

Program 2: Committee – You’re On!
February 23, 2010

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Exhibit 1

I. SO, YOU THINK YOU WANT ON THE COMMITTEE?

Getting a request to serve form doesn't force you to send it back. Before deciding whether you're likely to be selected and how to get there, you need to advise your client about the plusses and minuses about serving on the committee to make an informed decision about whether to take the next step.

A. Advantages of Being a Committee Member

1. Information

Possibly the single biggest advantage of being a committee member is access to information. Subject to protocols established under 11 U.S.C. § 1102(b)(3), debtors will typically provide the committee with more information than is generally available. The committee is also likely to be the first to receive information. That information can allow your client to better evaluate the direction of the case and make more informed assessments of risk.

It must be borne in mind that some of the information received, especially information that is not publicly available, cannot always be used by the creditor to its advantage. One obvious example is use of that information for insider trading. See FIDUCIARY RESPONSIBILITIES OF CREDITORS' COMMITTEE MEMBERS WITH RESPECT TO SECURITIES AND COMMODITIES TRANSACTIONS, 10 Am. Bankr. Inst. L. Rev. 493 (2002). Inappropriate use of information could also subject the client to a risk of liability for breaching its fiduciary duty to the creditor body as a whole.

2. Power

The committee's statutory powers set out in section 1103 are mostly consultative in nature. But see *Cybergenics v. Chinery*, 330 F.2d 548 (3d Cir. 2003) (committee may be granted derivative standing to sue on behalf of the estate). Nevertheless, in light of the fact that the committee is ordinarily a well-informed party that is charged with a duty to represent the interests of all unsecured creditors, Courts may give greater weight to the views of the committee than to those of any single unsecured creditor. The committee may have a significant influence on the direction of the case.

3. "Free" Legal Service

Any sophisticated client will know this, but you might mention that the committee has the ability to shift the costs of professional fees onto the estate itself. 11 U.S.C. § 1103(a). In effect, this gives members access to legal advice and representation as committee members without having to pay for it directly.

4. Experience

Again not an issue for a sophisticated client, service on a committee can provide a credit manager or in-house counsel invaluable insight into the inner workings of a bankruptcy case. Interaction with other committee members can lead to understanding different business perspectives.

B. Disadvantages of Being on the Committee

1. Time

Committee members are expected to attend telephonic meetings, review materials and keep reasonably informed about the case. (Some of that burden can be delegated to counsel, but at added expense). In general, it will only make sense to request to serve if your client has a significant interest in the case relative to the size of its own business.

2. Fiduciary Duty

The committee might be viewed as analogous to a board of directors in which individual 'directors' hold a fiduciary duty to act in the best interest of their constituency—here unsecured creditors. Westmoreland Human Opportunities, Inc. v. Walsh, 246 F.3d 233, 256 (3d Cir. 2001) (“We have construed §1103(c) as implying a fiduciary duty on the part of members of a creditor's committee, such as the present Unsecured Creditors Committee, toward their constituent members. See In re PWS Holding Corp., 228 F.3d 224, 246 (3d Cir. 2000) (‘A committee member violates its fiduciary duty by pursuing a course of action that furthers its self-interest to the potential detriment of fellow committee members’”). However, unlike a corporate director of an insolvent company, committee members owe no fiduciary duty to individual creditors or to the debtor’s estate in general. Rather, the duty is owed to the class of general non-priority unsecured creditors. E.g. In re TSIC, Inc., 393 B.R. 71 (Bankr. D. Del. 2008) (KG) (committee is a fiduciary to its constituency not to the debtor’s estate as a whole). Furthermore, committee members may be free to pursue their own economic interests outside of their role as committee members. See In re Fas Mart Convenience Stores, Inc., 265 B.R. 427, 432 (Bankr. E.D. Va. 2001) (“Membership on a committee does not preclude members from pursuing their own interests so long as this can be done without running afoul of their fiduciary duties to all unsecured creditors.”). Nevertheless, the members’ fiduciary duty necessarily places some constraints on their actions. E.g. Plan negotiation (In re Nutritional Sourcing Corp.), 398 B.R. 816 (Bankr. D Del. 2008) (PJW) (plan encompassing settlement that provided for disparate payment to trade and ‘non-goods’ trade creditors not confirmed where ‘non-goods’ creditors were not represented on committee and where committee members apparently did not properly exercise their fiduciary duty); claims trading (In re Federated Department Stores, Inc.), 1991 WL 11689551 (Bankr. S.D. Ohio, March 7, 1991) (restricting claims trading by requiring use of ethical walls by creditors' committee members when trading in debtor's securities). It is hence critical that you understand your client’s economic interests in the case and

whether service on the committee could limit your client's ability to protect those interests.

3. 1102(b)(3)

This curious provision from the BAPCPA requires committees to provide information and solicit comments from other unsecured creditors. The vagueness of this provision along with confidentiality concerns has led to standardized procedures governing 1102(b)(3) disclosures. E.g. In re Refco, Inc., 336 B.R. 187 (Bankr. S.D.N.Y. 2006).

C. Other Committees

If your client has an interest that may be contrary to those of general unsecured creditors but still wants to have powers of an official committee, one option is to seek appointment of a specialty committee (e.g. equity; sub-debt; PI claimants; oil producers; borrowers; landlords). The Bankruptcy Code expressly authorizes the appointment of additional committees if necessary to assure adequate representation of creditors or equity security holders. 11 U.S.C. §1102(a)(2). Courts considering the appropriateness of appointing an additional committee typically engage in a two-step analysis: first, whether the appointment of an additional committee is necessary to ensure adequate representation; and second, whether the appointment of an additional committee is an appropriate exercise of the court's discretion. The creditor or shareholder seeking the appointment of the additional committee has the burden of showing that the appointment is necessary to ensure adequate representation; the party opposing has the burden of demonstrating that the court should not exercise its discretion to appoint the additional committee.

The Bankruptcy Code does not define the term "adequate representation." That determination is left to the discretion of the court based on the facts of the specific case. Courts typically consider a number of factors, including: (i) whether the case is large and complex; (ii) how the interests of the creditor constituency balance against the interests of other groups on the committee; (iii) whether the cost of the additional committee significantly outweighs the concern for adequate representation; and (iv) the number of shareholders (if the appointment of an equity committee is sought).

