

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

	)	
In re:	)	Chapter 11
	)	
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10937 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: D.I. 16

**STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS IN SUPPORT OF THE REVISED BIDDING PROCEDURES**

The Official Committee of Unsecured Creditors (the “Committee”) respectfully submits this statement in support (the “Statement”) of the revised Bidding Procedures and revised Bidding Procedures Order (collectively, the “Revised Bidding Procedures”)² submitted by the Debtors in connection with the Bidding Procedures Motion.³

**STATEMENT**

1. Achieving holistic, value-maximizing agreements early in a chapter 11 proceeding is no small feat. It takes hard work, pragmatism and concessions on all sides. Since its

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> *Revised Order (I)(A) Approving Bidding Procedures for Sale of Substantially all of Debtors Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (II) Granting Related Relief.* [D.I. 158].

<sup>3</sup> *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances after the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases: and (III) In the Alternative, Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder (the “Bidding Procedures Motion”) [D.I. 16].* Defined terms used herein but not otherwise defined shall have the meanings ascribed in the Bidding Procedures Motion.



appointment, the Committee and its professionals have worked tirelessly to refine the sale process proposed by the Debtors to maximize value for unsecured creditors. In cases like these with limited funding and uncertain value propositions, stabilizing the process and assets, reducing costs and obtaining security for a value maximizing transaction is a worthy accomplishment.

2. Following extensive hard-fought negotiations with the Debtors and Ligand, the parties have reached an agreement in principle on a series of contours and concessions to chart a fair and reliable process that drives additional value to unsecured creditors and is in the best interests of the Debtors' estates and creditors.

3. The linchpin of the deal is the Revised Bidding Procedures, which have the full support of the Committee. The parties have agreed to a process that effectively divides the Debtors' assets into two separate auction lots. The R&D process will see Ligand serve as stalking horse bidder with a \$12 million credit bid and, critically, the assumption of the Ligand Royalty Agreement and the Reedy Creek Agreement.<sup>4</sup> This structure largely satisfies the Novan claims pool and removes potentially large rejection damages claims and costly litigation on the merits and value of those claims. In turn, it creates value for general unsecured creditors via EPI's significant intercompany claim against Novan.

4. Even greater potential value may be generated for unsecured creditors through the commercial assets process, which includes no assumption requirements, and potentially significant value flowing to general unsecured creditors from the sale proceeds of the commercial assets.

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<sup>4</sup> With respect to the Royalty Agreement Assumptions, the Committee undertook a detailed analysis of its impact on the sale process. Specifically, the Committee compared the risks of (i) the effect of the Ligand and Reedy Creek royalty agreement assumptions on the competitive bid process; with (ii) pursuing reasonably available alternatives, assuming that a potential competing bidder would reject both Ligand's and Reedy Creek's royalty agreements, which would result in the assertion of potentially substantial rejection damages claims, which may or may not be secured, and would, nonetheless, be a costly and hotly contested litigation for the estates.

5. Respectfully, the Revised Bidding Procedures Order is now far from a “heads I win, tails you lose” construct and is now a “win-win” proposition for all stakeholders. It is a package deal reflecting the consent and agreement of the Debtors, the Committee and Ligand, and eliminates costly and uncertain litigation across these cases, and ensures sufficient funding to effectuate a liquidating chapter 11 plan.

6. The terms of the deal are memorialized in the Revised Bidding Procedures Order and forthcoming Proposed Final DIP Order. Hard fought and important features of the value and concessions achieved by the parties’ agreement, include, without limitation: (i) retention by the estates of EPI Causes of Action and other Causes of Action and access to potential insurance policy recoveries; and accounts receivable proceeds, including those to be released by Bay View Funding; (ii) the removal of the Break-Up Fee and Private Sale features; and (iii) several concessions regarding the Final DIP Order, including removal of the Exit Fee and increases to the budget for Committee Professionals and the Challenge Budget.

7. Finally, the Committee heavily weighed the proposed accelerated case timeline and explored all alternatives. Ultimately, the costs and risks associated with prolonging the sale process, especially given the weekly cash burn of approximately \$1 million, militates in favor of the compressed proposed timeline under the Revised Bidding Procedures.<sup>5</sup> The Committee believes that, based on the long pre-petition marketing process involving three investment banks, and Raymond James’ post-petition marketing process, the parties most likely to be interested in acquiring some or all of the Debtors’ assets are actively participating in the sale process. In turn,

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<sup>5</sup> Hr’g Tr. Aug. 4, 2023 at 12:22-23, C. Wolfe (...that was driven by a number of factors and the topic of all night long discussions at points and it was the cash burn was huge, and you heard us saying this last time. It’s a million dollars a week, \$4 million a month, and the numbers are really easy.”).

the Committee has concluded that extending the sale timeline would not inure to the benefit of either the Debtors' estates or their unsecured creditors.<sup>6</sup>

8. For all of these reasons, the Committee supports the Revised Bidding Procedures and joins in the Debtors' request that they be approved.

**RESERVATION OF RIGHTS**

9. The Committee expressly reserves all rights, claims, defenses, and remedies, including, without limitation, to supplement and amend this Statement. To the extent the Bidding Procedures Order or the Final DIP Order are not approved by the Court in the manner agreed to by the Committee, the Committee reserves all rights regarding entry of such orders.

*[Remainder of page intentionally left blank.]*

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<sup>6</sup> The Committee also believes that the Revised Bidding Procedures have obviated the objections of Mayne and potentially Reedy Creek.

Dated: August 14, 2023  
Wilmington, Delaware

**WOMBLE BOND DICKINSON (US) LLP**

*/s/ Donald J. Detweiler*

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*Proposed Counsel to the Official Committee  
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**CERTIFICATE OF SERVICE**

I, Donald J. Detweiler, do hereby certify that on August 14, 2023, I caused a copy of the foregoing **Statement of Official Committee of Unsecured Creditors in Support of the Revised Bidding Procedures** to be served on the parties listed on the attached service list via email.

*/s/ Donald J. Detweiler*

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