

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: ATHENEX, INC., <i>et al.</i> ¹ Debtors.	§ § § § § §	Chapter 11 Case No. 23-90295 (DRJ) (Jointly Administration)
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**NOTICE OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF RULE 2004 EXAMINATION AND DOCUMENT
PRODUCTION REQUEST TO DEBTORS, ATHENEX, INC., ET AL**

TO: Athenex Inc., *et al.* (“Athenex” or “Debtors”), by and through its counsel of record, Michael D. Warner, Maxim B. Litvak, Pachulski Stang Ziehl & Jones LLP, 440 Louisiana Street, Suite 900, Houston Texas 88002, and Richard M. Pachulski, Debra I. Grassgreen, Shirley S. Cho, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067.

PLEASE TAKE NOTICE that, pursuant to Rules 2004, 7030, and 9016 of the Federal Rules of Bankruptcy Procedure and Bankruptcy Local Rule 2004-1, the Official Unsecured Creditors’ Committee of Athenex, Inc. (the “OUCC”) in the Debtors’ jointly administered chapter 11 cases, by and through its proposed undersigned counsel, will conduct an examination of a witness or witnesses identified by Athenex to testify regarding the topics of examination set forth in Exhibit A (the “Topics”) on August 4, 2023, beginning at 9:00 a.m. (CT) at the offices of McKool Smith, P.C., 600 Travis Street, Suite 7000, Houston, TX 77002, and continuing day to day until completed, or at such other date and time and location as agreed to by the parties. The examination will take place in person and/or remotely by videoconference or by other appropriate

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

means. The examination will proceed before an officer authorized by law to administer oaths, and will be recorded by audio, video, and/or stenographic means.

PLEASE TAKE FURTHER NOTICE that the documents and information requested herein shall be produced to the undersigned counsel in accordance with the instructions set forth in EXHIBIT A and EXHIBIT B annexed hereto, and in a manner consistent with the Bankruptcy Rules and Bankruptcy Local Rules. In addition, in all events, the documents and information requested shall be produced no later than 24 hours before the above-stated time of the examination.

Dated: July 21, 2023

Respectfully submitted,

MCKOOL SMITH, PC

/s/John J. Sparacino

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Proposed Counsel for the OUCC

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2023, a true and correct copy of the foregoing was sent to counsel for the Debtors via electronic mail.

/s/Rachel A. Parisi _____

Rachel A. Parisi

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 2004, I hereby certify that on July 20 and July 21, 2023, I communicated with counsel for the Debtors with respect to the proposed requests. Discussion with Debtors' counsel remain ongoing.

/s/Rachel A. Parisi _____

Rachel A. Parisi

EXHIBIT A

Athenex shall produce to testify on its behalf one or more officers, directors, or managing agents, or designate other persons who consent to testify on their behalf, in each case who have knowledge of the Topics set forth below. The individual(s) designated shall testify as to matters known or reasonably available to Athenex. Athenex shall identify in writing at least 24 hours in advance of the deposition the name of each person who will testify and the subject matters on which each person will testify.

DEFINITIONS

The following definitions of terms apply to all Topics. Unless otherwise defined herein, all words and phrases used herein shall be accorded their usual meaning and shall be interpreted in their common, ordinary sense:

1. “Athenex” or “Debtors” mean the debtors in these jointly administered Chapter 11 Cases, including any of its affiliates, subsidiaries, divisions, predecessors or successors, as well as its past and present officers, directors, partners, employees, members, owners and beneficiaries, agents, representatives, attorneys, consultants, advisors, or other persons acting or purporting to act under its control or on its behalf.

2. “Athenex Group” means all entities, individually or collectively, other than the Debtors that are identified or referred to on the “Corporate Organizational Chart” attached as “Exhibit A” to the *Declaration of Nicholas K. Campbell In Support of Debtors’ Chapter 11 Petitions and First Day Relief* [Docket No. 18] filed with the Bankruptcy Court on May 14, 2023, and any other entity, other than the Debtors, that may have inadvertently been excluded from such Corporate Organizational Chart.

3. “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

4. “Board of Directors” means any board of directors, board of managers or other similar governing body and any committees thereof of any of the Debtors.

5. “Board Material” means any materials, reports, presentations, minutes, or similar materials prepared for any Board of Directors.

6. “Chapter 11 Case” means the above-captioned chapter 11 case.

7. “Communication” means both the documentary and any non-documentary transmission of facts, data, or any other information, and all attachments and enclosures thereto, whether transmitted verbally, visually, in writing, electronically, or by any other means or media from one person to another person; the non-documentary transmission of information shall include but not be limited to oral statements, telephone conversations, recorded voicemail messages, negotiations, conferences or meetings, however formal or informal. The term also includes information relating to oral communications and written communications, whether or not any such information or writings were themselves transmitted by their author or any other persons.