Courts typically require the movant to prove that: (1) the parties represented by the committee will receive material distributions (determined by application of the absolute priority rule); and (2) the constituencies represented by the committee could not adequately advocate for themselves without the committee. An appointment of a committee under § 1102(a)(2) has been described by the courts as an "extraordinary remedy." See In re Spansion, Inc., 421 B.R. 151 (Bankr. D. Del. 2009) (KJC); Victor v. Edison Bros. Stores (In re Edison Bros. Stores, Inc.), 1996 WL 534853, *4 (D. Del. September 17, 1996); and Exide Tech. v. State of Wisconsin Inv. Bd., 2002 WL 32332000, *1 (D. Del. Dec.23, 2002) (internal citations omitted).

Exhibit 2

Office Of The United States Trustee
District of Delaware
844 King Street, Suite 2207
Wilmington, DE 19801
Tel. No. (302) 573-6491
Fax No. (302) 573-6497

IN RE:

Chapter 11

Case No.

Debtors.

Notice Of Formation Meeting For Official Committee of Unsecured Creditors

The above-named debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Section 1102(b) of the Code authorizes the United States Trustee to appoint a committee of unsecured creditors. The debtors' petitions or other sources of information indicate that you may be eligible for appointment to the Official Committee of Unsecured Creditors in these cases.

This is to notify you that the United States Trustee will hold a meeting to form an unsecured creditors' committee on _____ at the following location:

A representative of the debtors will attend the meeting to provide information regarding the status of the cases. If you wish to be considered for membership on any official committee that is appointed, please complete the enclosed Questionnaire Form and return it to the Office of the United States Trustee **no later than** _____. If you do not wish to serve on an official committee, you do not have to complete the Questionnaire or attend the meeting.

If you wish to be considered for membership on the committee but are unable to attend, you should immediately notify the Office of the United States Trustee. If you do not attend the meeting and do not affirmatively indicate your willingness to serve, you will not be considered. If you send an individual to represent you at the meeting, that representative must present your written proxy authorizing him or her to act on your behalf. The Official Committee of Unsecured Creditors performs a vital role in the chapter 11 proceeding, and for that reason your interest and consideration is solicited.

ROBERTA A. DEANGELIS
ACTING UNITED STATES TRUSTEE

Dated:

WILLIAM K. HARRINGTON
ASSISTANT UNITED STATES TRUSTEE

cc: Debtors' co-counsel:

Official Committee of Unsecured Creditors' Committee Information Sheet

Purpose of Unsecured Creditors' Committees. To increase participation in the chapter 11 proceeding, section 1102 of the Bankruptcy Code requires that the United States Trustee appoint a committee of unsecured creditors (the "Committee") as soon as practicable after the order for relief has been entered. The Committee ordinarily consists of the persons, willing to serve, who hold the seven (7) largest unsecured claims of the kinds represented on such committee. The debtors have filed a list indicating that your claim may be among the largest unsecured claims against the debtors, and for that reason, you may be eligible to serve on the Committee. There must be at least three (3) unsecured creditors willing to serve in order to form the Committee.

Powers and Duties of Unsecured Creditors' Committees. Members of the Committee are fiduciaries who represent all unsecured creditors as a group without regard to the types of claims which individual unsecured creditors hold against the debtors. Section 1103 of the Bankruptcy Code provides that the Committee may consult with the debtors, investigate the debtors and its business operations and participate in the formulation of a plan of reorganization. The Committee may also perform such other services as are in the interests of the unsecured creditors whom it represents.

Employment of Professionals. Section 1103 of the Bankruptcy Code provides that the Committee may, subject to the bankruptcy court's approval, employ one or more attorneys, accountants or other professionals to represent or perform services for the Committee. The decision to employ particular professionals should occur at a scheduled meeting of the Committee where a majority of the Committee is present. All professionals retained by the Committee may be compensated from assets of the debtor's estate pursuant to section 330 of the Bankruptcy Code. Applications for the payment of professional fees may be monitored by the Office of the United States Trustee and are subject to the Court's approval. However, the Committee should carefully review all applications and not rely on the Court or the United States Trustee to discover and object to excessive professional fees or costs.

Other Matters. The Committee should elect a chairperson and may adopt bylaws. As a party in interest, the Committee may be heard on any issue in the bankruptcy proceeding. Federal Bankruptcy Rule 2002(i) requires that the Committee (or its authorized agent) receive all notices concerning motions and hearings in the bankruptcy proceeding.

In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the debtors while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.

Should you have any additional questions concerning the Committee or your membership on the Committee, please contact the Office of the United States Trustee.

**OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF DELAWARE
844 King Street, Suite 2207
Wilmington, DE 19801
Tel. No. (302) 573-6491
Fax No. (302) 573-6497**

QUESTIONNAIRE FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Please Type or Print Clearly.

I am willing to serve on a Committee of Unsecured Creditors. Yes () No ()

A. Unsecured Creditor's Name and Contact Information:

Name: _____ Phone: _____
Address: _____ Fax: _____
_____ E-mail: _____

B. Counsel (If Any) for Creditor and Contact Information:

Name: _____ Phone: _____
Address: _____ Fax: _____
_____ E-mail: _____

C. Amount of Unsecured Claim (U.S. \$) _____

D. If your claim is against more than one debtor, list all debtors: _____

E. Describe the nature of your claim(s), i.e., whether arising from goods or services provided; loans made; litigation; etc., including whether any portion is secured. If any portion of the claim(s) arise from litigation, please state the nature of the claim, the case number and jurisdiction (if applicable) and the status.

F. Amount of Unsecured Claim entitled to 11 U.S.C. §503(b) treatment as an administrative expense:

G. Representations:

1. Are you or the company you represent in any way: "affiliated" with any of the debtors within the meaning of Section 101(2) of the Bankruptcy Code, a shareholder of, or related to the debtor(s)?
Yes () No () If a shareholder, state the number of shares: _____

2. Do you, or the company you represent, engage in a business which directly or indirectly competes with any of the businesses of the debtors? Yes () No ()

3. Have you ever been or are you an officer, director, agent, representative or employee of the debtors?
Yes () No () Does your claim arise from this relationship? Yes () No ()
4. Did you acquire any portion of your unsecured claim after the bankruptcy filing? Yes () No ()
If so, set forth the date(s) acquired, the amount paid and the face amount of the claim:

5. Have you made a UCC §2-702 reclamation claim? Yes () No ()
6. Have you or your attorney entered into a settlement agreement with the debtors regarding resolution of your claim? Yes () No ()
7. Do you have a claim against any entity affiliated with the debtors? Yes () No ()
State the name of the entity and the nature and amount of the claims:

8. Do you or any affiliated entities have any other claims against and/or debt or equity securities of the debtors?
Yes () No ()
- A. Do you or any affiliated entities have any financial arrangement that may affect the value of your claim(s) against or interest(s) in the debtors? Yes () No ()

Description of Claims, Debt And/or Equity Securities/Other Financial Arrangement	Amount

9. If you are represented by counsel, does your attorney represent any other parties in this bankruptcy case?
Yes () No () I do not know ()
10. If you have given a proxy to a third party either to represent you at the creditors' committee formation meeting, or in connection with your claim, please attach a copy of the written proxy.

