

Rule 1 26/  
1 54

The Insolvency Act 1986  
 Notice to Registrar of  
 Companies of Supervisor's  
 Abstract of Receipts and  
 Payments  
 Pursuant to Rule 1 26(2)(b) or  
 Rule 1 54 of the  
 Insolvency Rules 1986

# R.1.26(2)(b)/ R.1.54

For Official Use

To the Registrar of Companies

Company Number

03095391

Name of Company

Onyvax Limited (in CVA)

I / We  
 Paul Howard Finn  
 Tong Hall  
 Tong  
 West Yorkshire  
 BD4 0RR

Michael Field

supervisor(s) of a voluntary arrangement taking effect on

09 September 2009

present overleaf my/our abstract of receipts and payments for the period from

09 September 2010

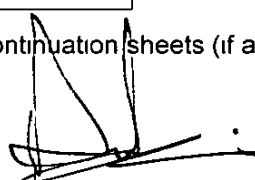
to

08 September 2011

Number of continuation sheets (if any) attached

☐

Signed



Date

10 November 2011

Finn Associates  
 Tong Hall  
 Tong  
 West Yorkshire  
 BD4 0RR

Ref ONY1218/PHF/MF/JDR

In

FRIDAY



A13

11/11/2011

45

COMPANIES HOUSE

\* Delete as appropriate

**Note - The receipts and payments must severally be added up at the foot of each sheet and the totals carried forward from one abstract to another without any intermediate balance so that the gross totals shall represent the total amounts received and paid by the supervisor since he was appointed**

**IN THE HIGH COURT OF JUSTICE CVA NO 13471 OF 2009**

**IN THE MATTER OF THE INSOLVENCY ACT 1986  
AND  
IN THE MATTER OF ONYVAX LIMITED ('the company')**

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**Joint Supervisors' Second Annual Report to Creditors  
pursuant to Rule 1.26 of the Insolvency Rules 1986**

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**1. Introduction**

- 1 1 The Company Voluntary Arrangement (CVA) of Onyvax Limited was approved (as amended) by creditors at a general meeting for that purpose on 09 September 2009, at which Paul H Finn and Michael Field (IP Nos 5367 and 1586 respectively) of this firm were appointed Joint Supervisors
- 1 2 The arrangement is due to be concluded on 09 September 2012, or until such earlier date as the clinical tests (upon which the arrangement is based) have terminated, or have successfully concluded
- 1 3 Pursuant to Rule 1 26 of the Insolvency Rules 1986, the Supervisors now write by way of an annual report on the progress and efficacy of the CVA during its second year

**2. Receipts and Payments**

- 2 1 A summarised Receipts and Payments Account analysed between the financial 12 month periods to 08 September 2010 and 2011 is attached

**3. Basis of the Arrangement – Ongoing Clinical Trials**

- 3 1 Creditors will recall that the CVA is based on the continuation of ongoing clinical trials being conducted at the Mayo Clinic, Rochester, Minnesota
- 3 2 It was reported in our previous report that the clinical trials were suspended albeit not terminated and the position remains broadly the same, however it now

appears unlikely that the trials will generate any positive results, the CEO of the company has provided an update for creditors, summarised below

"VaxOnco Inc , ("VaxOnco") the owner of the ONY-P intellectual property, continues development of the product at a very low level. Very little progress appears to have been made over the past year in terms of initiating new trials

The CEO has sought informal legal advice regarding the status of the Agreement between VaxOnco and Onyvax given that the Mayo Trial was terminated (as reported last year). Note that clause 7.6 states "VaxOnco and Onyvax shall share in equal proportions all and any proceeds received and receivable from any Third Party in respect of any Disposal or Disposals which are effected at any time from the date of this Agreement until the date that is eighteen months after the Sale Expiry Date". The Sale Expiry Date is defined as "the date that is six months after receipt by Onyvax of the Clinical Trial Data" and Clinical Trial Data is, in turn, defined in terms of the Mayo Trial. Hence, the Sale Expiry Date will never be reached (as the trial has been terminated, there will be no data stemming from it). There is consequently uncertainty as to whether clause 7.6 remains operative, and indeed it may require legal action to provide a final position on this. It may or may not be possible to negotiate with VaxOnco on this point.

Overall, it seems unlikely that Onyvax will derive a share of any proceeds from VaxOnco (if any) "

3.3 Clearly it is disappointing that the trials appear to have little prospect of resuming and the company is therefore unlikely to be able to generate any further realisations for the Arrangement.

