

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
deCODE genetics, Inc.¹)	Case No. 09-14063 (PJW)
)	
Debtor.)	Objection Deadline: 1/7/2009 at 4:00 p.m. (EST)
)	Hearing Date: 1/14/2009 at 4:00 p.m. (EST)

**MOTION OF DEBTOR AND
DEBTOR IN POSSESSION FOR ENTRY OF AN ORDER
AUTHORIZING DEBTOR TO REJECT CHANGE IN CONTROL BENEFITS PLAN**

The above-captioned debtor and debtor in possession (the “Debtor”) files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), authorizing it to reject that certain Change in Control Benefits Plan, effective as of November 6, 2007, a copy of which is attached hereto as Exhibit B (the “Plan”). In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 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.

GENERAL BACKGROUND

1. On November 16, 2009, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official

¹ The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc. (6704).

committee of unsecured creditors was appointed on December 1, 2009. No trustee or examiner has been appointed in this chapter 11 case.

2. The Debtor has executed an asset purchase agreement (the “Stalking Horse APA”) with Saga Investments LLC (“Saga”) for the sale (the “Sale”) of (a) all of the equity interests of Islensk erfdagreining ehf (“ehf”), a subsidiary of the Debtor, and (b) all intellectual property rights and other tangible and intangible assets of the Debtor and its direct and indirect U.S. subsidiaries related to (i) the business conducted by ehf and its subsidiary or (ii) certain drug compounds. The Debtor has also entered into a debtor-in-possession financing credit agreement with Saga whereby Saga, as DIP lender, will provide a loan in an aggregate amount not to exceed \$11,117,928 in accordance with an agreed-upon budget.

3. On November 18, 2009, the Debtor filed the *Motion of Debtor and Debtor in Possession for Entry of Orders (I) Approving Bidding Procedures for the Sale of Certain Assets of the Debtor Free and Clear of All Liens, Claims and Interests Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases, (IV) Scheduling an Auction and Sale Hearing and (V) Approving Such Sale* [Docket No. 28] (the “Sale Motion”). Pursuant to the Sale Motion, the Debtor sought entry of (i) an order (a) approving, among other things, the proposed bidding procedures, as well as certain proposed bid protections, each in connection with the Sale and (b) scheduling an auction (the “Auction”) and a hearing (the “Sale Hearing”) to consider approval of the Sale (the “Bidding Procedures Order”); and (ii) an order approving the Sale to Saga pursuant to the Stalking Horse APA or such other party that is the successful bidder at the Auction.

4. On December 11, 2009, the Court entered the Bidding Procedures Order [Docket No. 88]. Pursuant to the Bidding Procedures Order, the Court, among other things, scheduled the Auction, to the extent necessary, for January 12, 2010 at 10:00 a.m. (EST) and the Sale Hearing for January 14, 2010 at 4:00 p.m. (EST). Following consummation of the Sale, the liquidation of the Debtor and its subsidiaries will be completed pursuant to a plan of liquidation for the benefit of the Debtor's economic stakeholders.

DESCRIPTION OF THE PLAN

5. The Plan is an agreement that is intended to provide specified benefits in connection with a Change in Control² of the Debtor and its direct and indirect subsidiaries (collectively, the "Corporation") to certain employees who are members of the Corporation's management (the "Eligible Employees"). The express purpose of the Plan is to, among other things, "provide [Eligible Employees] with compensation arrangements upon a change in control of the Corporation which provide such individuals with financial security of their jobs and benefits." See Plan § 2.1(c). A Change in Control, includes, among other things, a situation where the Debtor "is liquidated or sells or otherwise disposes of substantially all of its assets in a single transaction or a series of related transactions." Plan § 3.4. The payments and/or other benefits due to the Eligible Employees upon a Change in Control include, among other things, the vesting of stock options or other equity plans, lump sum severance payments and certain insurance-related benefits (collectively, the "Payments"). See Plan, Art. IV.

RELIEF REQUESTED

6. On December 30, 2009, in accordance with Article VI of the Plan, the Board terminated the Plan. See Plan, Art. VI. However, to the extent such termination is later

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Change in Control Benefits Plan.

deemed to be ineffective, the Debtor hereby requests authorization to reject the Plan pursuant to section 365 of the Bankruptcy Code in an abundance of caution.

BASIS FOR RELIEF

7. Section 365(a) of the Bankruptcy Code provides that a debtor in possession³ “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

8. Under section 365 of the Bankruptcy Code, a debtor may exercise its business judgment to reject executory contracts and thereby relieve the estate of burdensome agreements which have not been completely performed. See N.L.R.B. v. Bildisco, 465 U.S. 513, 523 (1984); Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.), 180 B.R. 83, 88 (D. Del. 1995); In re III Enters., Inc., V, 163 B.R. 453, 469 (Bankr. E.D. Pa.), *aff’d sub nom*, Pueblo Chem., Inc., 169 B.R. 551 (E.D. Pa. 1994).

