

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re:	:	Chapter 11
	:	
SAVIENT PHARMACEUTICALS, INC.,	:	Case No. 13-12680 (MFW)
<u>et al.</u> ,	:	
	:	Jointly Administered
Debtors. ¹	:	
	:	Hrg. Date: 3/17/2014 at 11:30 a.m. (Eastern)
-----	X	Obj. Deadline: 2/20/2014 at 4:00 p.m. (Eastern)

**DEBTORS’ MOTION FOR ORDER PURSUANT TO
SECTION 363 OF THE BANKRUPTCY CODE AND FEDERAL
RULE OF BANKRUPTCY PROCEDURE 6004 AUTHORIZING THE SALE
OF CERTAIN PERSONAL PROPERTY TO AMNEAL PHARMACEUTICALS LLC**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby move (the “Motion”), pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order substantially in the form attached hereto (the “Proposed Order”) authorizing the Debtors to sell certain personal property to Amneal Pharmaceuticals LLC (“Amneal”) free and clear of all liens, claims and encumbrances (collectively, “Liens”), with such Liens attaching only to the sale proceeds with the same validity, priority, force and effect such Liens had on the assets immediately prior to the sale. In support of this Motion, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Savient Pharmaceuticals, Inc. (3811); and Savient Pharma Holdings, Inc. (0701). The address of the Debtors’ corporate headquarters is 400 Crossing Boulevard, 4th Floor, Bridgewater, New Jersey 08807.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are section 363 of the Bankruptcy Code and Bankruptcy Rule 6004.

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. On October 14, 2013 (the “Petition Date”), the Debtors each commenced a bankruptcy case by filing a petition for relief under chapter 11 of the Bankruptcy Code (together, the “Chapter 11 Cases”). The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases, is set forth in the Declaration of John P. Hamill in Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 4].

5. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On October 24, 2013, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an Official Committee of Unsecured

Creditors in the Chapter 11 Cases (the "Committee") pursuant to section 1102(a) of the Bankruptcy Code [Docket No. 81].

7. On December 13, 2013, the Court entered an order [Docket No. 251] approving the sale of substantially all of the Debtors' assets (the "Sale") to Crealta Pharmaceuticals LLC (the "Purchaser"). The Sale was consummated on January 9, 2014.

RELIEF REQUESTED

8. By this Motion, the Debtors respectfully seek entry of an order authorizing them to sell the Personal Property (as defined below) to Amneal, free and clear of all Liens, with such Liens attaching only to the sale proceeds with the same validity, priority, force and effect such Liens had on the Personal Property immediately prior to the sale.

BASIS FOR RELIEF

9. On January 23, 2012, Debtor Savient Pharmaceuticals, Inc. entered into a lease with Piedmont – Multi-State Owner, LLC ("Piedmont") for its corporate headquarters in Bridgewater, New Jersey (the "Headquarters"). This lease covered approximately 48,000 square feet, and encompassed the entire third floor, and a portion of the fourth floor, at 400 Crossing Boulevard, Bridgewater, New Jersey.

10. The Debtors realized that, after the closing of the Sale, they would no longer need the substantial office space that had been leased for their operations. Rather, going forward, the Debtors would require only a relatively modest office space to house the small team of employees and consultants conducting wind down tasks. Accordingly, prior to closing of the Sale, the Debtors approached Piedmont regarding the possibility of resolving all potential issues in the Chapter 11 Cases between the parties, including the rejection of the Headquarters lease and the settlement of claims between the parties. After arm's-length negotiations, the Debtors and Piedmont reached a global settlement resolving all issues between them (the "Global

Settlement”), which settlement was approved by the Court by order entered on January 6, 2014 [Docket No. 305].

11. As part of the Global Settlement, the Debtors agreed to reject their Headquarters lease, and take back a short-term license for the fourth floor space that they previously had leased from Piedmont. Also as part of the Global Settlement, the Debtors abandoned to Piedmont various office furniture and other items for which the Debtors had no use and which the Debtors believed had *de minimis* value, particularly when compared with the benefits that would inure to the Debtors under the Global Settlement. The Debtors had planned to move various other furniture and equipment to their fourth floor space for their use during the wind down period and, in some cases, for possible sale.