3.4 In the circumstances, having reviewed the position and sought legal advice relating to the way forward, the Supervisors now detail their proposals at 4 hereinafter.

#### **4. Proposals for the way forward**

4.1 Although there would appear to be little prospect of any further realisations within the CVA, legal advice received supports the Supervisors' understanding that the CVA has been implemented successfully, notwithstanding the seeming failure of the clinical trials.

4.2 Accordingly, and to avoid the continuing costs of maintaining the CVA regime in place within a scenario that is unlikely to produce further realisations, the Supervisors intend to issue a compliance certificate in due course and effect a final distribution to proving creditors.

4.3 On issuing that certificate, all creditor claims against the company will be deemed settled in full under the terms of the company's arrangement with its creditors and the company will be returned to the directors / shareholders.

- 4 4 We are advised however that there is little appetite from the incumbent directors to continue with the company given its limited prospects, with implications as to whether tax relief will be available to shareholders, without a liquidation of the company
- 4 5 Accordingly, it is proposed once the final distribution is made, and the certificate of compliance issued, that the Supervisors assist the company's directors in placing the company into Members' Voluntary Liquidation, thereby triggering a termination event required for tax purposes, it is anticipated that this process will take approximately eight weeks from the date of this report. The costs of the exercise are further examined at Sections 7-8 below
- 4 6 We have sought and now await the views of the majority creditor Kreos Capital on the above proposed way forward

## **5. Payments to Agents**

- 5 1 In accordance with best practice, and under authority contained within the CVA proposal, the Joint Supervisors advise that the following agents have been utilised

### *Legal Fees*

Messrs Morrison & Foerster LLP have provided legal advice on an ongoing basis to both the former joint administrators and the Supervisors as required from time to time. Legal fees in respect of advice sought regarding the ending of the arrangement (anticipated to be in the order of £500) have been accrued but not yet billed to the Supervisors

### *Patent Fees & Expenses*

Messrs Reddie & Gross were commissioned to assist the joint administrators in protecting the company's intellectual property

### *Consultancy Fees*

No payments have been made under this heading within the period under report

## **6. Creditor Claims / Dividend Prospects**

### *6 1 Preferential Claims*

Known preferential claims, in the total sum of £6,150.28, have been paid in full

### *6 2 Unsecured Non – Preferential Claims*

By way of two separate payments, a total dividend of 30p in the £ has been paid to proving unsecured creditors, whose claims currently stand at £2,015,840.88

In accordance with the proposals above, the Joint Supervisors are declaring a [potentially] final dividend in this matter, please find formal notice to this effect appended to this report. Creditors who have not yet provided details of their claims will find a proof of debt form also attached, which should be completed and returned before the last day for proving (09 December 2011) in order to be considered for the final dividend.

It is anticipated that this final dividend will be in the order of 1.5p in the £.

## 7. Joint Supervisors' Remuneration and Disbursements

- 7.1 The Joint Supervisors' time costs following appointment, up to 08 September 2011, total £25,362.50 and represent 160.60 hours input at an hourly average rate of £157.92. These costs are further analysed as follows:

Activity Analysis	Hours				Total	Average
	Fee Earner	Principal/Consultant	Manager	Admin Staff	£	per hour £
Administration and Planning		0.80	25.20	43.30	69.30	9514.00
Creditors		13.00	46.20	28.10	87.30	15008.50
Realisation of Assets			4.00		4.00	840.00
<b>TOTAL HOURS</b>		<b>13.80</b>	<b>75.40</b>	<b>71.40</b>	<b>160.60</b>	
<b>TOTAL TIME COSTS</b>	<b>£</b>	<b>4925.00</b>	<b>12177.00</b>	<b>8260.50</b>	<b>25362.50</b>	
<b>AVERAGE HOURLY RATE</b>	<b>£</b>	<b>356.88</b>	<b>161.50</b>	<b>115.69</b>		<b>157.92</b>

