

UNITED STATES DEPARTMENT OF JUSTICE  
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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE: §  
PALMAZ SCIENTIFIC INC., § CASE NO. 16-50552-CAG  
ADVANCE BIO PROSTHETIC § CASE NO. 16-50555-CAG  
SURFACES, LTD, §  
ABPS MANAGEMENT, LLC, § CASE NO. 16-50556-CAG  
ABPS MANAGEMENT, LLC, § CASE NO. 16-50554-CAG  
DEBTORS § CHAPTER 11  
§ (Jointly Administered Under  
§ Case No. 16-50552)

**OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTOR’S MOTION FOR  
FINAL APPROVAL OF (1) POST-PETITION SECURED AND SUPER PRIORITY  
FINANCING PURSUANT TO 11 U.S.C. § 364(C) AND (D) OF THE BANKRUPTCY  
CODE, (2) AUTHORITY FOR CONSENSUAL USE OF CASH COLLATERAL AND (3)  
GRANT OF ADEQUATE PROTECTION**

TO THE HONORABLE CRAIG A. GARGOTTA:  
UNITED STATES BANKRUPTCY JUDGE:

JUDY A ROBBINS, THE UNITED STATES TRUSTEE for Region 7 ("UST"), respectfully moves for entry of an order denying the debtor’s motion for post-petition secured and super-priority financing, authority for use of cash collateral, and grant of adequate protection (the “Motion”) for at least the following reasons.

**I. The debtor-in-possession lender and the pre-petition secured lenders are closely related to recent directors and management of the debtor.**

1. According to the Motion, the debtor's pre-petition secured debt is owned by either Julio Palmaz or Oak Court Partners, Ltd. The Motion states that affiliates of Dr. Palmaz own a majority interest in Oak Court Partners and that Oak Court Partners is also a shareholder of Palmaz Scientific and indirectly owns Vactronix Scientific, the proposed lender under the DIP facility ("Vactronix" or the "DIP Lender"). Motion, ¶ 20.

2. Until the date of filing of this bankruptcy case, Julio Palmaz was a director of this debtor. According to the List of Equity Security Holders, Julio Palmaz, MD & Affiliates own 7,750,172 Common and Series A shares of stock in Palmaz Scientific.

3. Until March 3, 2016, John Asel was a Director and Chief Financial Officer of the debtor. According to the List of Equity Security Holders, Mr. Asel owns 50,000 shares of stock in Palmaz Scientific. The UST is informed and believes that Mr. Asel was proffered this week for a deposition as the representative of Vactronix, the proposed DIP Lender and expected stalking horse bidder.

4. Because of the close relationship between the management and owners of Vactronix and the pre-petition secured lenders and the recent Board and management of the debtor, if the Court allows the debtor to borrow money from Vactronix or use cash collateral of the pre-petition secured lenders, it should not allow any extraordinary provision other than the granting of appropriate liens to the lenders.

**II. The Court should not allow the debtor to stipulate to the validity, priority, or extent of any of the pre-petition lender's liens.**

5. The proposed order submitted with the Motion provides that the debtor would stipulate to the validity, priority, or extent of any of the pre-petition lender's liens. The Court should not permit the debtor to stipulate to the validity, priority, or extent of

any of liens belonging to insiders or entities related to insiders. If there are issues with the liens, the debtor should not be precluded from performing its fiduciary duty to the creditors of this estate. Moreover, such a finding would bind a subsequent chapter 11 or chapter 7 trustee. The pre-petition lenders should simply receive replacement liens if any of its cash collateral is used and not this extra relief.

**III. The Court should not permit relief from the automatic stay without a future court order.**

6. Vactronix seeks a modification of the automatic stay to allow it to foreclose upon default without further order of the court. This provision is disfavored by courts in this district and requires the lender to provide a reason for this provision. Local Rules Appendix 1020.1, Exhibit J. Where the provision is disfavored and the DIP Lender is related to the pre-petition secured lender and to equity holders in the debtor, the Court should not grant this extraordinary provision. Relief from the automatic stay would allow an entity with ties to the recent directors and CFO to take assets of the company without court supervision.

**IV. Any Proposed Order Should Provide for the Payment of Professionals Employed by Any Official Committee.**

7. The Budget attached to any order needs to allow for payment for fees to counsel for any official committee appointed by the United States Trustee under 11 U.S.C. § 1102(a)(1) or (2). Currently the debtor's 13 week budget provides for payment of \$537,750 to debtor's general bankruptcy counsel, Norton Rose Fulbright, \$218,342 for "Legal Services (IP)" and \$276,558 for "Legal Other." Any order approving this motion would need to specify that professionals for any official committee appointed by the UST can share in this money. This clarification should not concern the DIP Lender because it does not increase the bottom-line budget to which it has committed. The

debtors' professionals should have no concern with this change because they understand that they are on the same level of priority under the Bankruptcy Code as professionals for any official committee. If the debtor's professionals are concerned that the amount in the budget is not sufficient to cover their fees and the fees of any committee professionals, then they should inform the debtor, and the debtor can try to alter its budget within the confines of any approved financing.

**V. The Court should not permit Vactronix to limit the amount of the Carve Out for review of the pre-petition lender's liens.**

8. The proposed order seeks to limit the ability for counsel to be paid for investigating claims against the pre-petition lender by limiting the use of the "Carve-out." The DIP Lender and the pre-petition secured lenders are different entities. The DIP Lender should have no concern about whether counsel for the committee or the debtor reviews possible actions against the pre-petition lenders. The only limitation for any professionals should be the limits of the approved budget for all counsel.

**VI. The Court should not approve a waiver of Section 506(c) of the Bankruptcy Code.**

9. The DIP Lender and secured creditor seek a waiver of section 506(c) of the Bankruptcy Code. Waiver of this provision too is disfavored in the district and should not be permitted. Section 506(c) permits a trustee to recover from property securing an allowed secured claim the "reasonable, necessary costs and expenses of preserving, or disposing of such property" to the extent of the "benefit" to the holder of that claim. Section 506(c) does not harm the DIP Lender or the secured creditors. The trustee cannot be reimbursed any money unless the trustee benefits one of the lenders. If the trustee's actions benefit the lender, the trustee should be reimbursed. The Court should not allow a waiver of section 506(c) of the Bankruptcy Code.

**VII. CONCLUSION**

For the foregoing reasons, the Court should deny the Motion. The UST requests any and all further relief as is equitable and just.

Respectfully submitted,

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UNITED STATES TRUSTEE, REGION 7

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served upon the parties listed on the attached service list by United States Mail, first class, postage prepaid, and/or by electronic means for all Pacer system participants on this the 31st day of March, 2016.

/s/Kevin M. Epstein  
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