

University of Tennessee College of Law

## Legal Scholarship Repository: A Service of the Joel A. Katz Law Library

---

Chapter 11 Bankruptcy Case Studies

Student Work

---

2022

### Down the Drain: The Bankruptcy of Insys Therapeutics, Inc.

Leah Creathorn

Randi Thompson

Follow this and additional works at: [https://ir.law.utk.edu/utk\\_studlawbankruptcy](https://ir.law.utk.edu/utk_studlawbankruptcy)



Part of the [Law Commons](#)

---

#### Recommended Citation

Creathorn, Leah and Thompson, Randi, "Down the Drain: The Bankruptcy of Insys Therapeutics, Inc." (2022). *Chapter 11 Bankruptcy Case Studies*. 65.  
[https://ir.law.utk.edu/utk\\_studlawbankruptcy/65](https://ir.law.utk.edu/utk_studlawbankruptcy/65)

This Article is brought to you for free and open access by the Student Work at Legal Scholarship Repository: A Service of the Joel A. Katz Law Library. It has been accepted for inclusion in Chapter 11 Bankruptcy Case Studies by an authorized administrator of Legal Scholarship Repository: A Service of the Joel A. Katz Law Library. For more information, please contact [eliza.boles@utk.edu](mailto:eliza.boles@utk.edu).



**Down the Drain:**  
**The Bankruptcy of Insys Therapeutics, Inc.**

By: Leah Creathorn & Randi Thompson

## **Table of Contents**

<b>I.</b>	Cast of Characters: <i>The Bankruptcy Players</i> .....	4
<b>II.</b>	Introduction.....	3
<b>III.</b>	So Sweet You Can Almost Taste It: <i>Before Chapter 11 Bankruptcy</i> .....	5
	<i>a. The Beginning of Insys Therapeutics</i> .....	5
	<i>b. The Products</i> .....	6
	<i>c. Marketing &amp; Sales</i> .....	8
<b>IV.</b>	Down the Drain: <i>Events Leading to Chapter 11 Bankruptcy</i> .....	8
	<i>a. External Factors: The Opioid Crisis</i> .....	9
	<i>b. Internal Factors: Fraud &amp; Other Litigation</i> .....	11
	<i>c. It is Time for Bankruptcy!</i> .....	17
<b>V.</b>	First Day Motions .....	20
	1. <i>Part One: Administrative Motions</i> .....	20
	2. <i>Part Two: Day-to-Day Operations</i> .....	34
	3. <i>Part Three: Prepetition Obligations</i> .....	44
<b>VI.</b>	The 363 Sale .....	52
	<i>a. Motion for Sale of Property Under 363</i> .....	52
	<i>b. Hikma Sale</i> .....	55
	<i>c. Chilion Sale</i> .....	56
	<i>d. BTcP Sale</i> .....	57
	<i>e. Pharmbio Sale</i> .....	58
	<i>f. De Minimis Sale</i> .....	59
<b>VII.</b>	The Liquidating Plan Development & Filing .....	60
<b>VIII.</b>	Confirmation .....	90
<b>IX.</b>	Post-Confirmation.....	95
<b>X.</b>	Adversary Proceedings .....	105
<b>XI.</b>	Professional Compensation.....	106
<b>XII.</b>	Current Status.....	107
<b>XIII.</b>	Appendix of Defined Terms .....	108

## **I. Cast of Characters: *The Bankruptcy Players***

### **The Debtors**

*Insys Therapeutics, Inc.* – Insys Therapeutics, Inc. a Delaware corporation, was the primary debtor involved in this jointly administered set of bankruptcy cases.

**Insys Subsidiary Companies:** Insys Therapeutics, Inc. and the following subsidiaries were substantively consolidated in these chapter 11 cases (collectively, “Insys”).

*Insys Pharma, Inc.*  
*IC Operations, LLC*  
*Insys Development Company, Inc.*  
*Insys Manufacturing, LLC*  
*IPSC, LLC*  
*IPT 355, LLC*

**Official Committee of Unsecured Creditors:** The individuals were appointed by the U.S. Trustee to represent creditors in the chapter 11 cases, (referred to as the “Creditors’ Committee”).

*The Mckesson Corporation*  
*Infirmity Health Hospitals, Inc.*  
*Louisiana Health Service & Indemnity Co. d/b/a Blue Cross and Blue Shield of Louisiana and HMO, LA, Inc.*  
*Deborah Fuller, as administrator for the Estate of Sarah Fuller*  
*Julie Key*  
*James Starling, Jr.*  
*Angela Mistrulli-Cantone*  
*Lisa Mencucci*

**The Creditors’ Committee’s Professionals** - The professionals acquired to assist the Creditors’ Committee relating to the chapter 11 cases.

*Akin Gump Stauss Hauer & feld, LLP*  
***Attorney***  
*Province, Inc.*  
***Financial Advisor***  
*Bayard P.A.*  
***Counsel in Delaware.***

**The Liquidation Trustee**

*William H. Henrich*

**Claims & Noticing Agent, Solicitation Agent**

*Epiq Corporate Restructuring, LLC*

**U.S. Trustee**

*Jane Leamy – Trial Attorney*

**Debtors' Senior Management At Time of Filing:**

*Andrew G. Long*

***Chief Executive Officer and Director***

*Andrece Housley*

***Chief Financial Officer***

*Mark Nance*

***Chief Legal Officer and General Counsel***

*Venkat Goskonda, PhD*

***Chief Scientific Officer***

*Vikram Malhotra*

***Vice President of Corporate Development and Strategy***

*(Richard) Scott Warlick*

***Vice President of Manufacturing (Round Rock)***

*Danny Tuck, PhD*

***Senior Vice President of Quality Control***

*Eric Kizier*

***Vice President of Commercial***

*Ahmend Elkashef*

***Vice President of Clinical Development***

## **II. Introduction**

On June 10, 2019, Insys Therapeutics, Inc., and its subsidiaries (collectively, “Insys”), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the District of Delaware. Insys jointly administered these chapter 11 cases pursuant to 1015(b) of the Federal Rules of Bankruptcy Procedure. The chapter 11 bankruptcy ultimately led to a liquidation of the business’s assets and Insys’s dissolution.

This document outlines how Insys navigated chapter 11 bankruptcy and the Opioid Crisis that plagued the nation between 1999 and 2019. It further describes how the fraudulent marketing and sale of Insys’s products led to the influx of litigation causing this chapter 11 bankruptcy case. Further, it shows how a company like Insys, who at the time of filing had no funded debt and approximately \$37 million in cash equivalents and investments, found themselves hopelessly insolvent and facing litigation, and left with no choice but to file for bankruptcy and wind up the business in an orderly fashion.

## **III. So Sweet you can Almost Taste it: Before Chapter 11 Bankruptcy**

### ***a. The Beginning of Insys Therapeutics, Inc.***

In 1990, 48-year-old John N. Kapoor founded Insys Therapeutics, Inc., a specialty pharmaceutical company that developed and sold certain drugs and drug delivery systems to improve patients’ quality of life and address unmet patient needs.<sup>1</sup> Kapoor was an Indian immigrant and grew up in a family of modest means.<sup>2</sup> For college, Kapoor moved to Mumbai and graduated from the Institute of Chemical Technology with a degree in Pharmacy.<sup>3</sup> Kapoor then graduated from the University at Buffalo with a degree in Medicinal Chemistry in 1972.<sup>4</sup> As he worked his way up in various pharmaceutical companies, Kapoor founded Insys Therapeutics, Inc., which was incorporated in Delaware and based out of Chandler, Arizona.<sup>5</sup>

Insys Therapeutics, Inc. was the parent company of Insys Pharma, Inc. Insys Pharma was the direct parent of the following subsidiaries: IPT 355, LLC, IC Operations, LLC, IPSC, LLC,

---

<sup>1</sup> Declaration of Andrew G. Long in Support of Debtors’ Chapter 11 Petition and First Day Relief. [Docket 11](#) at 3.

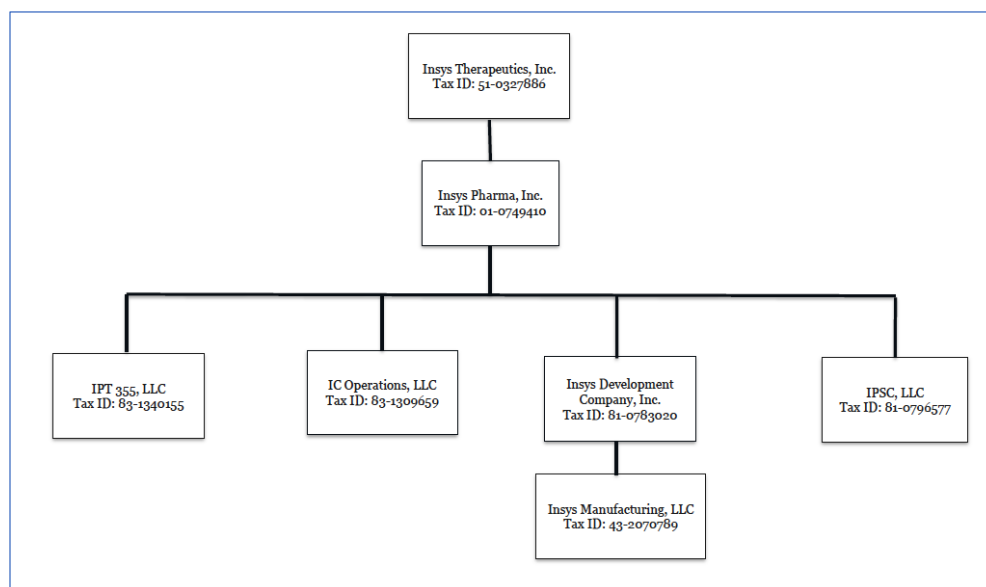
<sup>2</sup> *John N. Kapoor*, Wikipedia (last edited Apr. 3, 2022), archived at [Kapoor Wikipedia](#).

<sup>3</sup> *Id.*

<sup>4</sup> Barbara A. Byers, *John N. Kapoor, PhD ’72*, Uni. at Buff. (Mar. 28, 2011), archived at [University at Buffalo](#); Chidanand Rajghatta, *Indian-American Pharma Executive Convicted of Opioid Racketeering*, India Times, archived at [India Times](#).

<sup>5</sup> [Docket 11](#) at 6.

and Insys Development Company, Inc., which was the parent company to Insys Manufacturing, LLC.<sup>6</sup> Insys's corporate structure depicted in the chart below.



Each subsidiary had different day-to-day responsibilities. Insys Pharma, Inc. was a subsidiary that dealt with pharmaceutical manufacturing.<sup>7</sup> Insys Manufacturing, LLC took over the manufacturing of the products.<sup>8</sup> Insys Development Company, Inc., IPSC, LLC, and IC Operations, LLC were shell corporations, which had few assets and were inactive in the business operations.<sup>9</sup> IPT 355, LLC's operations remained unclear. On the Petition Date, Insys had 155 full-time employees, including 48 manufacturing employees, 38 sales and marketing employees, 34 research and development employees, and 35 administrative employees.<sup>10</sup>

#### ***b. The Products***

In the day-to-day, Insys conducted research, including preclinical and clinical trials, they manufactured, marketed, and sold their drugs and drug delivery systems to targeted therapies.<sup>11</sup> These operations resulted in Insys's two main products, Subsys and Syndros.

---

<sup>6</sup> [Docket 11](#) at 6.

<sup>7</sup> [Lexis Tool for Corporate Structures](#).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> [Docket 11](#) at 6.

<sup>11</sup> *Id.* at 7.

Subsys was a sublingual liquid form of Fentanyl that reached the blood stream faster than other normally administered drugs.<sup>12</sup> Subsys was developed to relieve pain in cancer patients, as it was fast-acting, alleviating pain within 5 minutes.<sup>13</sup> On March 26, 2012, Insys launched Subsys commercially, as the first fast-acting drug of its kind to be approved for cancer patients, by the United States Food and Drug Administration (“FDA”).<sup>14</sup> Syndros was an unconventional anti-nausea medication aimed to relieve symptoms for a range of ailments.<sup>15</sup> Syndros was a liquid dronabinol medication used to treat nausea caused by anti-cancer medications.<sup>16</sup> Syndros was also used to treat appetite loss and anorexia symptoms in people with AIDs.<sup>17</sup> In July 2017, Syndros launched as the first and only fast-acting medication of its kind approved by the FDA.<sup>18</sup>

Additionally, Insys began developing products called “Pipeline Products,” using similar elements as those in Subsys and Syndros.<sup>19</sup> Insys wanted Pipeline Products to be available, and to provide better solutions for relief for patients suffering ‘life burdening’ conditions.<sup>20</sup> For example, Naloxone nasal spray was to be used to treat overdoses due to fentanyl, and Epinephrine Nasal Spray was to be used to treat anaphylaxis.<sup>21</sup> The Pipeline Products were to address unmet medical needs, including pediatric epilepsy, weight-loss in cancer patients, and agitation in Alzheimer’s disease, to name a few.<sup>22</sup>

Insys maintained two manufacturing facilities located in Round Rock, Texas, to develop their products.<sup>23</sup> These facilities were FDA inspected, and used well-established techniques to

---

<sup>12</sup> [Docket 11](#) at 7.

<sup>13</sup> *Id.*; Sublingual – Dissolved under the tongue.

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.*; [Definition of Dronabinol - National Library of Medicine](#). “Dronabinol is used to treat nausea and vomiting caused by chemotherapy in people who have already taken other medications to treat this type of nausea and vomiting without good results.”

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 8; Pipeline Products were products that Insys was working on at the time of filing. These products had not yet been approved by the FDA.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 10.



produce their dronabinol products.<sup>24</sup> Similarly, as of March 5, 2019, Insys owned 94 worldwide patents, and 62 pending patent applications, including 27 U.S. utility patents and 29 U.S. utility patent applications.<sup>25</sup> Their intellectual property portfolio enabled Insys to develop and market their two main products, and to further develop their Pipeline Products.<sup>26</sup> However, most of their patents and applications were to expire between 2022 and 2029.<sup>27</sup>

### *c. Marketing & Sales*

Insys sold products to wholesale pharmaceutical distributors, who then sold Insys's products to pharmacies, hospitals, and similar customers.<sup>28</sup> Three wholesale pharmaceutical distributors, AmerisourceBergen Corporation, McKesson Corporation, and Cardinal Health, Inc., individually comprised approximately 33%, 15%, and 10%, of Subsyst's and Syndros' gross sales.<sup>29</sup> Additionally, Insys sold products to specialty retail pharmacies that directly sold products to patients.<sup>30</sup> Specialty retail pharmacies covered 39% of Subsyst's and Syndros's gross sales.<sup>31</sup> However, these sales appeared to be tainted with bribery and fraud.<sup>32</sup>

## **IV. Down the Drain: Events Leading to Chapter 11**

For a company with an extensive intellectual property portfolio, who created incredibly popular products, and who, at the time of filing, had \$37 Million in assets and no funded debt, how did Insys's resources dwindle so fast, forcing them to file for bankruptcy?<sup>33</sup> There were two issues: (1) internal fraud, and (2) an external public health crisis. Before 2019, claims against Insys came from every direction: the legislature in Washington, D.C., patients across the nation, states, and

---

<sup>24</sup> [Docket 11](#) at 10.; See *supra* note 16, for more on dronabinol.

<sup>25</sup> *Id.*; [U.S. Patent and Trademark Office \(USPTO\) Definition of Utility Patent](#). - "Issued for the invention of a new and useful process, machine, manufacture, or composition of matter, or a new and useful improvement thereof, it generally permits its owner to exclude others from making, using, or selling the invention for a period of up to twenty years from the date of patent application filing subject to the payment of maintenance fees."

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 10-11.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.* at 11.

<sup>32</sup> Gabrielle Emanuel, *Pharmaceutical Executives Face Prison Time In Case Linked To Opioid Crisis*, NPR (Jan. 13, 2020), archived at [NPR Article](#).; See IV. b. External Factors: Fraud and Other Litigations.

<sup>33</sup> [Docket 11](#) at 11.

even Insys's executives. Litigation ensued and sales dropped: Insys presented all the symptoms that indicated the need for a chapter 11 bankruptcy.

***a. External Factors: The Opioid Crisis***

In the early 2000s, the Opioid Crisis hit the U.S., and was a major event leading to Insys's destruction. The Opioid Crisis gained momentum in the late 1990's, when health care providers increasingly prescribed opioids because pharmaceutical companies reassured the medical community that prescription opioid pain relievers were not addictive.<sup>34</sup> By 2015, opioids were prescribed approximately three times more than they were in 1999, even with prescriptions rates decreasing between 2010 and 2015.<sup>35</sup> However, there was no significant increase in chronic pain in the U.S. that would justify the immense increase in prescription rates.<sup>36</sup> In March 2016, the Centers for Disease Control and Prevention ("CDC") released the "Guideline for Prescribing Opioids for Chronic Pains," which reported changes in opioid prescriptions between 2006 and 2015, at a national level.<sup>37</sup>

According to the CDC's report, more than 28,000 opioid overdoses were from prescription opioids.<sup>38</sup> On October 26, 2017, the Department of Health and Human Services declared a public health emergency.<sup>39</sup> Approximately 10.3 million people over the age of 12 misused opioids in 2018, and 9.9 million people specifically misused prescription pain relievers.<sup>40</sup> Fentanyl, the key product in Subsyst, was one of the misused drugs.<sup>41</sup> Fentanyl was approximately 50 times stronger

---

<sup>34</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis*, (archived on Apr. 24, 2022), archived at [National Institute on Drug Abuse](#).

<sup>35</sup> Center for Disease Control and Prevention, *Vital Signs: Changes in the Opioid Prescribing in the United States, 2006-2015*, CDC (Jul. 7, 2017), archived at [CDC: Vital Signs](#); National Conference of State Legislatures, *Prescribing policies: States Confront Opioid Overdose Epidemic* (Jun 6, 2019), archived at [Prescribing Policies](#).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

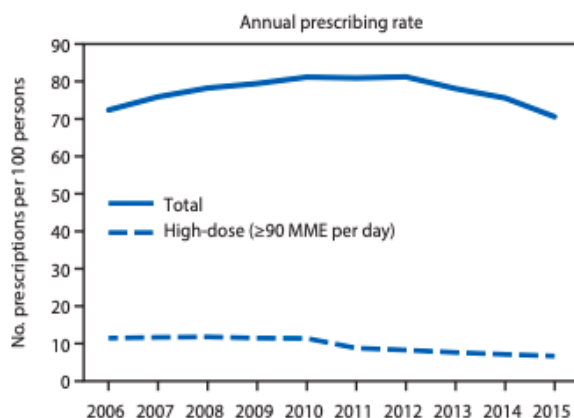
<sup>38</sup> Joey Garrison, *Insys Therapeutics Founder John Kapoor to Served 66 Months in Prison for Opioid Scheme*, USA Today (Jan. 23, 2020), archived at [USA Today](#).

<sup>39</sup> Center for Medicare and Medicaid Services, *Ongoing Emergencies and Disasters* (last modified, Dec. 1, 2021), archived at [CMS](#).

<sup>40</sup> Substance Abuse Mental Health Services Administration, *Key Substance Use & Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use & Health* (Aug. 2019), archived at [SAMHSA](#), 9.

<sup>41</sup> *Id.*; See in section IV. b.

than heroin and up to 100 times stronger than morphine.<sup>42</sup> In 2015, misuse and overdose were great concerns, but the increased government intervention and monitoring led to a significant decrease in opioid prescriptions, as depicted in the chart below.<sup>43</sup>



One study articulated, “annual high-dose opioid prescribing rates remained stable from 2006 to 2010, and then declined by 41.4% from 11.4 per 100 persons in 2010 to 6.7 in 2015,” just 3 years after Subsys hit the markets.<sup>44</sup>

Subsys sales were approximately 90% of Insys’s total revenue, but declined beginning in 2015.<sup>45</sup> Insys claimed that the decline was caused by the nature of pricing increased on their branded products, and the government and media attention on such product pricing.<sup>46</sup> Subsys, and other transmucosal immediate-release fentanyl (“TIRF”) products, experienced a “significant downward trend” in the years before the Petition Date.<sup>47</sup> Between 2015 and the Petition Date, TIRF class prescriptions declined around 75%.<sup>48</sup> All TIRF class prescriptions experienced a decline at that time, but Insys claimed Subsys declined even faster than the overall market.<sup>49</sup>

<sup>42</sup> [USA Today](#).