- 7.2 The Joint Supervisors have drawn £20,000 on account of their fees (based on time costs) during the duration of the CVA, up to the end of the period covered by this report, in accordance with sanction received at the initial meeting of creditors, and capped at this amount.
- 7.3 The work that has been carried out to date within the arrangement derives from the responsibilities placed upon the Supervisors by the underlying legal and regulatory framework for work of this nature. The Supervisors believe this case to be of average complexity with no exceptional responsibility attaching thereto. A schedule in respect of classification of work function undertaken in this case is appended hereto for creditors' further information, together with a creditors' guide to the fees and disbursements charged by Finn Associates.
- 7.4 Disbursements in the period since inception total £659.69 and analyse overleaf, of which £643.44 has been drawn on account,

	£
Postage	222 15
Company search	2 00
Photocopying	237 04
Facsimile	43 50
Motor/Travel	155 00
	<u>659 69</u>
	=====

Other direct cost disbursements have been drawn as per the Receipts and Payments Account

#### **8. Joint Supervisors' Final Fees / Proposed Liquidators' Fees**

- 8 1 The Supervisors propose to limit their current and ongoing time costs and disbursements to a sum not to exceed £9,650 to include unbilled costs as detailed at 7 above, further time costs incurred since 08 September 2011, time costs and disbursements to be incurred in effecting a final dividend and the time costs and disbursements incurred in attending to the liquidation of the company
- 8 2 As noted at 4 6 above, the views of the majority creditor has been canvassed, should the position materially alter as a consequence of the response received, creditors will be advised accordingly

#### **9. Cooperation with Supervisors**

- 9 1 The Supervisors are satisfied that the directors are continuing to cooperate with them in the implementation of the arrangement
- 9 2 The Supervisors are further satisfied that the directors are taking reasonable steps to ensure that the company complies with its obligations pursuant to the terms of the arrangement generally

#### **10. Further Information**

- 10 1 Please note that within 21 days of receipt of a progress report a creditor or creditors may request, in writing, further information from the Supervisors regarding remuneration and expenses. To make a request the creditor or creditors must either collectively have at least 5% in value of unsecured creditors or have permission of the Court
- 10 2 The Supervisors are obliged to provide the requested information within 14 days unless one of the following applies
- the time and cost involved in preparing the information would be excessive

- disclosure would be prejudicial to the conduct of the liquidation or might lead to violence against any person
- the Joint Supervisors are subject to an obligation of confidentiality in respect of the information

- 10 3 Any creditor can apply to Court within 21 days of the Supervisors' refusal to have the decision reviewed or if the Supervisors have not supplied the information within the prescribed 14 day period
- 10 4 If any creditor is dissatisfied with the quantum or basis of the Supervisors' remuneration or disbursements they may make an application to Court for them to be reviewed. Any such application should be made within eight weeks of receiving the report. Any creditor considering such action should seek their own independent legal advice but we would premise that unless the Court orders otherwise, the costs of such an application must be borne by the applicant and will not constitute an expense of the liquidation
- 10 5 A further explanatory note about this can be accessed at the R3 website [www.r3.org.uk](http://www.r3.org.uk). In any event we would recommend that you initially contact this office with any queries you may have pertaining to this case

**Paul H Finn**  
**Joint Supervisor**

**Dated this 10 November 2011**



**Onyvax Limited (in CVA)**  
**(Under a Voluntary Arrangement)**

**Summary of Receipts & Payments**

<b>RECEIPTS</b>	<b>Statement of Affairs (£)</b>	<b>From 09/09/2009 To 08/09/2010 (£)</b>	<b>From 09/09/2010 To 08/09/2011 (£)</b>	<b>Total (£)</b>
Funds Transferred from Administration		619,283 37	0 00	619,283 37
Administration Vat Recovered		4,269 05	0 00	4,269 05
Grants Receivable		4,064 84	0 00	4,064 84
Insurance Premium Refund		4,840 78	0 00	4,840 78
Funds Held by Solicitors		1,045 04	0 00	1,045 04
Intellectual Property Rights		35,000 00	0 00	35,000 00
Refunds Received		0 00	311 66	311 66
Sundry Receipts		50 00	0 00	50 00
Paye and National Insurance Overpaid		10,837 31	0 00	10,837 31
Recovery of Administrators' Costs		10,263 00	0 00	10,263 00
Bank Interest Gross		978 66	199 99	1,178 65
		<b>690,632 05</b>	<b>511 65</b>	<b>691,143 70</b>
<b>PAYMENTS</b>				
Specific Bond		680 00	0 00	680 00
Supervisors' Fees		15,750 00	4,250 00	20,000 00
Supervisors' Disbursements		462 73	180 71	643 44
Patent Fees and Expenses		6,399 00	0 00	6,399 00
Consultancy Fees		1,504 41	0 00	1,504 41
Legal Fees		6,028 27	0 00	6,028 27
Corporation Tax		47 35	266 48	313 83
Preferential Creditors 100p in the £		6,150 28	1,962 76	8,113 04
Unsecured Creditors 30p in the £		497,529 05	104,794 47	602,323 52
		<b>534,551 09</b>	<b>111,454 42</b>	<b>646,005 51</b>
<b>Net Receipts/(Payments)</b>		<b>156,080 96</b>	<b>(110,942 77)</b>	<b>45,138 19</b>
<b>MADE UP AS FOLLOWS</b>				
Vat Receivable		3,168 45	0 00	3,168 45
Bank 1 Current		156,080 96	(111,725 89)	44,355 07
Vat Payable		(1,539 45)	0 00	(1,539 45)
Vat Control Account		(1,629 00)	783 12	(845.88)
		<b>156,080 96</b>	<b>(110,942 77)</b>	<b>45,138 19</b>

