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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 10-11485 (MFW)

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In the Matter of:

MIDDLEBROOK PHARMACEUTICALS, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

August 26, 2010

10:30 AM

B E F O R E:
HON. MARY F. WALRATH
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY



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HEARING re Debtor's Second Omnibus Motion to Reject Certain
Leases and executory Contracts Nunc Pro Tunc to July 30, 2010.

HEARING re Application of the Official Committee of Equity
Security Holders to Retain the Law Offices of David Carlebach,
Esq., Nunc Pro Tunc.

HEARING re Application of the Official Committee of Security
Holders to Retain Morris James, LLP, Nunc Pro Tunc.

HEARING re Debtor's Motion for Approval of Procedures Pursuant
to Bankruptcy Code Sections 105, 363(b) and 554(a) for the Sale
and Abandonment of Certain Miscellaneous Property.

HEARING re Status Conference Regarding Scheduling of a Hearing
to Consider Approval of a Disclosure Statement and Plan.

Transcribed by: Pnina Eilberg

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Office of the United States Trustee

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P R O C E E D I N G S

THE COURT: All right. The parties are on the phone?
Hello?

THE OPERATOR: One moment, Your Honor.

THE COURT: All right. The parties are on the phone?

MS. KIM: Mary Kim from Dickstein Shapiro for the
Official Committee of Unsecured Creditors.

THE COURT: Anybody else?

MR. WAXMAN: Jeff Waxman of Morris James on behalf of
the Official Committee of Equity Security Holders.

MS. LEAMY: Jane Leamy for the United States Trustee.

MR. MILLER: Evan Miller with Bayard.

THE COURT: Anybody else?

(No response)

THE COURT: Are the debtor's counsel on?

MR. LEVIN: Yes, Your Honor. Matthew Levin on behalf
of the debtors with Alston & Bird.

THE COURT: All right. I hadn't heard you.

MR. LEVIN: I'm sorry; I think I spoke at the same
time as Kim did.

THE COURT: All right. All right. Where are we in
the case?

MR. LEVIN: Your Honor, again Matthew Levin, we are,
in terms of where we are in the case we did close the sale to
Victory as approved by the Court on July the 30th and have

1 received all of the proceeds due under the sale agreement since
2 that time.

3 We are currently in the process of liquidating, you
4 know, various miscellaneous assets that are still in the
5 debtor's possession, really furniture and things like that.

6 Towards that end we had filed a certificate of no
7 objection with regard to a motion to set up procedures for
8 dealing with the sale of its miscellaneous assets and we
9 haven't seen an order yet on that. Has the Court seen that
10 yet?

11 THE COURT: I have. I have an issue with that and
12 specifically I think your procedures provide that if there's no
13 objection to the sale that no further order has to be entered.
14 But I think under Section 363 if you're selling something I
15 think you need a court order. So I think you should simply
16 file a certificate of no objection and get a court order to
17 approve the sale.

18 MR. LEVIN: With respect to each individual sale?

19 THE COURT: Yes.

20 MR. LEVIN: Okay. Well, we can revise the order
21 accordingly and resubmit.

22 THE COURT: Okay.

23 MR. LEVIN: And we will do that. And then with regard
24 to the -- so that's the, sort of, functional things that we're
25 doing right now. I think as the Court is aware the bar date

1 for proofs of claim to be filed, at least for non-governmental
2 entities, is tomorrow. We have been reviewing the claims
3 docket on a daily basis as the claims come in and there don't
4 seem to be too many surprises. There's one or two that will
5 require some investigation and obviously we're still waiting
6 for whatever claims come in today and tomorrow and then we'll
7 start moving on towards claim objections.

8 In terms of, you know, ultimate resolution of this
9 case, we have a draft plan. The debtor has drafted a plan that
10 we've circulated to both committees and we have a call on
11 Monday to discuss comments to that and so forth and we
12 anticipate getting that on file sometime next week. And in
13 terms of where we go from here, relative to the plan, I guess
14 that's one of the issues we wanted to discuss with the Court
15 today and get some guidance in terms of, perhaps, being able to
16 expedite the confirmation process.