<sup>43</sup> [CDC: Vital Signs](#).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> [Docket 11](#) at 23.

<sup>47</sup> *Id.* at 22.; [The Miami Herald: Transmucosal Definition & Meaning - Merriam-Webster](#): “Transmucosal: relating to, being, or supplying a medication that enters through or across a mucous membrane (as of the mouth) transmucosal fentanyl Noven Pharmaceuticals develops transdermal and transmucosal drug delivery systems and technologies.”

<sup>48</sup> *Id.* at 22-23.

<sup>49</sup> *Id.* at 23.

Overall, Insys experienced substantial operating losses—more than \$200 million in 2017 and \$100 million in 2018.<sup>50</sup> Although Insys’s Pipeline Products were anticipated to generate significant revenue in the future, Insys lacked sufficient liquidity to continue operations.<sup>51</sup> Furthermore, Insys’s auditors failed to provide Insys with an ‘unqualified going concern audit opinion’ for the Form 10-K, which was filed with the SEC in March, notwithstanding management’s efforts to reduce costs and Insys’s bankers’ efforts to identify liquidity-enhancing transactions.<sup>52</sup> The going concern qualification negatively affected Insys’s attempts to obtain funding.<sup>53</sup> As if the significant revenue loss from the Opioid Crisis was not enough, Insys was overdosed with internal complications.

### ***b. Internal Factors: Fraud & Other Litigation***

Since 2013, Insys claimed to have “faced an onslaught of investigative inquiries and litigation claims by both the government and private parties in connection with the marketing of Subsys,” some claims were common for all opioid manufacturers, but some were unique to Insys.<sup>54</sup> Defending Insys at just one trial could amount to \$10 million.<sup>55</sup> The issues presented in the lawsuits were mostly about the marketing and sales of Subsys, and the potential violations of the Anti-Kickback Statute and the Food, Drug, & Cosmetic Act.<sup>56</sup> Eventually, some of Insys’s employees and executives were charged for crimes including conspiracy, bribery, mail fraud, racketeering, and wire fraud.<sup>57</sup>

#### *i. Enlisting Medical Professionals*

John Kapoor directed Insys to implement “speaker programs,” which paid healthcare professionals a large sum to advocate for Subsys prescriptions in presentations, regardless of how

---

<sup>50</sup> [Docket 11](#) at 23.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 24.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 12-13.

<sup>55</sup> *Id.* at 12.

<sup>56</sup> *Id.* at 13.

<sup>57</sup> Gabrielle Emanuel and Katie Thomas, *Top Executives of Insys, an Opioid Company, Are Found Guilty of Racketeering*, N.Y. Times (May 2, 2019), archived at [NY Times](#).

many people attended.<sup>58</sup> The “speaker programs” allowed Insys to work around anti-kickback laws that prohibited practitioners from earning an income from writing prescriptions.<sup>59</sup> One doctor admitted to being paid “speaker fees” even though he did not present on Insys’s behalf, similarly stating that the presentation sign-up sheets were full of forged health care professionals’ names.<sup>60</sup> Further, the doctor claimed that Insys encouraged him to write Subsys prescriptions by paying him these “speaker fees.”<sup>61</sup> Prosecutors proved that that doctor bullied patients into taking Subsys if they pushed back.<sup>62</sup>

In October 2012, Kapoor instructed the Vice President of Marketing to determine whether the speaker had a positive return on investment (“ROI”).<sup>63</sup> An ROI is measured by dividing the net return on the investment by the cost of the investment, multiplied by 100.<sup>64</sup> No sources were found directly discussing how the ROI’s were measured for such speaker programs, but the amount the speaker received seemed to directly correlate with the number of prescriptions the speaker wrote.<sup>65</sup> The speakers were kicked out of the program if they did not have a positive ROI.<sup>66</sup> For example, Insys targeted a physician’s assistant who practiced in a pain clinic in Somersworth, New Hampshire, to promote their products at a “speaker program.”<sup>67</sup> In 2012, Subsys’s first year on the market, the physician’s assistant did not prescribe Subsys to any patients.<sup>68</sup> However, in May 2013, the physician’s assistant joined the “speaker programs” because he knew he would be paid ‘kickbacks’ for writing Subsys prescriptions.<sup>69</sup> When he joined, he received \$44,000 in kickbacks by writing approximately 672 Subsys prescriptions, many of which were unnecessary.<sup>70</sup> Insys

---

<sup>58</sup> [Docket 11](#) at 13; Emanuel, *supra* note 31, at [NPR Article](#).

<sup>59</sup> [Stacey A. Tovino, JD, PhD, Fraud, Abuse, and Opioids](#), 67 U. Kan. L. Rev. 901 (2019).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Press Release, The U.S. Attorney General Office, District of Massachusetts, *Founder and Former Chairman of the Board of Insys Therapeutics Sentences to 66 Months in Prison* (Jan. 23, 2020), archived at [District of MA](#).

<sup>64</sup> Andrew Beattie, *A Guide to Calculating Return on Investment (ROI)*, Investopedia.

<sup>65</sup> [Tovino](#), *supra* note 62, 901.

<sup>66</sup> [District of MA](#).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; See also [Tovino](#), *supra* note 62, 901.

plead guilty to five counts of mail fraud for the “speaker programs,” which led to a deferred prosecution agreement with the U.S. Attorney for the District of Massachusetts.<sup>71</sup>

Additionally, Insys created the “Insys Reimbursement Center,” another fraudulent marketing tactic.<sup>72</sup> After doctors wrote Subsys prescriptions, Insys called insurance companies and fabricated patients’ stories to ensure the insurance would cover it.<sup>73</sup> Without coverage, Subsys medications were around \$19,000 per month.<sup>74</sup> Due to the high cost and substantial amount Insys put into creating the drug, Insys misled insurers about patients’ diagnoses to obtain reimbursement for Subsys prescriptions that had been written for Medicare and the Defense Health Agency (“TRICARE,” discussed below) beneficiaries.<sup>75</sup> A physician that wrote 1,283 prescriptions to Medicare beneficiaries, amounting to more than 20% of Subsys’s prescriptions between 2009 and 2015, cost Medicare nearly \$7 million.<sup>76</sup> Kapoor not only approved the center’s business model, but he demanded a 100% success rate, ensuring Subsys prescriptions were approved by insurance companies, whether patient was qualified for it or not.<sup>77</sup>

ii. Fraud & Prosecutions

Insys’s severe and extensive fraudulent marketing behavior led to the prosecution of Insys employees and physicians. For example, in 2017, an Alabama doctor linked to Kapoor’s case was sentenced to 20 years in prison, and in 2019, a Michigan doctor was sentenced to 32 months in prison for his involvement.<sup>78</sup> On May 2, 2019, Kapoor and the four executives were convicted on criminal racketeering charges in Boston’s federal district court, becoming the first drug company executives to be convicted in the federal government’s fight to combat the opioid crisis.<sup>79</sup> At the

---

<sup>71</sup> [Docket 11](#) at 13.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Press Release, Department of Justice, *Opioid Manufacturer Insys Therapeutics Agrees to Enter \$225 Million Global Resolution of Criminal and Civil Investigations*, (Jun. 5, 2019), archived at [DOJ Press Release](#).

<sup>76</sup> [Tovino, JD](#), *supra* note 62, 901.

<sup>77</sup> [FDA: Founder and Former Chairman of the Board of Insys Therapeutics sentenced to 66 Months in Prison](#).

<sup>78</sup> [USA Today](#).

<sup>79</sup> [Docket 11](#) at 21.

time of the chapter 11 filing, Insys anticipated appeals, which would result in further litigation expense.<sup>80</sup>

Only five days after agreeing to pay \$225 million to the federal government for civil and criminal claims for bribing doctors to prescribe Subsys, Insys filed for chapter 11 bankruptcy.<sup>81</sup> Similarly, Insys had to pay millions in fees for the indemnification claims against former officers and directors of Insys, who were defendants in two shareholder derivative lawsuits located in Delaware and Arizona.<sup>82</sup> Insys had paid these fees upfront, but was entitled to “claw-back” in the amounts paid for individuals found liable.<sup>83</sup>

Insys claimed to address past management’s wrongdoings by taking steps to restructure their executives and change their marketing practices to comply with state and federal laws and regulations.<sup>84</sup> Thus, Insys entered into a “Corporate Integrity Agreement and Conditional Exclusion Release” with the Office of Inspector General for the U.S. Department of Health and Human Services, where Insys promised to establish intensive programs promoting compliance with statutes, regulations, and directives of the FDA, and of the Medicare, Medicaid, and other federal health care programs.<sup>85</sup> By entering into this agreement, Insys resolved one of the issues of the U.S. Department of Health and Human Services.<sup>86</sup>

### *iii. Pending Actions*

#### *1) United States Government investigations & U.S. and State Qui Tam litigation*

Between August 2013 and October 2016, under the *qui tam* provisions of the False Claims Act, individuals called “*Qui Tam* Plaintiffs,” filed complaints against Insys regarding the

---

<sup>80</sup> [Docket 11](#) at 21.

<sup>81</sup> Vanessa Romo, *Insys Files for Chapter 11, Days After Landmark Opioid Settlement of \$225 Million*, NPR (Jun. 10, 2019), archived at [NPR, Romo Article.](#)

<sup>82</sup> [Docket 11](#) at 21.

<sup>83</sup> *Id.* at 22.

<sup>84</sup> *Id.* at 13.

<sup>85</sup> *Id.* at 13-14.

<sup>86</sup> Motion to Approve Compromise under Rule 9019 (Motion of Debtors Pursuant to 11 U.S.C. Section 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Stipulation and Agreement Between the Debtors and the United States. [Docket 28](#) at 7.

marketing and sales of Subsys.<sup>87</sup> Except for attorneys' fees and retaliation claims, these *Qui Tam Plaintiffs'* actions were dismissed with prejudice, and the U.S. Department of Justice ("DOJ") commenced civil and criminal actions against Insys ("DOJ Civil Action" and the "DOJ Criminal Actions," collectively, the "DOJ Actions").<sup>88</sup> The DOJ filed DOJ Civil Actions on behalf of the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services, and TRICARE.<sup>89</sup>

The government intervened in five of the "*qui tam*" lawsuits, accusing Insys of violating the Civil False Claims Act.<sup>90</sup> The U.S. alleged that Insys paid kickbacks to persuade physicians and nurse practitioners to prescribe Subsys for their patients, covering up the kickbacks with "speaker program" payments and "jobs for the prescribers' relatives and friends, and lavish meals and entertainment."<sup>91</sup> Further alleging that Insys improperly influenced physicians to prescribe Subsys for patients who did not have cancer.<sup>92</sup> Insys's fraudulent schemes caused tragic results, for example, a woman named Sarah died from a Subsys overdose after being improperly prescribed it for pain from a car accident.<sup>93</sup> In an interview, Sarah's mother said she had no idea the FDA had only approved Subsys for terminal cancer patients who developed a tolerance for other painkillers, stating that Sarah was not similarly qualified.<sup>94</sup>

On August 8, 2018, Insys entered into an agreement with the DOJ, to resolve the DOJ Actions.<sup>95</sup> Here, Insys agreed to pay a minimum liability exposure of \$150 million over five years, with the potential for additional contingency-based payments, up to \$75 million, that were associated with certain events.<sup>96</sup> This agreement caused Insys's funds to deplete significantly, and

---

<sup>87</sup> [Docket 28](#) at 15; see 31 U.S.C. § 3730(b). *Qui Tam* refers to the whistleblower provisions of the False Claims Act, permitting citizens to bring suit on behalf of the U.S. for false claims and share in any recovery from the suit.

<sup>88</sup> [Docket 11](#) at 15.

<sup>89</sup> *Id.*

<sup>90</sup> [DOJ Press Release](#). The lawsuits: *United States, et al., ex rel. Guzman v. Insys Therapeutics, Inc., et al.*, 13-cv-5861; *United States ex rel. Andersson v. Insys Therapeutics, Inc.*, 14-cv-9179; *United States ex rel. John Doe and ABC, LLC v. Insys Therapeutics, Inc., et al.*, 14-cv-3488; *United States ex rel. Erickson and Lueken v. Insys Therapeutics, Inc.*, 16-cv-2956; and *United States ex rel. Jane Doe, et al. v. Insys Therapeutics, et al.*, 16-cv-7937.

<sup>91</sup> [Docket 11](#) at 15; [DOJ Press Release](#).

<sup>92</sup> *Id.*

<sup>93</sup> [USA Today](#); Joe Eaton, *How Drugmaker Bribed Doctors and Helped Fuel the Opioid Epidemic*, AARP (Jan. 24, 2020), archived at [AARP Article](#).

<sup>94</sup> [AARP Article](#).

<sup>95</sup> [Docket 11](#) at 16.



at this time, Insys knew they were no longer able to pay the amounts the DOJ sought.<sup>97</sup> After months of negotiations, Insys and the DOJ entered into several interrelated documents, finally reaching a settlement (the “DOJ Settlement”).<sup>98</sup> However, to ensure that the sales were approved without major litigation, and to allow Insys to maximize value for their assets, the DOJ settlement did not carry over to any purchasers of Insys’s assets.<sup>99</sup> The DOJ Settlement included (1) a settlement agreement with the U.S. which resolved the DOJ Civil Action; (2) the “Corporate Integrity Agreement and Conditional Exclusion Release” mentioned above; (3) a plea agreement between Insys and the DOJ; and (4) the related deferred prosecution agreement.<sup>100</sup>

On June 5, 2019, Insys entered into the DOJ prepetition civil settlement, requiring Insys to make settlement payments over time to the U.S., which resolved the DOJ Civil Action, and released any remaining U.S. claims against Insys.<sup>101</sup> According to the DOJ prepetition civil settlement, and approval of the Court, Insys promised the DOJ an unsecured claim in the Chapter 11 cases of \$243 million, although the DOJ’s recovery was capped at \$195 million, which included \$5 million prepetition payments.<sup>102</sup> If Insys failed to fulfill their obligations under the agreement, the U.S. was provided an “undisputed, non-contingent, liquidated allowed claim,” against Insys for damages under the False Claims Act that were for \$600 million and penalties.<sup>103</sup> Further, the DOJ prepetition civil settlement stated that Insys would enter the DOJ Criminal Resolution and the deferred prosecution agreement.<sup>104</sup>

On June 7, 2019, pursuant to the DOJ Criminal Resolution, Insys Pharma, Inc. plead guilty to five counts of mail fraud, agreeing to pay a \$2 million fine and \$28 million in forfeiture with \$5 million due ten days after July 10, 2019, when Insys Pharma, Inc. was set for sentencing.<sup>105</sup> Under the deferred prosecution agreement, the U.S. agreed to defer prosecution against Insys for five

---

<sup>96</sup> [Docket 11](#) at 16.; [Docket 28](#) at 6: a minimum liability exposure of \$150 million means that Insys had to pay a minimum of \$150 million, although that the DOJ Settlements could have required an additional \$75 million.

<sup>97</sup> [Docket 28](#) at 7.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 13.

<sup>100</sup> *Id.* at 7.

<sup>101</sup> *Id.* at 10.

<sup>102</sup> [Docket 11](#) at 16-17.; The \$243 million was a non-priority, general unsecured claim.

<sup>103</sup> [Docket 28](#) at 11.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 17.

years for its criminal fraud actions, if Insys satisfied the deferred prosecution agreement, and further agreed that Insys was jointly and severally liable for money owed by Insys Pharma under the DOJ Criminal Resolution.<sup>106</sup>

## *2) State & Municipality Litigations*

Additionally, Insys received information requests or subpoenas from at least 15 states' offices of the Attorney General ("the AG Investigations"), including: Municipal Actions, brought in approximately 32 states, in state and federal courts, which named Insys as defendants in approximately 1,000 cases, the majority of which were consolidated into Multidistrict Litigation No. 2804 (the "MDL"), brought in the U.S. District Court for the Northern District of Ohio, as well as approximately 230 Municipal actions pending outside the MDL ("Non-MDL").<sup>107</sup>

## *3) Private Insurance Provider & Personal Injury Plaintiff Litigation*

Internal fraud litigation was not the only issue that drained Insys's cash, as of the Petition Date, claims were brought by, or on behalf of, six insurance companies and seven self-funded health care plans.<sup>108</sup> Additionally, 28 personal injury lawsuits were brought, including those that sought class action status.<sup>109</sup> The claims ranged from negligent misrepresentation and wrongful death to fraud regarding Insys's marketing and sale of Subsys.<sup>110</sup>

### *c. It's Time for Bankruptcy*

The Opioid Crisis litigation; the litigation of Insys's executives; and Insys's business structure, caused Insys's revenue to disappear down the drain. After experiencing the Seeing the deterioration of their financial status, Insys implemented procedures to reduce costs, hoping to reduce their spending to mirror the decrease in revenue.<sup>111</sup> Before filing, on July 12, 2018, Insys eliminated 45 positions, including 30 employees from marketing and sales, representing approximately 9% of Insys's workforce at that time.<sup>112</sup> Less than six months later, Insys eliminated

---

<sup>106</sup> [Docket 11](#) at 17.

<sup>107</sup> *Id.* at 18-19.

<sup>108</sup> *Id.* at 20.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 24.

<sup>112</sup> *Id.*

48 more positions, including 36 employees, and a majority from in marketing and sales, representing approximately 13% of the workforce at that time.<sup>113</sup> On May 31, 2019, Insys eliminated an additional 8 positions, representing 5% of their workforce at that time.<sup>114</sup>

*i. JMP Securities Review*

On November 5, 2018, Insys hired JMP Securities, LLC (“JMP”) in hopes of enhancing liquidity by having JMP review strategic alternatives for their opioid-related assets, including Subsys.<sup>115</sup> Unfortunately, even after JMP’s help which lead to several offers for Subsys, the proposed transactions could not be consummated fast enough to ‘fund the gap’ between their existing cash-burn situation, and the time in the future where they expected to generate revenues.<sup>116</sup> As the draining of Insys’s revenues continued without replacement, Insys employed Lazard Freres & Co. LLC (“Lazard”) to advise Insys on capital planning and strategy alternatives to help with Insys’s opioid related assets, and to explore other potential opportunities for a sale or similar.<sup>117</sup> Insys gave Lazard free-range, but was ultimately unable to identify a transaction or group of transactions sufficient to ensure the Insys’s long-term survival.<sup>118</sup>

*ii. Changing Management*

As of April 2017, Insys replaced half of the independent directors on their Board, as well as several senior management positions, including CEO, CFO, and vice presidents of Commercial, Sales, Human Resources, and Clinical Development.<sup>119</sup> On October 29, 2017, Kapoor resigned on and placed his outstanding shares of common stock, approximately 59% of Insys, into an independent trust.<sup>120</sup> On April 15, 2019, Andrew Long was appointed CEO; Andrece Housley who served as Insys’s Corporate Controller, as CFO; and Dr. Venkat Goskonda, who served as

---

<sup>113</sup> [Docket 11](#) at 24.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 25.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 26.