You may attach a written statement to explain or respond to any responses.

If you are appointed to the Official Committee of Unsecured Creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on an official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the debtors while they are committee members absent an order of the court on application of the creditor.

I hereby certify that, to the best of my knowledge and belief, the answers to this Questionnaire are true and correct. By executing this questionnaire, you agree to provide the periodic certifications referenced in the prior paragraph to the United States Trustee if the United States Trustee so requests.

Date: _____

Signature _____

Print Name _____

Title _____

Note: This is not a proof of claim form. Proof of claim forms are filed with the Clerk of the Bankruptcy Court, not with the United States Trustee.

Exhibit 3

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF DELAWARE

J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801

IN RE:

Chapter 11

Case No.

Debtor(s).

NOTICE OF FORMATION MEETING FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS

The above-named debtors have filed voluntary petitions for relief under the provisions of chapter 11 of the Bankruptcy Code.

Section 1102 of the Bankruptcy Code authorizes the United States Trustee to appoint representatives of the unsecured creditors of the debtors to the Official Creditors' Committee. The debtors' petitions or other sources of information indicate that you fall into the category of being one of the largest unsecured creditors.

This is to notify you that a formation meeting for an official committee of unsecured creditors has been scheduled for:

Date/Time:

Location:

It is important that you attend this meeting. If you cannot attend the meeting and you wish to be considered for serving on the Committee, you should immediately advise the Office of the United States Trustee.

The United States Trustee may appoint a Committee consisting of creditors who attend the meeting or otherwise indicate a willingness to serve on the Committee. If you do not attend the scheduled meeting, or do not affirmatively indicate your willingness to serve, you will not be considered for appointment to the Committee. If you send an attorney or someone else to represent you at the meeting, your representative must present your written proxy authorizing the representative to act on your behalf.

The Unsecured Creditors' Committee performs a vital role in chapter 11 proceedings and for that reason your interest and consideration is solicited and appreciated.

ROBERTA A. DeANGELIS
Acting United States Trustee, Region 3

WILLIAM K. HARRINGTON
ASSISTANT UNITED STATES TRUSTEE

DATED: February 18, 2010

cc: Attorney assigned to these cases:
Debtors' co-counsel:

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF DELAWARE

OFFICIAL UNSECURED CREDITORS' COMMITTEE QUESTIONNAIRE

In the matter of:

I or my company is an unsecured creditor of: (if more than one debtor; which debtor?) _____

Your Full Name: _____ (Note*)

Company Name: _____

Company Address _____
(if you are individual creditor, your home address)

City/State: _____ Zip Code: _____

Phone# (_____) _____ Fax#(_____) _____

E-Mail Address _____

Amount of Unsecured Claim is: _____

Amount of Unsecured Claim entitled to be treated as an administrative expense in accordance with
11 U.S.C. §503(b) _____

Give a brief description below of the nature of your claim(s), including whether any portion of your claim is secured. If any of the claim(s) were acquired after the bankruptcy filing, set forth when the claim(s) were acquired and the consideration paid in comparison to the face amount of each claim: _____

1. Are you, or the company you represent, in any way "affiliated" with any of the debtors within the meaning of Section 101(2) of the Bankruptcy Code? Yes() No()
2. Do you, or the company you represent, engage in a business which directly or indirectly competes with any of the businesses of the debtor(s)? Yes() No()
3. Have you ever been an officer, director, agent, representative or employee of the debtor(s)? Yes() No()
4. As of the petition date, did you own any equity interests in the debtor(s)? Yes() No()
5. Was any of the unsecured claim you are asserting acquired after the bankruptcy filing? Yes() No()
6. Are you eligible and willing to serve on the unsecured creditors' committee? Yes() No()
7. Have you made a UCC 2-702 reclamation claim? Yes() No()

I hereby certify that, to the best of my knowledge and belief, the above answers to this questionnaire are true and correct. Further, I have read the attached Information Sheet and consent to its terms.

Signature

Title

***If you are an attorney representing a creditor, please attach your proxy**

CHAPTER 11 CREDITORS' COMMITTEE INFORMATION SHEET

Chapter 11 Proceedings Generally - After commencement of a chapter 11 bankruptcy proceeding, the debtor continues to operate its business as a "debtor-in-possession", unless it is subsequently shown that a trustee should be appointed. All actions to recover or enforce pre-bankruptcy claims against the debtor are automatically stayed under Section 362 of the Bankruptcy Code during the bankruptcy proceeding.

Section 1121 of the Bankruptcy Code states that the debtor has the exclusive right to file a plan of reorganization for 120 days after the entry of the order for relief, unless the bankruptcy court approves a longer or shorter exclusivity period. Following the expiration of this period, or if certain other conditions are met, any party in interest, including a creditors' committee, may file a plan of reorganization. Debtors frequently attempt to negotiate the terms of the plan of reorganization with their creditors.

A plan of reorganization may modify the rights of any class of creditors and may be confirmed by the bankruptcy court over the objections of one or more classes of creditors, provided that such creditors receive under the plan at least what they would receive in a chapter 7 liquidation. If the bankruptcy court does not confirm a plan of reorganization, the chapter 11 proceeding may be converted to a chapter 7 liquidation case, or it may be dismissed.

Purpose of Unsecured Creditors' Committees. To increase participation in the chapter 11 proceeding, Section 1102 of the Bankruptcy Code requires that the United States Trustee appoint a committee of unsecured creditors (the "Committee") as soon as practicable after the order for relief has been entered. The Committee ordinarily consists of the persons, willing to serve, that hold the seven (7) largest unsecured claims against the debtor of the kinds represented on such committee. Since the debtor has filed a list indicating that your claim is one of the twenty (20) largest unsecured claims against the debtor, you may be eligible to serve on the committee. There must be at least three (3) unsecured creditors willing to serve in order to form the Committee.