12. The Debtors understand that Piedmont has found a replacement tenant, Amneal, which plans to occupy the Debtors’ former space on the third floor of 400 Crossing Boulevard. Amneal approached the Debtors regarding the purchase of certain personal property that the Debtors had planned to relocate to the fourth floor (the “Personal Property”), a list of which is attached as Exhibit A to the Proposed Order. Because the Debtors generally no longer have a need for the Personal Property and believe that the consideration offered by Amneal is fair and reasonable, and likely more favorable than what the Debtors otherwise would obtain, the Debtors have determined in an exercise of their business judgment to sell the Personal Property to Amneal.²

² As part of the transaction with Amneal, Amneal will provide the Debtors, at a below-market cost, with (i) “loaner” firewall and switch equipment, to be used by the Debtors until they terminate their license for the fourth-floor premises, and (ii) approximately twelve hours of Cisco certified firewall engineer support, to assist the Debtors with setting up their information technology systems on the fourth floor.

APPLICABLE AUTHORITY

13. Section 363 of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Federal Rule of Bankruptcy Procedure 6004(f)(1) provides that “sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f).

14. Courts generally apply the “business judgment” standard in determining whether to approve a proposed transaction under section 363 of the Bankruptcy Code. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to the debtor’s judgment concerning the proposed use of estate property under section 363(b) when there is a legitimate business justification); In re Del. and Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (noting that the Third Circuit has adopted the “sound business purpose” standard for transactions under section 363).

15. Under this standard, the debtor has the initial burden of establishing that a valid business purpose exists for the use of estate property in a manner outside of the debtor’s ordinary course of business. See Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983). Once the debtor articulates a valid business justification for the proposed transaction, courts will generally presume that the decision was made “on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

16. Thus, after a debtor satisfies its initial burden of establishing a valid business justification, the business judgment rule shields the debtor’s management from judicial second-guessing and mandates that a court approve the debtor’s business decision unless the

decision is a product of bad faith or constitutes a gross abuse of discretion. See, e.g., In re Global Crossing, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); see also In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”). To impose more exacting scrutiny would slow a debtor’s reorganization, thereby increasing its cost and undermining the “Bankruptcy Code’s provision for private control” of the estate’s administration. See Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1986).

17. Here, the Debtors submit that the sale of the Personal Property to Amneal is a sound exercise of their business judgment. As set forth above, the Debtors generally no longer have a need for the Personal Property and believe that the consideration offered by Amneal is fair and reasonable—and likely more favorable than what the Debtors otherwise would obtain. Moreover, the sale to Amneal relieves the Debtors of the burden of attempting to market and sell the Personal Property, some of which would have a very limited market—or perhaps no market at all.

18. Amneal is not affiliated with, nor an insider of, the Debtors, and Amneal’s purchase of the Personal Property is the result of good faith, arm’s-length negotiations between the parties. Accordingly, the Debtors request that this Court find that Amneal is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code³ and that the sale is not subject to avoidance under section 363(n) of the Bankruptcy Code.⁴

³ Pursuant to section 363(m) of the Bankruptcy Code, the reversal or modification on appeal of an authorization under sections 363(b) or 363(c) of the Bankruptcy Code does not affect the validity of a disposition under that authorization to an entity that has acted in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the relevant transaction were stayed

19. In light of the foregoing, the Debtors respectfully submit that the sale of the Personal Property to Amneal is in the best interests of the Debtors' estates, their creditors and all other parties in interest.

NOTICE

20. Notice of this Motion shall be given to: (i) the U.S. Trustee; (ii) the indenture trustee under the 2019 Senior Secured Notes; (iii) the indenture trustee under the 2018 Convertible Notes; (iv) counsel to the Unofficial Committee of Senior Secured Noteholders; (v) counsel to the Committee; (vi) counsel to Amneal; and (vii) all parties entitled to notice pursuant to Local Bankruptcy Rule 2002-1. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

21. No prior request for the relief sought in this Motion has been made to this or any other court.

pending the appeal. See 11 U.S.C. § 363(m).

⁴ Section 363(n) of the Bankruptcy Code provides that

[t]he trustee may avoid a sale under this section if the sale process was controlled by an agreement among the potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

11 U.S.C. § 363(n).

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto authorizing the Debtors to sell the Personal Property to Amneal and granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
February 6, 2014

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

/s/ David R. Hurst

David R. Hurst (I.D. No. 3743)

J. Kate Stickles (I.D. No. 2917)

500 Delaware Avenue, Suite 1410

Wilmington, Delaware 19801

Telephone: (302) 652-3131

Facsimile: (302) 652-3117

Counsel for Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
:

In re: : Chapter 11

:

SAVIENT PHARMACEUTICALS, INC., : Case No. 13-12680 (MFW)

et al., :

: Jointly Administered

Debtors.¹ :

