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NewAge Strikes Deal With Buyers In \$8.2M Cash Dispute

By **Donald Morrison**

Law360 (February 1, 2023, 1:24 PM EST) -- NewAge Inc. urged a Delaware bankruptcy judge to approve a settlement tying up a disputed \$8.2 million stemming from the health and wellness product distributors' 2022 bankruptcy.

The disputed \$8.2 million was left after longtime NewAge independent sales associate John Wadsworth **purchased the company** on Oct. 17 during a bankruptcy auction, where no one came forward to top his stalking horse credit bid of the \$16 million he provided in debtor-in-possession financing and \$12 million in secured debt he'd purchased before NewAge filed for Chapter 11 protection.

The Utah-based company will use \$1.5 million to fund a litigation trust for creditor recoveries, with the rest covering nine purchase claims related to unpaid taxes, penalties, improperly swept bank accounts and administrative expenses, according to a motion filed Monday in the U.S. Bankruptcy Court for the District of Delaware.

The purchaser and the trust will share equally in the first \$4 million of net litigation proceeds, with the purchaser set to receive 100% of net litigation proceeds between \$4 million and \$6 million and anything over \$8 million.

The dispute arose shortly after the sale over ownership of certain cash that was automatically transferred to the purchaser. NewAge requested a return of the money, but the purchaser pushed back, saying they bought "the right to the cash under the asset purchase agreement and that they hold certain administrative expense claims arising from the sale."

The motion states NewAge originally denied paying the purchase claims on Jan. 10.

However, according to the proposed settlement, the NewAge bankruptcy estate would be responsible for paying \$6,607,156 for unpaid taxes, penalties and interest, \$1,377,740 for money it allegedly improperly swept from the purchaser's bank accounts and \$246,248 related to certain liabilities owed to third parties prior to the sale.

"The terms of the settlement agreement are well within the range of reasonable outcomes in light of the cost, risks and inherent uncertainty of litigation," the motion states.

NewAge distributes lines of health, wellness and beauty products through a worldwide multilevel marketing network and says it sells its products through 400,000 brand partners in more than 50 countries.

It filed for **Chapter 11 protection** in August with \$149 million in debt after a turnover of top executives, COVID-19 disruption of direct-to-customer sales model and a "**difficult regulatory environment**" in China.

The debtors are represented by Dennis A. Meloro, Anthony W. Clark, Annette Jarvis, Michael F. Thomson, Peggy Hunt, Alison Elko Franklin and Carson Heninger of Greenberg Traurig LLP.

DIP Financing LLC is represented by Steven M. Berman of Shumaker Loop & Kendrick LLP and Lucian Borders Murley of Saul Ewing Arnstein & Lehr LLP.

The case is In re: NewAge Inc., case number 1:22-bk-10819, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by John C. Davenport.

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