Powers and Duties of Unsecured Creditors' Committees - Members of the Committee are fiduciaries who represent all unsecured creditors as a group without regard to the types of claims which individual unsecured creditors hold against the debtor. Section 1103 of the Bankruptcy Code provides that the Committee may consult with the debtor, investigate the debtor and its business operations and participate in the formulation of a plan of reorganization. The Committee may also perform such other services as are in the interests of the unsecured creditors whom it represents.

Employment of Professionals - Section 1103 of the Bankruptcy Code provides that the Committee may, subject to the bankruptcy court's approval, employ one or more attorneys, accountants or other professionals to represent or perform services for the Committee. The employment of such professionals must occur at a scheduled meeting of the Committee at which a majority of the Committee is present. All professionals retained by the Committee may be compensated from assets of the debtor's estate pursuant to Section 330 of the Bankruptcy Code. Applications for the payment of professional fees are monitored by the Office of the U.S. Trustee and are subject to the Court's approval. However, the Committee should carefully review all applications and not rely on the Court or the U.S. Trustee to discover and object to excessive professional fees.

Other Matters - The Committee may elect a chairman and adopt bylaws. As a party in interest, the Committee may be heard on any issue in the bankruptcy proceeding. Federal Bankruptcy Rule 2002(i) requires that the Committee (or its authorized agent) receive all notices concerning motions and hearings in the bankruptcy proceeding.

Trading - If you are a creditor who holds a publicly traded debt instrument or equity interest, including an unsecured noteholder, and you wish to serve as a fiduciary on any statutory committee, you may not trade while serving as a committee member absent appropriate order of the Bankruptcy Court.

Should you have any additional questions concerning the Committee or your membership on the Committee please contact the Office of the United States Trustee.

Exhibit 4

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

In re:	:	Chapter 11
	:	
Vaccine Corporation, Inc.,	:	Case No. 10-12345
	:	
Debtor .	:	(Jointly Administered)

**INTERIM ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c)(1), 364(c)(2),
364(c)(3), 364(d)(1) AND 364(e) AND FED. R. BANKR. P2002, 4001 AND 9014 (I)
AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING, (II)
AUTHORIZING DEBTOR TO USE CASH COLLATERAL AND (III) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED LENDER**

Upon the motion, dated January 8, 2010 (the “Motion”), of Vaccine Corporation, Inc., (the “Borrower” or “Debtor”), as debtor and debtor-in-possession in the above-captioned case (the “Case”) commenced on January 8, 2010 (the “Petition Date”) for interim and final orders under sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), seeking:

I. authorization for (a) the Borrower to obtain up to \$35,000,000 of postpetition financing (the “DIP Financing”) on the terms and conditions set forth in this Order and the Credit and Guarantee Agreement (substantially in the form attached to the Motion as Exhibit “A”, and as hereafter amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Agreement”;¹ together with all agreements, documents and instruments delivered or executed in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and

¹ Unless defined in this Order, capitalized terms are used herein as defined in the DIP Agreement.

thereof, the “DIP Documents”), between the Borrower, and Blood From A Stone Bank, N.A. (“BFAS” or the “Lender”), as Administrative Agent (in such capacity, the “DIP Agent”) for itself and a syndicate of other financial institutions (collectively, the “DIP Lenders”), and (b) the Guarantors to guaranty the Borrower’s obligations in respect of the DIP Financing;

II. authorization for the Debtor to execute and deliver the DIP Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

III. authorization for the Debtor to (a) use the Cash Collateral (as defined in paragraph 11 below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined in paragraph 3(b) below) and (b) provide adequate protection to Medical Organization Incorporated (the “First Lien Lender” or “MOI”) under and pursuant to that Secured Promissory Note, in the principal amount of \$50 Million, dated as of April 3, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “MOI Promissory Note”; and together with any other security, pledge or guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified prior to the Petition Date, the “First Lien Loan Documents”), between the Borrower and MOI;

IV. authorization to grant first priority liens to the DIP Lenders on the proceeds of the Debtor’s claims and cause of action arising under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”);

V. the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined in paragraph 7 below) pursuant to section 506(c) of the Bankruptcy Code;

VI. to schedule, pursuant to Bankruptcy Rule 4001, an interim hearing (the “Hearing”) on the Motion to be held before this Court to consider entry of the proposed interim order annexed to the Motion (this “Order”) (a) authorizing the Borrower, on an interim basis, to borrow under the DIP Agreement up to \$14,000,000.00 of Loans to be used for working capital and general corporate purposes of the Debtor, (b) authorizing the Debtor to use the Cash Collateral and the other Prepetition Collateral and (c) granting adequate protection to the First Lien Lender; and

VII. to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the “Final Hearing”) for this Court to consider entry of a final order (the “Final Order”) authorizing the Borrower on a final basis to borrow the balance of the DIP Financing and to continue to use the Cash Collateral and the other Prepetition Collateral, and authorizing and approving on a final basis the relief requested in the Motion to become effective pursuant to the Final Order.

VIII. The Interim Hearing having been held by this Court on _____, 2010, and upon the record made by the Debtor at the Interim Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Case, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Oral notice of the Motion, the relief requested therein and of the Interim Hearing was provided by the Debtor to its thirty largest unsecured creditors, the DIP Agent, the First Lien Lender and the United States Trustee for the District of Delaware (the “U.S. Trustee”). Under the circumstances, the notice given by the Debtor of the Motion, the relief requested

therein and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (e).

3. *Debtor's Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 18 and 19 below) the Debtor admits, stipulates, and agrees that:

a. as of the Petition Date, the Debtor was indebted and liable to the First Lien Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$51.5 million in respect of a loan made by the First Lien Lender pursuant to the First Lien Loan Documents, plus accrued and unpaid interest thereon, and any fees and expenses due and owing the First Lien Lender (including, without limitation, all of the fees and expenses of attorneys and financial advisors of the First Lien Lender) as provided in the First Lien Loan Documents (collectively, the "First Lien Obligations");

b. the liens and security interests granted to the First Lien Lender to secure the First Lien Obligations are (i) valid, binding, perfected, enforceable, first priority (subject to permitted exceptions under the First Lien Credit Agreement) liens on and security interests in the Prepetition Collateral, (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to after giving effect to this Order, the liens and security interests granted to secure the DIP Financing and the Adequate Protection Obligations;

c. the First Lien Obligations constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising under section 362 of the Bankruptcy Code);

d. (i) no portion of the First Lien Obligation is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (ii) the Debtor does not have, and hereby forever releases, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or applicable nonbankruptcy law, against the First Lien Lender, and all of its respective affiliates, subsidiaries, agents, officers, directors, employees, attorneys and advisors; and

e. the aggregate value of the Prepetition Collateral is less than the aggregate amount of the First Lien Obligations.