: **Hrg. Date: 3/17/2014 at 11:30 a.m. (Eastern)**

----- X **Obj. Deadline: 2/20/2014 at 4:00 p.m. (Eastern)**

NOTICE OF MOTION

TO: (i) the U.S. Trustee; (ii) the indenture trustee under the 2019 Senior Secured Notes; (iii) the indenture trustee under the 2018 Convertible Notes; (iv) counsel to the Unofficial Committee of Senior Secured Noteholders; (v) counsel to the Committee; (vi) counsel to Amneal; and (vii) all parties entitled to notice pursuant to Local Bankruptcy Rule 2002-1

PLEASE TAKE NOTICE that, on February 6, 2014, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the **Debtors’ Motion for Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004 Authorizing the Sale of Certain Personal Property to Amneal Pharmaceuticals LLC** (the “Motion”).

An objection, if any, to the Motion must be in writing, filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon the counsel for the Debtors listed below, so that it is received **on or before 4:00 p.m. (ET) on February 20, 2014.**

David R. Hurst, Esq.
J. Kate Stickles, Esq.
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Savient Pharmaceuticals, Inc. (3811); and Savient Pharma Holdings, Inc. (0701). The address of the Debtors’ corporate headquarters is 400 Crossing Boulevard, 4th Floor, Bridgewater, New Jersey 08807.

A HEARING ON THE MOTION WILL BE HELD ON **MARCH 17, 2014 AT 11:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 4, WILMINGTON, DE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
February 6, 2014

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

/s/ David R. Hurst
David R. Hurst (I.D. No. 3743)
J. Kate Stickles (I.D. No. 2917)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

Counsel for Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
:

In re: : Chapter 11

:

SAVIENT PHARMACEUTICALS, INC., : Case No. 13-12680 (MFW)

et al., :

: Jointly Administered

Debtors.¹ :

: **Related to Docket No. ___**

----- X

**ORDER PURSUANT TO SECTION 363 OF THE
BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 6004 AUTHORIZING THE SALE OF CERTAIN
PERSONAL PROPERTY TO AMNEAL PHARMACEUTICALS LLC**

Upon the motion (the "Motion")² of the above-captioned Debtors for entry of an order pursuant to section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004 authorizing the Debtors to sell the personal property listed on Exhibit A hereto (the "Personal Property") to Amneal free and clear of all liens, claims and encumbrances (collectively, "Liens"), with such Liens attaching only to the sale proceeds with the same validity, priority, force and effect such Liens had on the Personal Property immediately prior to the sale; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Savient Pharmaceuticals, Inc. (3811); and Savient Pharma Holdings, Inc. (0701). The address of the Debtors' corporate headquarters is 400 Crossing Boulevard, 4th Floor, Bridgewater, New Jersey 08807.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

estates, their creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. That the Motion is GRANTED.
2. Pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized to sell the Personal Property to Amneal free and clear of all Liens, with such Liens attaching only to the sale proceeds with the same validity, priority, force and effect such Liens had on the Personal Property immediately prior to the sale, for the consideration and on the terms set forth in the Motion and on Exhibit A hereto.
3. Amneal is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code and the sale of the Personal Property is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2014

The Honorable Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT APersonal Property

Boardroom audio conferencing equipment	\$5,486.83
Samsung plasma television	\$1,400.00
Security equipment, including video cameras, digital video recorder, security access panels and electronic badge creation and printing equipment and software	\$11,486.00
White noise sound masking system for privacy, including multiple speakers with independently networked control system	\$8,071.60
Computer monitors (70 @ \$50/each)	\$3,500.00
Docking station stands (34 @ \$40/each)	\$1,360.00
Miscellaneous IT equipment	\$47,063.60
Catalyst 2960G	
ASA5500 ENCR K9	
ASA AIP Security Module	
WS C6504 Enhanced Chassis	
GLC-SX-MM (Connector)	
WS-X6748-GE-TX (48 Port Switch)	
WS-X6148-GE-45AT (48 Port Switch)	
WS-SUP7203B (Supervisor Blade)	
IPS4240 Sensor	
Cisco 2911/K9 (Switch)	
HWIC-2FE (10/100 Routed Port)	
ACS 5.3 VMWare Software Upgrade	
Catalyst 3750X 48 POE Switch	
C3750X-IOS Software Upgrade	
C3KXNM-1G Network Module	
Digiport Controller	
Total Consideration	\$78,368.03
Less Cisco Loaner Equipment	\$1,000.00
Less Cisco Technical Support	\$1,200.00
Net Consideration to Debtors	\$76,168.03