

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

In re:)	Chapter 11
)	
AAIPHARMA INC., et al.,)	Case Nos. 05-11341 through 05-11345 and
)	05-11347 through 05-11350 (PJW)
Debtors.)	
)	Jointly Administered
)	
)	Objection Deadline: May 27, 2005 at 4:00 p.m.
)	Hearing Date: June 3, 2005 at 3:00 p.m.

**MOTION FOR ADMINISTRATIVE ORDER
PURSUANT TO SECTIONS 331 AND 105(A) OF THE
BANKRUPTCY CODE ESTABLISHING PROCEDURES
FOR INTERIM COMPENSATION AND REIMBURSEMENT OF
EXPENSES OF PROFESSIONALS AND COMMITTEE MEMBERS**

aaiPharma Inc. (“aaiPharma”) and the other above-captioned debtors and debtors in possession (collectively, the “Debtors”),¹ hereby submit this motion (the “Motion”) for an order, pursuant to sections 331 and 105 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”), establishing procedures for interim compensation and reimbursement of court-approved professionals (except ordinary course professionals) and official committee members (collectively, the “Professionals”) on a monthly basis. In further support of this Motion, the Debtors respectfully state as follows:

BACKGROUND

1. On May 10, 2005 (the “Filing Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to an order of this Court, the Debtors’ chapter 11 cases (the “Cases”) are being jointly administered and have been

¹ The Debtors are the following entities: aaiPharma, Applied Analytical Industries Learning Center, Inc., AAI Properties, Inc., AAI Technologies, Inc., AAI Japan, Inc., aaiPharma LLC (“LLC”), AAI Development Services, Inc. (Delaware), AAI Development Services, Inc. (Massachusetts) and Kansas City Analytical Services, Inc.

consolidated for procedural purposes only. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their properties as debtors in possession. No trustee, examiner or statutory committee has been appointed in the Debtors' Cases.

2. The Debtors, along with their foreign subsidiaries and affiliates (collectively, "AAI"), form a science-based pharmaceutical company focused primarily on providing product development services to the pharmaceutical industry and selling pharmaceutical products which primarily target pain management. AAI operates through two divisions: (a) AAI Development Services ("AAI Development") and (b) Pharmaceuticals Division ("Pharmaceuticals"). Prior to a reorganization of its operating divisions in March 2005, AAI also operated a Research and Development Division, the activities of which have been integrated into Pharmaceuticals and into AAI Development.

3. Through AAI Development, the Debtors offer a comprehensive range of pharmaceutical product development services to customers on a worldwide basis, including, among other things, formulation development, stability testing services, production scale-up, manufacturing and human clinical trials management. AAI Development provides its services to (i) its customers, to help them develop, control, and improve their drug products and (ii) Pharmaceuticals, to manufacture and improve its acquired drug products and develop pipeline products.

4. Pharmaceuticals markets and commercializes the pharmaceutical products that AAI has acquired or developed. AAI commercializes products in two therapeutic areas, pain management and critical care. The pain management products include Roxicodone®,

Oramorph® SR, Roxanol™, Duraclon®, Darvon®, Darvocet®, and a Methadone Hydrochloride injection. The critical care products include Brethine® and azathioprine.

5. In March 2005, AAI reorganized its research and development group, with the oversight of the development efforts on pipeline products being conducted by a group within Pharmaceuticals and the management of intellectual property assets, including drug delivery technologies and patents, being conducted by a group in AAI Development.

6. Prior to the Filing Date, two of the Debtors, aaiPharma and LLC, signed an asset purchase agreement with Xanodyne Pharmaceuticals Inc. (“Xanodyne”), pursuant to which Xanodyne will acquire substantially all of the assets of Pharmaceuticals. On the Filing Date, the Debtors filed a motion seeking orders approving bid procedures, scheduling an auction, scheduling a hearing to approve the sale to Xanodyne or such other purchaser that is selected at the auction as having provided the highest and best offer and approving such sale.

7. The Court has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), in that it is a matter concerning the administration of the Debtors’ estates. The statutory predicates for the relief sought in this Motion are sections 331 and 105(a) of the Bankruptcy Code.