8. “Concerning” means referring to, relating to, constituting, in connection with alluding to, supporting, refuting, reflecting, touching upon, involving, pertaining to, explaining, containing, recording, summarizing, showing, disclosing, setting forth, discussing, describing, evaluating, analyzing, or evidencing.

9. “D&O Policies” means any director and officer insurance policies Concerning the Debtors and any of their respective officers and/or directors.

10. “Document” is used in the broadest sense possible and equal in scope to the use of the term in Federal Rule of Civil Procedure 34(a), made applicable to this proceeding by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure.

11. “Including” means including, without limitation.

12. “Insider” has the meaning ascribed to in §101(a)(1) of the Bankruptcy Code.

13. “Person” means natural persons, firms, associations, agencies, and/or other organizations and entities cognizable by law, including private corporations, public corporations, partnerships, unincorporated associations, offices, governments, governmental or political entities.

14. “Petition Date” means May 14, 2023.

15. “Securities Litigation” means the securities class action captioned as *In re Athenex, Inc. Securities Litigation*, Case No. 21-cv-00337 pending in the United States District Court for the Western District of New York.

16. “You” and “Your” means the Debtors, as well as their past and present officers, directors, partners, employees, members, owners and beneficiaries, agents, representatives, attorneys, consultants, advisors, or other persons acting or purporting to act under their control or on their behalf.

17. Terms not otherwise defined herein shall have the meaning ascribed such term(s) in the (Draft) *Combined Disclosure Statement and Plan of Liquidation of Athenex, Inc. and its Affiliated Debtors under Chapter 11 of the Bankruptcy Code* dated July 10, 2023.

INSTRUCTIONS

1. Unless otherwise noted, the dates applicable to the document requests set forth herein are May 14, 2019 to the present (the “Relevant Period”), and each request covers any and all documents created, dated, sent, received, in effect, or in Your possession at any time during the Relevant Period.

2. The requests set forth herein are for documents and things that are not currently available on Athenex’s website or the Bankruptcy Court’s docket.

3. Documents shall be produced in accordance with the document production format and specifications described herein.

4. The use of the singular form of any word includes the plural and vice versa.
5. The use of the past tense of any verb includes the present tense and vice versa.
6. The connectives “and” and “or” shall be construed conjunctively or disjunctively as necessary to make each request for production inclusive rather than exclusive; to bring within the scope of the request all documents and communications and responses that otherwise might be construed to be outside the scope of the request.

7. If any documents or communications requested are withheld from production on a claim of privilege, please provide information reasonably sufficient to: (a) identify the category, nature, and general subject matter of the withheld document(s); and (b) enable the Committee and its counsel to assess and make a determination about the validity and propriety of any assertion of privilege.

8. Where documents or communications in the possession of a legal entity are requested, such request includes the entity’s employees, advisors, attorneys, representatives, agents, members, partners, officers, directors, independent contractors, successors and assigns, and all other persons acting for or on behalf of any one or more of them.

9. Please produce responsive documents as they have been kept in the usual course of business.

10. If there are no documents responsive to any particular request, please state so in writing.

11. If the only documents responsive to any particular request are publicly-available, please state so in writing. Documents that are publicly-available and equally accessible to both Athenex and the Committee need not be produced in response to the requests herein.

12. Where only a portion of a document relates or refers to the subject of a request, the entire document is to be produced nevertheless, inclusive of any and all attachments, appendices, and exhibits.

13. If a responsive document was, but no longer is, within Your possession, custody or control, please state in detail: (i) the type of document and the author(s), sender(s), recipient(s) and copy(s) of the document; (ii) a summary of the contents of the document; (iii) what disposition was made of such document; (iv) the date of such disposition; (v) whether the original or a copy thereof is within the possession, custody or control of any other person; and (vi) if the answer to (v) is affirmative, the identity of such person.

14. The requests herein are to be deemed continuing so as to require further and supplemental productions if You discover, receive, or generate additional responsive documents.

TOPICS OF EXAMINATION

1. The organizational and corporate structure of the Athenex Group.
2. The D&O Policies.
3. All claims against the D&O Policies made in the last five (5) years, and communications relating to same.
4. All matters Concerning the China Manufacturing Business Receivable, including the business or transactions giving rise to such, the account debtor(s) as to the receivable, the validity, amount and collectability of the receivable, any defenses to collection that have been or might be asserted, any prior or on-going collection efforts (including the identity of any Person engaged or consulted in regards to collection), and the identity of all Persons that may have information as to any of these issues.
5. The existence, volume, location, custodians, and retention of documents and business records regarding the China Manufacturing Business Receivable.

