

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, December 10, 2020

Hearing Room 1568

11:00 AM

2:20-16475 Neumedicines, Inc.

Chapter 11

#1.00 HearingRE: [114] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Debtor's Motion for Order: (1) Approving the Sale of Substantially All Assets Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §363(b)(1) and (f)(4); (2) Approving the Assumption and Assignment of Certain Executory Contracts; and (3) Entering Findings Related to the Sale; Memorandum of Points and Authorities; Declarations of Daniel J. Weintraub, Timothy K. Gallaher and Raphael Nir in Support Thereof.

Docket 114

Tentative Ruling:

12/9/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

Hearing required. The parties shall be prepared to address the issues set forth below.

"The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005). Here, achieving optimal value requires that the Debtor resolve the dispute with Libo Pharma Corp. regarding the *Exclusive License and Technology Agreement* and its subsequent amendments (the "License") prior to the auction. The Stalking Horse Bidder is not required to close the sale unless Libo has confirmed that the License has terminated and Libo and the Stalking Horse Bidder have entered into a New License on terms agreeable to both parties. See Stalking Horse APA at §§ 1.1(ddd) and 8.1(e). There is no point in conducting an auction where the conditions precedent for the Stalking Horse Bidder to close have not yet been satisfied.

The Debtor acknowledges that no bidder has agreed to waive the conditions precedent pertaining to the License, even if the Debtor obtains an order authorizing sale of the Assets free and clear of the License. See Doc. No. 129, p. 10 at n.2. The Debtor postulates that an order authorizing a sale free and clear "would substantially

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increase the likelihood" that a bidder would close. *Id.* In the Court's view, this is wishful thinking. The dispute regarding the License casts a substantial cloud over the Assets, and a buyer closing the sale absent resolution of this dispute would face significant risk and uncertainty, even if the Debtor obtained an order authorizing sale of the Assets free and clear of the License. Such a buyer could not be certain that the sale order would not be reversed on appeal, an outcome that would significantly impair the value of the Assets. The dispute with Libo thus makes it unlikely that any sale approved by the Court would close. (To be clear, the Court is not making a determination that the Debtor is entitled to an order authorizing sale of the Assets free and clear of the License. The point is that even if the Court ruled in the Debtor's favor on all the disputed issues set forth in the Sale Motion, the Debtor still has not demonstrated that the sale is feasible.)

Even more significant, the cloud cast on the Assets by the dispute will chill bidding, reducing the ultimate sale price received by the estate.

The sale and auction hearing shall remain on calendar, but the Court is unlikely to go forward with the auction unless material progress has been made towards resolving the disputes concerning the License.

If the Court determines that it is appropriate to allow the auction to proceed, the auction shall be conducted out of court by the Debtor. The bids for the Assets involve multiple forms of consideration, including cash, stock, and rights to future royalty payments. An out-of-court auction will maximize the value received by the estate since it will provide the parties a greater opportunity to consult with their advisors regarding the formulation of complex bids. The Debtor shall be responsible for providing a recorder to transcribe the auction. (Unfortunately, the Court is unable to furnish court recording services for out-of-court auctions.) In the event the auction goes forward, the Court will set a continued hearing date to approve the results of the auction.

Party Information

Debtor(s):

Neumedicines, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Selth

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#2.00 Hearing
RE: [109] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement

Docket 109

Tentative Ruling:

12/9/2020

For the reasons set forth below, the Motion is **GRANTED**.

Pleadings Filed and Reviewed

1. Motion of Debtor-in-Possession for Entry of an Order (I) Extending the Exclusivity Periods; and (II) Granting Related Relief; Declaration of Daniel J. Weintraub in Support Thereof (the "Motion") [Doc. No. 109]
2. Notice of Hearing on Motion of Debtor-in-Possession for Entry of an Order (I) Extending the Exclusivity Periods; and (II) Granting Related Relief; Declaration of Daniel J. Weintraub in Support Thereof [Doc. No. 111]
3. As of the preparation of this tentative ruling, no objection is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, Neumedicines, Inc (the "Debtor") seeks an extension of the exclusivity periods under which it may file and solicit votes on a plan of reorganization (the "Plan"). The Debtor's exclusivity period to file the Plan expired on November 16, 2020. The Debtor's exclusivity period to solicit a vote with respect to the Plan expires on January 15, 2021. The Debtor seeks an order (1) extending the exclusivity period to file the Plan by 120 days, to and including March 16, 2021; and (2) extending the exclusivity period to solicit votes with respect to the Plan by 120 days, to and including May 15, 2021. This is the Debtor's first request for an extension.

The Debtor proposes to sell its various pharmaceutical assets. The process is complex and time-consuming. The Debtor began the sales process, but additional time may be required to complete a sale, if approved. Sale proceeds will enable the debtor

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to pay all allowed claims in full, including all administrative, secured, and unsecured claims.

The Debtor believes that it is appropriate to extend the deadlines to file the Plan and solicit votes because, until the sale is finalized, "any Plan would be speculative and contingent upon a future event with an as of yet to be determined buyer." *Id.* at 4-5.

II. Findings of Fact and Conclusions of Law

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. If the debtor files a plan within the 120-day exclusivity period, §1121(c)(3) provides that exclusivity is extended for an additional 60 days to maintain exclusivity during the plan solicitation period. If the plan has not been accepted by holders of impaired claims before 180 days after the date of the order for relief, then the exclusivity period terminates, unless the debtor has obtained an extension. § 1121(c)(3). Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the exclusivity periods in accordance with the Debtor's request. The Debtor has been working toward both a sale of its assets as well as a resolution of its issues with Libo. Furthermore, the Debtor remains current on all of its post-petition bills. An extension of the exclusivity periods will give the Debtor enough time to file an appropriate Plan, and an extension does not appear as though it will prejudice creditors.

The exclusivity period for the Debtor to file the Plan is extended from November 16, 2020 to and including March 16, 2021. The exclusivity period for the Debtor to solicit votes on the Plan is extended from January 15, 2021 to and including May 15, 2021.

III. Conclusion

For the reasons set forth above, the Motion is **GRANTED**.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Andrew Lockridge or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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| Party Information |
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Debtor(s):

Neumedicines, Inc.

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