17 Where we sit right now, and this is a discussion that
18 the committees and the debtor have had relative to the plan, is
19 that we were considering the possibility of whether the Court
20 would be amenable to a combined disclosure statement and
21 confirmation hearing. And the reason for that is, obviously,
22 one to cut down on the time involved here, as well as the admin
23 expenses associated with the Chapter 11 process. But really
24 the plan itself is what you would expect. It is, in essence,
25 pay the assets in the estate to cash available for distribution

1 to the creditors in their order of priority and then anything
2 left over at the end of the day goes to the equity pro rata,
3 according to the number of shares. So there's not a lot of
4 magic to this. Really, to a large degree, just mirroring what
5 would happen if this case converted to Chapter 7.

6 So under the circumstances, the general feeling,
7 amongst the lawyers, at least, was it does seem to be a bit of
8 a, I don't want to use the word waste but it does seem to be a
9 bit of a -- less than -- well, less than optimal use of the
10 estate resources to go through a full blown disclosure
11 statement hearing thirty-five days for that and then a
12 confirmation hearing. It really, kind of, elongates the
13 process when the end result is no different then what would
14 occur under Chapter 7 at the end of the day.

15 So that was one of the issues we wanted to take up
16 with the Court today.

17 THE COURT: Well, I don't have a problem with a
18 combined hearing under these circumstances.

19 MR. LEVIN: Okay. What type of notice would -- I
20 guess then the second question would be, from a timing
21 standpoint, we currently have a hearing, an omnibus hearing at
22 least scheduled. We have one scheduled for September 23rd,
23 which I think would be too soon. But we have another hearing
24 scheduled for, I believe, October the 12th. Would that -- I
25 mean, if we were able to get the plan on file by next week,

1 would that be a date that would be agreeable to the Court for
2 purposes of a combined hearing or do we need more notice period
3 time?

4 THE COURT: Well, I have you down at October 19th.

5 MR. LEVIN: Oh, it's October 19th, I get my days mixed
6 up. For some reason I had it on my calendar as the 12th.

7 THE COURT: No, it's actually -- actually the 12th is
8 the NCBJ.

9 MR. LEVIN: Oh, okay. You know what, that's exactly
10 right. Yeah, I do have it as the 19th, that's correct.

11 THE COURT: Yeah. I mean, I think, depending on your
12 timing, I mean you just need, what, twenty-eight days notice
13 now?

14 MR. LEVIN: Right, of the objection deadline so it's
15 really adds about seven days to the process.

16 THE COURT: I think, you know, depending on if you get
17 it on file next week, I think that's sufficient time.

18 MR. LEVIN: Okay. And assuming we do that, and I
19 think we can, would we just submit a proposed order to the
20 Court relative to scheduling that combined hearing? I'm just,
21 sort of, thinking through out loud to a certain degree, the
22 procedures we'd use to get from here to there.

23 THE COURT: Good point. Yeah, you don't have to --
24 when is your other hearing?

25 MR. LEVIN: The September hearing is, and I think I

1 have this one right, the 23rd at 2 o'clock.

2 THE COURT: Hold on a second.

3 (Pause)

4 THE COURT: Well, since -- I assume all the parties
5 are on board as far as this -- if you will, expedited
6 procedure. So maybe simply file a stipulation for approval of
7 voting procedures. I think we have pretty standard voting
8 procedures.

9 MR. LEVIN: Uh-huh.

10 THE COURT: Maybe the parties can draft and file that
11 stipulation regarding voting procedures and having a combined
12 hearing on the plan and disclosure statement and I would
13 approve that.

14 MR. LEVIN: Okay. We can certainly do that. We've
15 begun working on the voting procedures right now so we can turn
16 that into a stipulation fairly quickly, I think, and get that
17 around for comment to everybody. And I think, from a timing
18 standpoint, we'd look to probably file that along with the plan
19 and disclosure statement, assuming everybody has time to look
20 at everything between now and next week, but hopefully we can
21 get that done.

22 THE COURT: I think -- yeah, if you get it done
23 promptly. I'm out next week so really the first week of -- I
24 mean right after Labor Day is when I'd approve it.

25 MR. LEVIN: Okay.

1 THE COURT: But I think that's still sufficient time.

2 MR. LEVIN: I think that probably gets us there. The
3 week of the 6th, I think that should work from a timing
4 perspective.