6. The facts and claims alleged in the Securities Litigation.
7. The involvement of Johnson Y.N. Lau, Rudolf Kwan and Timothy Cook in the facts and claims asserted in the Securities Litigation.
8. The facts regarding Oral Paclitaxel, including the clinical trials, the design of the study, the blinded independent central review reconciliation and re-read process, risk mitigation strategies, and FDA responses, such as the 'Complete Response Letter.'
9. Payments and/or transfers made by a Debtor to any Insider of the Debtors or Athenex Group within four years of the Petition Date.
10. Payments and/or transfers made to any Athenex Group entity by a Debtor in the four years prior to the Petition Date.
11. The existence, generation and growth, bases, amounts and collectability of any intercompany receivables owed to a Debtor by any Athenex Group entity.
12. The existence, generation and growth, bases, amounts and collectability of any monies owed to a Debtor by any Insider of the Debtors or Athenex Group entity.
13. Business transactions and agreements between any Debtor and any Athenex Group entity or Insider of the Debtors or Athenex Group entity.
14. All matters Concerning the sale of Athenex's interest in its Dunkirk, New York manufacturing facility in February 2022, including the Board of Directors' consideration and approval, the marketing process, and the negotiation and consummation of the transaction, and the use or disposition of transaction proceeds.
15. All matters Concerning the divestment of equity interests in the Athenex Group's Chinese manufacturing operations in November 2022, including the Board of Directors'

consideration and approval, the marketing process, and the negotiation and consummation of the transaction, and the use or disposition of transaction proceeds.

16. All matters Concerning the revenue interest purchase agreement ("RIPA") entered into on June 21, 2022 with affiliates of Sagard Healthcare Partners and certain funds managed by Oaktree Capital Management, L.P. for the sale of revenues from U.S. and European royalty and milestone interests in Klisyri for a purchase price of \$85 million, including the Board of Directors' consideration and approval, the marketing process, and the negotiation and consummation of the transaction, and the use or disposition of transaction proceeds.

17. All matters Concerning the Kuur Merger Agreement entered into on May 4, 2021, including the \$70 million paid to Kuur shareholders and former employees and directors, the \$115 million milestone payments, including the Board of Directors' consideration and approval, the marketing process, and the negotiation and consummation of the transaction, and the use or disposition of transaction proceeds.

EXHIBIT B

REQUESTS FOR PRODUCTION

1. All documents and communications Concerning the D&O Policies.
2. Documents sufficient to identify all claims made against the D&O Policies.
3. Documents sufficient to identify all compensation from the Debtors or Athenex Group entity received by any Insider, including without limitation, salary, bonuses, dividends, and stock options in the four years prior to the Petition Date.
4. Documents sufficient to identify all payments and transfers made by a Debtor to any Insider of the Debtors or to any Athenex Group entity in the four years prior to the Petition Date, including without limitation the date of such payment or transfer, proof of such payment or transfer, and any business justification for such payment of transfer.
5. All minutes and Board Material Concerning the determination to award any payment or transfer to any Insider of the Debtors or to any Athenex Group entity.
6. Documents sufficient to identify any legal, administrative, or regulatory proceedings brought by any governmental unit or agency against any Insider of the Debtors or Athenex Group.
7. Documents Concerning any indemnification rights or obligations by and between the Debtors, on the one hand, and the Athenex Group, any Insider of the Debtors, or any Insider of the Athenex Group, on the other hand.
8. All minutes of any Debtor's Board of Directors meetings.
9. All periodic financial reports of any of the Debtors prepared for the Debtors' Board of Directors or executive management team that are not publicly available, including without limitation, annual reports, quarterly reports, and monthly reports.

10. Entity-level consolidating income statements and balance sheets of the Debtors and the Athenex Group on a monthly basis, including fiscal year end income statements and balance sheets that tie to the publicly available audited financial statements.

11. Documents sufficient to identify, determine and/or support any receivables due to any of the Debtors from any affiliated non-debtor, including the Athenex Group.

12. Documents Concerning aging, collection efforts and collectability of any receivables due to any of the Debtors from any non-debtor affiliate, including the Athenex Group.

13. Documents sufficient to identify the basis for the obligation for the China Manufacturing Business Receivable.

14. All minutes and Board Materials Concerning the sale of Athenex's interest in its Dunkirk, New York manufacturing facility in February 2022.

15. All minutes and Board Materials Concerning the divestment of equity interests in the Athenex Group's Chinese manufacturing operations in November 2022.

16. All minutes and Board Materials Concerning the June 21, 2022 RIPA transaction.

17. All minutes and Board Materials Concerning the May 4, 2021 Kuur Merger Agreement.

18. All minutes and Board Materials Concerning Oral Paclitaxel, including the clinical trials, the design of the study, the blinded independent central review reconciliation and re-read process, risk mitigation strategies, and FDA responses, such as the 'Complete Response Letter.'