4. *Findings Regarding The DIP Financing.*

a. Good cause has been shown for the entry of this Order.

b. The Debtor has an immediate need to obtain the DIP Financing and to use the Prepetition Collateral, including the Cash Collateral, in order to, among other things, permit the orderly continuation of its business, pay a substantial “stay” bonus to its President and CEO, preserve the going concern value of the Debtor, make payroll and satisfy other working capital and general corporate purposes of the Debtor. The Debtor’s use of the Prepetition Collateral (including the Cash Collateral) is necessary to ensure that the Debtor has sufficient working capital and liquidity to preserve and maintain the going concern value of the Debtor’s estate.

c. The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lenders pursuant to, and for the purposes set forth in, the DIP Documents and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtor granting the priming DIP Liens (as defined in paragraph 7 below) and

the Superpriority Claims (as deemed in paragraph 6 below) and repaying in full the LIFO Obligations, in each case on the terms and conditions set forth in this Order and the DIP Documents.

d. The terms of the DIP Financing and the use of the Prepetition Collateral (including the Cash Collateral) pursuant to this Order are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

e. The DIP Documents and the use of the Prepetition Collateral (including the Cash Collateral) have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtor, the DIP Agent, the DIP Lenders and the First Lien Lender, and all of the Debtor's obligations and indebtedness arising under or in connection with the DIP Financing, including without limitation, (i) all loans made to, or contemplated to be made to, the Debtor pursuant to the DIP Agreement and (ii) all other obligations of the Debtor under the DIP Documents and this Order owing to any DIP Lenders (collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

f. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the interim relief set forth in this Order, the Debtor's estate will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of the Prepetition Collateral (including the Cash Collateral) in

accordance with this Order and the DIP Documents are, therefore, in the best interest of the Debtor's estate.

5. *Authorization O/The DIP Financing And The DIP Documents.*

a. Pending entry of the Final Order, the Debtor is hereby authorized to enter into and perform under the DIP Documents and to borrow under the DIP Agreement up to an aggregate principal amount of \$14,000,000.00 for working capital and other general corporate purposes of the Debtor, including without limitation, to pay interest, fees and expenses in connection with the DIP Financing.

b. In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized and directed to perform all acts and to execute and deliver all instruments and documents that the DIP Agent determines to be reasonably required or necessary for the Debtor's performance of their obligations under the DIP Documents, including without limitation:

- i. the execution, delivery and performance of the DIP Documents;
- ii. the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in such form as the Debtor, the DIP Agent and the DIP Lenders may agree, and no further approval of this Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (and any and all fees paid in connection therewith) including, without limitation, any amendment or other modifications which, *inter alia*, that (A) shorten the maturity of the Loans, (B) increase the Commitments or the rate of interest payable on the Loans under the DIP Agreement, or (C) change any Event of Default, add any covenants or amend the covenants therein, even if such amendments or modifications are materially more restrictive. Notwithstanding anything contained herein to the contrary, a copy of

any such amendment, waiver consent or other modification need not be filed by the Debtor with this Court nor served by the Debtor on the U.S. Trustee and/or any statutory committee of unsecured creditors appointed in the Case (the “Committee”);

iii. the non-refundable payment to the DIP Agent, and the DIP Lenders, as the case may be, of the fees set forth in the DIP Documents and referred to in the Fee Letter, dated January 8, 2010, between the Borrower and BFAS, in the aggregate amount of \$5,000,000.00 million; and

iv. the performance of all other acts required under or in connection with the DIP Documents.

c. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor and its estate in accordance with the terms of this Order and the DIP Documents. No obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *Superpriority Claims.*

a. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative claims (the “Superpriority Claims”) against the Debtor and its estate with priority over any and all administrative expenses, adequate protection claims and all other claims against the Debtor, now existing or hereafter arising, of

any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, any and all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under sections 1930(a) of title 28 of the United States Code; and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment.

7. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Agent of any property, the following security interests and liens are hereby granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, all property identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”, (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the “DIP Liens”):

a. First Lien On Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property of the Debtor, whether existing on or as of the Petition Date or thereafter acquired, that is not subject to valid, perfected, non-avoidable and enforceable liens in existence on or as of the Petition Date (collectively, the “Unencumbered Property”), including, without limitation, any and all unencumbered cash, accounts receivable, claims or causes of action, including, without

limitation, the Avoidance Actions, the proceeds thereof or any other property recovered in respect of any Avoidance Actions, inventory, general intangibles, contracts, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, and the proceeds of all of the foregoing.

b. Liens Priming First Lien Lender's Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, all Prepetition Collateral as well as all tangible and intangible postpetition property of the Debtor (the "Postpetition Collateral"), whether now existing or hereafter acquired. The DIP Liens on the Prepetition Collateral shall be senior in all respects to the security interests in, and liens on, the Prepetition Collateral and the Postpetition Collateral (including, without limitation, the Adequate Protection Liens (as defined in paragraph 13 below).

c. Liens Senior To Certain Other Liens. The DIP Liens and the Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code or otherwise.

8. *Remedies After Event of Default.* The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise: (i) immediately upon the occurrence and during the continuance of an Event of Default, all rights and remedies under the DIP Documents, other than those rights

and remedies against the DIP Collateral as provided in clause (ii) below, and (ii) upon the occurrence and during the continuance of an Event of Default, and the giving of five (5) hours prior written notice to the Debtor (with no notice required to be given to counsel for the Debtor, counsel to the Committee, and to the U.S. Trustee), all rights and remedies against the DIP Collateral provided for in the DIP Documents and this Order (including, without limitation, the right to setoff monies of the Debtor in accounts maintained with the DIP Agent or any DIP Lender. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, there was five (5) hours prior notification of the Event of Default. In no event shall the DIP Agent, the DIP Lenders, or the First Lien Lender be subject to the equitable doctrine of, “marshaling” or any similar doctrine with respect to the DIP Collateral. The DIP Agent’s or any DIP Lender’s delay or failure to exercise rights and remedies under the DIP Documents or this Order shall not constitute a waiver of the DIP Agent’s or the DIP Lenders’ rights hereunder, thereunder or otherwise.