Note

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ONYVAX LIMITED  
IN COMPANY VOLUNTARY ARRANGEMENT

Notes to the time and charge-out summary

**Classification of work function**

The headlines provided in the analysis are as set out in best practice guidelines and include but are not limited to the following

**1. Administration & Planning**

- Case planning
- Case set up routines
- Companies House Searches
- Periodic partner/manager reviews
- Correspondence with solicitors/agents
- Securing the premises/liasing with advising agents
- File maintenance
- Client identity checks
- Ethical/compliance checks
- Filing documents at Companies House
- Advertising
- Preparing & issuing notices as required by the Insolvency Act 1986
- Case closure

**2 Creditors**

- Ongoing correspondence with company's preferential creditors (employees)
- Liaison with Insolvency Service Redundancy Payments Office
- Ongoing correspondence with company's non preferential creditors
- Agreeing claims of preferential creditors
- Agreeing claims of non-preferential creditors
- Ongoing liaison with HM Revenue & Customs
- Reporting to all classes of creditors

**3. Asset Realisation**

- Correspondence with associated parties and ongoing action regarding recovery of monies owed to the company
- Liaising with appointed advisers in respect of asset recovery

**Creditors' Guide to the Fees, Expenses and Disbursements charged by Finn Associates**  
**Rates applicable from 01 January 2011**

**Insolvency Practitioner's Licensing Body**

Paul Howard Finn (no 5367) is licensed by The Institute of Chartered Accountants in England and Wales, Chartered Accountants' Hall Moorgate Place, PO box 433, London, EC2R 6EA

Michael Field (no 1586) is licensed by the Insolvency Practitioner's Association, Valiant House, 4 – 10 Heneage Lane, London, EC3A 5DQ

**Insolvency Practitioners' Fees**

Where it has been agreed by resolution of the creditors or the creditor's committee that the office holder's remuneration will be calculated by reference to the time properly given by the insolvency practitioner and his staff in attending to matters arising in the administration, then such remuneration will be calculated in units of 6 minutes at the following hourly rates

Grade	Hourly Rate	Hourly Rate
	Standard	Complex
	£	£
Principals/Consultants	285 – 415	465 – 545
Managers	185 – 275	295 – 395
Administrators	135 – 185	
Assistants / Support Staff	35 – 140	

Charge out rates are exclusive of valued added tax and subject to an annual review. Creditors will be advised of any alteration thereto

In cases of exceptional complexity, the insolvency practitioner reserves the right to seek authority from the secured creditor(s), the committee or the creditors generally that remuneration shall be fixed either by reference to the higher complex hourly rate noted above or as a percentage of the value of the assets which are realised or distributed or both. For remuneration purposes the insolvency practitioner's staff includes other directors and consultants within Finn Associates together with Finn Associates employees

**Expenses and Disbursements**

*Category 1 – Disbursements charged at actual cost*

The payment of Category 1 disbursements will be a charge against the estate to recover the costs of the actual disbursement, including insolvency bonds, oath fees, company searches, redirection of mail, accommodation and subsistence, hire of meeting rooms or any other miscellaneous item paid out in respect of the administration of the estate. A separate amount will be charged by way of an expense to recover the cost of Category 2 disbursements provided by the insolvency practitioner's firm