Insys's Senior Vice President of Research and Development, as new Chief Scientific Officer.<sup>121</sup> As a result, a majority of Insys management team was new to the company since 2015.<sup>122</sup>

iii. Insys's Three-Step Chapter 11 Process

Finally, Insys decided that their liquidity situation, combined with the substantial litigation they faced, meant that a chapter 11 bankruptcy was their only way out.<sup>123</sup> Insys's entered chapter 11 bankruptcy with the goal to maximize value for all of their stakeholders.<sup>124</sup> Insys further believed that the chapter 11 filing provided them the ability to negotiate a "consensual resolution with some or most of their creditor groups, as they did with the DOJ."<sup>125</sup>

Insys's their three-step chapter 11 was as follows: (1) Insys planned to pursue affirmative claims to maximize revenue, including recovery of indemnification claims, as discusses above, and filing claims against insurance carriers who Insys believed wrongly denied them coverage in years before the Petition Date; (2) Insys needed to "stop the bleed" on litigation-related legal expenses and needed the automatic stay of Bankruptcy Code section 362.<sup>126</sup> Additionally, Insys planned to seek an injunction against the majority of the litigation proceedings that were not stayed by section 362 due to the "police powers" exception to the automatic stay; (3) Insys planned to quickly create a chapter 11 plan and make distributions as soon as possible by requesting the Court, pursuant to section Bankruptcy Code section 502(c), to adopt estimation procedures and estimate Insys's "aggregate liability with respect to certain categories of claims related to Subsys to avoid undue delay of the administration the chapter 11 cases."<sup>127</sup>

---

<sup>121</sup> [Docket 11](#) at 26.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 27.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*; citing 11 U.S.C. § 362.

<sup>127</sup> *Id.* at 28-29. Legal Information Institute: [Definition of Police Powers](#). States have "Police Powers," to enact laws that benefit important government goals, such as public health, safety, and welfare.; citing 11 U.S.C. § 362(b)(4).

***d. The Voluntary Petition***

Insys first filed their voluntary petition for chapter 11 bankruptcy under Insys Therapeutics, Inc.<sup>128</sup> At the time of the petition, Insys claimed to have between 5,001 and 10,000 creditors.<sup>129</sup> On the Petition Date, CEO Andrew Long provided information about the company's operations.<sup>130</sup> Insys's total assets amounted to \$175,114,056, and their total debts were \$262,504,755.<sup>131</sup> Additionally, Insys represented John N. Kapoor, and Insys Pharma, as well as the entities under Insys Pharma.<sup>132</sup>

**V. First Day Motions**

On the Petition Date, Insys filed a multitude of "First Day Motions." These motions were naturally divided into three main subsections: (1) administrative motions, (2) motions to maintain day-to-day operations, and (3) Prepetition Motions.

***a. Declaration of C.E.O. Long in Support of Insys's Petition & First Day Relief***

Along with the voluntary petition, Andrew G. Long ("Long"), the CEO at the time of the petition filed a declaration in support and was evidentiary support for all first day motions. Long's declaration clarified, to other parties and the Court, the events and circumstances that compelled Insys to file for chapter 11 bankruptcy.<sup>133</sup> Long explained why he had the ability to shed light on day-to-day operation, business financial affairs, and the goals Insys had for filing for chapter 11 bankruptcy.<sup>134</sup>

**1. Part One: Administrative Motions**

The first category of first day motions was Administrative motions. Administrative motions requested the Court to approve the administrative procedures Insys proposed for the chapter 11 cases.

---

<sup>128</sup> Chapter 11 Voluntary Petition. [Docket 1](#) at 1.

<sup>129</sup> *Id.*

<sup>130</sup> [Docket 11](#)

<sup>131</sup> [Docket 1](#) at 5.

<sup>132</sup> *Id.* at 5; See above for the entities under Insys Pharma in Section III. a.

<sup>133</sup> [Docket 11](#) at 1.

<sup>134</sup> *Id.* at 3.

***a. Motion for Joint Administration***

First, Insys filed was the motion for joint administration.<sup>135</sup> Insys requested joint administration under the Federal Rules of Bankruptcy Procedure Rule 1015(b) (“Bankruptcy Rules”), and the Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”).<sup>136</sup> Insys asked the Court to grant them joint administration over all of their entities for procedural purposes in these chapter 11 cases.<sup>137</sup>

Bankruptcy Rule 1015(b) states that if “two or more petitions are pending in the same court by or against ... a debtor and an affiliate, the court may order a joint administration of the estates.”<sup>138</sup> If Insys filed the motion under Bankruptcy Rule 1015, the Local Rule 1015-1 provided Insys the right to request an order “without notice or hearing.”<sup>139</sup> Under Bankruptcy Rule 1015(b), Insys had the right to joint administration so long as their assertion was supported by an “affidavit, declaration, or verification,” to establish proper joint administration of multiple claims and proof that the Court would be put at ease of the administrative burden.<sup>140</sup> As provided above, Long filed a declaration, which supported this motion for joint administration.<sup>141</sup> Additionally, Insys asserted that approving this motion would neither affect them adversely, nor would it have consolidated the affiliates estates, and that any creditor could file a claim against an individual affiliate, or its estates, regardless of this motion’s approval.<sup>142</sup>

On June 11, 2019, the Court granted Insys joint administration for procedural purposes only.<sup>143</sup> The Court required Insys to file a document directing procedural consolidation and joint

---

<sup>135</sup> Motion of Debtors Pursuant to Fed. R. Bankr. P 1015(b) and Del. Bankr. L.R. 1015-1 For Entry of Order Directing Joint administration of Related Chapter 11 Cases. [Docket 2](#).

<sup>136</sup> *Id.* at 1-2.

<sup>137</sup> [Docket 2](#) at 2.

<sup>138</sup> *Id.* at 5; citing Fed. R. Bankr. Pr. § 1015(b).

<sup>139</sup> *Id.* : citing Del. Bankr. L.R. 1015-1.

<sup>140</sup> *Id.* at 5.

<sup>141</sup> *Id.*; see also [Docket 11](#)

<sup>142</sup> *Id.* at 6-7.

<sup>143</sup> Order Pursuant to Fed. R. Bankr. P 1015(b) and Del. Bankr. L.R. 1015-1 Directing Joint Administration of Related Chapter 11 Cases. [Docket 45](#) at 3.

administration of the following: Insys Therapeutics, Inc.; IC Operations, LLC; Insys Development Company, Inc.; Insys Manufacturing, LLC; Insys Pharma, Inc.; IPSC, LLC; and IPT 355, LLC.<sup>144</sup>

***b. Application for Authority to Appoint EPIQ as Claims and Noticing Agent***

Next, under sections section 156(c) of title 28 of the United States Code, section 105(a) of the United States Code (the “Bankruptcy Code”), and Rule 2002-1(f) of the Local Rules, Insys requested the Court approve the appointment of EPIQ Corporate Restructuring, LLC (“EPIQ”) as their claims and noticing agent.<sup>145</sup> Insys stated that EPIQ may have done work outside the work permitted by section 156(c), and therefore Insys requested EPIQ to be their administrative advisor pursuant to Bankruptcy Code section 327(a).<sup>146</sup> Section 156(c) requires Insys to obtain and review engagement proposals from at least two other court-approved claims and noticing agents, ensuring that the selection process was competitive.<sup>147</sup> Insys asserted that EPIQ was competitive and reasonable given the quality-of-service they provided.<sup>148</sup>

Local Rule 2002-1 provides that “in all cases with more than 200 creditors or parties in interest on the creditors list, the debtors shall file [an application to authorize the retention of a noticing or claims clerk], unless the court orders otherwise.... The notice and/or claims clerk shall comply with the Claims Agent Protocol.”<sup>149</sup> Thus, Insys asserted Local Rule 2002-1 was satisfied due to their anticipation of more than 5,000 entities to be notice during their chapter 11 cases.<sup>150</sup>

Additionally, Insys claimed that the only request in this motion was for EPIQ’s work under Bankruptcy Code section 156(c), and Local Rule section 2002-1.<sup>151</sup> Under Bankruptcy Code sections 156(c) and 503(b)(1)(A), Insys requested EPIQ to be treated as an administrative expense of their chapter 11 estate.<sup>152</sup> Further, Insys requested that EPIQ be paid in the ordinary course of

---

<sup>144</sup> [Docket 45](#) at 3.

<sup>145</sup> Application of Debtors for Authority to Appoint Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Effective as of Petition Date. [Docket 3](#); citing 28 U.S.C. § 156 and 11 U.S.C. § 105(a) and Del. Bankr. L.R. 2002-1.

<sup>146</sup> *Id.* at 2.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 7.

<sup>152</sup> *Id.*

business without further application of the Court.<sup>153</sup> EPIQ agreed to maintain records of their services showing the dates, categories of services, charges and expenses, and to serve this data monthly to various parties, and to those who requested it.<sup>154</sup> Insys proposed to pay a retainer of \$25,000 to EPIQ, which EPIQ sought to apply to all prepetition invoices and to replenish the funds after such application, agreeing that the retainer would be held as security for payments incurred for their services.<sup>155</sup> Thus, Insys asserted all requirements under Bankruptcy Code section 156(c) had been satisfied.<sup>156</sup>

On June 11, 2019, the Court authorized Insys to retain EPIQ as claims and noticing agent.<sup>157</sup> The Court also authorized and directed EPIQ to perform noticing services and to receive, maintain, record, and otherwise administer proofs of claim filed in the chapter 11 cases; and maintain both official claims registered to each affiliate, to provide public access to every proof of claim unless the court stated otherwise, and to provide the clerk with certified duplicates of the proofs of claims.<sup>158</sup>

***c. Motion for Interim & Final Orders to Establish Noticing Procedures & to Approve Restrictions on Certain Transfers of Worthless stock***

Insys requested the authority to establish procedures to protect Insys's consolidated net operating loss carryforwards ("NOLs") and certain other tax benefits (collectively, "Tax Attributes").<sup>159</sup> Insys asserted the procedures would apply to their common stock; and other similar options or rights to acquire common stock; and any claim of worthless stock deduction under 165(g) of title 26 of the United States Code (the "Tax Code") with respect to common stock by a majority stockholder.<sup>160</sup>

---

<sup>153</sup> [Docket 3](#) at 7.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 8.

<sup>157</sup> Order Authorizing Appointment of Epiq Corporate Restructuring, LLC As Claims and Noticing Agent Effective as of Petition Date. [Docket 48](#) at 3.

<sup>158</sup> *Id.*

<sup>159</sup> Motion of Debtors for Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors and Claiming a Worthless Stock Deductions. [Docket 6](#) at 1.

<sup>160</sup> *Id.*; [Tax Foundation: NOL Definition](#): Net Operating Loss Carry Forward allows businesses suffering losses in one year to deduct those losses from a future years' profits, thus being taxed on average profitability and making the tax code more neutral.



i. Automatic Stay Bars Any Equity Transfer that Would Diminish or Limit Insys's Interest in Tax Attributes

Additionally, Insys sought authority to monitor and approve certain changes in the beneficial ownership of common stock, and certain worthless stock deduction claims, to protect against ownership change during the chapter 11 cases, which would preserve the potential value of the Tax Attributes.<sup>161</sup> Bankruptcy Code section 362 enjoins all entities from taking action to obtain possession of property of, or from the estate, or to exercise control over property of estate.<sup>162</sup> Bankruptcy Code section 541 states that 'property of the estate' includes "all legal or equitable interests of a debtor in property as these chapter 11 cases commence, this includes tax benefits."<sup>163</sup>

Insys asserted that Tax Attributes were valuable to their estates, therefore protected by the automatic stay against the actions that diminished or eliminated the value, including voluntary and involuntary transfers and tax deduction claims, resulting in ownership change.<sup>164</sup> Similarly, Bankruptcy Code section 363(a)(3) allowed the automatic stay to enjoin actions that would adversely affect Insys's ability to use NOLS and other tax benefits.<sup>165</sup>

ii. The Procedures were Necessary & in the Best Interest of Insys, Their Estates, and Their Creditors

Insys claimed that the proposed procedures would help their ability to seek necessary relief, if any transfer or claim appeared to potentially harm Insys's ability to utilize their Tax Attributes.<sup>166</sup> Insys wanted to utilize the Tax Attributes to offset a substantial portion of any gain that would have surfaced upon sale of appreciated assets during the chapter 11 cases.<sup>167</sup> Insys further claimed that if ownership change occurred, it could have limited the use of Tax Attributions, therefore, reducing the after-tax proceeds that would have been available to satisfy

---

<sup>161</sup> [Docket 6](#) at 9.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 10.

<sup>165</sup> Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors and Claiming Worthless Stock Deductions. [Docket 50](#).

<sup>166</sup> [Docket 6](#) at 6.

<sup>167</sup> *Id.* at 13.

the creditor's claims.<sup>168</sup> Thus, Insys requested the relief subject to Bankruptcy Rule 3001(e) and other laws.<sup>169</sup>

Tax Code section 382(l)(6) provides that, if a debtor undergoes ownership change, and 382(l)(5) does not apply, then, for purposes of calculating the annual limitation under that section, the appropriate value of the debtors shall reflect an increase in value of the debtors resulting from any surrender or cancellation of the creditors' claims.<sup>170</sup> Thus, Insys stated that the Court should grant the requested relief to prevent ownership change prior to the date of the plan, or any applicable order.<sup>171</sup>

On June 11, 2019, the Court entered an interim order granting all of Insys's requests in this motion.<sup>172</sup> Finally, on July 3, 2019, the Court issued a final order granting Insys's requests on a final basis.<sup>173</sup>

***d. Motion for the Authority to Pay Certain Prepetition Wages & Employee Expenses***

Next, Insys requested: (i) the authority, and the sole discretion, to pay and honor certain prepetition claims and obligations relating to business programs for their employees, including (a) unpaid wages and taxes; (b) pay for supplemental workforces; (c) reimbursable expenses; (d) the Amex Program; (e) employee benefits programs; (f) the severance program; (g) the 401K saving plan; and (h) other programs; and (ii) other related relief.<sup>174</sup>

***i. Payment of Employee Obligations***

First, under Bankruptcy Code section 363(b) Insys requested the authority to pay prepetition employee obligations.<sup>175</sup> 363(b)(1) provides that "after notice and hearing, [the debtor]

---

<sup>168</sup> [Docket 6](#) at 13.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 14

<sup>171</sup> *Id.*

<sup>172</sup> [Docket 50](#) at 2.

<sup>173</sup> Final Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors and Claiming a Worthless Stock Deduction. [Docket 235](#).

<sup>174</sup> Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363 and 507(a) for (i) Authority to (A) pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (c) Continue Employee Benefits Programs, And (II) Related Relief. [Docket 5](#).

<sup>175</sup> *Id.* at 27.

may use, sell, or lease other than in the ordinary course of business, property of the estate.”<sup>176</sup> Thus, Insys claimed that the Court could authorize Insys to pay prepetition claims that have a “sound business purpose for doing so.”<sup>177</sup> Pursuant to Bankruptcy Code section 105(c), the Court has the authority to authorize relief requested because the relief was necessary for Insys to continue their fiduciary duties under Bankruptcy Code 1107(a).<sup>178</sup> 1107(a) provides an implied duty for a debtor to protect the estate, including an operating business’ ongoing-concern value for the debtor and the other interested parties.<sup>179</sup> Insys asserted that they should be afforded this authority to because employees would have to move on if they were not being paid.<sup>180</sup> Similarly, Insys claimed it was necessary to keep employees so they could maintain customer relations and satisfy customer obligations.<sup>181</sup>

ii. Payment of Certain Employee Obligations Required by Law

Insys requested the authority to remit deductions and payroll taxes to the appropriate entities, including the employee earnings that the employees and governments designated on the employee’s paychecks.<sup>182</sup> Bankruptcy Code section 541(b) states that funds on hand relating to certain deductions were not Insys’s property, including contributions to employee benefit programs, child support and alimony payments that were withheld from the employee’s paycheck including trust fund payroll taxes.<sup>183</sup> Insys asserted that these deductions and taxes were not their property, therefore requesting the authority to remit these amounts to the proper parties in the ordinary course of business.<sup>184</sup>

iii. Severance Payments that were Outside of those Under Bankruptcy Code §503(c)

Lastly, Insys requested authority to pay employees who were terminated after the petition date, and to honor obligations in the ordinary course of business, except those that were outside of

---

<sup>176</sup> [Docket 5 at 27](#).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 27-28.

<sup>179</sup> *Id.* at 29.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 31.

<sup>184</sup> *Id.*

Bankruptcy Code section 503(c).<sup>185</sup> Insys claimed 503(c) was not relevant to severance payments because such payments were in the ordinary course of business.<sup>186</sup> Insys asserted that the Court could approve this request, if the severance program satisfied requirements under Bankruptcy Code section 363(b).<sup>187</sup> Similarly, courts within the jurisdiction have held severance payments can continue so long as they were in the ordinary course of business, to employees terminated post-petition.<sup>188</sup> Under 363(b), Insys asserted that they had a “sound business purpose” for continuing to pay severance to employees terminated post-petition because retaining employees was critical, and severance pay would incentivize other employees to honor their prepetition obligations.<sup>189</sup>

iv. Objections and Orders

On June 11, 2019, the Court entered an Interim order, granting Insys’s requests.<sup>190</sup> Further, the Court authorized Insys to pay the amounts payable as of the Petition Date, and those available in the Interim Period, which were not to exceed \$733,120.<sup>191</sup> Similarly, salaries and sick leave by a single employee were not to exceed \$13,650, and Insys could not pay bonus commission, unless provided otherwise.<sup>192</sup> On July 3, 2019, the Court granted the motion on a final basis.<sup>193</sup> The Court filed an amended final order on that same day adding in the Employee Bonus Programs to be paid after initially leaving them out.<sup>194</sup>

---

<sup>185</sup> [Docket 5](#) at 31

<sup>186</sup> *Id.* at 32; citing 11 U.S.C. § 503(c)(3) prohibits payments outside the course of ordinary business.

<sup>187</sup> *Id.*; *In re Nellson Nuraceutical, Inc.*, 369 B.R. 787, 801 (Bankr. D. Del. 2007) (holding compensation programs within the ordinary course of business do not trigger 503(c)(1) and are thus governed by 363(b)).

<sup>188</sup> *Id.* at 32.

<sup>189</sup> *Id.*

<sup>190</sup> Interim Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 507(a) (I) Authorizing Debtors to (A) Pay Certain Prepetition Wages and Reimbursable Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Granting Related Relief. [Docket 49](#) at 3.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 3.

<sup>193</sup> Final Order (I) Authorizing Debtors to (A) Pay Certain Prepetition Wages and Reimbursable Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Granting Related Relief. [Docket 223](#) at 1.

<sup>194</sup> (Amended) Final Order (I) Authorizing Debtors to (A) Pay Certain Prepetition Wages and Reimbursable Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Granting Related Relief. [Docket 231](#) at 1.

On August 19, 2019, Insys filed a statement in support of the post-petition severance program and honoring obligations.<sup>195</sup> Insys stated that employees were to be paid severance in the ordinary course of business for events including job elimination, change in management, or reorganization.<sup>196</sup> Similarly, Insys clarified eligible employees included those who had an employment agreement with Insys, who entered into a separation agreement with them, or where the eligible employee is otherwise entitled to such benefit by law.<sup>197</sup> Further, Insys stated that severance payments were to be made to key employees who were winding up their affairs and post-sale business.<sup>198</sup> Key employees were to receive up to 8 weeks of severance pay, and the aggregate payment was not to exceed over \$500,000.<sup>199</sup> Insys then stated that no party in interest had objected to the terms of the Prepetition Severance Program, and the response deadline involving wages was only extended for the Creditors' Committee.<sup>200</sup>

On August 20, 2019, the Creditors Committee filed a limited objection and statement in opposition to this motion.<sup>201</sup> Various parties filed a joinder to the statement and limited objections, including Non-MDL Municipal Plaintiffs (Jason Gibson),<sup>202</sup> Florida,<sup>203</sup> Non-MDL Municipal

---

<sup>195</sup> Debtors Statement in Support of Postpetition Severance Program and Honoring Related Obligations. [Docket 475](#).

<sup>196</sup> *Id.* at 1.

<sup>197</sup> *Id.* at 2.

<sup>198</sup> [Docket 475](#) at 3.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. Sections 105(a), 363 and 507(a) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 482](#).