RELIEF REQUESTED

8. The Debtors have sought or will seek to retain, by separate applications, the law firms of Fried, Frank, Harris, Shriver & Jacobson LLP and Richards, Layton & Finger, P.A. as bankruptcy co-counsel (collectively “Debtors’ Counsel”), Robinson, Bradshaw & Hinson, P.A. as Special Corporate and Litigation Counsel, McDonnell, Boehnen, Hulbert & Berghoff LLP as Special Intellectual Property Litigation Counsel, and Shearman & Sterling LLP as Special Litigation Counsel. In addition, the Debtors have sought or will seek to retain, by separate

application, Rothschild, Inc. as their investment banker for the sole purpose of the sale of the pharmaceutical business.² The Debtors may need to retain other professionals and special counsel as these Cases move forward. Moreover, a statutory committee of unsecured creditors and/or other official committees (collectively, the “Committees”) may be appointed in these Cases, and if appointed, likely will retain counsel, and possibly other professionals, to assist them.

9. On the Filing Date, the Debtors filed a motion (the “DIP Financing Motion”) seeking authority to obtain postpetition financing (the “DIP”). The Debtors’ projections indicate that as a result of the contemplated DIP, they will be able to pay the fees and expenses incurred by the Professionals from operating cash flow and availability under the DIP. The DIP lenders (the “DIP Lenders”) have acknowledged the need to provide a source of funds for payment of estate Professionals’ fees and expenses as an expense of administration of these Cases, and the terms of the DIP allow for the payment of fees and expenses to Professionals as set forth therein. In addition, the DIP Lenders have agreed to separate “carve outs” of their collateral to cover shortfall in Professional fees and expenses incurred by (i) Court approved professionals up to an amount set forth in the DIP Agreement and (ii) the success fee owed to Rothschild, Inc.

10. Under section 331 of the Bankruptcy Code, a court may permit the filing of interim professional fee and expense reimbursement applications more frequently than the prescribed period of filing such applications every one hundred and twenty (120) days. Moreover, section 503(b)(3)(f) of the Bankruptcy Code grants administrative expense priority to

² The Debtors have also sought or will seek to approve by separate motion, their agreement with FTI Consulting, Inc. to provide the Debtors with officers and temporary staff. Because that motion will seek certain payment procedures for FTI, FTI’s compensation will not be paid in accordance with the procedures set forth in this Motion

the actual necessary expenses incurred by members of statutory committees in performing their official duties.

11. The Debtors request that this Court enter an order establishing procedures for compensating and reimbursing Court-approved professionals and for reimbursing members of the Committee on a monthly basis, comparable to the procedures established in other chapter 11 cases in this district. Such an order will permit this Court and all other parties to more effectively monitor the professional fees incurred in these Cases.

12. Specifically, to provide for interim payment of Professionals' fees and expenses during these Cases, the Debtors propose that such payments be made on the following terms and conditions:

a) No earlier than the 20th day of each calendar month, each Professional seeking interim compensation shall file an application (the "Fee Application"), pursuant to section 331 of the Bankruptcy Code, for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Compensation Period") and serve a copy of such Fee Application on the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o aaiPharma Inc., 2320 Scientific Park Drive, Wilmington, NC 28405 (Attn: Gregory S. Bentley, Esq.); (ii) counsel to the Debtors, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, NY 10004 (Attn: Gary Kaplan, Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committees; (iv) the Office of the United States Trustee, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: William Harrington, Esq.); (v) counsel to the unofficial committee of holders of the Debtors' publicly issued notes (the "Unofficial Committee"), Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005 (Attn: Dennis F. Dunne and Matthew S. Barr, Esq.) and Morris; Nichols, Arsht & Tunnell, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899-1347 (Attn: Robert Dehney, Esq.); (vi) Moore & Van Allen, PLLC, counsel to Bank of America, N.A., the administrative agent for the proposed debtor in possession financing and the administrative agent for the Debtors'

