

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF
MITOMICS INC.
OF THE CITY OF THUNDER BAY
IN THE PROVINCE OF ONTARIO**

**SECOND REPORT OF DODICK LANDAU INC. IN ITS CAPACITY AS RECEIVER AND FIRST
REPORT AS PROPOSAL TRUSTEE**

MITOMICS INC.

November 6, 2014

INTRODUCTION

1. On August 7, 2014, William Poulter and Harald Smart (the “**Lenders**”) issued an application (the “**Receivership Application**”) under sub-section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, (the “**CJA**”), for an order appointing Dodick Landau Inc. (“**DLI**”) as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties (collectively, the “**Property**”) of Mitomics Inc. (the “**Debtor**” or “**Mitomics**”).
2. On August 14, 2014, the Receivership Application was granted by the Honourable Madam Justice Pierce and DLI was appointed Receiver of the Property (the “**Appointment Order**”). The Appointment Order did not require DLI to manage the Debtor or take control of the property, operate the business or employ any of the Debtor’s employees. As a result, Mitomics’ management has retained control over the day to day operations of the business, subject to the oversight of the Receiver. A copy of the Appointment Order is attached as **Appendix “A”**.
3. Among the powers given to the Receiver in the Appointment Order was the ability to file a BIA proposal on behalf of Mitomics. As explained in further detail below the Receiver did file a proposal on behalf of Mitomics and assumed the role of proposal trustee (“**Trustee**”).
4. The purpose of this second report (“**Second Report**”) is to support the Receiver’s and Trustee’s request for the Court to:

- a) approve the Amended Proposal (as hereinafter defined);
- b) authorize the Trustee to take all steps necessary to implement the Amended Proposal;
- c) establish a deadline for the filing of proofs of claim by the unsecured creditors of Mitomics in order to receive cash distributions pursuant to the Amended Proposal;
- d) appoint the Trustee to be the foreign representative of the Debtor for recognition of the BIA proceeding as a “Foreign Main Proceeding” under Chapter 15 of the United States Bankruptcy Code, if necessary;
- e) approve the Receiver’s and Mitomics’ entering into the agreement of purchase and sale (“**APS**”), and the amendment agreement to the APS (“**Amendment Agreement**”, and together the “**APS Agreement**”);
- f) issue an order vesting the Property in favour of 2436884 Ontario Inc. (the “**Purchaser**”);
- g) approve the Receiver’s activities and conduct during the receivership proceedings, as described in the Receiver’s First Report (defined below) and the Second Report;
- h) discharge the Receiver from its role and duties and forever barring any party from making any claim as against the Receiver upon the filing of a discharge certificate (“**Discharge Certificate**”); and
- i) approve the fees and disbursements of the Receiver and its legal counsel, including an accrual up to and including the Receiver’s discharge.

DISCLAIMER

5. In preparing this Report of the Trustee and Receiver, the Trustee and Receiver have relied upon certain unaudited, draft and/or internal financial information, the Company’s books and records, discussions with Management, Creditors and the Purchaser and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report:

- a) the Trustee and the Receiver have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Trustee

and Receiver express no opinion or other form of assurance in respect of the Information;

- b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Canadian Institute of Chartered Accountants handbook, has not been performed; and
 - c) the Trustee and Receiver have prepared this Report in their capacity as Court appointed officers and have made a copy of this Report available on DLI's website at www.dodick.ca. Parties using this Report, other than for the purpose of evaluating the Proposal, are cautioned that it may not be appropriate for their purposes. DLI will continue to maintain on its website copies of any court orders, reports and other material public filings it considers relevant to this proceeding.
6. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
7. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

Background

8. From the date of the Appointment Order to September 8, 2014, the Receiver had discussions with the Applicants and the Debtor over the best process to realize upon the Property. The principal options were through a sale process or pursuant to a proposal under the BIA.
9. As there was considerable overlap between the secured and unsecured creditors of Mitomics, the Receiver believed that if there was sufficient support for a BIA proposal amongst the secured and unsecured creditors of Mitomics then that would provide the quickest and most efficient resolution and would allow the creditors to choose the best way forward. Management of the Debtor, with the support of those providing the interim financing to Mitomics, had requested that they have a short window to determine if the requisite support to proceed with a BIA proposal could be obtained. This was all outlined in the first

report of the Receiver, dated September 8, 2014 (the “**First Report**”). A copy of the First Report (without Appendices other than Appendix “E”) is attached as **Appendix “B”**.