<sup>202</sup> Non-MDL Municipal Plaintiffs Joinder in Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(a), 363 and 507(a) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 485](#).

<sup>203</sup> Joinder By The State Of Florida In The Statement And Limited Objection Of The Official Committee Of Unsecured Creditors To Motion Of The Debtors Pursuant To 11 U.S.C. 105(a), 363 AND 507(a) For (I) Authority To (A) Pay Certain Prepetition Wages And Reimbursable Employee Expenses, (B) Pay And Honor Employee Medical And Other Benefits, And (C) Continue Employee Benefit Programs And (II) Related Relief. [Docket 487](#).

Plaintiffs (Michael Busenkell),<sup>204</sup> the Minnesota Board of Pharmacy,<sup>205</sup> New York,<sup>206</sup> New Jersey,<sup>207</sup> Non-MDL Municipal Plaintiffs (William Hazeltine),<sup>208</sup> and Arizona.<sup>209</sup> Finally, on September 19, 2019, the Court rendered the final order after reviewing all the objections, the Severance plan, and having held a hearing to consider the request on August 22, 2019.<sup>210</sup> The Court denied the motion at the hearing with a motion to adjourn *sine die*, with direction for Insys and the Creditors' Committee to develop a protocol for determining the eligible employee.<sup>211</sup>

When Insys and the Creditors' Committee agreed to such protocol, the Court had a final hearing on severance on September 19, 2019, and granted the motion.<sup>212</sup> The Court authorized Insys to act in accordance with only the severance plan and the severance eligibility Protocols,

---

<sup>204</sup> Joinder to Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(A), 363 and 507(A) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 488](#).

<sup>205</sup> Joinder in Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(a), 363, and 507(a) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 489](#).

<sup>206</sup> Joinder of the State of New York to Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(A), 363 and 507(A) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 490](#).

<sup>207</sup> Joinder of the State of New Jersey to Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(A), 363 and 507(A) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 491](#).

<sup>208</sup> Joinder of the MDL Plaintiffs to Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(a), 363, and 507(A) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief. [Docket 499](#).

<sup>209</sup> Joinder to Statement and Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors Pursuant to 11 U.S.C. 105(A), 363 and 507(A) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief Filed by State of Arizona. [Docket 500](#).

<sup>210</sup> Order Pursuant to 11 U.S.C. Sections 105(a) and 363 (I) Approving the Postpetition Severance Program, (II) Authorizing the Debtors to Pay and Honor Severance Obligations Under the Postpetition Severance Program, and (III) Granting Related Relief. [Docket 639](#) at 1-2.

<sup>211</sup> *Id.* at 2.; [Webster Dictionary Definition: Sine Die](#): to adjourn the meeting until further notice/indefinitely.

<sup>212</sup> *Id.* at 2-3.

further authorizing Insys to pay and honor all stated obligations within the order.<sup>213</sup> The Court specified that Insys could make payments up to the aggregate of \$500,000, and that all payments were to be made to those specified by the severance eligibility protocol, as well as the Non-insider Eligible Employees identified by Insys as “Severance Program Participants.”<sup>214</sup> The Court required Insys to file their severance program participant list within 10 business days of making such list, setting forth the name, title, annual base salary, and severance payment of each name listed.<sup>215</sup> Within 10 days of making the payments, Insys was required to send a notice to all Severance Notice Parties and the U.S. Trustee with an unredacted schedule of payments.<sup>216</sup>

***e. Motion for Authority to Establish Important Deadlines***

Insys filed another motion requesting the authority: (i) to establish deadlines for filing proofs of claim; (ii) to establish the form and manner of the notice there of; and (iii) to approve Insys’s plan for providing notice of Bar Dates and other important deadlines.<sup>217</sup>

***i. Procedure for Filing Proof of Claims***

Insys requested for their proposed procedures to be approved for filing proofs of claims.<sup>218</sup> Under Bankruptcy Rule 3003(c)(2), any creditor whose claim is not scheduled or is scheduled as disputed, contingent, or unliquidated that, fails to file a proof of claim by the applicable bar date, could not be treated as a creditor for voting and distribution purposes.<sup>219</sup> Thus, Insys requested that any holder of a claim required to file a claim of proof under the proposed order, but that failed to do so on, or before the specified bar date, were to not be treated as a creditor for voting or

---

<sup>213</sup> [Docket 639](#) at 3.

<sup>214</sup> *Id.* at 4.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Motion of Debtors 11 U.S.C. §§ 502(b)(9) and 105(a) Fed. R. Bankr. P 2002, 3003(c)(3), and 9007, and Local Rules 2002-1(e), 3001-1, and 3003-1 for Authority to (I) Establish Deadlines for Filing Proofs of Claim, (II) Establish the Form and Manner of Notice thereof, and (III) Approve Procedures for Providing Notice of Bar Date and Other Important Deadlines. [Docket 25](#).

<sup>218</sup> *Id.* at 10.

<sup>219</sup> *Id.* at 13.

distribution rights during these chapter 11 cases.<sup>220</sup> On July 15, 2019, the Court granted Insys's plan for how to file the proof of claims.<sup>221</sup>

ii. The Proposed Bar Dates and Mailing Procedures

Insys requested the Court's approval of their proposed bar dates, including general bar dates, government bar dates, and administrative claim bar dates.<sup>222</sup> Under Bankruptcy Rule 2002(a)(7), and to provide sufficient notice to all interested parties, Insys proposed to serve the following documents, to all parties listed on the proposal, at least 30 days prior to the general bar date, via first-class mail: (1) proof of claims form and (2) the general bar date notice.<sup>223</sup> This deadline included all claimants who would file a proofs of claim including secured claims, unsecured priority claims, unsecured non-priority claims, and all claims arising under Bankruptcy Code section 503(B)(9) against all of Insys's affiliates.<sup>224</sup> Additionally, EPIQ, as noticing agent, were to receive the proofs of claim before, or on the general bar date, unless the person or entity's claim fell within one of the exceptions in the motion.<sup>225</sup>

Bankruptcy Code section 502(b)(9) states that a government claim "shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Bankruptcy Rules may provide."<sup>226</sup> Insys requested that the Court establish the governmental bar date to be December 9, 2018.<sup>227</sup> Section 503(a) provides that an entity may file a timely request for "payment of administrative expenses or may tardily file such request if permitted by the court for cause."<sup>228</sup> Insys requested the Court to establish that the administrative claim's bar date be October 24, 2019.<sup>229</sup> On July 15, 2019, the Court approved Insys's request to establish the general bar date and how to give notice to the parties about the established general bar date.<sup>230</sup>

---

<sup>220</sup> [Docket 25](#) at 13.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 7-8.

<sup>223</sup> *Id.* at 14.; See appendix for the General Bar Bate Notice.

<sup>224</sup> *Id.* at 7.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 8; citing 11 U.S.C § 502(b)(9).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*; citing 11 U.S.C. § 503(a).

<sup>229</sup> *Id.*

<sup>230</sup> [Docket 294](#) at 8.



iii. Publication of the Notice of Commencement & Supplement Notice Plan

Insys requested the Court to approve their plan of publication of notice, and the supplement notice plan.<sup>231</sup> Insys stated notice would be provided to all parties at least 30 days prior to requested the general bar date.<sup>232</sup> That gave EPIQ three business days from filing Insys's schedules and statements to mail the general bar date notice.<sup>233</sup> Bankruptcy Rule 2002(a)(7) requires a debtor provide at least 21 days' notice prior to the time of filing proof of claims, and Rule 2002(p)(2) states creditors with foreign addresses be given at least 30 days.<sup>234</sup> Similarly, "where a creditor is unknown to the debtor, due process requires only that the debtor take reasonable steps, such as notice by publication, to provide constructive notice of the deadline of proof of claims."<sup>235</sup>

On July 15, 2019, the Court granted Insys's motion and set the proposed notice date, stating notice must be provided "as soon as practicable, but in no event later than 30 days prior to the General bar date."<sup>236</sup> Additionally, the Court required Insys to post, with any modifications, once in a national edition of the *New York Times* and *USA Today*, and in ten other local news sources at Insys's and the Creditors' Committee's discretion.<sup>237</sup> The Court stated that the requirements above were satisfied giving constructive notice to unknown creditors.<sup>238</sup>

***f. Motion to Extend Time to File Schedules of Assets & Liabilities & Statements of Financial Affairs***

Insys requested an extension of 21 days to the initial 28-day period to file their schedules and assets and liabilities and statements of financial affairs, allowing the Insys a total of 49 days after the Petition Date to file their schedules and statements.<sup>239</sup>

---

<sup>231</sup> [Docket 25](#).

<sup>232</sup> *Id.* at 17.

<sup>233</sup> *Id.* at 14.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*; see also *In re Enron Corp.*, No. 01-16034, 2006 WL 898031 (Bankr. S.D.N.Y. Mar. 29, 2016).

<sup>236</sup> [Docket 294](#) at 9.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at 1-2.

*i. The Rules*

Bankruptcy Code section 521 requires a debtor to file schedules of assets and liability, as well as statements of financial affairs, unless the Court specifies otherwise.<sup>240</sup> Bankruptcy Rule 1007(c) states that schedules and statements must be filed within 14 days after the petition date unless the court grants an extension.<sup>241</sup> However, in a voluntary chapter 11 case with over 200 creditors, and that otherwise satisfies requirements of Local Rule 1007-2, the debtor is allotted 28 days after the Petition Date to file the schedules and statements.<sup>242</sup>

*ii. Insys's Request*

Insys claimed an extension for filing the schedules and statements was a necessity that due to the complexity of their case, which identified more than 200 creditors, as well as the limited time and resources available they had to get the required information.<sup>243</sup> Similarly, Insys claimed that those responsible for obtaining this information had other day-to-day operational tasks, and forcing them to act within such a time constraint was too burdensome.<sup>244</sup> Further, Insys claimed that creditors and parties in interest were not prejudiced or adversely affected by the extension.<sup>245</sup> 18 days after filing the motion, the Court granted Insys's motion for the full 21-day request, allotting Insys 49 days to prepare and file its schedules and statements.<sup>246</sup>

***g. Motion to Approve Compromise Under Rule 9019 of the Bankruptcy Code***

Insys requested the Court to give them authority and the approval of stipulations and agreements between Insys and the U.S., discussed above.<sup>247</sup> Prior to filing, Insys entered into several agreements with the U.S. and other federal agencies that resolved some of “the federal

---

<sup>240</sup> [Docket 294](#) at 3; 11 U.S.C. § 521(a)(1)(A)-(B).

<sup>241</sup> *Id.*; citing Fed. R. Bankr. P. 1007(c).

<sup>242</sup> *Id.* ; citing Del. Bankr. L.R. 1007-1(b).

<sup>243</sup> *Id.* at 4.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> Order Approving Extending Time To File Schedules Of Assets And Liabilities And Statements Of Financial Affairs. [Docket 186](#).

<sup>247</sup> [Docket 28](#) at 1.; See IV. a. ii. Fraud and Prosecutions above.

government's criminal, civil, and administrative actions against them.”<sup>248</sup> Insys filed this motion hoping to constitute their final agreement with the DOJ.<sup>249</sup>

Insys claimed that approving the agreement with the DOJ was in all interested parties' best interests because it allowed Insys to resolve their most significant liability for “a fraction of the total amount asserted by the DOJ,” and “significantly less than the amount the federal government represented,” and by “removing the threat of governmental action against them,” they maximized the proceeds Insys could receive from a sale, and placed the burden of their biggest claim behind them, which would enable Insys to focus on the other creditors' and negotiating with them.<sup>250</sup>

On July 1, 2019, Florida filed a limited objection to the motion to approve the compromise, but did not object to the majority of the terms in the proposed agreement.<sup>251</sup> Florida stated that Insys unjustly provided the U.S. with unequal treatment regarding similarly situated creditors by providing the U.S. with a substantial ‘Allowed Claim’ that could not be subordinated.<sup>252</sup> Finally, Florida stated that if the Court approve this motion, Florida requested for the Court to specify that third parties were not bound by the provisions waiving chapter 5 claims.<sup>253</sup> On October 7, 2019, the Court authorized and approved the stipulation and agreement that granted Florida's requests.<sup>254</sup>

#### ***h. Declaration in Support of Insys's Motion for Preliminary Injunction***

After filing the motion for preliminary injunction and motion for entry of an order establishing procedures and scheduling for estimation, Insys filed CEO Andrew Long's declaration in support.<sup>255</sup> Long reiterated that Insys was defendant to approximately 1,000 lawsuits related to Subsys and how these suits took a significant toll on Insys's already limited financial

---

<sup>248</sup> [Docket 28](#) at 1.

<sup>249</sup> *Id.* at 1-2.

<sup>250</sup> *Id.* at 2.

<sup>251</sup> Limited Objection To Debtors Motion To Approve Compromise With The United States by the State of Florida. [Docket 200](#)

<sup>252</sup> *Id.*; See appendix for Allowed Claim.

<sup>253</sup> *Id.*

<sup>254</sup> Order Authorizing and Approving the Stipulation and Agreement Between the Debtors and the United States. [Docket 707](#).

<sup>255</sup> Declaration of Andrew G. Long in Support of Debtors Motion for a Preliminary Injunction Pursuant to 11 U.S.C. Section 105(a) and Motion for Entry of an Order Pursuant to 11 U.S.C. Sections 105(a) and 502(c) Establishing Procedures and Schedule for Estimation Proceedings. [Docket 30](#) at 4.

resources.<sup>256</sup> Further, Long pointed out the amount of time continuing litigation would have required, which would have distracted Long and other senior management from maximizing value for these chapter 11 proceedings.<sup>257</sup> For this reason, Long submitted his declaration in support of Insys's motion for preliminary injunction and their motion for entry Insys's Estimation Motion.

## **2. Part Two: Day to Day Operations**

Motions relating to day-to-day operations were filed to request permission from the Court to continue procedures that enabled Insys to continue to work through the chapter 11 cases.

### ***a. Motion to Continue Cash Management***

First Insys filed the motion to continue existing cash management. The cash management system provided Insys benefits, including the ability to control corporate funds, ensuring the maximum availability of funds when and where necessary, and it reduced costs and administrative expenses by allowing Insys to move funds, and to develop a timelier, more accurate account information.<sup>258</sup> Bankruptcy Code section 363(c)(1) of authorizes a debtor to "use property of the estate in the ordinary course of business without notice or hearing."<sup>259</sup> At the time of the petition date, Insys' cash management system was composed of thirty-three different bank accounts.<sup>260</sup>

Before the petition date, in April 2019, Insys began transferring their accounts from JPMorgan to Western Alliance.<sup>261</sup> Insys's accountants regularly maintained these accounts. because, although they were mostly automated, the system required various levels of authorizations to release disbursement.<sup>262</sup> Insys claimed maintaining the cash management system was critical to ensure that Insys could seamlessly continue transactions and collect revenue.<sup>263</sup>

---

<sup>256</sup> [Docket 30](#) at 10.

<sup>257</sup> *Id.* at 13.

<sup>258</sup> Motion of Debtors Pursuant to 11 U.S.C. 105, 345, 363, 364, 503, and 507 for (I) Authority to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (B) Honor Obligations Relating Thereto, and (C) Implement Ordinary Course Changes to Cash Management System, (II) Administrative Expense Priority for Postpetition Intercompany Claims, (III) Waiver or Extension of Time to Comply with Requirements of 11 U.S.C. 345(b), and (IV) Related Relief. [Docket 4](#) at 15.

<sup>259</sup> *Id.* at 17; Citing 11 U.S.C. § 363(c)(1).

<sup>260</sup> *Id.* at 4.; Thirteen bank accounts were maintained with Western Alliance Bank, fourteen accounts were maintained with JPMorgan Chase Bank, two bank accounts were maintained by Raymond James, and one bank account was maintained by Oppenheimer Investment Advisors, Morgan Stanley Investment Management, Wells Fargo Advisors, and Deutsche Bank AG.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* at 5.

<sup>263</sup> *Id.*

On June 11, 2019, the Court granted Insys’ request on an interim basis.<sup>264</sup> Under Bankruptcy Code section 363, the Court authorized Insys request to continue using and managing their cash management system, to collect and disburse cash in accordance with the system, and to make changes in the ordinary course of business.<sup>265</sup> Finally, on July 5, 2019, the Court granted Insys’s request on a final basis.<sup>266</sup>

*i. Authority to Continue Performance of Intercompany Transactions & to be Accorded to as Administrative Expenses*

Next, Insys requested authority to continue performance of Intercompany Transactions, requesting “administrative expense priority” on post-petition intercompany claims.<sup>267</sup> Intercompany transactions were money transfers made from one Insys subsidiary to another.<sup>268</sup> A general ledger required all entities to be balanced at the legal entity level, meaning when the system entered in an intercompany receivable on one entity’s balance sheet, it automatically created a corresponding intercompany payable on the affiliate’s balance sheet—resulting in a net zero on the intercompany account.<sup>269</sup>

Bankruptcy Code section 363(c)(1) provides a debtor authorization “to enter into transactions including the sale or lease of property of the estate, in the ordinary course of business...,” and without notice or hearing, “[to] use property of the estate in the ordinary course of business.”<sup>270</sup> Insys asserted that the intercompany transactions were in the ordinary course of business under 363(c)(1), and thus Insys should be able to continue without Court approval.<sup>271</sup>

---

<sup>264</sup> Order (Interim) (I) Authorizing Debtors to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (b) Honor Obligations Relating Thereto, & (c) Implement Ordinary Court Changes to Cash Management System, (II) Providing Administrative Expense Priority for Postpetition Intercompany Claims (III) Extending Time to Comply with Requirements of 11 U.S.C SS 345(b) , and (IV) Granting Related Relief. [Docket 46](#).

<sup>265</sup> [Docket 4](#) at 3.

<sup>266</sup> Final Order With Revisions by the Court (I) Authorizing Debtors to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (B) Honor Obligations Relating Thereto, and (C) Implement Ordinary Course Changes to Cash Management System, (II) Providing Administrative Expense Priority for Postpetition Intercompany Claims, (III) Extending Time to Comply with Requirements of 11 U.S.C. 345(b), and (IV) Related Relief. [Docket 243](#) at 3

<sup>267</sup> [Docket 4](#) at 18; See appendix for Intercompany Transactions.

<sup>268</sup> *Id.* at 13; See appendix for Administrative Expense Priority.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 18.; citing 11 U.S.C. § 363(c)(1).

<sup>271</sup> *Id.*

Thus, Insys claimed it was continuing intercompany transactions was necessary to maintain the ordinary course of business.<sup>272</sup>

Additionally, Insys requested the Court grant administrative expense status to all post-petition intercompany claims, asserting that giving such status would ensure that each entity using the cash management system continued to bear the responsibility for the transaction with affiliated in the ordinary course of business.<sup>273</sup> Bankruptcy Code section 503(b)(1)(A) states “after a notice or a hearing there shall be allowed, administrative expenses, including the actual, necessary costs and expenses of preserving the estate.”<sup>274</sup>

Again, on June 11, 2019, the Court granted Insys’s motion on an interim basis pursuant to Bankruptcy Code 363(a) and 503(b)(1)(A), authorizing Insys to continue Intercompany Transactions in the ordinary course of business and granting post-petition intercompany administrative expense priority.<sup>275</sup> Finally, on July 7, 2019, the Court granted Insys’s motion on a final basis.<sup>276</sup>

ii. Certain Prepetition Obligations Related to Cash Management System

Next, Insys requested the Court to authorize Insys to pay prepetition obligations related to the cash management system.<sup>277</sup> Further, Insys stated that payment would prevent unnecessary disruptions to the cash management system and would ensure that Insys’s receipts of funds were not delayed.<sup>278</sup> Insys claimed that the payments would not prejudice any parties in interest, because the banks likely had setoff rights, and payment of prepetition fees should not alter the rights of unsecured creditors in these chapter 11 cases.<sup>279</sup> A right to setoff is when a creditor holds their claim against a debtor in the creditor’s “own property,” compared to a security interest where the creditor holds their claim in the debtor’s property.<sup>280</sup>

---

<sup>272</sup> [Docket 4](#) at 18.