9. *Limitation On Charging Expenses Against Collateral.* Subject to and effective upon entry of the Final Order, no expenses of administration of the Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the First Lien Lender, as the case may be, and no such consent shall be implied from any other action or inaction by the DIP Agent, the DIP Lenders, or the First Lien Lender,

10. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lenders or the First Lien Lender pursuant to the provisions of this

Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

11. *The Cash Collateral.* All of the Debtor's cash, including without limitation, all cash and other amounts on deposit or maintained by the Debtor in any account or accounts with any First Lien Lender and any cash proceeds of the disposition of any Prepetition Collateral, constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the First Lien Lender within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

12. *Use Of Prepetition Collateral (including Cash Collateral).* The Debtor is hereby authorized to use the Prepetition Collateral, including the Cash Collateral, during the period from the Petition Date through and including the Termination Date under the DIP Agreement for general corporate purposes in accordance with the terms and conditions of this Order, provided that (a) the First Lien Lender is granted adequate protection as hereinafter set forth and (b) except on the terms of this Order, the Debtor shall be enjoined and prohibited from at any time using the Cash Collateral.

13. *Adequate Protection.* The First Lien Lender is entitled, pursuant to sections 361, 363(c)(2) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution of value of the Prepetition Collateral, including without limitation, any such diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of Cash Collateral and any other Prepetition Collateral, the priming of the First Lien Lender's liens on the Prepetition Collateral by the DIP Liens, and the imposition of the automatic stay pursuant to

section 362 of the Bankruptcy Code (such diminution in value, the “Adequate Protection Obligations”). As adequate protection, the First Lien Lender is hereby granted the following:

a. Adequate Protection Liens. As security for the payment of the Adequate Protection Obligations, the First Lien Lender is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtor of any security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral (the “Adequate Protection Liens”), subject and subordinate only to the DIP Liens.

b. Section 507(b) Claim. The Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the “507(b) Claims”), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331 and 726 of the Bankruptcy Code, subject and subordinate only to the Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Order, the First Lien Lender shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash.

c. Fees And Expenses. The First Lien Lender shall receive from the Debtor reimbursement of all fees and expenses payable to the First Lien Lender under the First Lien Loan Documents, including without limitation, the actual fees and disbursements of advisors to the First Lien Lender. None of the fees and expenses payable pursuant to this paragraph 13(c) shall be subject to separate approval by this Court, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. The Debtor shall pay the

fees and expenses provided for in this paragraph immediately after invoices for such fees and expenses shall have been submitted to the Debtor, and the Debtor shall not provide copies of such invoices to the Committee and the U.S. Trustee, even upon written request.

d. Information. The Debtor shall promptly provide to the First Lien Lender any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent or the DIP Lenders.

14. *Reservation of Rights of First Lien Lender.* Based upon the consent of the First Lien Lender, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the First Lien Lender. Notwithstanding any other provision hereof, the grant of adequate protection to the First Lien Lender pursuant hereto is without prejudice to the right of the First Lien Lender to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and the Debtor, for itself and on behalf of its estate, waives any right to contest any such modification. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization to use Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the First Lien Lender. The consent of the First Lien Lender to the priming of its liens on the Prepetition Collateral by the DIP Liens (a) is limited to the DIP Financing and (b) does not constitute, and shall not be construed as constituting, an acknowledgement or stipulation by the First Lien Lender that, absent such consent, its interests in the Prepetition Collateral would be adequately protected pursuant to this Order.

15. *Perfection Of DIP Liens And Adequate Protection Liens.*

a. The DIP Agent, the DIP Lenders, the First Lien Lender is hereby authorized, but not required, to file or record financing statements, intellectual property filings,

mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent or the First Lien Lender shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Order.

b. A certified copy of this Order may, in the discretion of the DIP Agent or the First Lien Lender, as the case may be, and at the Debtor's sole expense, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

c. The Debtor shall execute and deliver to the DIP Agent and the First Lien Lender, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Agent and the First Lien Lender request to evidence, confirm, validate or perfect the DIP Liens and the Adequate Protection Liens.

d. Upon entry of this Order, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for the Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other DIP Collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code, and any such provision shall have no

force and effect with respect to the granting of DIP Liens or Adequate Protection Liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by the Debtor in favor of the DIP Lenders or the First Lien Lender in accordance with the terms of the DIP Documents or this Order.

16. *Preservation Of Rights Granted Under This Order.*

a. No claim or lien having a priority senior to or *pari passu* with those granted by this Order to the DIP Agent, the DIP Lenders, or the First Lien Lender shall be granted or allowed while any portion of the DIP Obligations (or any refinancing thereof), or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

b. Unless all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash, the Debtor shall not seek, and it shall constitute an Event of Default under the DIP Agreement and a termination of the right to use Cash Collateral if the Debtor seeks, or if there is entered, (i) any modification of this Order without the prior written consent of the DIP Agent and the First Lien Lender, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent or the First Lien Lender or (ii) an order converting or dismissing the Case. If an order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (A) the Superpriority Claims, the 507(b) Claims, the other administrative claims granted pursuant to this Order, the DIP Liens and the

Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations and all Adequate Protection Obligations have been paid and satisfied in full (and that such Superpriority Claims, the 507(b) Claims, the other administrative claims granted pursuant to this Order, the DIP Liens and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (B) this Court shall retain jurisdiction to the greatest extent permitted by applicable law, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (A) above.

c. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacated shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or the First Lien Lender, as applicable, of the effective date of such reversal, stay, modification or vacatur or (ii) the validity, priority or enforceability of the DIP liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Debtor to the DIP Agent, the DIP Lenders, or the First Lien Lender, as the case may be, prior to the actual receipt of written notice by the DIP Agent and the First Lien Lender of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Order, and the DIP Agent, the DIP Lenders, and the First Lien Lender shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, all DIP Obligations and all Adequate Protection Obligations.

d. Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations, the 507(b) Claims and all of the other rights and remedies of the DIP Agent, the DIP Lenders, and the First Lien Lender granted by this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code, dismissing the Case or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Order and the DIP Documents shall continue in the Case, or in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the Superpriority Claims, the Section 507(b) Claims, the other administrative Claims granted pursuant to this Order, and all other rights and remedies of the DIP Agent, the DIP Lenders, and the First Lien Lender granted by this Order and the DIP Documents shall continue in full force and effect until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash.