prepetition senior secured credit facility and; and (vii) counsel to Silver Point Capital, the collateral agent for the proposed debtor in possession financing facility and the collateral agent for the Debtors' prepetition senior secured credit facility, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022 (Attn: Frederick L. Ragucci, Esq.) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899-0391 (Attn: Brendan L. Shannon, Esq.). All Fee Applications shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable Third Circuit law and the Local Rules. Each Notice Party will have until 4:00 p.m. (Eastern Time) on the 20th day after service of a Fee Application to object thereto (the "Objection Deadline"). Upon the expiration of the Objection Deadline, the Professional may file a certificate of no objection with the Court after which the Debtors are authorized to pay each Professional an amount (the "Actual Interim Payment") equal to the lesser of (i) eighty (80%) percent of the fees and one hundred (100%) percent of the expenses requested in the Fee Application (the "Maximum Interim Payment") and (ii) eighty (80%) percent of the fees and one hundred (100%) percent of the expenses not subject to an objection pursuant to subparagraph (b) below.

b) If any Notice Party objects to a Professional's Fee Application, it must file a written objection (the "Objection") with the Court and serve it on the affected Professional and each of the Notice Parties. Additionally, the Objection must be filed with the Court and received by the affected Professional and the Notice Parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within twenty (20) days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Interim Payment and the Actual Interim Payment made to the Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.

c) Each Professional may submit its first Fee Application no earlier than June 20, 2005. This initial Fee Application will cover the period from the Petition Date through May 31, 2005. Thereafter, the Professionals may file Monthly Fee Applications in the manner described above.

d) Beginning with the approximately three-month period ending on August 31, 2005, at three month intervals or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve on the Notice Parties a request (an "Interim Fee Application Request") for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Fee Applications filed during such period (the "Interim Fee Period"). The Interim Fee Application Request, which will be substantially in the form of Exhibit A attached hereto and incorporated herein by reference, must include a brief description identifying (i) the Fee Applications that are the subject of the request, (ii) the amount of fees and expenses requested, (iii) the amount of fees and expenses paid to date or subject to an Objection, (iv) the deadline for parties other than the Notice Parties to file objections (the "Additional Objections") to the Interim Fee Application Request, and (v) any other information requested by the Court or required by the Local Rules. Each Professional must file its Interim Fee Application Request within forty-five (45) days after the end of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. Each Professional must file its first Interim Fee Application Request on or before October 15, 2005 and the First Interim Fee Application Request should cover the Interim Fee Period from the commencement of these cases through and including August 31, 2005. Any Professional that fails to file an Interim Fee Application Request when due will be ineligible to receive further interim payments of fees or expenses for such Interim Fee Period under the Compensation Procedures until such time as the Interim Fee Application Request is submitted by the Professional.

e) The Debtors shall request that the Court schedule a hearing on Interim Fee Application Requests at least once every six (6) months, or at such other intervals as the Court deems appropriate. If no Objections are pending and no additional Objections are timely filed, the Court may grant an Interim Fee Application Request without a hearing.

f) The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses.

(g) Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of

expenses nor (ii) the filing or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of interim applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

13. The Debtors further request that each member of any Committee be permitted to request payment of expenses by submitting statements thereof and supporting vouchers to such Committee's counsel, and that such counsel be authorized to collect and submit such requests for payment in accordance with the foregoing procedures.

14. The Debtors further request that the Court limit the notice of hearings to consider interim and final fee applications to: (a) the Notice Parties and (b) all parties who have filed a notice of appearance with the Clerk of this Court and requested such notice. The Debtors further request the Court to order that the Notice Parties shall be entitled to receive both the Fee Applications and the notice of hearing thereon (the "Hearing Notice"), and all other parties entitled to notice shall be entitled to receive only the Hearing Notice. Additionally, the Debtors request that the Court deem the Notice given in accordance with this paragraph sufficient and adequate in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. Such notice should reach the parties most active in these Cases and will save the expense of undue duplication and mailing.

APPLICABLE AUTHORITY

15. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11 U.S.C. § 331.

16. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the title.