9. This is not a strict standard. The business judgment test “requires only that the [debtor-in-possession] demonstrate that rejection of the contract will benefit the estate.” Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 846 (Bankr. W.D. Pa. 1987) (citation omitted). Generally, courts defer to a debtor in possession’s business judgment to reject an executory contract or lease. See Bildisco, 465 U.S. at 525; Wheeling-Pittsburgh Steel Corp., 72 B.R. at 849. To that end, the Court “will not substitute [its] own business judgment for that of the debtor . . . unless the [debtor’s] decision is so unreasonable that it could [only be based] on bad faith or whim.” III Enters., 163 B.R. at 469 (citations omitted). Upon a finding that a debtor has exercised its sound business judgment,

³ Although section 365(a) of the Bankruptcy Code refers to a “trustee” only, a debtor in possession in a chapter 11 case has the rights and powers, and performs the functions, of a trustee, including rejecting an executory contract. 11 U.S.C. § 1107(a)

a court will approve the rejection of an executory contract under section 365(a) of the Bankruptcy Code. See Bildisco & Bildisco, 465 U.S. at 523 (recognizing the “business judgment” standard used to approve rejection of executory contracts and unexpired leases). Under this standard, this Court should approve the rejection of the Plan.

10. The Debtor has reviewed the Plan and has determined, in the exercise of its sound business judgment, to reject the Plan.⁴ Namely, the Debtor is concerned that certain events in the Debtor’s chapter 11 case, including the Sale, may result in a Change in Control. Pursuant to the terms of the Plan, to the extent the Plan has not already been validly terminated, this would result in the vesting of the Eligible Employees’ right to Payments.

11. As an initial matter, most of the Eligible Employees will likely remain in the employ of the ultimate purchaser after the consummation of the Sale. Thus, in the event that Eligible Employees receive the Payments, such payments can only be described as a windfall. One of the express purposes of the Plan is to provide Eligible Employees with financial security and not with a windfall. See Plan § 2.1(c). Accordingly, in these circumstances the functioning of the Plan achieves an unintended, superfluous result.

12. Finally and more importantly, the Payments will necessarily be made from assets that would otherwise be available for distribution to the Debtor’s legitimate stakeholders. Thus, if the Payments are made, they would significantly reduce the assets available for distribution to such stakeholders. Given that the Payments will likely amount to a windfall for Eligible Employees, such a result is inequitable and runs at direct cross purposes with the underlying tenets of the Bankruptcy Code.

⁴ Moreover, and as stated above, on December 30, 2009, the Board terminated the Change in Control Benefits Plan in accordance with the terms thereof.

13. For the above-mentioned reasons, the Debtor believes that it is appropriate for the Court to approve the rejection of the Plan to the extent the Plan has not already been validly terminated.

REQUEST FOR WAIVER OF STAY

14. In addition, by this Motion, the Debtor seeks a waiver of any stay of the effectiveness of the Order. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” To the extent the rejection of the Plan may be construed as a “use” of property of the estate or otherwise implicate Bankruptcy Rule 6004(h), the Debtor respectfully requests a waiver of Bankruptcy Rule 6004(h). If the Order is deemed effective immediately upon entry, it will reduce any ambiguity associated with the rejection of the Plan and/or the making of the Payments pursuant to the Plan. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

15. The Debtor has or may have claims against the counterparties to the Plan arising under, related to the rejection of, or independent of, the Plan. The Debtor does not waive any such potential claims by filing this Motion or by rejecting the Plan.

16. In addition, and as stated above, this Motion is being filed out of an abundance of caution given that, on December 30, 2009, the Plan was terminated in accordance with Article VI thereof. To that end, nothing herein shall be construed as a concession by the Debtor that the Plan has not been terminated. Rather, the Debtor expressly reserves all rights

with respect thereto including, without limitation, its rights to seek a later determination of these issues and its rights to dispute the validity, status, characterization or enforceability of the Plan.

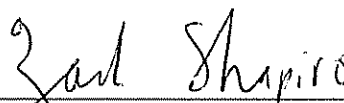
NOTICE

17. The Debtor will provide notice of this Motion, via overnight mail, to: (a) the Office of the United States Trustee for the District of Delaware, (b) the Official Committee of Unsecured Creditors, (c) counsel to Saga, (d) the Eligible Employees, and (e) parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that no further notice of this Motion is required.

WHEREFORE, the Debtor requests that the Court enter the Order authorizing the Debtor to reject the Plan and granting such other and further relief as is warranted.

Dated: December 31, 2009
Wilmington, Delaware

Respectfully submitted,



Mark D. Collins (No. 2981)
Christopher M. Samis (No. 4909)
Zachary I. Shapiro (No. 5103)
Travis A. McRoberts (No. 5274)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

*Attorneys for the Debtor and
Debtor in Possession*