17. *Effect Of Stipulation On Third Parties.* The stipulations and admissions contained in this Order, including without limitation, in paragraphs 3 and 11 of this Order, shall be binding upon the Debtor and its estate in all circumstances. The stipulations and admissions contained in this Order, including without limitation, in paragraphs 3 and 11 of this Order, shall also be binding upon all other parties in interest with requisite standing, including without limitation, the Committee and the U.S. Trustee and neither the Committee nor any other party-in-interest can file any adversary proceeding or contested matter (A) challenging the validity, enforceability, priority or extent of the First Lien Obligations or the liens on the Prepetition Collateral securing

the First Lien Obligations or (B) otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Claims and Defenses”) against the First Lien Lender or any of its respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the First Lien Obligations or the Prepetition Collateral. Upon entry of this Order, the Debtor, for itself and on behalf of its estate, agrees and acknowledges that all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. Upon entry of this Order, (i) the First Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, characterization, defense or avoidance, for all purposes in the Case and any subsequent chapter 7 case, (ii) the liens on the Prepetition Collateral securing the First Lien Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 3(d), not subject to defense, counterclaim, recharacterization, subordination or avoidance and (iii) the First Lien Obligations and the liens on the Prepetition Collateral granted to secure those obligations shall not be subject to any challenge by the Committee or any other party-in-interest, with such Committee or party-in-interest being enjoined from seeking to exercise any rights of the Debtor’s estate, including without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for the Debtor). Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, standing or authority to pursue any cause of action belonging to the Debtor or its estate, including without limitation, Claims and Defenses with respect to the First Lien Loan Documents, the First Lien Obligations or any liens granted by any Debtor to secure any of the foregoing.

18. *Limitation On Use Of DIP Financing And DIP Collateral.* The Debtor shall use the DIP Financing and the Prepetition Collateral (including the Cash Collateral) solely as provided in this Order and the DIP Documents. Notwithstanding anything herein or in any other order of this Court to the contrary, no loans under the DIP Agreement, DIP Collateral, or Prepetition Collateral (including the Cash Collateral) may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents, the First Lien Loan Documents, or the liens or claims granted under this Order, the DIP Documents, or the First Lien Loan Documents, (b) assert any Claims and Defenses or any other causes of action against the DIP Agent, the DIP Lenders, the First Lien Lender, or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's or the First Lien Lender's assertion, enforcement or realization on the Prepetition Collateral, the Postpetition Collateral or the DIP Collateral in accordance with the DIP Documents, the First Lien Loan Documents or this Order, (d) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the First Lien Lender hereunder or under the DIP Documents or the First Lien Loan Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are permitted under the DIP Documents. **Notwithstanding anything to the contrary herein, no portion of the Prepetition Collateral (including the Cash Collateral), Postpetition Collateral, Loans under the DIP Agreement or the DIP Collateral may be used by the Committee to investigate the validity, enforceability or priority of the First Lien Obligations, or the liens on the Prepetition Collateral securing the First Lien Obligations, or investigate any Claims and Defenses or other causes action against the First Lien Lender.**

19. *Insurance.* To the extent the First Lien Lender is listed as loss payee under the Debtor's insurance policies, the DIP Agent is also deemed to be the loss payee under the Debtor's insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment in full of the DIP Obligations, and second, to the payment of the First Lien Obligations.

20. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

21. *Binding Effect; Successors And Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties-in-interest in the Case, including without limitation, the DIP Agent, the DIP Lenders, the First Lien Lender, the Committee, and the Debtor and its respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtor or with respect to the property of the estate of any of the Debtor) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the First Lien Lender and the Debtor and its respective successors and assigns, provided that, except to the extent expressly set forth in this Order, the DIP Agent, the DIP Lenders and the First Lien Lender shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of the Debtor.

22. *Limitation of Liability.* Subject to entry of the Final Order, in determining to make any loan under the DIP Agreement, permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the DIP Agent, the DIP Lenders and the First Lien Lender shall not be deemed to be in control of the

operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute). Furthermore, nothing in this Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the First Lien Lender any liability for any claims arising from the pre-petition or post-petition activities of any of the Debtor.

23. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Order.

24. *Final Hearing.* The Final Hearing is scheduled for _____, 2010 at _____ .m., prevailing Eastern time, before this Court.

25. *Final Hearing Notice.* The Debtor shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to the Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party-in-interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (a) Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, DE 19801-1246, Attention: Lawrence J. Kotler, Esquire, attorney for the DIP Agent, and the First Lien Lender; (b) [INSERT NAME AND ADDRESS OF DEBTOR’S COUNSEL], Wilmington, DE 19801, attorney for the Debtor and (c) the Office of the U.S. Trustee, and shall be filed with the Clerk of the United

Exhibit 5

PRESENTATION TO THE DELAWARE BANKRUPTCY INNS OF COURT

FEBRUARY 23, 2010

ANALYSIS AND CRITIQUE OF DIP BORROWING FACILITIES

AND FINANCIAL STATEMENTS

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Key Considerations in Review of DIP budgets

General DIP Budget Construction Issues

- For how long must funds *really* be borrowed? Can changes in timing of expenses relative to projected cash receipts minimize the need for borrowing?
- Is the Debtor over-borrowing? A \$35 Million facility provides a conservative cushion if all the company will ever need is a maximum of \$31 Million – but the excess fees add cost to an already burdened estate and provide leverage for the lender.
- Budget line-items for the Committee and its professionals are often understated.
- Watch timing – professional fee payments (for example) are often very flexible in terms of where in the budget they can fall. Often represented as accrual based rather than cash-based, which can result in a +35-day swing in disbursements verses a monthly accrual-based budget. This can create a fundamental economic change in the case.

Specific Expense Line-Item Questions

1. Payroll – Are there hidden unnecessary employee expenses (including unnecessary employees?)
 - a. Are there hidden (or overt) bonuses or incentive plans?
 - b. Does management compensation present issues of concern?
 - c. Are independent contractors disguised as employees, or vice-versa?
 - d. Is there a MIP/KERP issue? If a KERP, does it meet the standard for executive bonuses post-BAPCPA?
 - i. Is there some other reason (such as regulatory concerns) for management to be “tied” to the Debtor, that renders a KERP unnecessary?
 - ii. How are the funds distributed among the recipients? Is it reasonable? Is this a group of insiders lining their pockets? Does it pass the “smell test” – even if it is burdensome, is it necessary for the good of the estate (*i.e., if you have to accept it to get a deal done, could you*)?
2. Operating Expenses – can be very specific by industry, but generally the same basis for concern