10. On September 11, 2014, the Court ordered that, should the Debtor advise the Receiver by September 19, 2014, that a proposal was viable, then the Receiver would proceed to file a proposal on behalf of the Debtor and would not carry-out a sale and investment solicitation process. A copy of the September 11, 2014 order is attached as **Appendix “C”**.
11. On September 19, 2014, the Debtor advised the Receiver that a proposal was viable. Negotiations followed with the Purchaser to conclude the APS. The APS envisions the Property being acquired by the Purchaser and the Purchaser issuing shares in satisfaction of the unsecured claims against Mitomics. The APS also provided for a restructuring of the secured claims as against the Debtor and the restructured claims being assumed by the Purchaser. The transaction was to be implemented pursuant to a BIA proposal.
12. On October 8, 2014, the Receiver filed with the Official Receiver a proposal in the name, and on behalf, of Mitomics (the “**Proposal**”), and DLI was named Trustee. On October 10, 2014, the Trustee mailed the Proposal and other related documentation, including the APS, to all known creditors (“**Creditor Package**”) which included: the Proposal, Report of Trustee on Proposal, Statement of Affairs, Notice of Proposal to Creditors, proof of claim form with instructions, proxy and voting letter. A copy of the Creditor Package is attached as **Appendix “D”**.
13. Following the filing of the Proposal, one creditor raised a concern over whether the proposed share issuance complied with securities laws. Discussions ensued with the Purchaser, as the Purchaser would be the party issuing the shares under the Proposal. The Purchaser advised the Receiver that it believed that the proposed share issuance complied with the prospectus exemption as most unsecured creditors were “accredited investors” and, in any event, the transaction was exempt pursuant to section 2.11 of National Instrument 45-106 as being in connection with a “reorganization or arrangement under a statutory procedure”. For added clarity the Purchaser’s counsel contacted the Ontario Securities Commission to request confirmation that the proposed transaction was an exempt transaction under section 2.11 of National Instrument 45-106.
14. Given that timing was tight, and in case the OSC took a position that differed from the Purchaser, the decision was made, in consultation with the Purchaser, to amend the Proposal to the extent certain unsecured creditors might not be “accredited investors” so as

to create a cash pool to which such creditors might have access instead of receiving shares. Any unsecured creditor that wasn't an accredited investor could elect to receive the value of its claims up to a maximum of \$600 (or to cap their claim at \$600 if it was greater than \$600). Alternatively, any unsecured creditor whose claim was in excess of \$600 (if they chose not to reduce their claim to \$600) could share, pro rata, in a cash pool of \$20,000 (provided that no one creditor could receive more than 100% of the principal amount of their claim). Unsecured creditors who are accredited investors also could elect to participate in the cash pool instead of receiving shares.

15. In order to address these concerns, on October 22, 2014, the Amendment Agreement was signed to reflect these changes and, as a result, the Proposal was amended as well ("**Amended Proposal**"). A supplement to the Report by the Trustee on the Proposal ("**Supplement to Report of Trustee on Proposal**") was prepared on October 22, 2014, to assist in the evaluation of the Amended Proposal. The Supplement to Report of Trustee on Proposal along with the Amended Proposal were sent by electronic mail to all known creditors on October 23, 2014 for whom the Proposal Trustee had an e-mail address. The Supplement to Report of Trustee on Proposal was also placed on the Proposal Trustee's website. A copy of the Supplement to Report of Trustee on Proposal, including the Amended APS and the Amended Proposal (excluding exhibits and with tracked changes to highlight the amendments made to the Proposal) as appendices, is attached as **Appendix "E"**.