<sup>273</sup> *Id.* at 18-19

<sup>274</sup> *Id.* at 18; citing 11 U.S.C. § 503(b)(1)(A).

<sup>275</sup> [Docket 46](#) at 3.

<sup>276</sup> [Docket 243](#) at 4.

<sup>277</sup> [Docket 4](#) at 19.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKRUPTCY IN PRACTICE 339-41. (6th ed.).

Pursuant to Bankruptcy Code sections 363(b) and 105(a), Insys sought authority to pay any prepetition bank fees, as well as to continue making payments on account of such obligations post-petition in the ordinary course of business.<sup>281</sup> On July 7, 2019, the Court authorized Insys to pay any pre-existing bank fees, and stated that if there were any outstanding fees left, Insys was to pay them as a ‘Bank Fee’ for the maintenance of the cash management system.<sup>282</sup>

*iii. Waiver or Extension of time to Comply with Requirements of §345(b)*

Next, Insys requested the Court to grant a waiver of the requirements of Bankruptcy Code section 345(b).<sup>283</sup> 345(b) states “a debtors cash deposits and investments during a chapter 11 case and authorizes such deposits or investments to yield the maximum reasonable net return on that money.”<sup>284</sup> For deposits not insured or guaranteed by the U.S., or by any instrumentality of the U.S., or not backed up by the full faith and credit of the U.S., 345(b) requires the debtor to obtain an adequate corporate surety from the entity that the money was deposited or invested in favor of the U.S., unless the Court stated otherwise.<sup>285</sup> Insys may require the entity may to deposit government securities in accordance with 331 U.S.C. § 9303, which provided that when required to give a surety bond, a person “may instead provide an eligible obligation designated by the Secretary or the Treasury as an acceptable substitute for a surety bond.”<sup>286</sup> Similarly, UST Operating Guidelines provided that chapter 11 debtors are required to deposit all estate funds into an account with an authorized depository that agrees to comply with the U.S. Trustee requirements, among other things.<sup>287</sup>

Thus, Insys asserted that the cause requirement existed 345(b), to satisfy the waiver requirements.<sup>288</sup> In support, Insys asserted that all of the bank accounts were maintained by authorized depositories, except for three investment accounts and employee stock option accounts. which were maintained by highly rated, nationally chartered banks, subject to supervision of national banking regulators.<sup>289</sup> Further, Insys claimed moving funds from the accounts would have

---

<sup>281</sup> [Docket 4](#) at 20.

<sup>282</sup> [Docket 243](#) at 6-7.

<sup>283</sup> [Docket 4](#) at 21.

<sup>284</sup> *Id.*; citing 11 U.S.C. §345(a).

<sup>285</sup> *Id.*; citing 11 U.S.C. §345(b).

<sup>286</sup> *Id.*; citing 31 U.S.C. § 9303.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

disrupted the cash management system and inhibited their ability to operate “efficiently and economically.”<sup>290</sup> Similarly asserting that if forced to obtain a bond secured by receiving a corporate surety, if could be obtained at all, it would have been prohibitively expensive.<sup>291</sup>

Thus, Insys declared that the Court should waive the requirements of 345(b) in these chapter 11 cases.<sup>292</sup> If such waiver was deemed inappropriate, Insys requested an extension to engage in a discussion with the U.S. Trustee to make other acceptable arrangements.<sup>293</sup> Insys requested a 45 days extension to come into compliance with the Bankruptcy Code section 345(b) requirements, or to make other acceptable arrangement with U.S. Trustee accepted.<sup>294</sup> Insys claimed that they had more than 200 creditors and thus, there was cause to grant their waiver request pursuant to Local Rule 2015-2(b).<sup>295</sup> If the Bankruptcy Code section 345(b) requirements were not waived, Insys stated their requested extension to comply with 345(b) was warranted.<sup>296</sup>

On June 11, 2019, the Court entered an interim order granting Insys’s request for a 45 extension, without prejudice, that would have enabled them to come into compliance with Bankruptcy Code section 345(b), or to make other arrangements the U.S. Trustee agreed to.<sup>297</sup> Insys clarified that they reserved the right to further request an extension or waiver for the requirements of 345(b).<sup>298</sup> Finally, on July 7, 2019, the Court issued the final order granting Insys’s request.<sup>299</sup>

*iv. Maintenance of Insys’ Bank Accounts and Business Forms*

Further, Insys requested the Court permit maintenance of their existing bank accounts, claiming that if forced to comply with UST Operating Guidelines, their ordinary financial operations would be severely disrupted, causing inefficiency, increased administrative burdens,

---

<sup>290</sup> [Docket 4](#) at 21.

<sup>291</sup> *Id.* at 21-22.

<sup>292</sup> *Id.*, at 22.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> [Docket 46](#) at 7.

<sup>298</sup> *Id.*

<sup>299</sup> [Docket 243](#) at 7.



and creating unnecessary expenses.<sup>300</sup> The UST Operating Guidelines required chapter 11 debtors to: (1) establish one account for all debtor-in-possession tax paying estate funds; (2) exchange existing accounts with new debtor-in-possession accounts; (3) maintain a separate debtor-in-possession account for cash collateral; (4) bear “debtor in possession” on their business forms; and (5) have Insys’s bankruptcy number and type on the business forms.<sup>301</sup>

Insys claimed that if forced to open new debtor-in-possession accounts, they would have to modify their cash management system, forcing them to reconstruct it entirely.<sup>302</sup> Insys asserted that the accountants would have changed their focus to opening these accounts, diverting their attention from daily responsibilities during the crucial the critical chapter 11 cases.<sup>303</sup> Further, Insys claimed that such requirements would have increased operating costs, and that delays caused by the reconstruction would have negatively impacted their ability to operate their business while they tried to make these arrangements.<sup>304</sup>

Similarly, Insys requested permission to maintain their existing business forms, which they used in their ordinary course of business from time to time.<sup>305</sup> Insys claimed that adhering to the strict guidelines from the UST Operating Guidelines above, along with the Local Rule 2015-2(a) would have unnecessarily increased their expenses and risk confused their customers, suppliers, and employees.<sup>306</sup> Local Rule 2015-2(a) provides that when debtors exhaust their existing business forms, a chapter 11 debtor must order new ones that are labeled with “debtor-in-possession” and the bankruptcy numbers that correspond with it.<sup>307</sup>

They further stated that they believed, to reduce expense and delay, they should have been authorized the use of their old forms, so long as when they were to order new forms, they would comply with UST Operating Guidelines and Local Rule 2015-2(a) by adding debtor-in-possession along with the lead bankruptcy number.<sup>308</sup> Further, Insys would have added such information to

---

<sup>300</sup> [Docket 4](#) at 23.

<sup>301</sup> *Id.*; Citing UST Operating Guidelines § 2.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.* at 24.

<sup>305</sup> *Id.*

<sup>306</sup> [Docket 46](#) at 24.

<sup>307</sup> *Id.*; citing Del. Bankr. L.R. 2015-2(a)

<sup>308</sup> *Id.*

their checks generated within 10 business days after the date of entry of the proposed interim order.<sup>309</sup>

For the forgoing reasons, Insys claimed that all benefits sought by implementing UST Operating Guidelines or the Local Rule 2015-2(a) would have been outweighed by the expenses and inefficiencies they would have faced in the process.<sup>310</sup> Therefore, Insys stated their request for authority to maintain their bank accounts and business forms should have been granted for these chapter 11 cases.

On June 11, 2019, the Court ordered Insys to contact all the banks where they maintained accounts to a UDA with the U.S. Trustee within 15 days of the interim order, to provide the banks with their identification number, and to identify the bank accounts that the banks held as being accounts held by a debtor-in-possession.<sup>311</sup> The Court further ordered Insys to contact all banks that were not party to a UDA with the U.S. Trustee and use their “good faith efforts to cause such banks to execute a UDA in a form prescribed,” by the U.S. Trustee within 45 days of the entry of the interim order.<sup>312</sup> On July 7, 2019, the Court issued its final order which finalized their decision made in the Interim order.<sup>313</sup>

v. Bankruptcy Rule 6003(b)

Bankruptcy Rule 6003(b) provides that a court may issue an order granting, “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate including a motion to pay all or part of the claim that arose before the filing of the petition,” within 21 days of filing the petition, if necessary to avoid immediate and irreparable harm.<sup>314</sup> Insys claimed that they would suffer irreparable harm if the relief under Bankruptcy Rule 6003(b) was not promptly granted.<sup>315</sup> The Court granted this motion in its interim order on June 11, 2019, and finalized its decision, after the final hearing, on July 7, 2019.<sup>316</sup>

---

<sup>309</sup> [Docket 46](#) at 24

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 7

<sup>312</sup> *Id.*

<sup>313</sup> [Docket 243](#) at 4.

<sup>314</sup> [Docket 4](#) at 25; citing Fed. R. Bankr. P. 6003(b).

<sup>315</sup> *Id.*

<sup>316</sup> [Docket 46](#); [Docket 243](#).

vi. Bankruptcy Rule 6004(a) and (h) Waivers

If the notice requirement applied, Insys claimed that the information in the motion supported their need for a waiver of the notice requirements under Bankruptcy Rule 6004(a) and a stay order providing the relief requested under Bankruptcy Rule 6004(h).<sup>317</sup> On June 11, 2019, the Court entered an interim order, granting the motion under Bankruptcy Rules 6004(a) and 6004(h), deeming the adequate circumstances to grant such motion.<sup>318</sup> The Court deemed the order under 6004(a) to be effective immediately.<sup>319</sup> The Court issued a final order on July 7, 2019, granting the motion on a final basis.<sup>362</sup>

**b. Motion to Pay Utility Providers**

Next, Insys filed a motion requesting the continuation of utility service and approval of adequate assurance to pay the utility company.<sup>320</sup> As of the Petition Date, Insys incurred expenses for utilities, including electricity, gas, water, sewage, technology, and waste removal.<sup>321</sup> Approximately thirteen utility providers provided service to Insys collectively amounting to about \$72,000 a month.<sup>322</sup> Insys claimed to rely on the utility providers to service their various businesses in Arizona and Texas, providing service to their employees, vendors, and customers.<sup>323</sup> Bankruptcy Code section 366 allows Insys's request for the "dual purpose of protecting [Insys] from utility service cutoffs upon bankruptcy filing and providing utility companies adequate assurance that [Insys] will be able to pay for post-petition services."<sup>324</sup>

Under Bankruptcy Code section 366, "during the first thirty days of a chapter 11 case, a utility company may not alter, refuse, or discontinue services to a debtor solely because of any

---

<sup>317</sup> [Docket 4](#) at 25.

<sup>318</sup> [Docket 46](#) at 8.

<sup>319</sup> *Id.*

<sup>320</sup> Motion Prohibiting Utilities from Discontinuing Service (Motion of Debtors Pursuant to 11 U.S.C. 105(a) and 366 Requesting Entry of an Order (I) Approving Debtors Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Service. [Docket 7](#).

<sup>321</sup> *Id.* at 3.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* at 4.

<sup>324</sup> *Id.* at 8

unpaid prepetition amounts.”<sup>325</sup> However, 366 also provides that after the thirty days, utility providers may alter, refuse, or discontinue service if the debtor fails to provide a satisfactory form of ‘adequate assurance’ of payment of post-petition utility services.<sup>326</sup>

On June 11, 2019, after only two days, the Court granted Insys’ motion on an interim basis, granting Insys the authority to deposit \$36,000 of adequate assurance into a separate account, which was payable to each provider in their given amounts.<sup>327</sup> On July 3, 2019, after the final hearing, the Court issued a final order granting Insys the authority on a final basis.<sup>328</sup>

***c. Insurance Policies, Surety Bonds, & Related Obligations***

On June 10, 2019, Insys filed the motion requesting the authority to continue to maintain their insurance policies and surety bonds, to honor all relating obligations, and to modify the automatic stay relating to the workers’ compensation policies.<sup>329</sup> The nature of Insys business required them to maintain the General Liability and Property Policies, the Professional Liability Policies, the Worker’s Compensation Policies (“WC Policies”) and the Global Clinical Trials Policies (“Clinical Trial Policies”) (further discussed below and collectively, the “Insurance Policies”) through several different insurance carriers (the “Insurers”).<sup>330</sup> As of the Petition Date, Insys believed they paid all fees related to the Insurance Policies, and were estimated to accrue fees from other obligations, including broker or advisor fees, assessments, and taxes, amounting to approximately \$187,500.<sup>331</sup>

Insys obtained insurance, including general liability, products liability, property, automobile, crime, equipment, marine cargo, umbrella, and excess liability policies (collectively,

---

<sup>325</sup> [Docket 7](#) at 8.

<sup>326</sup> *Id.* at 9.

<sup>327</sup> Order (Interim) (I) Approving Debtors Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Services, and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Service. [Docket 51](#) at 2.

<sup>328</sup> Final Order (I) Approving Debtors Proposed Form Of Adequate Assurance Of Payment To Utility Providers, (II) Establishing Procedures For Determining Adequate Assurance Of Payment For Future Services And Resolving The Objection Of Salt River Project, And (III) Prohibiting Utility Providers From Altering, Refusing, Or Discontinuing Utility Service. [Docket 237](#) at 2.

<sup>329</sup> Motion of Debtors Pursuant to 11 U.S.C. Sections 105(a), 362(d), 363(b), and 503(b) (I) for Authority to (A) Continue to Maintain Their Insurance Policies and Surety Bonds and (B) Honor All Obligations with Respect Thereto, and (II) to Modify the Automatic Stay with Respect to the Workers Compensation Policies. [Docket 24](#) at 3.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.* at 4.

the “GLP Policies”).<sup>332</sup> Similarly, Insys paid \$2,817,000 for the GLP Policies.<sup>333</sup> The GLP policies covered directors’ and officers’ liability, fiduciary liability, employment practices liability, and professional liability, Insys paid about \$1,581,000 in the aggregate.<sup>334</sup> For Insys’s WC Policies, Insys paid \$139,000 in premiums for the policy year, ending September 1, 2019.<sup>335</sup>

Insys believed they paid all prepetition amounts on their Insurance Policies but requested relief to be cautious.<sup>336</sup> In addition to the Insurance Policies were the clinical trial policies, which shielded Insys from liability related to clinical trials conducted in foreign countries such as Argentina, Canada, Italy, Mexico, and Poland.<sup>337</sup> The clinical trial policies were approximately \$43,000 for 2019, expiring in December, six months after the Petition Date.<sup>338</sup>

Insys requested relief to satisfy their Insurance Policies and Surety Bonds, under Bankruptcy Code section 503(b)(1), which provides that administrative expenses, including “the actual, necessary costs and expenses of preserving the estate” were permitted after notice and hearing.<sup>339</sup> Similarly, pursuant to Bankruptcy Code section 362(a)(1), Insys requested modification for WC Policy Claims, which would have allowed Insys employees to proceed with such claims.<sup>340</sup> Insys argued failing to modify the WC Policy would cause employees to leave or harm employee morale, in turn “severely disrupt[ing] Insys’s business and prevent[ing] a successful reorganization.”<sup>341</sup> On July 3, 2019, the Court granted Insys requests Insys’s motion regarding Insurance Policies and workers compensation.<sup>342</sup>

---

<sup>332</sup> [Docket 24](#) at 5.

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 6.

<sup>335</sup> *Id.* at 7.

<sup>336</sup> *Id.* at 8.

<sup>337</sup> *Id.* at 8.

<sup>338</sup> *Id.* at 9.

<sup>339</sup> *Id.* at 11; citing 11 U.S.C. §503(b)(1)(A).

<sup>340</sup> *Id.* at 15; citing 11 U.S.C. § 362(a)(1).

<sup>341</sup> *Id.* at 15-16.

<sup>342</sup> Order Granting Motion of Debtors (I) For Authority to (A) Continue to Maintain Their Insurance Policies and Surety Bonds and (B) Honor all Obligations with Respect Thereto, and (II) To Modify the Automatic Stay with Respect to the Workers Compensation Policies. [Docket 234](#).

### **3. Part Three of First Day Motions: Prepetition Obligations**

Prepetition obligations were payments and services that Insys agreed to before filing for chapter 11 proceedings, and these motions requested authority from the Court to pay and honor such obligations.

#### ***a. Prepetition Claims for Critical Vendors***

First, Insys filed a motion requesting the authority to pay certain prepetition claims for certain critical vendors, and for the Court to confirm the administrative expense priority of undisputed and outstanding prepetition claims.<sup>343</sup> Pursuant to Bankruptcy Code sections 105(a), 363(b), and 503(b), Insys requested entry the authority to pay non-priority, prepetition claims to vendors, whose goods and services were essential to Insys's operations ("Critical Vendors Claims").<sup>344</sup> These Critical Vendors ("Critical Vendors") provided various outsourcing operations, such as: storing, monitoring, packaging, and distributing services, also providing equipment and equipment-related services for manufacturing Insys's products, including Marketed Products, Subsys and Syndros (the "Marketed Products"), and developing Pipeline Products that were not ready for commercial use.<sup>345</sup> Insys requested the authority to establish a trade agreement to pay the Critical Vendor Claims through, consisting of terms that were just as favorable as ones made in the contracts before the filing, or any other recent contracts.<sup>346</sup>

Further, Insys claimed that paying the Critical Vendors was important because Insys's operations were highly specialized and relied on the Critical Vendors' key raw ingredients.<sup>347</sup> Insys claimed that switching vendors on such short notice would have been impractical and the business would be forced to jump a lot of hurdles to get new vendors approved, due to how heavily regulated Insys's business was.<sup>348</sup> Changes made to a vendor's product would have to be approved and comply with regulations on a federal and/or state level, which would likely cause further expense and delay in Insys's operations, especially for Insys's Pipeline Products, which had to be

---

<sup>343</sup> Motion to Pay Critical Trade Vendor Claims // Motion of Debtors for Entry of an Order (I) Authorizing Payment of Certain Prepetition Claims of Critical Vendors, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief. [Docket 8](#).

<sup>344</sup> *Id.* at 1.

<sup>345</sup> *Id.* at 2.; Pipeline Products *supra* note 18.

<sup>346</sup> *Id.*

<sup>347</sup> *Id.* at 4.

<sup>348</sup> *Id.* at 4-5.

produced in approved facilities before they could be approved for marketing.<sup>349</sup> Insys claimed that even minor changes cost millions and “required months to a year of regulatory study.”<sup>350</sup>

In addition, Insys lacked many long-term agreements because it operated on a purchase order basis.<sup>351</sup> If Critical Vendors failed to supply Insys with necessary services or goods, it would cause delays in producing the Marketed Product’s, which would have “adversely affect[ed] the willingness of wholesale pharmaceutical distributors or special retail pharmacies (the “Customers”) to do business with the [Insys] in the future.”<sup>352</sup> Thus, Insys claimed that failing to retain the Critical Vendors could have a “material adverse effect on [Insys’s] cash flow,” and could have hindered Insys’s ability to maximize their estate value.<sup>353</sup>

Further, if the Court rejected Insys’s request to pay the nonpriority, prepetition Critical Vendor Claims, Insys claimed they would be unable to adhere to FDA regulations and clinical studies for the Marketed Products.<sup>354</sup> Failing to perform the required clinical studies “could result in a withdrawal of [Insys’s] marketing authorizations or approvals.”<sup>355</sup> Further, Insys claimed that to rely on “highly specialized contract research organizations,” (“CRO”s) to conduct their clinical trials on both the Marketed and Pipeline Products.<sup>356</sup> Similarly, Insys claimed to rely on “third-party medical institutions clinical investigators, and contract laboratories,”(together with CROs (“Clinical Trial Vendors”).<sup>357</sup> The Clinical Trial Vendors conducted clinical research, and failing to pay their prepetition claims could have caused them to cease enrollment of new patients , which was likely to delay or terminate ongoing trials, which would have negatively impacted Insys’s business.<sup>358</sup> Moreover, many of the Critical Trial Vendors performed services for which no alternative vendors existed, and even where an alternative vendor existed, switching vendors

---

<sup>349</sup> [Docket 8](#) at 4.

