

# Biotech Industry Bankruptcy Cases: Zymergen and Humanigen

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March 15, 2024

**T**his issue of the Bankruptcy Update focuses on the recent biotech industry bankruptcy cases of Zymergen and Humanigen.

**'Zymergen' (Bankr. D. Del. Case No. 23-11661)**

On Oct. 3, 2023, Zymergen Inc. and three affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

In 2021, Zymergen raised approximately \$530 million from its initial public offering (IPO) to fund their product, Hyaline, the polyimide film for flexible touch-screen devices. Soon after the IPO, the company struggled to generate revenue as customers faced technical problems with the product, causing the company's stock to drop about 70%. This spurred litigation against the company and directors by investors.

Subsequently, Gingko Bioworks purchased Zymergen for \$300 million. As a wholly-owned subsidiary of Gingko, Zymergen shifted to a services-based business utilizing its synthetic biology technology but continued to operate on a cash negative basis.

The debtors noted that they filed their bankruptcy cases in order to maximize the value of their business



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and assets through court supervised sale process, reducing cash burn and resolving claims and providing recoveries for their creditors.

Gingko entered into an asset purchase agreement to serve as stalking horse bidder, offering \$5 million in cash for most of debtors' intellectual property assets and assumption of \$77 million in potential future liabilities.

The U.S. Trustee objected to debtors' proposed bidding procedures, which sought to award Gingko bid protection of up to 5% of the purchase price, claiming that it is unclear why a 100% parent company that acquired the company fairly recently would need any inducement to bid for the assets of its subsidiary.

On Nov. 14, 2023, the court approved the bidding

procedures including the stalking horse agreement from corporate parent Gingko after the debtors reached a resolution with official committee of unsecured creditors. Under the revised order, the stalking horse bid purchase price was increased to \$7.5 million, the expense reimbursement provisions in favor of Gingko were eliminated, and the unsecured creditors' committee received broader consultation rights.

Following an auction, the debtors selected two winning bids: (1) \$6.3 million bid by Gingko for all of the debtors' assets with the exception of the nitrogen fixation technology and (2) \$2.5 million bid by agriculture business Pivot Bio Inc. for the nitrogen fixation technology.

On Feb. 5, 2024, the court confirmed the debtors' Chapter 11 liquidation plan following the resolution of an objection by a securities litigation class whereby the litigation could continue with recoveries limited to available insurance proceeds. The debtors

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projected that unsecured creditor recoveries may be as high as 90% pending resolution of certain claims.

#### 'Humanigen' (Bankr. D. Del. Case No. 24-10003)

On Jan. 3, 2024, Humanigen Inc. filed a petition for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The clinical-stage biopharmaceutical company attributed its bankruptcy filing to the combination of failing to receive emergency authorization for a COVID-19 treatment from the U.S. Food and Drug Administration (FDA) and unsuccessful business combination negotiations with a privately held company. The debtor reported \$500,000 in assets and \$44 million in debt as of the bankruptcy filing date.

The debtor sought approval to enter into a \$2 million debtor-in-possession (DIP) financing facility to be provided by Taran Therapeutics (Taran), an entity formed by its CEO, Dr. Cameron Durrant. The court approved the DIP financing on an interim basis, granting the debtors access to half of the \$2 million DIP loan to help fund its operations. Taran also agreed to serve as the stalking horse bidder in connection with the debtor's post-petition sale process.

The official committee of unsecured creditors objected to final approval of the DIP loan, pointing out that Durrant and other insiders of Humanigen have two pending lawsuits against them alleging breach of fiduciary duty, unjust enrichment and gross mismanagement, and that, consequently, it was inappropriate for Durrant to obtain liens on potential estate claims or cause of action against himself.

On Feb. 13, 2024, the debtor filed a notice canceling the auction as it received no competing bids for its assets. The debtor sought approval of the sale to Taran, whereby Taran would pay \$2 million in cash to acquire substantially all of the debtor's assets and make additional payments ranging from \$1 million to \$3 million if certain milestones are met. The unsecured creditors' committee objected, arguing the sale amount was insufficient.

An objection from the FDA followed, asserting that transfer of investigational new drug applications usurps the federal regulations on clinical trial applications.

Ultimately, the sale was approved following resolution of the FDA's and unsecured creditors' committee's objection and restructuring of the milestone payments to between \$2.5 million and \$7.5 million and removal of causes of action against Durrant from the purchased assets.

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