AMENDED PROPOSAL

16. The Amended Proposal provides for the restructuring of the business and affairs of the Debtor by completion of a sale of all the Property to the Purchaser, as contemplated in the Purchase Transaction, on an "as is where is" basis, with a closing date no later than November 17, 2014. The Property includes, among other things, all of Mitomics' intellectual property, accounts receivable, inventory, cash-in-bank, customer lists and shares in its subsidiaries.
17. Implementation of the Amended Proposal is subject to the satisfaction or waiver of a number of conditions, including:

- a) each class of Creditors approving the Amended Proposal at the Creditors' Meetings¹ and any other approvals and consents to the Amended Proposal that may be required have been obtained;
 - b) the Court granting the approval and a vesting order, and the Closing Date (as defined in the APS) has passed;
 - c) no order or decree restraining or enjoining the consummation of the transactions contemplated by the Amended Proposal has been issued;
 - d) all agreements or instruments necessary to effect the intention and purpose of the Amended Proposal have been received by the Debtor and the Purchaser from the applicable Creditors in a form satisfactory to the Debtor and Purchaser;
 - e) the Amended APS shall have been completed; and
 - f) any further orders of the Court have been obtained which are required to facilitate the transactions referred to in the Amended Proposal.
18. Upon being satisfied that all the conditions in the Amended APS have been met or waived, the Trustee will file a closing certificate ("**Closing Certificate**") with the Office of the Superintendent of Bankruptcy ("**OSB**") and this Honourable Court. The arrangements set out in the Amended Proposal will become effective on the date on which the Closing Certificate is filed with the OSB.

Meetings of Creditors

19. Meetings of the Creditors ("**Creditors' Meetings**") to consider the Amended Proposal were held at the Valhalla Inn, Thunder Bay, Ontario, on October 27, 2014. There were two Creditor Meetings. The first was held for the secured creditor class and the second was held for the unsecured creditor class ("**Unsecured Creditors**"). Details relating to the filing of claims, and other documents, were outlined in the Report of Trustee on Proposal included in the Creditor Package and were mailed to each known creditor of the Company, or their duly appointed representative. The Creditor Package was also available on the Trustee's website (www.dodick.ca).

¹ In order for the Proposal to be approved by a particular class, not less than a majority in the number of creditors representing two-thirds in the value of the proven claims in that class, present and voting, in person or by proxy or by voting letter, at the applicable Creditors' Meetings must vote in favour of the Proposal.

20. Notices of the Creditors' Meetings were also published on October 22, 2014, in the Chronicle Journal, a daily newspaper servicing northwest Ontario. A copy of this notice is attached as **Appendix "F"**.
21. Mr. Rahn Dodick of Dodick Landau Inc. acted as the chair (the "**Chair**") of the Creditors' Meetings. Mr. Kenneth Kraft of Dentons Canada LLP acted as secretary of the Creditors' Meetings. Stephanie Toye of Dodick Landau Inc. acted as scrutineer (the "**Scrutineer**").
22. The Scrutineer reported that a quorum was present at each of the Creditors' Meetings and accordingly, the Chair declared that the Creditors' Meetings were properly constituted.

Results of the Vote on Acceptance of the Amended Proposal

23. A motion to consider a resolution to approve the Amended Proposal was proposed at the Creditors' Meetings (the "**Resolution**") and votes by ballot were called for by the Chair at each Creditors' Meeting. The Resolution tabled at both meetings was as follows:

"Be and it is hereby resolved to accept the Proposal of Mitomics Inc. dated October 8, 2014, as amended on October 22, 2014, and, if approved, the Trustee and Mitomics take all necessary steps to implement the terms of the Amended Proposal."