<sup>350</sup> *Id.* at 5.

<sup>351</sup> *Id.* at 6.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> *Id.*

<sup>358</sup> *Id.* at 6-7.

during ongoing clinical trials would have “cause[d] severe disruption and impede[d] the results of such studies.”<sup>359</sup>

Insys and their restructuring professionals worked to develop a process that identified the Critical Vendors and quantified the relief necessary to avoid “immediate and irreparable” harm to Insys.<sup>360</sup> The process provided the following factors: type of good/service provided by vendor/supplier; whether goods/services were essential; whether contract or a purchase order basis; whether full or partial payment was necessary; alternative vendor options; whether failing to pay the vendor jeopardized Insys’s valuable proprietary interest in their products.<sup>361</sup>

Insys requested to use appropriate efforts to require each Critical Vendor to “provide as favorable trade terms, practices, and programs, including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs, as those trade terms, practices, and programs in place in the 120 days prior to the Petition Date.”<sup>362</sup> Thus, Insys requested the Court require each Critical Vendor to enter into a trade agreement, as a condition of a Critical Vendor Claim.<sup>363</sup> If Trade Agreements were not approved, Insys requested limited authority to pay Critical Vendor Claims because Insys assumed that Critical Vendors were likely to cease timely performance, or delivery, of goods or services that were critically important to Insys’s business.<sup>364</sup>

Additionally, Insys addressed pre-petition outstanding orders with various manufacturers, suppliers, and vendors for good or services (“Outstanding Orders”), stating these obligations were to be treated as general unsecured claims in the chapter 11 cases.<sup>365</sup> Therefore, under Bankruptcy Code section 503(b), Insys requested the Court to grant administrative expense priority to satisfy such obligations in the ordinary course of business.<sup>366</sup>

---

<sup>359</sup> [Docket 8](#) at 7.

<sup>360</sup> *Id.*

<sup>361</sup> *Id.* at 8.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.* at 9.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.* at 9-10.

<sup>366</sup> *Id.* at 10.



On June 11, 2019, the Court entered an Interim Order, granting Insys's requests as explained above.<sup>367</sup> Finally, on July 3, 2019, the Court issued a Final Order affirming the grants under the Interim Order.<sup>368</sup>

***b. Prepetition Claims for Taxes***

Pursuant to Bankruptcy Code sections 105(a), 363(b), and 507(a), Insys requested authority, without direction, taxes, fees, and other charges later established upon audit or otherwise, that were owed for periods prior to the Petition Date (collectively, the "Taxes and Fees").<sup>369</sup> Insys was required to pay certain Taxes and Fees, including: (a) Business and Commercial Activity Taxes, (b) Franchise Taxes, (c) Personal Property Taxes, and (d) Regulatory Miscellaneous Fees.<sup>370</sup> These payments were usually for a large sum of money, for example, in 2018, Insys paid an aggregate amount of approximately \$2,800,000 in Taxes and Fees.<sup>371</sup> In September 2018, Insys paid \$1,859,590 to cover following year.<sup>372</sup> Moreover, as of the Petition Date, Insys expected to incur fees related to five prescription strength doses of their Subsys product, and one dose Syndros product.<sup>373</sup> The FDA had not announced the applicable program fee rates for 2019, so Insys claimed that they could not anticipate the August 2019 invoice amount.<sup>374</sup>

Insys claimed to have paid on time, but still anticipated to incur approximately \$371,900 in Taxes and Fees during the chapter 11 cases.<sup>375</sup> Thus, Insys sought to enjoin Tax Authorities

---

<sup>367</sup> Order (Interim) (I) Authorizing Payment of Certain Prepetition Claims of Critical Vendors, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, & (III) Granting Related Relief. [Docket 52](#).

<sup>368</sup> Final Order (I) Authorizing Payment Of Certain Prepetition Claims Of Critical Vendors, (II) Confirming Administrative Expense Priority Of Undisputed And Outstanding Prepetition Orders, And (III) Granting Related Relief. [Docket 238](#).

<sup>369</sup> Motion of Debtors Pursuant to 11 U.S.C. Sections 105(a), 363(b), and 507(a) for Authority to Pay Certain Prepetition Taxes and Fees [Docket 23](#).

<sup>370</sup> *Id.* at 3.

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.* at 4; Although it is worth noting that none of the \$371,900 was anticipated to become due and payable within the period between the Petition Date and the hearing to consider this Motion on a final basis (the "Interim Period").

from taking actions that interfered with the chapter 11 cases, or with Insys's ongoing business.<sup>376</sup> As of the Petition Date, Insys believed to have paid all fees, but still requested the authority to pay any prepetition taxes owed, including any amount later determined by Insys.<sup>377</sup>

Insys argued that failing to pay these Taxes and Fees risked causing an increase of secured claims held by Taxing Authorities against their estates.<sup>378</sup> Moreover, Insys argued that without the grant of relief requested, many Taxing Authorities could have over secured claims against Insys's estates related to the Taxes and Fees.<sup>379</sup> Under Bankruptcy Code section 506(b), over secured Claims may accrue interest during a chapter 11 case.<sup>380</sup> Insys argued that certain Taxing Authorities may have had the ability to hold Insys's directors and officer's personally liable if they failed to pay these taxes.<sup>381</sup> Further, Insys asserted that it would harm their reputation and potential ability to sell their two most revenue generating products, by failing to pay these Taxes and Fees.<sup>382</sup> On July 3, 2019, the Court granted Insys's motion for Taxes and Fees.<sup>383</sup>

***c. Motion to Approve Established Procedures & Schedules for Estimation Proceedings***

Under Bankruptcy Code sections 105(a) and 502(c), Insys requested the Court enter an order establishing procedures to estimate certain categories of claims.<sup>384</sup> Specifically, Insys requested the Court approve: (1) a proposed discovery timeline and an estimation proceeding before confirming the plan, (2) the proposed order protecting confidential information produced by the estimation process, (3) estimated actual and compensatory damages subsumed in each Claim Category for purposes of plan allocation and settling claim distribution reserves, and (4)

---

<sup>376</sup> [Docket 23](#) at 4.; Ongoing Business included personal liability actions against directors, officers, and other key employees, liens asserted on Insys's property, or penalties and/or significant interest on any past-due taxes

<sup>377</sup> *Id.* at 5.

<sup>378</sup> *Id.* at 11.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> *Id.* at 14.

<sup>382</sup> *Id.* at 16.

<sup>383</sup> Order Authorizing Debtors to Pay Certain Prepetition Taxes and Fees [Docket 233](#).

<sup>384</sup> Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. Sections 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, & (III) Subordination of Certain Penalty Claims [Docket 29](#) at 3.

subordination of penalty and punitive damage claims.<sup>385</sup> Bankruptcy Code section 502(c) requires the Court to estimate “any contingent or unliquidated claim.”<sup>386</sup> Insys clarified that they sought the Court to find the claims in category 4 to be subordinate to all general unsecured claims, including actual and compensatory claims, not to estimate liability with respect to the individual Claims.<sup>387</sup> Insys believed that established estimation proceedings were appropriate to avoid delay and ensure transparency for all parties participating in the process in cases like theirs with such uncertain litigation costs.<sup>388</sup> Insys hoped that the chapter 11 process would serve as a catalyst for settlement, expecting that setting a definitive schedule would prove to be a constructive framework for potential negotiations.<sup>389</sup>

Insys’s proposed the following procedures and schedule for Claims Categories estimation proceeding, by first serving their report, including expert analysis and good faith estimates of their general unsecured liability in the Claims Categories, within five days after entry of the proposed scheduling order.<sup>390</sup> Next, within 10 days entering the proposed scheduling order, any interested party, that sought to submit evidence in connection with the estimation hearing, was to file a notice of participation, and was to file a notice served on Insys and other participants, providing their decision to use and expert or not, and the identity of the within 21 days after the entry of the proposed scheduling order.<sup>391</sup>

When Insys received a party-in-interest’s participation notice, they gave that party access to Insys’s documents.<sup>392</sup> Any interested party had 24 days after entry of the proposed scheduling order to make additional fact discovery requests that were not already made accessible by Insys.<sup>393</sup> Responses and objections were to be served on Insys and the party who made the initial request within 21 days of such request.<sup>394</sup> Parties had up to 14 days after service of the responses and

---

<sup>385</sup> [Docket 29](#) at 5.

<sup>386</sup> *Id.* at 12; 11 U.S.C § 502(c).

<sup>387</sup> *Id.* at 5.

<sup>388</sup> *Id.* at 14.

<sup>389</sup> *Id.* at 11.

<sup>390</sup> *Id.* at 15.; See also pages 15-17 for estimation procedures and Exhibit A for proposed scheduling order.

<sup>391</sup> *Id.* at 15-16.

<sup>392</sup> *Id.* at 16; Insys’s documents included those produced in connection with various investigations and actions, and pleadings and settlements also related to those actions.

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

production to make fact depositions.<sup>395</sup> Within 15 days of the General Bar Date or the completion of fact depositions, whichever came later, parties were to provide notice of their intent to use expert testimony regarding Insys's liability for one or more of the Claims Categories.<sup>396</sup> Then, if Insys sought to present expert rebuttal reports, they were to serve them within 14 days of service of the expert reports, and all parties' expert were to be available for a deposition within 14 days of service of such rebuttal reports.<sup>397</sup>

An emergency hearing could be requested by any party at interest, but absent such request, a hearing to estimate liability for Subsys Claims in each Claim Category would be held, if the Court was available, within 15 days of the completion date for expert depositions.<sup>398</sup> The parties were to receive copies of exhibits relating to the estimation proceedings seven days prior to the estimation hearing, and pre-trial briefs were to be filed with the Court four business days prior to the estimation hearing.<sup>399</sup> Additionally, Insys requested that the Court approve their proposed order to protect disclosure of individuals medial information, that was classified as confidential by HIPPA.<sup>400</sup>

Finally, Insys requested the Court to maximize all claims for actual and compensatory damages by subordinating all claims that sought.<sup>401</sup> Bankruptcy Code section 726(a)(4) states "any fine, penalty, or forfeiture, or for multiple or exemplary, or punitive damages," are subordinated to general unsecured creditors in chapter 7.<sup>402</sup> However, according to case law, section 723(a)(4) is also applicable to chapter 11 cases through § 1129(a)(7).<sup>403</sup> Therefore, Insys requested the Court to prioritize actual and compensatory damages making all claims that sought penalties subordinate to all general unsecured claims.<sup>404</sup> Similarly, many objections argued that the proposed estimations failed to provide adequate justice for their action and were fundamentally

---

<sup>395</sup> [Docket 29](#) at 15.

<sup>396</sup> *Id.*

<sup>397</sup> *Id.* at 16.

<sup>398</sup> *Id.* at 17.

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* at 19.

<sup>402</sup> *Id.*; citing 11 U.S.C. § 726(a)(4).

<sup>403</sup> *Id.*; See *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 723–24 (D. Del. 2005); *In re Motors Liquidation Co.*, 571 B.R. 565, 576 (Bankr. S.D.N.Y. 2017); citing 11 U.S.C. § 1129(a)(7).

<sup>404</sup> *Id.* at 20.

one-sided.<sup>405</sup> On July 2, 2019, Insys entered an agreement with the Creditors' Committee and certain State Attorneys General regarding estimation procedures.<sup>406</sup>

Insys began negotiating with the Creditors' Committee, and certain state AGs to come to an agreement on the procedures as it pertains to this motion.<sup>407</sup> During the adversary proceedings, the Court entered the *Agreed Order Regarding Estimation Motions, PI Motion, and Approving Case Procedure*, which exemplified all the negotiations the aforementioned parties worked toward.<sup>408</sup> The agreed order provided the Case Protocol, which was also described in the disclosure statement to the second amended plan.<sup>409</sup> When the Court approved the disclosure statement, therefore approving the Case Protocol, Insys withdrew this motion.<sup>410</sup>

## VI. The 363 Sale

### *a. Motion for Sale of Property Under 363(f)*

After facing extensive litigation and related expenses, and as Subsys revenues substantially declined, Insys developed a “multi-faceted” chapter 11 plan to resolve their liabilities, to maximize the value for their stakeholders.<sup>411</sup> The plan included increasing cash value of their estates and

---

<sup>405</sup> Objection of Class Creditors to Debtors' Motion for (I) Entry of Orders Pursuant to 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims [Docket 153](#); Objection of the MDL Plaintiffs to Motion of Debtors for (I) Entry of Orders Pursuant to 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims [Docket 157](#); Objection Municipality Litigation Claimants Objection to Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. Sections 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims Filed by The City of Prescott, AZ [Docket 162](#); Non-MDL Municipal Plaintiffs Joinder in Objections of the MDL Plaintiffs and Various Municipalities to Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims [Docket 171](#).

<sup>406</sup> Agreed Order Regarding Estimation Motion, PI Motion, and Approving Case Procedures. [Adversary Proceeding Docket 45](#).

<sup>407</sup> Disclosure Statement or Second Amended Joint Chapter 11 Plan of Liquidation For Solicitation. [Docket 956](#) at 43; [Adversary Proceeding Docket 45](#).

<sup>408</sup> *Id.*

<sup>409</sup> [Docket 956](#) at 43; See appendix for Case Protocol.

<sup>410</sup> *Id.*

<sup>411</sup> Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors Assets, (B) Scheduling Auction for and Hearing to Approve Sale of Debtors Assets, (C) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief; and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests, and Encumbrances,

using that value to pay claimants instead of using it to fund unnecessary chapter 11 and other legal costs.<sup>412</sup> A part of the plan was to solicit bids for an auction for the sale of Insys's assets related to Subsys, Syndros, their Pipeline Products, and other CBD products.<sup>413</sup> Insys requested the approval of the bidding and auction procedures (the "Bidding Procedure").<sup>414</sup>

Pursuant to all applicable law, Insys requested the following: (1) authorization the Bidding Procedures, (2) asset auctions to be held on August 2, 2019, (3) the Court to schedule a hearing to consider the proposed sale transactions, (4) authorization of notice procedures for all bidding procedures, and (5) authorization and approving procedures for the assumption and assignment of contracts and leases, and (6) any other related relief.<sup>415</sup> Further, under Bankruptcy Code section 363(f), Insys requested that, the assets be sold "free and clear of any lien, claim, interest and other encumbrance."<sup>416</sup> Moreover, Insys asked the Court to apply Bankruptcy Code section 365(a), approving Insys, as debtor in possession, to assume or reject any executory contract or unexpired lease.<sup>417</sup> Insys argued that their assumption of contracts and leases satisfied Bankruptcy Code section 365 and would be a sound exercise of their business judgment.<sup>418</sup>

Following an entry of the Bidding Procedures Order, Insys requested the Court's approval of one or more orders that authorized the sale of the assets, except those permitted by Insys, and the assumption and assignment of proposed assumed contracts and leases in connection with the Sale Transactions.<sup>419</sup>

As mentioned, Insys employed JMP to serve as their investment banker and to solicit sales before these chapter 11 cases.<sup>420</sup> JMP contacted 83 parties, providing them with a memorandum

---

(B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief Fee Amount \$181 [Docket 32](#) at 2.

<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

<sup>415</sup> *Id.* at 3.; Sections 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. §§ 2002, 6004, 6006, 9007, 9008, and 9014, and Local Rules 2002-1, 6004-1, and 9006-1

<sup>416</sup> *Id.* at 25; 11 U.S.C. § 363(f).

<sup>417</sup> *Id.*; 11 U.S.C. § 365(a).

<sup>418</sup> *Id.* at 26-27.

<sup>419</sup> *Id.* at 4.

<sup>420</sup> *Id.* at 5.

containing confidential information regarding Insys's business.<sup>421</sup> Four of the 83 parties expressed interest in a potential sale or license of rights relating to Subsys.<sup>422</sup> By the end of January 2019, only three of the interested entities had submitted written proposals while the fourth indicated that it intended to submit a written proposal in late April 2019.<sup>423</sup>

As stated above, in April 2019, Insys employed Lazard to "explore opportunities to engage in a strategic partnership or financing transaction" with respect to Insys's products.<sup>424</sup> Lazard was therefore transferred all of JMP's work on the Subsys related transaction, and continued marketing Insys's other products.<sup>425</sup> Lazard contacted 51 entities and 28 were granted access to a virtual data room that contained confidential information regarding the assets they expressed interest in.<sup>426</sup> Four of the 28 who received access expressed interest in the transaction process and were granted access to another virtual room which had additional confidential information regarding the Pipeline Products.<sup>427</sup> By March 2019, Insys had four non-binding indications of interest for some of their Pipeline Products and three of those four were selected to continue the next round of submissions.<sup>428</sup> Presentations were held to management and the one interested party conducted an on-site visit at Insys's corporate office in April that same year.<sup>429</sup> Unfortunately, as of the Petition Date, all interested parties withdrew their offers.<sup>430</sup>

In support of this motion, Andrew Yearly's declaration was filed.<sup>431</sup> Yearly was managing director for Lazard's Restructuring Group, and worked for Lazard since 1998, claiming he could

---

<sup>421</sup> [Docket 32](#) at 5.

<sup>422</sup> *Id.* at 5-6.

<sup>423</sup> *Id.* at 6.

<sup>424</sup> *Id.* at 25.; See IV. c. i. JMP Securities Review.

<sup>425</sup> *Id.*

<sup>426</sup> *Id.* at 7.

<sup>427</sup> *Id.*

<sup>428</sup> *Id.*

<sup>429</sup> *Id.* at 7-8.

<sup>430</sup> *Id.* at 8.

<sup>431</sup> Declaration of Andrew Yearley in Support of Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors Assets, (B) Scheduling Auction for and Hearing to Approve Sale of Debtors Assets, (C) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief; and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief. [Docket 33](#) at 1.

testify to its credibility and success in complex financial restructurings.<sup>432</sup> Yearly attested that Insys's Bidding Procedures were designed to facilitate the most "robust and competitive" bidding process possible under the circumstances.<sup>433</sup> Furthermore, Yearly stated that the Bidding Procedures provided an adequate framework, allowing Insys the flexibility to consider each bid carefully to make a strong evaluation of which bid to select.<sup>434</sup> For example, the option to purchase a part of the assets without having to bid for all relating assets.<sup>435</sup> Finally, Yearly supported Insys's decision to reserve their rights to forego the sale of assets if the bids were not sufficient.<sup>436</sup> Further, Yearly believed that the Insys's proposed post-petition sale process was reasonable and appropriate given the prepetition marketing efforts and prior due diligence conducts.<sup>437</sup>

The Post-Petition sales consisted of marketing Insys's assets related to: (1) Subsys; (2) Syndros, and CBD related products; (3) epinephrine; (4) Naloxone; (5) Buprenorphine.<sup>438</sup> Insys consulted their advisors and the Creditors' Committee and developed Bidding Procedures that governed some aspects of the Post-Petition sales.<sup>439</sup> On July 2, 2019, the Court rendered an order that approved the Bidding procedures.<sup>440</sup> The Bidding Procedures allowed for parties to submit bids on individual or combinations of the assets of Insys, and afforded Insys the ability to reject offers that did not prove sufficient for the assets.<sup>441</sup>

#### ***b. Hikma Transaction***

On August 5, 2019, Insys and Hikma Pharmaceuticals USA, Inc. ("Hikma"), entered into an asset purchase agreement for Insys's epinephrine 7mg and 8.5mg unit-dose nasal spray products, as well as the naloxone 8mg unit-dose nasal spray products (collectively "Hikma Products").<sup>442</sup> The purchase agreement agreed to sell to Hikma the Hikma Products pursuant to

---

<sup>432</sup> [Docket 33](#) at 2.