11 U.S.C. § 105(a).

17. Courts recognize that it is appropriate to allow payment of professionals on a more frequent basis to avoid having professionals fund a reorganization case. See In re Mariner Post-Acute Network, Inc., 257 B.R. 723, 727 (Bankr. D. Del. 2000) (“[section 331] expressly permits the Court, in appropriate circumstances, to permit fee applications to be filed more often.”); In re Int’l Horizons, Inc., 10 B.R. 895, 897-98 (Bankr. N.D. Ga. 1981). Appropriate factors to consider in establishing interim compensation procedures include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys . . . in providing services necessary to achieve a successful reorganization of the debtors.” In re Int’l Horizons, 10 B.R. at 897. See also In re Mariner Post-Acute Network, 257 B.R. at 727 (“Courts have generally recognized that in large cases it is appropriate to allow payment of professionals more frequently.”) (citations omitted). These cases are complex and will continue to place substantial time demands on the Professionals in moving toward the goal of a successful reorganization. In light of these considerations, the procedures proposed herein are appropriate.

18. Moreover, the procedures for compensating and reimbursing Professionals set forth above are comparable to those established in other recent, large chapter 11 cases in this District. See, e.g., In re Ultimate Electronics, Inc., et al., Case No. 05-10104 (PJW) (Bankr. D. Del. Feb. 14, 2005); In re IWO Holdings, Inc., et al., Case No. 05-10009 (PJW) (Bankr. D. Del.

Jan. 27, 2005); In re KB Toys, Inc., et al., Case No. 04-10120 (JBR) (Bankr. D. Del. Feb. 25, 2004); In re Bob's Stores, Inc., et al., Case No. 03-13254 (LHK) (Bankr. D. Del. Oct. 23, 2003).

19. The efficient administration of these Cases will be significantly aided by establishing the interim compensation and expense reimbursement procedures suggested in this Motion, as these procedures will enhance the Debtors' ability to monitor cash flow and manage the costs of administering these cases. Accordingly, the relief requested herein is in the best interests of the Debtors, their estates, and creditors.

BRIEFING

20. The Debtors do not believe that this Motion presents any novel issues of law requiring briefing. Accordingly, pursuant to Rule 7.1.2.(a) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local District Court Rules"), incorporated by reference into Local Rule 1001-1(b), the Debtors request that the Court set aside the briefing schedule set forth in Rule 7.1.2.(a) of the Local District Court Rules.

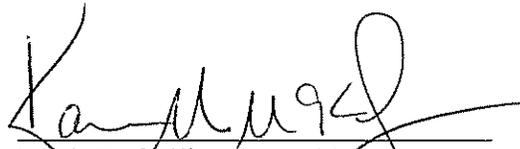
NOTICE

21. The Debtors have provided notice of this Motion to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Unofficial Committee; (iii) the collateral agent for the proposed debtor in possession financing facility and the collateral agent for the Debtors' prepetition senior secured credit facility; (iv) counsel to Bank of America, N.A., the administrative agent for the proposed debtor in possession financing and the administrative agent for the Debtors' prepetition senior secured credit facility; (v) the Debtors' top thirty unsecured creditors, on a consolidated basis, as set forth in their chapter 11 petitions; and (vi) all parties entitled to receive notice pursuant to Bankruptcy Rule 2002. Because of the nature of the

relief requested, the Debtors respectfully submit that no other or further notice of the relief requested in this Motion need be given.

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that this Court enter an order, pursuant to sections 331 and 105(a) of the Bankruptcy Code, in the form attached hereto as Exhibit B (i) authorizing and approving the interim compensation procedures as requested in this Motion; (ii) authorizing Professionals to prepare and serve Interim Fee Applications as set forth herein; and (iii) granting to the Debtors such other and further relief as is just and proper in the circumstances.

Dated: May 12, 2005
Wilmington, Delaware



Mark D. Collins (No. 2981)
Rebecca L. Booth (No. 4031)
Karen M. McKinley (No. 4372)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

-and-

Bonnie Steingart, Esq.
Gary L. Kaplan, Esq.
FRIED, FRANK, HARRIS, SHRIVER &
JACOBSON LLP
One New York Plaza
New York, New York 10004
Telephone: (212) 859-8000
Facsimile: (212) 859-4000

Proposed Co-Counsel for Debtors and
Debtors in Possession