24. The Scrutineer tabulated the ballots cast in respect of the Amended Proposal, and added these results to the votes received by voting letter in advance of the Creditors' Meetings, and the Chair reported the results at the Creditors' Meetings.
25. The Creditors, or their proxy holders, at both Creditors' Meetings voted on the Resolution to approve the Amended Proposal as follows:

Secured Creditors' Meeting:

	For		Against	
	#	\$	#	\$
Class 1: Secured Creditors having a voting claim voting in person, by proxy or by voting letter	54	\$4,945,942.84	0	\$0.00
Percentage of the total votes	100%	100%	0%	0%

Unsecured Creditors' Meeting:

	For		Against	
	#	\$	#	\$
Class 2: Unsecured Creditors having a voting claim voting in person, by proxy or by voting letter	47	\$5,317,481.28	1	\$503,671.23
Percentage of the total votes	97.87%	91.35%	2.13%	8.65%

26. In summary, a majority in number representing in excess of two-thirds in value of the Creditors by class holding proven claims and voting in person or by proxy at the Creditors' Meetings, or by voting letter, voted in favour of the Resolution to approve the Amended Proposal. Copies of the minutes of the Creditors' Meetings are attached as **Appendix "G"**.

Approval and Implementation of the Amended Proposal

27. The BIA requires the Amended Proposal be approved by the Court following approval by the requisite majorities of Creditors. Subject to this Court's approval of the Amended Proposal, the Receiver and the Purchaser believe that the closing date for the transaction will be November 17, 2014.
28. As such, the Receiver requests that the Court ratify and approve the Receiver's and Mitomics' entering into the APS and the Amendment Agreement and approve the Amended Proposal. Provided the foregoing relief is granted then the Receiver and the Trustee believe it appropriate that the Court issue an order vesting the right, title and interest in the assets of Mitomics in, and to, the Purchaser upon the closing of the transaction set out in the Amended APS.

Distributions Pursuant to the Amended Proposal

29. The Amended Proposal, as described in more detail in the Report of Trustee on Proposal and the Supplement to Report of Trustee on Proposal, provides for two classes of creditors, the Secured Creditor Class and the Unsecured Creditor Class, both for purposes of voting on the Amended Proposal and for distribution.

30. Distributions in relation to the Secured Creditors' Class will be made as contemplated by the restructuring transactions set out on Schedule "C" to the Amended APS which includes:
- a. the Purchaser issuing to each Secured Creditor a promissory note evidencing their respective Assumed Liability;
 - b. the Purchaser entering into a General Security Agreement with each secured creditor providing security over the property and assets of the Purchaser; and
 - c. each secured creditor entering into an inter-creditor agreement.
31. Distributions in relation to the Unsecured Creditors' Class will be made upon closing of the Amended APS as follows:
- d. the Purchaser shall issue to the Trustee for the benefit of such Unsecured Creditor common shares to each such unsecured creditor, provided that the unsecured creditor is an "accredited investor" pursuant to the National Instrument 45-106 Prospectus and Registration Exemptions, or the laws of the applicable jurisdiction of that unsecured creditor, and shall provide satisfactory evidence to the Purchaser that the unsecured creditor so qualifies at the time of the issuance of the common shares;
 - e. any unsecured creditor that does not qualify as an accredited investor, or does not file the requisite proof with the Purchaser of such qualification (the "**Ineligible Unsecured Creditor**"), with claims equal to or lesser than \$600, shall have its claim paid in full; or
 - f. any Ineligible Unsecured Creditor with claims in excess of \$600 shall be entitled to elect for a payment of \$600 or be paid out their proportionate share of a cash pool established by the Purchaser totalling \$20,000 (the "**Unsecured Payment Fund**"). The proportionate share of the Unsecured Payment Fund available to unsecured creditors who elect to participate in the Unsecured Payment Fund shall be calculated as the proportion that their claim bears to the total dollar value of the claims being paid out of the Unsecured Payment Fund, up to the aggregate amount of any such Unsecured Creditor's claim. Unsecured Creditors who are "accredited investors" may also elect to join the Unsecured Payment Fund instead of receiving common shares.
32. Once it is determined whether there are Ineligible Unsecured Creditors, the Proposal Trustee will send a notice to the Ineligible Unsecured Creditors requesting that they elect to receive

either \$600, or their proportionate share of the Unsecured Payment Fund, as described above.

