funds into Court without any prior determination of Claims (“**Option A**”);
 - (b) pay the Remaining Funds to OAI without any prior determination of Claims (“**Option B**”); or
 - (c) authorize and direct the Sales Officer to administer a claims procedure to determine and settle all Claims against OAI and/or in respect of the Remaining Funds, subject to Court supervision and approval (“**Option C**” or the “**Claims Procedure**”). Under this option, the Sales Officer would continue to hold the Remaining Funds pending further Order of the Court.
20. Having considered and canvassed each of these options with OAI, the Sales Officer is of the view that Option C represents the most fair, timely and transparent process in terms of addressing all remaining Claims against OAI and in respect of the Remaining Funds for the following reasons:

- (a) Option A may lead to costly and drawn out litigation if the Creditors and OAI are unable to consensually resolve the Claims. This option would likely also require additional judicial resources in respect of the determination of unsettled Claims and payments out of Court. Option A will also lose the benefit of the certainty created by the proposed Claims Procedure, particularly the proposed Claims Bar Date which will require parties to file Claims in a timely manner;
 - (b) Option B will place the onus on OAI to resolve all Claims against it. This option would also require OAI to consensually resolve the Claims or have such claims determined through litigation (following a lifting of the Stay). This option provides less certainty as to timing and cost, particularly if formal litigation is required and provides less certainty as to the resolution of Claims that were affected by the Stay imposed by these proceedings. The Sales Officer also has concerns that the shareholder disagreements which precipitated the Appointment Order¹ may resurface if the Remaining Funds are paid directly to OAI and under the dominion of one shareholder or shareholder group to the detriment of other equity interests; and
 - (c) Option C provides the benefit of having an impartial Court-appointed officer determine and settle all Claims affected by the Stay, subject to Court supervision and approval. The Sales Officer is already familiar with OAI's books and records and is able to administer the Claims Procedure on an expedited basis.
21. The Claims Procedure will not address or determine any claims by current or former shareholders of OAI as against OAI, or any competing claims to equity among OAI's current or former shareholders. In this regard, the Sales Officer proposes that the claims of current and former shareholders of OAI be deemed Excluded Claims under the Claims Procedure Order.

¹ As set out in the affidavit of Maurice Moffett sworn August 17, 2018 in support of the Appointment Order.

Summary of Claims Procedure

22. The Sales Officer proposes a dual-process claims procedure that would entail delivering a Claim Statement to Known Creditors while simultaneously publishing a general call for Claims to other potential Creditors.
23. With respect to the Known Creditors, the Sales Officer will:
 - (a) determine the Claims of Known Creditors based on the books and records of OAI. In this regard, the Sales Officer has reviewed OAI's accounts payable list and believes that it is a reasonable summary of OAI's unsecured creditors; and
 - (b) send the Claims Document Package to each Known Creditor, which will include a Claim Statement setting out the amount of such Creditor's Claim. If the Creditor agrees with the Sales Officer's assessment, it need not take any further action. If the Creditor disagrees with the Sales Officer's assessment it must file a Notice of Dispute to the Sales Officer prior to the Claims Bar Date.
24. With respect to all other Creditors, the Sales Officer will:
 - (a) publish the Notice to Creditors in a national newspaper and post a copy of the Notice to Creditors on its website. The Notice to Creditors will invite Creditors to submit a Proof of Claim to the Sales Office prior to the Claims Bar Date.
25. The Claims Bar Date will be October 15, 2019 for all Creditors, including Known Creditors.
26. As soon as practicable following the Claims Bar Date, the Sales Officer will review all Notices of Dispute and Proofs of Claim and may:
 - (a) request additional information from a Creditor or from OAI;
 - (b) request that a Creditor file a revised Proof of Claim or Notice of Dispute;
 - (c) attempt to resolve and settle any issue arising in respect of a Proof of Claim or Notice of Dispute;

- (d) accept (in whole or in part) the amount of any Claim and notify the Creditor in writing; and/or
 - (e) revise or disallow (in whole or in part) the amount of any Claim by delivering a Notice of Revision or Disallowance to such Creditor.
27. If a Creditor intends to dispute their Claim as set out in a Notice of Revision or Disallowance, the Creditor must:
- (a) notify the Sales Officer in writing of the Objection within fifteen (15) days of receipt of the Notice of Revision or Disallowance; and
 - (b) file a Notice of Motion with this Honourable Court for the determination of the Claim in dispute, with a copy to be sent to the Sales Officer immediately after filing, which Notice of Motion is to be:
 - (i) supported by a sworn affidavit setting out the Creditor's basis for disputing the Notice of Revision or Disallowance; and
 - (ii) returnable within thirty (30) day of the date on which the Sales Officer received the Objection.
28. If a Creditor fails to deliver the Objection and/or the Notice of Motion in accordance with the Claims Procedure Order, the Claim will be deemed accepted at the amount set forth in the Notice of Revision or Disallowance and the Creditor will:
- (a) where the entire Claim is disallowed:
 - (i) not be entitled to receive any distribution in these proceedings; and
 - (ii) be forever barred from making or enforcing such Claim against OAI;
 - (b) where the Claim has been revised:
 - (i) only be entitled to receive a distribution in an amount proportional to the revised amount; and

- (c) be forever barred from making or enforcing any Claim against OAI greater than the revised amount and the amount of the Claim reduced by the revision will be forever extinguished.

29. The proposed timeframe for administering the Claims Procedure is summarized as follows:

| PROCESS | DATE |
|--|---|
| Sales Officer to Mail Claims Document Package to Known Creditors | Not later than five (5) Business Days following the granting of the Claims Procedure Order |
| Sales Officer to Publish Notice to Creditors in Newspaper | Not later than ten (10) Business Days following the granting of the Claims Procedure Order |
| Sales Officer to Post Claims Procedure Order, Motion Record and Claims Package on Sale's Officer's Website | Not later than five (5) Business Days following the granting of the Claims Procedure Order |
| Claims Bar Date | October 15, 2019 |
| Sales Officer to Deliver Notice of Revision or Disallowance | As soon as practicable following review of Proof of Claim or Notice of Dispute, as applicable |
| Creditor to Deliver Objection to Sales Officer | Within 15 calendar days following receipt by the Creditor of the Notice of Revision or Disallowance |
| Creditor to Deliver Notice of Motion in respect of an Objection | Returnable within 30 calendar days following receipt by the Creditor of the Notice of Revision or Disallowance, subject to the Court's availability |

V. CONCLUSION

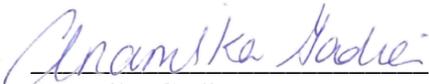
30. The Sales Officer submits this Fourth Report to the Court in support of the Sales Officer's Motion for the relief as set out in the Motion Record and recommends that the Court grant the Order substantially in the form contained at Tab 3 of the Motion Record approving:

- (a) the Claims Procedure; and

(b) the activities of the Sales Officer set out in the Fourth Report.

All of which is respectfully submitted at Toronto, Ontario this 23rd day of August, 2019.

**KPMG Inc., in its capacity as Court Appointed Sales Officer of
Oxford Advanced Imaging Inc. and not in its personal capacity**

Per: 
Anamika Gadia
Senior Vice President