<sup>433</sup> *Id.* at 6.

<sup>434</sup> *Id.* at 6-7.

<sup>435</sup> *Id.* at 7.

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

<sup>438</sup> [Docket 956](#) at 43.

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

<sup>441</sup> *Id.*

<sup>442</sup> *Id.*



Bankruptcy Code section 363(b).<sup>443</sup> Along with the Hikma Products, Insys agreed to sell certain equipment and liabilities related to the products (collectively “Hikma Purchased Assets”).<sup>444</sup> Hikma agreed to pay Insys \$17,000,000 at the closing of the transaction, as well as the cure costs for the purchased contracts that were assumed and assigned to Hikma under the asset purchase agreement.<sup>445</sup> On August 22, 2019, the Court entered an order approving of the Hikma Asset Purchase Agreement, as well as the sale to Hikma.<sup>446</sup> The transaction closed on August 29, 2019.<sup>447</sup>

***c. Chilion Transaction***

On August 6, 2019, Insys agreed to sell to Chilion Group Holdings US, Inc. (“Chilion”), Insys’s: (1) CBD formulations; (2) THC programs of Syndros Oral Dronabinol Solution; and (3) Buprenorphine products, (collectively “Chilion Products”).<sup>448</sup> Insys also agreed to sell Chilion certain related equipment and other assets (collectively “Chilion Purchased Assets”).<sup>449</sup> In return, Chilion agreed to pay Insys \$12,200,000 in cash at the close of the transaction.<sup>450</sup> In addition, Chilion agreed to pay cure costs for the purchased contracts, and the lease for Insys’s Round Rock Facility, as well as to assume certain liabilities.<sup>451</sup> Chilion also agreed to offer employment to certain employees who worked for Insys.<sup>452</sup> On August 23, 2019, the Court rendered an order approving the Chilion asset purchase agreement and the sale of those assets.<sup>453</sup>

However, on October 23, 2019, Insys and Chilion amended the asset purchase agreement, and filed a copy with the court, dated October 25, 2019.<sup>454</sup> The amendment included Insys’s

---

<sup>443</sup> [Docket 956](#) at 43.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> *Id.* at 44.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*

<sup>452</sup> *Id.* at 43

<sup>453</sup> *Id.*

agreement to sell Chilion additional equipment, as well as intellectual property, and a lease agreement for Insys's Ellis Facility.<sup>455</sup> In exchange, Chilion agreed to pay an additional \$105,000 in cash at the closing of the transaction.<sup>456</sup> Chilion agreed to pay Insys for the funds lost due to the delay, which included; (1) \$856,797.26 in cash at the execution of the amendment; (2) payment to the FDA or to Insys as reimbursement of an amount equal to the aggregate fee amount which was payable pursuant to the Prescription Drug User Fee Act with respect to Syndros; (3) reimbursement in cash to Insys for any third party costs and expenses up to \$100,000 dollars, to be paid at the closing of the transaction; and (4) all reasonable costs and expenses up to \$200,000 in the aggregate to Insys for certain professional services performed by Insys's Advisors, which we to be paid at closing.<sup>457</sup> The Amendment provided certain other negotiations to the purchase agreement, and stated that the transaction would close by October 31, 2019, which it did.<sup>458</sup> The parties agreed that the employees would be paid 107.5% of what Insys had originally paid them for the services.<sup>459</sup>

#### ***d. BTcP Subsys Transaction***

On September 1, 2019, Insys and BTcP Pharma, LLC ("BTcP") entered into an asset purchase agreement for strengths, doses, and formulas in the world of Insys's Subsys Product.<sup>460</sup> BTcP agreed to assume certain specified liabilities, including the cure costs, as well as post-closing royalty payments based on the sale of Subsys.<sup>461</sup> This royalty was in connection with some of BTcP's products, and was only until the expiration of the last to expire orange book listed patent in respect to the products.<sup>462</sup> The estimated number of royalties Insys was to receive was approximately \$52 million over a 15 year period.<sup>463</sup> Further, prior to the second anniversary of the closing date, BTcP agreed to pay Insys the sum of the total closing date accounts annually collected by BTcP and the value of Subsys product transferred to BTcP at the closing, even if it is

---

<sup>454</sup> [Docket 956](#) at 43.; *See also* Notice of Amendment to Asset Purchase Agreement for Certain Assets Relating to CBD Formulations, Syndros, and Buprenorphine. [Docket 816](#).

<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Id.* at 45.

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Id.* at 46.

sold by BTcP at Insys's cost of acquisition of the inventory.<sup>464</sup> This later group of payments were estimated to be \$8.2 million dollars.<sup>465</sup> Insys also agreed to pay all costs incurred from third-parties due to the observation of the FDA form 483 letter related to Subsys products, until September 30, 2019, and after that BTcP agreed to pay those costs.<sup>466</sup> On September 19, 2019, the Court approved the transaction, which closed on September 26, 2019.<sup>467</sup>

***e. Pharmbio Subsys Transaction***

On September 25, 2019, Insys and Pharmbio Korea, Inc. ("Pharmbio") entered into an asset purchase agreement for specific intellectual property, records and other assets related to the strength, doses, and formulations of Subsys, which covered the territories excluded in the BTcP sale.<sup>468</sup> Insys agreed to sell, transfer, and assign these products to Pharmbio.<sup>469</sup> In exchange, Pharmbio agreed to pay \$1,200,000 to Insys at the closing of the transaction.<sup>470</sup> The Court approved the Pharmbio asset purchase agreement on October 16, 2019, and when the second amended plan was filed, this transaction had not been closed.<sup>471</sup> Finally, the sale went through in December, and Insys started to make transfers to Pharmbio.<sup>472</sup>

***f. De Minimis Sale to Renaissance Lakewood, LLC.***

On December 13, 2019, Insys filed a motion requesting the Court approve their procedures for the expedited sale, transfer or abandonment of De Minimis Assets, and entry into exclusive

---

<sup>464</sup> [Docket 956](#) at 46.

<sup>465</sup> *Id.* at 45.

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*; Exhibit B "Sales Agreement." [Docket 638](#).

<sup>468</sup> *Id.*; Order (1) Approving Asset Purchase Agreement Between Insys Therapeutics, Inc. and Pharmbio Korea, Inc., (2) Approving Sale of Certain Purchased Assets Relating to Subsys Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to Bankruptcy Code section 105 and 363(b), (f) and (m) and (3) Granting related Relief. [Docket 767](#).

<sup>469</sup> *Id.*

<sup>470</sup> *Id.* at 46.

<sup>471</sup> *Id.* at 47.

<sup>472</sup> Debtor-In-Possession Monthly Operating Report for Filing Period December 1 through 31, 2019 Filed by Insys Liquidating Trustee. [Docket 1241](#) at 7.

auction and Sales Agreement.<sup>473</sup> The de minimis assets were those that Insys used to operate their pharmaceutical business, including “lab equipment and related materials, general office equipment, including printers, copiers, and intellectual property that Insys determined to be too costly to pay fees on.”<sup>474</sup> Pursuant to Bankruptcy Code section 363, Renaissance Lakewood, LLC purchased these de minimis assets for \$275,000.<sup>475</sup> On December 16, 2019, the Court approved the sale over the de minimis assets.<sup>476</sup>

## **VII. The Liquidating Plan Development & Filing**

On September 17, 2019, Insys Filed their Joint Chapter 11 Plan of Liquidation (“Original Plan”), the disclosure statement and other applicable documents.<sup>477</sup> A disclosure statement is a “document that must contain information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor to make an informed judgment about the debtor’s plan of reorganization.”<sup>478</sup> A new disclosure statement was to be filed with every amended plan.

### ***a. Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims***

Under Bankruptcy Code section 507(a)(2) and 507(b), Administrative Expense Claims were claims were: (i) costs during the chapter 11 cases, that Insys needed to operate and preserve their estate,; (2) professional fees; (3) all fees and charges assessed against the Estate under Bankruptcy Rule 1911 through 1930 and the Tax Code; (4) “Allowed” claims that were deemed “allowed” in the Final order pursuant to Bankruptcy Code section 546(c)(2); and (5) cure claims, which were cured by assignment of contracts of unexpired leases under Bankruptcy Code section 365(a).<sup>479</sup> All Administrative Expense Claims were to be filed by September 9, 2019 (“Administrative Expense Claims Bar Date”), not including Professional Claims Fees (defined below) and Administrative Expense Claims arising out of the ordinary course of business after the

---

<sup>473</sup> Motion For Sale of Property Free and Clear of Liens under Section 363(f)(FEE) // Motion of Debtors Pursuant to 11 U.S.C. 105(a), 363, and 554 and Fed. R. Bank. P. 2002 for Approval of (I) Procedures for the Expedited Sale, Transfer or Abandonment of De Minimis Assets, and (II) Entry into an Exclusive Auction and Sales Agreement Fee Amount \$181. [Docket 985](#) at 1.

<sup>474</sup> *Id.* at 5

<sup>475</sup> *Id.* at 1.

<sup>476</sup> Order (I) Approving Asset Purchase Agreement among the Debtors and the Buyer, (2) Approving Sale of the Transferred Assets relating to Certain Equipment Free and Clear of All Liens, Claims, Encumbrances and Other Interests pursuant to Bankruptcy Code §§ 105 and 363(b), (f) and (m), and (3) Granting Related Relief. [Docket 990](#).

<sup>477</sup> Chapter 11 Plan of Liquidation Joint Chapter 11 Plan of Liquidation [Docket 612](#) at 1.

<sup>478</sup> [Definition of Disclosure Statement from U.S. Courts](#)

<sup>479</sup> [Docket 612](#) at 8.

Petition Date, which were to be filed by October 24, 2019.<sup>480</sup> Similarly, so long as they were properly and timely filed, and the Liquidating Trustee of the Court did not properly object (within 120 days after the Effective Date, or otherwise specified by the Court), the claim would become an “Allowed Administrative Expense Claim.”<sup>481</sup> If an objection was filed, the claim would only be “Allowed” if deemed so by the Final Order, or if the Claim was settled or otherwise resolved by the Liquidating Trustee.<sup>482</sup>

### ***b. Professional Fee Claims***

Professional Fee Claims (“Professional Fee Claims”) were claims made by professionals for providing services, or incurring costs, during the chapter 11 cases, that were unpaid as of the Effective date.<sup>483</sup> These Claims were to be filed within 45 days after the Effective Date.<sup>484</sup> Similarly, the Original Plan established the Professional Fee Escrow Account, which was an interest-bearing account, funded on the Effective Date, by Insys with an estimated amount of all of the Professional Fee Claims.<sup>485</sup> On the Effective Date, or as soon as possible after, Insys was required to transfer the Professional Fee Escrow Account to the ILT.<sup>486</sup> If all professionals were paid in full and no additional claims were pending, any remaining amount in the Professional Fee Escrow Account was to transfer to the ILT Recovery Fund (“ILT Recovery Fund”), which was established distribute all Allowed Non-PI General Unsecured Claims, and fund, with cash available, all Non-PI General Unsecured Claims (cash available defined as, “Estate Distributable Value”).<sup>487</sup> If there were insufficient funds in the Professional Fee Escrow Account, the unpaid Professional Fee Claims were to be reclassified as an Allowed Administrative Expense Claim.<sup>488</sup>

### ***c. Summary of Classification of Claims and Interests***

<u>Classes</u>	<u>Claims and Interests</u>	<u>Status</u>	<u>Voting Rights</u>
<b>Class 1</b>	Secured Claims	Unimpaired	No (Presumed to Accept)
<b>Class 2</b>	Other Priority Claims	Unimpaired	No (Presumed to Accept)

---

<sup>480</sup> [Docket 612](#) at 8.

<sup>481</sup> *Id.* at 30; See appendix for Allowed Administrative Expense Claim

<sup>482</sup> *Id.*; See also section 7.5 of [Docket 612](#).

<sup>483</sup> *Id.* at 22.

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*; See appendix for Professional Fee Escrow Account.

<sup>486</sup> *Id.* at 30

<sup>487</sup> *Id.* at 7, 14.

<sup>488</sup> *Id.* at 30

<b>Class 3</b>	Trade and Other Claims	Impaired	Yes
<b>Class 4</b>	Insurance Related Claims	Impaired	Yes
<b>Class 5</b>	Hospital & <sup>NAS</sup> Monitoring Claims	Impaired	Yes
<b>Class 6</b>	DOJ Claims	Impaired	Yes
<b>Class 7</b>	SMT Group Claims	Impaired	Yes
<b>Class 8</b>	Personal Injury Claims	Impaired	Yes
<b>Class 9</b>	510(a)/(b) Subordinate Claims	Impaired	No (Presume to Reject)
<b>Class 10</b>	510(c) Subordinate Claims	Impaired	No (Presumed to Reject)
<b>Class 11</b>	Intercompany Claims	Impaired	No (Presumed to Reject)
<b>Class 12</b>	Equity Interests	Impaired	No (Presumed to Reject)

*i. Original Plan's Voting Procedures*

The Original Plan provided that only holders of Classes 3-8 Claims were entitled to vote to accept or reject the plan (the “Voting Classes”).<sup>489</sup> A class accepted the Original Plan if: (1) more than 2/3 the amount (dollar amount) of the holders of the claims in the Voting Class voted to accept the plan, and (2) if more than 1/2 the number (number of claims) the holders of the Claims in the Voting Class voted to accept the plan.<sup>490</sup> Bankruptcy Code section 1126(f) made Classes 1 and 2 unimpaired, and deemed to have accepted the plan.<sup>491</sup> Bankruptcy Code 1126(g) made Classes 9 through 12 impaired, but were to receive nothing under the Original Plan, and therefore, were deemed to reject the Original Plan.<sup>492</sup>

Bankruptcy Code section 1129(b) provides that if a class rejected the plan, or was entitled to vote but failed to, Insys could cramdown those rejections or failures to vote by (1) seeking confirmation anyway or (2) amending or modifying the Original Plan; if controversy arose out of impaired, or unimpaired, claims or interests, the Court was to resolve that controversy before, or on the Confirmation Date.<sup>493</sup>

---

<sup>489</sup> [Docket 612](#) at 32.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* at 33; citing 11 U.S.C. § 1126(f).

<sup>492</sup> *Id.*; citing 11 U.S.C. § 1126(g).

<sup>493</sup> *Id.* at 32.

ii. Treatment of Claims

1. *Unimpaired Claims*

Class 1, Allowed Secured Claims, were to receive: (1) payment in full under Bankruptcy Code section 506(a); (2) reinstatement under Bankruptcy Code section 1124; or (3) any treatment making the claim unimpaired.<sup>494</sup> Under Bankruptcy Code section 1126(f), Secured Claims were unimpaired and deemed to accept the Original Plan.<sup>495</sup> Class 2, Other Priority Claims were treated in the same manner as class 1 as they were unimpaired and deemed to accept the plan.<sup>496</sup>

2. *Impaired Claims*

Under the Original Plan, Classes 3-8 were impaired and were entitled to vote.<sup>497</sup> Class 3, Trade and Other Unsecured Claims, were to be paid their Pro Rata share of: (1) 100% of all Category 1 Distributions, (2) .5% of all Category 2 Distributions, or (3) 7% of Indemnity or Preference Proceeds, which in the aggregate was not to exceed the cap on recovery.<sup>498</sup> Class 4, Insurance Related Claims, were to be paid their Pro Rata share, based upon the determination by the ILT Claims Arbiter, of 68.5% of all Category 2 Distributions from the Insys Liquidation Trust.<sup>499</sup> Class 5, Hospital and NAS Monitoring Claims, was to receive its pro rata share from the ILT, based upon the ILT Claims Arbiter's determination, of 31% of all Category 2 Distributions.<sup>500</sup> Class 6, DOJ claims, as restitution with respect to the Allowed DOJ Civil Claim and any additional restitution claims, was to receive from the ILT, 31.4% of all Category 3 Distributions.<sup>501</sup> However, the DOJ Settlement Order prohibited the DOJ from receiving distributions for the Allowed DOJ Civil Claim until the "GUC Recovery Reallocation Threshold," was met, which was no greater than \$40.9 million.<sup>502</sup> Class 7, SMT Group Claims, were to receive as restitution, from the ILT, its Pro Rata share, determined by SMT Group Claims holders or by the Liquidating Trustee, and if left undecided, 68.6% of Category 3 Distributions, 5% of any Products Liability Insurance

---

<sup>494</sup> [Docket 612](#) at 32.

<sup>495</sup> *Id.*

<sup>496</sup> *Id.* at 34.

<sup>497</sup> *Id.* at 34-36.

<sup>498</sup> *Id.* at 34; See appendix for Category 1 and 2 Distributions, Preference and Indemnity Proceeds, Pro Rata.

<sup>499</sup> *Id.*; See appendix for ILT Claims Arbiter.

<sup>500</sup> *Id.* at 35.

<sup>501</sup> *Id.*; See appendix for Category 3 Distributions.

<sup>502</sup> *Id.*; See appendix for GUC Recovery Reallocation Threshold.

Proceeds, and 100% interest in any Excess Products Liability Insurance Proceeds.<sup>503</sup> However, no Class 7 Claimant was permitted more than the amount of their claim.<sup>504</sup> Class 8, Personal Injury Claims, was to receive its Pro Rata share of 95% of any Products Liability Insurance Proceeds from the VRT.<sup>505</sup>

Under Bankruptcy Code section 1126(g), Classes 9-12 were impaired and deemed to reject the Original Plan.<sup>506</sup> Under the Original Plan and Bankruptcy Code sections 510(a) and 510(b) Class 9, 510(a) and 510(b) Subordinated Claims, were subordinated.<sup>507</sup> No further action was required on these claims, as they were deemed, “expunged, discharged, released, and extinguished without further action by or order of the Court.”<sup>508</sup> Under the Original Plan and Bankruptcy Code section 510(c), Class 10, 510(c) Subordinated claims, were treated in the same manner as Class 9, but were subordinated.<sup>509</sup> Class 11, Intercompany Claims, and Class 12, Equity Interest Claims, were also deemed “expunged, discharged, released, and extinguished without further action by or order of the Court,” and were not to receive any property under the Original Plan.<sup>510</sup>

#### *d. Means for Implementation*

Insys asserted that confirmation by the Court would have been proper, under Bankruptcy Code section 1123 and 9019, as this structure, along with their trust formation transactions and consolidation of estate value constituted a good faith compromise and settlement pursuant to Bankruptcy Rule 9019.<sup>511</sup> Insys Therapeutics, Inc. and all of its subsidiaries were substantively consolidated into one chapter 11 case, meaning all property of the estate for each subsidiary was deemed the property of the “consolidated estates.”<sup>512</sup> Next, under Bankruptcy Code sections 1141(b) and (c), the Original Plan provided that all Assets were to vest in the ‘Liquidating Debtors’, then were to be assigned to the appropriate trust, either the Insys Liquidation Trust or

---

<sup>503</sup> [Docket 612](#) at 35.

<sup>504</sup> *Id.*

<sup>505</sup> *Id.* at 36

<sup>506</sup> *Id.* at 36-37.; citing 11 U.S.C. § 1126(g).

<sup>507</sup> *Id.* at 36.; citing 11 U.S.C. §§ 510(a), 510(b).

<sup>508</sup> *Id.*

<sup>509</sup> *Id.*; citing 11 U.S.C. § 510(c).

<sup>510</sup> *Id.* at 37.

<sup>511</sup> *Id.* at 38.