33. To date, the Trustee has received 115 proofs of claim from Unsecured Creditors. Based on known Unsecured Creditors included in the Debtor's Statement of Affairs, the Trustee understands that there are approximately 41 additional known Unsecured Creditors who, to date, have not submitted a proof of claim to the Trustee. In order to complete the distribution in an efficient and timely manner, the Trustee requests the Court to issue an order providing Unsecured Creditors with a deadline of January 15, 2015, to file a proof of claim with the Trustee ("**Claims Bar Date**") in order to be eligible to receive a cash distribution under the Amended Proposal. Unsecured Creditors who do not issue a proof of claim to the Trustee by the Claims Bar Date shall be forever barred from being eligible to receive a cash distribution. No later than December 15, 2014, 30-days prior to the Claims Bar Date, the Trustee will notify all known remaining Unsecured Creditors, by courier or registered mail at their last known address, of the Claims Bar Date. Provided that this Honourable Court approves the Amended Proposal, then the Trustee will follow up with a form or election to be sent to all Unsecured Creditors along with information that the Purchaser will require to determine if such Unsecured Creditor is an accredited investor.

CLOSURE OF RECEIVERSHIP

34. Following closing of the Amended APS, all the assets of Mitomics will have been sold, and the Trustee will then carry-out the distributions pursuant to the Amended Proposal. The Proposal proceeding will continue until such time as the Trustee completes the distributions and obtains its discharge. As a result, following closing of the Amended APS, the Receiver will have completed the administration of the Mitomics receivership. Upon completing its administration of the receivership proceedings, the Receiver will file a certificate to confirm completion of its duties (the "**Discharge Certificate**").
35. The Receiver hereby requests the Court issue an order discharging the Receiver from its duties, and releasing DLI from any and all liability, pursuant to the Appointment Order, which will become effective upon the Receiver filing the Discharge Certificate with the Court.

FOREIGN MAIN PROCEEDING

36. The Trustee is also requesting the Court declare the Trustee to be the foreign representative of the Debtor in order to permit the Trustee to apply for recognition of the BIA Proposal

proceeding as a “Foreign Main Proceeding” under Chapter 15 of the United States Bankruptcy Code should it consider such an application to be necessary in the future.

37. The Trustee is of the view that since Mitomics has a large number of secured and unsecured creditors, as well as assets, in the United States, it would be prudent to request the Court to appoint the Trustee to be the authorized foreign representative in case an application in the United States for recognition of the BIA Proposal proceeding is necessary in the future.

CASH FLOW FORECAST

38. Mitomics, with the assistance of the Receiver, has prepared a cash flow forecast for the period from October 25, 2014, to January 16, 2014 (“**Cash Flow Forecast**”), when it is forecast that Mitomics will be dissolved. A copy of the Cash Flow Forecast is attached hereto and marked as **Appendix "H"** to this Report. Management of Mitomics prepared the Cash Flow Forecast for the purpose of this motion, using probable and hypothetical assumptions set out in notes 1 to 12 attached to the Cash Flow Forecast. The Cash Flow Forecast includes Mitomics’ actual receipts and disbursements for the weeks-ended October 24, 2014, and, thereafter, reflects receipts and disbursements to be received or paid over the forecast period in Canadian dollars.
39. The Cash Flow Forecast projects that Mitomics will have sufficient liquidity with use of the remaining loans from the interim lenders to fund the Company’s expenses and the Receivership and Proposal proceedings through the week-ending January 16, 2014 until such time as the Amended APS closes and the Amended Proposal is fully implemented.
40. The Cash Flow Forecast projects that Mitomics will require the use of the entire amount of interim financing advanced and being held by the Receiver. However, should any interim financing remain on account with the Receiver at the time it files its Discharge Certificate, the Receiver proposes to advance the remaining funds to the Purchaser which has assumed the interim financing obligation as part of the Amended APS.
41. In addition, it is forecast that the deposit received from the Purchaser on closing of the Amended APS will be required to fund the remaining administration costs of the Receivership and Proposal proceedings, in accordance with the Amended Proposal, until the Receiver and Trustee are discharged.
42. The Receiver's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussion related to information supplied to the Receiver by certain of

the Management and employees of Mitomics. Since hypothetical assumptions need not be supported, the Receiver's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Receiver has also reviewed the support provided by Management of Mitomics for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.