*Category 2 – Disbursements involving a service provided by the Insolvency Practitioner's firm*

Category 2 disbursements will include storage of company's books and records at the insolvency practitioner's own storage facility. The books and records will be stored in archive boxes and a storage fee will be charged at the rate of £5.50 per box per year. This charge covers the transportation of records from the company's premises, storage and retrieval of books and records in storage for administration purposes. The provision of boxes is charged at £3.10 per box and the destruction of such books and records 15 months after the completion of the insolvency administration is charged at £3.75 per box

The charge for the use of in-house meeting rooms will be a flat rate of £100 per meeting. This includes where requested, the use of computer and media facilities and refreshments

Travelling by motor vehicle on business for the administration of the insolvency will be charged to the estate per mile at the appropriate rate currently published by the "AA" for the type of vehicle and engine size used

All circulars will be sent out by first class post, with the actual cost of postage charged as a Category 1 disbursement. Stationery and photocopying will be charged out at a flat rate per sheet depending upon the size of the circular run, viz

No of Sheets	Pence per Sheet
1 - 25	25
26 – 50	12
51 plus	7

Telephone, mobile, email and facsimile costs are recovered using actual facsimiles received and sent as a cost centre, charged at £1.50 per sheet outgoing and £0.75 per sheet incoming

Identity checks are carried out on (amongst others) all instructing directors. These form part of our obligations under the Money Laundering Regulations and are charged at £25 per identity check. Company searches are charged at £50 per company

All 'Category 2' charges are subject to periodic review, notice of which will be provided to creditors as part of the normal reporting procedure

**Professional Indemnity**

Finn Associates hold Professional Indemnity cover with CNA Insurance Company Limited. The limit of each claim is £1.25m and the cover holds worldwide jurisdiction excluding USA and Canada

**Complaints Procedure**

In the first instance any complaints should be addressed in writing to Paul Finn at Finn Associates, Tong Hall, Tong, West Yorkshire, BD4 0RR

In the event that any complaint is not rectified to your satisfaction then further representations may be made to the respective Insolvency Practitioner's licensing body, details of which can be found on at the top of this information sheet

**The Insolvency Act 1986**

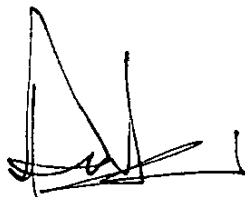
**In the Matter of Onyvax Limited**

**In Company Voluntary Arrangement ("CVA")**

**Notice** is hereby given, pursuant to Paragraph 9.2 of the CVA (as passed by creditors on 09 September 2009), that I intend to declare a final pro rata dividend payable to the unsecured creditors who have proved in the CVA proceedings

I hereby invite all creditors (who have not already done so) to prove their debts and would advise that proofs of debt may be lodged with me, at Tong Hall, Tong, West Yorkshire BD4 0RR, up to 12 December 2011 (the last day for proving)

Dated 10 November 2011

A handwritten signature in black ink, appearing to read 'Paul Howard Finn', written over a horizontal line.

**Paul Howard Finn**  
Joint Supervisor

## PROOF OF DEBT - GENERAL FORM

**In the matter of Onyvax Limited  
In Company Voluntary Arrangement  
and in the matter of The Insolvency Act 1986**

Date of Administration Order 24 April 2009

1	Name of Creditor	
2	Address of Creditor	
3	Total amount of claim, including any Value Added Tax and outstanding uncapitalised interest as at the date the company went into liquidation (see note)	£
4	Details of any document by reference to which the debt can be substantiated [Note the liquidator may call for any document or evidence to substantiate the claim at his discretion]	
5	If the total amount shown above includes Value Added Tax, please show -  (a) amount of Value Added Tax (b) amount of claim NET of Value Added Tax	£ £
6	If total amount above includes outstanding uncapitalised interest please state amount	£
7	If you have filled in both box 3 and box 5, please state whether you are claiming the amount shown in box 3 or the amount shown in box 5(b)	
8	Give details of whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts under section 386 of, and schedule 6 to, the Insolvency Act 1986 (as read with schedule 3 to the Social Security Pensions Act 1975)	Category  Amount(s) claimed as preferential £
9	Particulars of how and when debt incurred	
10	Particulars of any security held, the value of the security, and the date it was given	£
11	Signature of creditor or person authorised to act on his behalf	
	Name in BLOCK LETTERS	
	Position with or relation to creditor	