

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
MIDDLEBROOK PHARMACEUTICALS,) Case No. 10-11485 (MFW)
INC.,¹)
) **Docket Ref. No. 63**
)
Debtor.)

**ORDER APPROVING THE MIDDLEBROOK EMPLOYEE INCENTIVE PLAN AND
AUTHORIZING PAYMENTS THEREUNDER PURSUANT TO SECTIONS 105(a),
363(b) AND 503(c) OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “**Motion**”) of the above-captioned debtor and debtor in possession (the “**Debtor**”), for the entry of an order pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code² to approve the Incentive Plan, as set forth as Exhibit A hereto, and authorizing payments thereunder; the *Limited Objection and Reservation of Rights by the Official Committee of Unsecured Creditors to Motion of the Debtor for an Order (I) Approving the MiddleBrook Employee Incentive Plan and (II) Authorizing Payments Thereunder Pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code* (the “**Creditors’ Committee Objection**”) [D.I. 87]; the *Objection of the Ad Hoc Committee of Equity Security Holders to the Debtor’s Motion for an Order (I) Approving the MiddleBrook Employee Incentive Plan and (II) Authorizing Payments Thereunder Pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code* (the “**Equity Committee Objection**” and, together with the Creditors’ Committee Objection, the “**Objections**”) [D.I. 98]; and the Objections having been resolved as

¹ The last four digits of the Debtor’s taxpayer identification number are 8264. The Debtor’s mailing address is 7 Village Circle, Suite 100, Westlake, Texas 76262.

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



set forth in this Order; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interest of the Debtor, its estate, and creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED as set forth herein.
2. To the extent not otherwise withdrawn or resolved by this Order, the Objections are hereby overruled.
3. Pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, the Debtor is authorized, but not required, (a) to adopt and implement the Incentive Plan, as revised, as set forth on Exhibit A, attached hereto, (b) to make the appropriate payments thereunder to eligible Participants, and (c) to take such other actions as may be necessary to implement the Incentive Plan, including, without limitation, designing and/or altering the Incentive Plan in any manner necessary to comply with applicable law.
4. Neither this Order nor any payment or performance by the Debtor authorized hereunder shall be deemed: (i) an assumption of any executory contract or otherwise affect the Debtor's rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract, (ii) a waiver of any of the Debtor's estate's defenses that may exist to a Remaining Employee's claim or (iii) any waiver of any other claim against a Remaining Employee.

5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware

July 12, 2010



JUDGE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A TO THE ORDER

MiddleBrook Employee Incentive Plan

Overview

Management Participants	<p>The following employees, if they remain through the date(s) that: (a) the KEFLEX® and MOXATAG® Assets are sold, (b) a stand alone plan of reorganization is confirmed in the bankruptcy case, or (c) his or her employment by MiddleBrook is terminated for any reason other than for cause:</p> <p>Dave Becker (CEO); Dave Carlson (VP, Finance); Brad Cole (SVP, General Counsel); Tim Miller (SVP, Sales Operations); Cyndi Tirpak (VP, Controller); and Donald Treacy (SVP, Manufacturing, Product Development).</p>
Compensation Pool	<p>The dollar value of each Management Participant's cash payment under the Incentive Plan will be determined by multiplying each Management Participants' current annual base salary by the cumulative percentages below based on MiddleBrook's achievement of pre-established metrics related to the goal of compensating creditors in full and providing recovery for shareholders. For example, if a Management Participant has an annual base salary of \$200,000, the cash payment under the Incentive Plan will equal \$164,400 if between \$12.5 million and \$15.0 million is available for distribution to shareholders. The dollar value of the pool will equal the aggregate of the cash payments to all of the Management Participants.</p>
Severance Reduction	<p>The dollar value of each Management Participant's cash payment claim for severance against the Debtor will be reduced dollar for dollar by the payment made to such Management Participant under the Incentive Plan, up to a maximum of twelve and one half percent (12.5%) of the value of the severance payment. For example, the maximum 12.5% severance payment reduction to a Management Participant with an annual base salary of \$200,000 would be \$25,000.</p>
Maximum Aggregate Amount Payable to the Management Participants	<p>\$2.30 million, excluding that portion of the Management Participant's Severance that will be reduced by Management</p>

pursuant to the Incentive Plan	Participant's participation in Incentive Plan.
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Management Participant Incentive Plan Measurement Points

Metric	Management Participant		Aggregate Amount Paid
	Other than CEO	CEO	To All Management Participants
Payment of, or reserve for, Allowed Claims of Unsecured Creditors, plus interest on account of such claims to the extent allowed by the Court, plus funds available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$7.5m and equal to or less than \$10.0m	44.0%	55.0%	\$750,000.00
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$10.0m and equal to or less than \$12.5m	20.5%	25.7%	\$1,100,000.00
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$12.5m and equal to or less than \$15.0m	15.5%	16.0%	\$1,350,000.000
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$15.0m and equal to or less than \$17.5m	14.7%	18.3%	\$ 1,600,000.00
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$17.5m and equal to or less than \$20.0m	11.7%	14.7%	\$1,800,000.00
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$20.0m and equal to or less than \$22.5m	11.7%	14.7%	\$2,000,000.00

Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$22.5m and equal to or less than \$25.0m	5.85%	7.35%	2,100,000.00
Funds are available for distribution to common stockholders before calculation of the Incentive Plan of greater than \$25.0m	11.7%	14.7%	2,300,000.00

Non-Management Participants

Non-Management Participants include:

Marcus	Schestopol
Robin	Belsaas
Debra	Raphelt
Amber	Tomlinson
Nicholas	Garito Jr.
Brenda	Wolling
Gary	Herman

Under the Incentive Plan, each Non-Management Participant is entitled to receive one additional week's pay for each week of continued service (the "**Weekly Incentive Plan Payment**"). These payments began to accrue on May 1, 2010 and will continue until the earlier of August 1, 2010 or the date the Non-Management Participant terminates his or her employment or MiddleBrook terminates his or her employment for any reason other than for cause.