43. As described in the Disclaimer above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Receiver expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Receiver expresses no opinion or other form of assurance with respect to the accuracy of financial information presented in the Cash Flow Forecast, or relied upon by the Receiver in preparing this Report.

PROFESSIONAL FEES

44. The Receiver, together with its counsel, Dentons Canada LLP ("**Dentons**"), have maintained detailed records of their professional costs and time during the course of the receivership administration.
45. Exhibit "A" to the affidavit of Rahn Dodick sworn on November 5, 2014, and contained in the Receiver's motion record (the "**Dodick Affidavit**") contains a summary of the personnel, hours and hourly rates charged by the Receiver in respect of these proceedings. For the period July 18, 2014 to October 25, 2014 ("**Receiver's Billing Period**"), the Receiver's accounts amount to \$71,268.00 in fees, \$2,361.83 in disbursements and \$9,571.88 in HST for a total amount of \$83,201.70. The Receiver estimates that it will incur a further \$10,000.00 in fees, \$2,750.00 in disbursements and \$1,657.50 in HST for a total of \$14,407.50, which has been accrued on the Receiver's final invoice, for its final reporting requirements, including preparation of this Report and completion of its administration (together with Receiver's Billing Period, the "**Period**"). Attached as Exhibit "B" of the Dodick Affidavit are copies of the accounts rendered by the Receiver in respect of the receivership proceeding.
46. The fees and disbursements of Dentons as counsel to the Receiver and Trustee in respect of this proceeding are set out in the Affidavit of John Salmas sworn on November 6, 2014 and contained in the Receiver's Motion Record (the "**Salmas Affidavit**"). Exhibits "A" and "B" in the Salmas Affidavit contain a summary of the personnel, hours and hourly rates charged by

Dentons as counsel to the Receiver together with a copy of the accounts to October 31, 2014 (the “**Dentons Accounts**”). The Dentons Accounts comprise of fees of \$34,824.00, disbursements of \$772.18, and HST of \$4,623.99 for a total amount of \$40,220.17. Dentons’ final account includes a further reserve of \$12,500.00 in fees, \$2,000.00 in disbursements and \$1,885.00 in HST for a total of \$16,385.00 to complete its obligations to the Receiver, including attendance at the this motion.

RECOMMENDATIONS

47. The Receiver and the Trustee respectfully recommend that the Court grant orders:
- a) approving the Amended Proposal;
 - b) authorizing the Receiver and the Trustee to take all steps necessary to implement the Amended Proposal;
 - c) establish the Claims Bar Date for filing proofs of claim by the unsecured creditors of Mitomics in order to receive cash distributions under the Amended Proposal;
 - d) authorizing the Trustee to be the foreign representative of the Debtor in order to apply for recognition of the Proposal proceeding as a “Foreign Main Proceeding” under Chapter 15 of the United States Bankruptcy Code, if necessary;
 - e) ratifying and approving the Receiver and Mitomics entering into the APS and the Amendment Agreement;
 - f) vesting the Property in favour of the Purchaser;
 - g) approving the Receiver’s activities and conduct during the receivership proceedings, as described in the First Report and this Report;
 - h) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP, for the Period; and
 - i) discharging the Receiver from its duties, and releasing DLI from any and all liability, pursuant to the Appointment Order, upon filing of the Discharge Certificate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

DODICK LANDAU INC.

Trustee *re* the Proposal of Mitomics Inc.

Per:



Rahn Dodick, CPA, CIRP