5 And then the last issue we wanted to raise with the
6 Court is, as I think we've mentioned to the Court on several
7 occasions, probably the one critical claim that has to be
8 resolved in order to assure that there will be a hundred
9 percent distribution to creditors is the PAR claim. They have
10 filed their proof of claim in the amount that we anticipated
11 they would and we are preparing an objection right now, that we
12 intend to file today or tomorrow.

13 Just looking at the calendar I don't think that if
14 even if we filed it today that that could be heard on the 23rd
15 of September because it doesn't give the thirty days notice
16 required by Rule 3007. So we were wondering whether the Court
17 might have availability on its calendar some time the following
18 week or the next week, whatever works. But we're looking to
19 get that one resolved much quicker than the other claims,
20 simply because that's such a big claim and was filed in the
21 amount of 11.6 million dollars. As I think we've mentioned on
22 a couple of occasions, we think the claim is actually zero or
23 should be zero according to the terms of the contract.
24 Obviously PAR has a different view of that and we're not
25 looking to prejudice their rights to raise their arguments.

1 But we do think the claim can be resolved -- well, there are a
2 couple of arguments with respect to their claim that we think
3 very minimal facts involved and it's really just a construction
4 of the contract that the Court could resolve this thing with
5 relatively little muss or fuss.

6 If, on the other hand, their arguments prevail then I
7 think they're will probably be a little bit lengthier
8 litigation process. So what we were hoping was, and if we can
9 have at least the initial hearing on the claim objection
10 shortly after the thirty day notice period, we might be able to
11 get this thing fully resolved so that when we get to a
12 confirmation hearing we'll be in much better shape to start
13 making distributions immediately.

14 THE COURT: Well, is it -- if I simply moved the
15 omnibus, which is on what day you say?

16 MR. LEVIN: September 23.

17 THE COURT: Twenty-three, if I move that a week to
18 September 30?

19 MR. LEVIN: Yeah, I think that would be fine.

20 THE COURT: Then you can just notice it up for that
21 omnibus.

22 MR. LEVIN: I think that would work great, Your Honor.

23 THE COURT: Well, let's make it September 30 at 2 p.m.

24 MR. LEVIN: Okay. All right. I believe that's all I
25 had, at least on my plate, so we will -- we will redraft the

1 order relative to the miscellaneous asset sale procedures and
2 resubmit that under certification of counsel and then with
3 regard to the plan and disclosure statement, obviously we'll
4 look to have that on file along with the stipulation regarding
5 voting procedures some time next week for the Court's
6 consideration when the Court returns on September 6th.

7 THE COURT: Okay.

8 MR. LEVIN: Or 7th actually because September 6th is
9 Labor Day.

10 THE COURT: All right.

11 MR. LEVIN: And I don't mean to cut anybody else off.
12 I don't know whether anybody else on the phone had any issues
13 that they wanted to raise with the Court.

14 THE COURT: Anybody else?

15 MS. KIM: This is Mary Kim, I don't have -- the
16 committee has nothing.

17 MR. WAXMAN: Jeff Waxman, Your Honor. The equity
18 committee has nothing. Thank you very much for making yourself
19 available telephonically, Your Honor.

20 THE COURT: All right. Then I'll see the parties, I
21 guess, not until the 30th but I'll look for that stipulation.

22 MR. LEVIN: Thank you, Your Honor. We appreciate it.

23 MS. KIM: Thank you, Your Honor.

24 THE COURT: All right. We'll stand adjourned.

25 (Whereupon proceedings were concluded at 10:45 a.m.)

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C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a true and accurate record of the proceedings.

PNINA EILBERG (CET**D-488)
AAERT Certified Electronic Transcriber

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: September 8, 2010

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Middlebrook Pharmaceuticals, Inc.
7 Village Circle, Suite 100
Westlake, TX 76262

Chapter: 11

EIN: 52-2208264

Advancis Pharmaceuticals Corporation

Case No.: 10-11485-MFW

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on 8/26/2010 was filed on 9/13/2010 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 10/4/2010 .

If a request for redaction is filed, the redacted transcript is due 10/14/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 12/13/2010 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 9/13/10

(ntc)

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Case: 10-11485-MFW

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