- a. Are all expenses necessary and aligned with a clear purpose for which the activity is necessary?
 - i. Consider expenses more typically found in a “business-as-usual” company that can be eliminated in a DIP (i.e., audit fees)
- b. Are there any relationships between company, insiders and vendors?
- c. Are there potential insider relationships involving vendors (i.e., a drug development partner who might have lent funds to the Debtor, who also holds equity)
- d. Watch broad categories, which can hide unnecessary expenses
 - i. Insurance (can include unnecessary coverage)
 - ii. Development partners in a wind-down case

Key Considerations in Review of Pre-Petition Financials

Understanding What the Financial Really Say – Balance Sheets

- Lists assets and liabilities, and that's about all it does.
- Can wildly overstate assets (especially in the area of intangibles and Intellectual Property) and can understate the context of liabilities
- Use the balance sheet as a picture of a company at a fixed point in time.
- Best used as a rolling comparison to spot trends and in conjunction with the Income Statement (or Profit-and-Loss Statement)

Understanding What the Financial Really Say – P&L

- Gives a single point of reference as to the Debtor's performance over time – but it's still only a picture, not a movie.
- Does not show how effectively the Debtor utilizes its assets, but does show where the cash is going (which is often the most important aspect of a Committee's existence early in the case)
- Use to show progress in comparison to balance sheet items (such as liabilities or assets employed)

Where to focus early in the Case

- What was the Debtor's trajectory?
 - Interplay of Assets and Liabilities (Balance Sheet) versus Revenue and Expenses (P&L)
 - When and why was Debt incurred?
- There is no aspect of a Committee's investigation into the Debtor's affairs early in a case that can't be improved by asking the question "Why did this occur?"

EXHIBIT A

Vaccine Corporation
 Comparison of Common Size DIP Financings
 Period July 2009 thru December 2009

Case#	Case Name	Date Filed	DIP Amount	Interest Rate	Interest & Fees	Annual Interest	Fees & Expenses	Total Fees
09-XXXXX	Random Case No. 1		\$ 30,000,000	11.00%	15.86%	3,300,000	1,459,000	4.9%
09-XXXXX	Random Case No. 2		\$ 35,000,000	8.00%	18.32%	2,800,000	3,611,000	10.3%
09-XXXXX	Random Case No. 3		\$ 25,000,000	7.00%	11.00%	1,750,000	1,000,000	4.0%
09-XXXXX	Random Case No. 4		\$ 31,000,000	8.50%	8.50%	2,635,000	-	0.0%
09-XXXXX	Random Case No. 5		\$ 31,000,000	15.00%	18.10%	4,650,000	962,500	3.1%
09-XXXXX	Random Case No. 6		\$ 17,500,000	16.00%	19.00%	2,800,000	525,000	3.0%
09-XXXXX	Random Case No. 7		\$ 25,000,000	10.98%	10.98%	2,745,000	-	0.00%
09-XXXXX	Random Case No. 8		\$ 34,000,000	10.00%	10.51%	3,400,000	175,000	0.51%
09-XXXXX	Random Case No. 9		\$ 30,000,000	13.00%	18.00%	3,900,000	1,500,000	5.00%
09-XXXXX	Random Case No. 10		\$ 20,000,000	11.00%	12.00%	2,200,000	200,000	1.00%
09-XXXXX	Random Case No. 11		\$ 24,000,000	8.00%	8.00%	1,920,000	-	0.00%
09-XXXXX	Random Case No. 12		\$ 40,000,000	7.50%	8.00%	3,000,000	200,000	0.50%
09-XXXXX	Random Case No. 13		\$ 40,000,000	13.50%	16.50%	5,400,000	1,200,000	3.00%
TOTAL						\$ 40,500,000	\$ 10,832,500	
Average								
Weighted Average						10.73%		13.44%
Weighted Average of DIP Loans with Disclosed Fees						10.59%		13.42%
10-xxxxx	Vaccine Corporation - Proposed		\$ 35,000,000	10.00%	14.37%	3,500,000	1,530,134	4.37%

EXHIBIT B

Vaccine Corporation DIP Facility Pricing

Total Facility Size \$ 35,000,000

Summary of Fees

Libor Rate	10.00%	
Unused Fee	0.75% of the unused facility	
Backstop Fee	\$ 275,000	Payable at closing
Closing Fee	\$ 175,000	Payable at closing
Facility Fee	1.50% of the aggregate Commitments	
Agency Fee	\$ 75,000	Payable at closing
Exit Fee	2.00% of the Outstanding Balance	
Extension Fee	2.00%	due upon extension of the facility

Annualized Interest Rate

Base	Libor + Unused Fee	\$ 1,915,000.00	\$ 3,830,000.00 (1)
Plus	Backstop/Closing	\$ 450,000.00	\$ 450,000.00
Plus	Facility	\$ 225,000.00	\$ 225,000.00
Plus	Agency	\$ 75,000.00	\$ 75,000.00
Plus	Exit	\$ 420,000.00	\$ 420,000.00

Total Interest & Fees: \$ 5,000,000.00

Annualized Cost as %: **27.30%**

NOTE: Some fees, such as the agency fee, can be doubled on an annualized basis since they represent effectively twice as much required work for 12 vs. 6 months.

Week	Amount Outstanding	Libor + Unused	Unused Only
1	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
2	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
3	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
4	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
5	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
6	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
7	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
8	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
9	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
10	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
11	\$ 14,000,000	\$ 57,506.94	\$ 3,062.50
12	\$ 15,000,000	\$ 61,250.00	\$ 2,916.67
13	\$ 17,000,000	\$ 68,736.11	\$ 2,625.00
14	\$ 22,000,000	\$ 87,451.39	\$ 1,895.83
15	\$ 23,000,000	\$ 91,194.44	\$ 1,750.00
16	\$ 35,000,000	\$ 136,111.11	\$ -
17	\$ 21,159,555	\$ 84,305.56	\$ 2,018.40
18	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
19	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
20	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
21	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
22	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
23	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
24	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
25	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
26	\$ 21,000,000	\$ 83,708.33	\$ 2,041.67
	\$ 1,915,000.00	\$ 63,268.40	0.18% of \$35,000,000

Semi-annual int (clean) 10.46%
Annualized int (clean) 20.91%

Notes:

(1) - The annualized interest rate was derived by taking the semi-annual (6-month) interest + unused fee total and multiplying by 2. This has the effect of slightly understating the actual total, because doubling the six-month total does not capture the further compounding of interest that would occur in the second six-month period. Therefore, the actual yearly total would be slightly higher, thus increasing the total annualized cost of the facility.