<sup>512</sup> *Id.*



the Victims Restitution Trust, were free and clear of all “encumbrances, and liabilities of any kind.”<sup>513</sup> Similarly, Class 12 suggested that all equity interests, including all notes, instruments, certificates, and other documents, that showed claims or interests in Insys, or their obligations were to be deemed as discharged, and did not require further action or approval by the Court.<sup>514</sup>

*e. The Trusts*

*i. The Insys Liquidating Trust*

After the Insys Liquidating Trust (“ILT”) was established, the Creditors Committee and the SMT Group Representatives appointed a trustee (the “Liquidating Trustee”) to administer the trust.<sup>515</sup> The Liquidating Trustee had exclusive authority to perform “Authorized Acts.”<sup>516</sup> Additionally, the Liquidating Trustee was responsible for paying taxes and filing tax returns and retaining professionals without Court approval.<sup>517</sup>

The ILT was established within 5 business days of the Effective Date, and handled all non-personal injury unsecured claims (“Non-PI Unsecured Claims”).<sup>518</sup> All Products Liability Insurance Policies actions were reserved for the Victims Restitution Trust (the “VRT”) (discussed below).<sup>519</sup> The “ILT Operating Reserve,” held the ILT’s resources to pay claimants, and was funded by \$1 million of Insys’s available cash to pay the trust’s operating expenses.<sup>520</sup> The Liquidating Trustee replenished the ILT Operating Reserve as necessary to satisfy future estimated operating expenses.<sup>521</sup>

The ILT’s obligations were a fundamental part of the Original Plan, which included: (1) the responsibility and liability for Non-PI Unsecured Claims; (2) all operating expenses of the ILT, (3) Administrative Expense Claims, Secured Claims, and Priority Claims; and (4) paying the ILT Recovery Fund, the ILT Operating Reserve, and the Priority Reserve, in that order.<sup>522</sup> The

---

<sup>513</sup> [Docket 612](#) at 39.; citing 11 U.S.C. § 1141.

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> *Id.*; See appendix for Authorized Acts.

<sup>517</sup> *Id.* at 40.

<sup>518</sup> *Id.* at 41-42.

<sup>519</sup> *Id.*; See *Id.* at 22; See appendix for Products Liability Insurance Policy and Product Liability Insurance Rights.

<sup>520</sup> *Id.* at 43.; See appendix for ILT Operating Expenses.

<sup>521</sup> *Id.*; See appendix for ILT Recovery Fund and ILT Operating Reserve

<sup>522</sup> [Docket 612](#) at 43.

Creditors' Committee appointed the ILT Claims Arbiter, who was paid \$175,000.<sup>523</sup> The ILT Claims Arbiter determined the aggregate allocation of Estate Distributable Value for: (1) Class 4's Third Party Payor Claims ("TPPs"), and Insurance Ratepayer Claims ("Ratepayer"); and (2) Class 5's Hospital Claims and NAS Monitoring Claims; However, the ILT Claims Arbiter was not responsible for determining the individual amounts allocated within those Classes.<sup>524</sup>

Additionally, the ILT established a board (the "ILT Board"), that had general oversight of the ILT, comprised of three members, two selected by the SMT Group Representatives and the one selected by the Creditors' Committee.<sup>525</sup> When necessary, the ILT Board used the VRT Insurance Negotiator, here ILT Insurance Negotiator, to assist in liquidating insurance claims.<sup>526</sup>

The ILT dissolved, and the Liquidating Trustee, ILT Claims Arbiter and ILT Board were discharged, when: (1) all disputed Non-PI Unsecured Claims were resolved, (2) all ILT Assets were liquidated, and (3) ILT made all required Distributions.<sup>527</sup>

ii. The Victims Restitution Trust

The VRT was to be established within 5 business days of the Effective Date, but no earlier than January 1, 2020.<sup>528</sup> The VRT benefited Class 9 Allowed Personal Injury Claimants, and handle and pay all Class 9 Claims.<sup>529</sup> The VRT received all Products Liability Insurance Rights and was the VRT Operating Reserve was funded by \$1 million of Insys's available cash.<sup>530</sup> Before the Confirmation Hearing, the Creditors Committee and the SMT Group Representatives, or from a list of potential candidates provided by the Liquidating Trustee, appointed the VRT Claims

---

<sup>523</sup> [Docket 612](#) at 44.

<sup>524</sup> *Id.*

<sup>525</sup> *Id.* at 44-45.

<sup>526</sup> *Id.* at 45.; See appendix for VRT Insurance Negotiator.

<sup>527</sup> *Id.*; see also at 46: The ILT was a "liquidating trust," under Treasury Regulation § 301.7701-4(d), complied with Revenue Procedures 94-45, 1994-2 C.B. 684 and, as a "grantor trust," under 28 U.S.C. §§ 671 through 679 to the holders of the beneficial interests in the ILT within the meaning of the Original Plan. The sole purpose of ILT was to distribute Assets in accordance with Treasury Regulation § 301.7701-4(d), with no intention to continue to operate business; and all parties with interest in the ILT were to report consistently with such treatment (i.e., receiving assets from the trust). The Liquidating Trustee was responsible for filing the returns for the ILT as grantor pursuant to Treasury Regulation 1.671-4(a) and was to send a separate statement regarding such receipts to each holder of ILT interest that was relevant to the U.S. Federal Tax Income purposes.

<sup>528</sup> *Id.* at 47.

<sup>529</sup> *Id.* at 47-48.

<sup>530</sup> *Id.* at 48-49. See appendix for Products Liability Insurance Rights and VRT Operating Reserve

Administrator, who was identified in the plan supplement.<sup>531</sup> Periodic Distribution Dates, as determined by the Liquidating Trustee, Distributions were to be made from the both trusts' operating.<sup>532</sup> If a Claim was disputed when the trust was established, but later resolved, the Claim was to be treated as if it was resolved at the trust's establishment, and was to receive distributions in accordance with the applicable trust.<sup>533</sup>

iii. *The Parent Holding Trust*

The Original Plan established the Parent Holding Trust (the "PHT"), which represented 100% Insys's capital stock before the Original Plan cancelled their employees' interest in the stock, but the PHT was terminated after the interest in the stock was cancelled.<sup>534</sup>

f. *Procedures for Unresolved Disputed Claims*

The Original Plan stated a claim objections were to be served on the respective claim holder, and filed with the Court no longer than 120 days after either the Effective Date, or the date that a proof of claim is filed or amended, whichever came later, unless the Court specified otherwise.<sup>535</sup> Payments and distributions were made only when disputed claims were resolved, becoming 'Allowed Claims.'<sup>536</sup> Disputed claims requiring Court involvement were to be submitted to the Court for resolution.<sup>537</sup> Holders of disputed claims that later became Allowed Claims were only to be paid from undistributed available cash, having no cause of action against any assets previously distributed.<sup>538</sup>

---

<sup>531</sup> [Docket 612](#) at 50. See appendix for VRT Claims Administrator.

<sup>532</sup> *Id.* at 58; See appendix for Periodic Distribution Date.

<sup>533</sup> *Id.* at 59.

<sup>534</sup> *Id.* at 41.

<sup>535</sup> *Id.* at 63.

<sup>536</sup> *Id.* at 65.

<sup>537</sup> *Id.* at 64.

<sup>538</sup> *Id.* at 65.

***g. Conditions Precedent to Confirmation of the Plan & the Effective Date***

***i. Conditions Precedent to the Confirmation***

The following conditions had to be met before the Original Plan was to be confirmed: (a) the Original Plan was reasonable and accepted by Insys and the Creditors' Committee; (b) the Court found that all trust assets were free and clear of encumbrances and liabilities; and (c) Insys and the Creditors' Committee accepted the plan and plan supplement, including schedules, exhibits and other applicable documents, and consistent with the other plan provisions.<sup>539</sup>

***ii. Conditions Precedent to the Effective Date***

Until the following conditions were satisfied, the Effective Date was not to occur: (a) the Confirmation Order was entered by the Court, and it was not stayed, modified, or vacated on appeal; (b) all condition precedents, except the effectiveness of the plan, were satisfied or waived by the authorized parties of the Trust Agreements, to create the Trust Formation Transactions; (c) the Trust Agreements were effective according to the Original Plan; (d) the Priority Reserve, the Professional Fee Escrow Account, and the Trust Operating Reserves were fully funded; (e) Insys received all necessary documents for effectuating the plan; (f) all proceedings necessary to implement the Original Plan were executed; and (g) all professional fees were approved by the Court and fully paid, or were sufficiently paid in amounts for such fees, and after the Effective Date, were placed in the Professional Fee Escrow Account, or contained in a professional fee retainer," pending Court approval.<sup>540</sup>

***h. Effect of Confirmation***

The Confirmation of the Original Plan was to be binding on every claim holder or any impaired, or unimpaired, interest under the Original Plan.<sup>541</sup> On the Effective Date, whether Bankruptcy Code sections 105 or 362 applied or not, any injunctions or stays were to be ineffective, unless they expired before then.<sup>542</sup>

Under Bankruptcy Code section 1125, Insys filed the disclosure statement to the Original Plan, and a notice of hearing, enabling the Voting Classes to make an informed decision when

---

<sup>539</sup> [Docket 612](#) at 69.

<sup>540</sup> *Id.* at 70. See appendix for Trust Formation Transaction.

<sup>541</sup> *Id.* at 71.

<sup>542</sup> *Id.*

voting on the disclosure statement.<sup>543</sup> Before filing the Original Plan, Insys, the Creditors' Committee, certain Personal Injury Claimants, Hospitals and NAS Children, Insurance Ratepayers, certain non-MDL Municipalities, and the TPPs, conducted mediation between August 6 and August 31, 2019 ("August Mediation").<sup>544</sup> Although the SMT Group Representatives were not involved, after the August Mediation, Insys, the Creditors' Committee, and the SMT Group discussed the Claims Analysis Protocol ("Claims Analysis Protocol") and the VRT Claims Administrator ("VRT Claims Administrator").<sup>545</sup> The Claims Analysis Protocol established general guidelines for the VRT Claims Administrator when determining whether a Class 9 was allowed, and in what amount.<sup>546</sup> The Original Plan and the VRT Agreement ("VRT Agreement") appointed the VRT Claims Administrator to administer, and otherwise resolve, the Class 9 Claims under the Original Plan.<sup>547</sup> The negotiations between Insys, the Creditors' Committee, and the SMT Group Representatives were incomplete at the time the Original Plan was filed.<sup>548</sup>

*i. Objections*

*i. Williamson Objection*

On September 27, 2019, the County of Williamson, Texas ("Williamson") objected to the Original Plan.<sup>549</sup> Under Bankruptcy Code section 1129(b)(1) and (2)(A), Williamson alleged that the Original Plan's provisions failed to provide fair and equitable treatment when dealing with their secured claims, arguing that Insys failed to: (1) express when Williamson would be paid for their Claims; (2) provide a clearly detailed proposed payment plan by stating that they intended to pay Tax Authorities in installments or one lump sum,; and (3) provide interest for the taxes they failed to pay in 2019, 12% per annum under Bankruptcy Code sections 511 and 1129.<sup>550</sup>

---

<sup>543</sup> [Docket 612](#) at 71.; Disclosure Statement for Joint Chapter 11 Plan of Liquidation Proposed by Insys Therapeutics, Inc., and its Affiliated Debtors. [Docket 613](#) ; Notice of Hearing to Consider Approval of Disclosure Statement for Joint Chapter 11 Plan of Liquidation Proposed by Insys Therapeutics, Inc. [Docket 619](#).

<sup>544</sup> Notice of Filing of Blacklines of Amended Plan and Amended Disclosure Statement. [Docket 894](#) at 58.

<sup>545</sup> *Id.* at 59.

<sup>546</sup> *Id.* at 14.

<sup>547</sup> *Id.* at 34. See appendix for VRT Agreement

<sup>548</sup> *Id.* at 59

<sup>549</sup> Objection to Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc., and Its Affiliated Debtors Filed by Williamson County. [Docket 668](#).

<sup>550</sup> *Id.* at 2-3.; Citing 11 U.S.C. § 511 and 1129.

ii. S. Yu Objection

On October 8, 2019, an individual Shareholder of Insys Therapeutics common stock, S. Yu (“Yu”), filed an objection to the Original Plan and the disclosure statement.<sup>551</sup> Yu had 9 main objections, including that: (1) instead donating the leftover funds from trusts to charity after creditors were paid, the leftover funds should be placed in the PHT, belonging to 100% of Shareholders;<sup>552</sup> (2) derivative lawsuit recoveries should not be transferred to Insys, when it was the Shareholders who earned those profits and they should receive the benefit;<sup>553</sup> (3) illegitimate Creditors would receive undeserving distributions under this scheme, and suggested that they establish a fair industry and legal guideline for elimination of illegitimate creditor claims, including guidelines for arbitrations that set settlement costs and determined legitimate claims, and also suggested implementing of a Shareholder’s Committee to help establish legitimacy of claims and assure fairness;<sup>554</sup> (4) liability was being directed at the Shareholders, arguing that the Bankruptcy Court should direct those liabilities to the past Insys management who committed the fraud;<sup>555</sup> (5) the Original Plan was “flawed and unreasonable,” based on assumptions, involved a large number of ‘unvetted’ creditors, stating that: (a) the Original Plan’s settlements were illegitimate, and (b) the sales were disappointing, with the exception of the Subsys sales to BTcP and Pharmbio, and suggested that those assets be held in the PHT, giving Shareholders control over such funds;<sup>556</sup> (6) the illegitimate and Non-vetted claimants should not be entitled to vote, and by doing so would have given them power over the Shareholders who already faced losses, and suggested the Court eliminate voting rights all together, requesting this exception due to the circumstances of the case, which could lead to illegitimate creditors voting on the Shareholders’ outcome;<sup>557</sup> (7) distribution percentages for Claimants were not proper, stating that class 5 had a particularly high impaired distribution percent which played a part in the distribution devaluation. Yu claimed Insys would have been profiting and would have had sufficient funds to carry them through if the fraud around the opioid crisis never occurred.<sup>558</sup> Yu believed that the wrongs would be better resolved by being brought against the wrongdoers, rather than liquidating the company, gave away the illegally earned money, and the victims of such fraud would have been covered by

---

<sup>551</sup> Yu Objection to Liquidation Plan and Disclosure Statement [Docket 719](#).

<sup>552</sup> [Docket 719](#) at 1-2.

<sup>553</sup> *Id.* at 2-3.

<sup>554</sup> *Id.* at 3-9.

<sup>555</sup> *Id.* at 9-13.

<sup>556</sup> *Id.* at 13-14.

<sup>557</sup> [Docket 719](#) at 15.

<sup>558</sup> *Id.* at 15-17.

insurance;<sup>559</sup> (8) only legitimate creditors should be allowed to make motions and objections, given that such filings affect the Court and Original Plan, asking the Court to dismiss the illegitimate creditors' filings.<sup>560</sup>

iii. Chubb's Objection to the Disclosure Statement

On October 15, 2019, the Chubb Companies ("Chubb") filed an objection the Original Plan and disclosure statement.<sup>561</sup> Chubb asserted several reasons for their objection to the disclosure statement, including: (i) the Plan was "patently unconfirmable"; (ii) both the disclosure statement and the Original Plan attempted to improperly modify the insurance program's terms, and the Original plan asserted improper assignment of the insurance; (iii) the Original Plan was inconsistent with the provisions relating to the insurance programs; (iv) both the Original Plan and disclosure statement misconstrued the coverage, and any dispute relating to it was to be settled under the terms of the coverage; and (v) both documents failed to provide information about Workers' Compensation claims and direct actions, which were to continue to be administered in the ordinary course of business according to the applicable law.<sup>562</sup> Chubb then requested the Court to either require Insys to modify the issues in the disclosure statement, or deny the request for to approve the disclosure statement and grant related relief.<sup>563</sup>

iv. Limited Objection of the Disclosure Statement by the SEC

On October 24, 2019, the Securities and Exchange Commission ("SEC"), filed a limited objection against the disclosure statement stating: (i) it lacked adequate information to support the exculpation of the provisions in the Original Plan under Bankruptcy Code section 1125(b); (ii) the Original Plan appeared to discharge any liability of a non-debtor party, contradicting Bankruptcy section 524(e).<sup>564</sup> Bankruptcy Code section 1125(b) provides that a debtor may not solicit an acceptance or rejection from a claim or interest holder with respect to such claim or interest, unless

---

<sup>559</sup> [Docket 719](#) at 15-17.

<sup>560</sup> *Id.* at 17, 18.

<sup>561</sup> Objection of the Chubb Companies to the Disclosure Statement for Joint Chapter 11 Plan of Liquidation. [Docket 746](#) at 1; Chubb Companies include Ace Property and Casualty Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, Federal Insurance Company, Chubb Custom Insurance Company, and Chubb Indemnity Insurance Company.

<sup>562</sup> *Id.* at 10-11.

<sup>563</sup> *Id.* at 27.

<sup>564</sup> Objection to Disclosure Statement Filed by Securities And Exchange Commission. [Docket 810](#) at 2.

the claim or interest holder received a written disclosure statement, and after notice and hearing, the Court approved the disclosure statement, stating it had sufficient information.<sup>565</sup>

First, the SEC alleged that the Original Plan's disclosure statement failed to provide sufficient information, and contained conflicting information and the Third Party Releases.<sup>566</sup> A Third Party Release was a provision in the Original Plan that sought to release and permanently enjoin actions against non-debtor third parties ("Third Party Release").<sup>567</sup> The disclosure statement failed to provide a Third-Party Release definition, and failed to provide who was affected by it.<sup>568</sup> The SEC concluded that, without a definition or identification of parties enjoined, a holder of a claim could not have known if they were enjoined by the litigation against third parties.<sup>569</sup> Second, the SEC addressed how the Third Party Releases violated Bankruptcy Code section 524(e), as well as other applicable law, as 524(e) states that when a debtor's debt is discharged, the discharge does not affect the liability of any other entity on such debt, or the property of any other entity on such debt.<sup>570</sup> Third, the SEC claimed that the shareholders were entitled to affirmatively opt out, but were deemed to reject and not given voting rights.<sup>571</sup> The SEC asserted that Insys did not state whether the parties who did not receive a solicitation package, whether they were not entitled to or they were unreachable, were to be omitted from the Third Party Release, stating that Insys should not rely on silence as a manifestation of consent to the Third Party Release.<sup>572</sup>

v. MDL Plaintiffs' Objection to the Approval of the Disclosure Statement

On November 1, 2019, the MDL Plaintiffs assert that the Disclosure statement was insufficient because: (i) it described the plan that was "patently unconfirmable"; and (2) it did not provide adequate information to inform a holder of a claim to make an informed vote.<sup>573</sup> The MDL

---

<sup>565</sup> [Docket 810](#) at 6. ; See 11 U.S.C. § 1125(b) and 11 U.S.C. § 1125(a)(1): Adequate information enables one with a claim or interest to make an informed judgment on the proposed plan.

<sup>566</sup> *Id.*

<sup>567</sup> *Id.* at 4.; See appendix for Third Party Release.

<sup>568</sup> *Id.* at 6.

<sup>569</sup> *Id.*

<sup>570</sup> *Id.* at 6-7.; See 11 U.S.C. § 524(e).; see also *Gillman Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000).

<sup>571</sup> *Id.*

<sup>572</sup> *Id.* at 7-8.

<sup>573</sup> Objection of the MDL Plaintiffs to Approval of Disclosure Statement for Joint Chapter 11 Plan of Liquidation Proposed [Docket 835](#) at 17.



Plaintiffs claimed that the government creditors were misled by the information in the disclosure statement.<sup>574</sup> Further, the MDL Plaintiffs claimed that the Original Plan impermissibly split similar claims to gerrymander a favorable vote.<sup>575</sup> MDL Plaintiffs claimed the disclosure statement failed to provide approximate values for Class 7 for the estate claims and causes of action, or the recovery analysis.<sup>576</sup> MDL Plaintiffs supported their claim that the disclosure statement failed to provide adequate information, but listing various other discrepancies.<sup>577</sup>

vi. Florida's Objection to the Disclosure Statement

On November 11, 2019, the State of Florida ("Florida") objected to the disclosure statement because: (i) it failed to provide adequate information under Bankruptcy Code section 1125(b), that allowed creditors to make an informed voting decision as to whether to accept or reject the Original Plan; and (ii) the description of the Original Plan was "so patently unconfirmable," that voting would have wasted time.<sup>578</sup> The State of New York filed a joinder to this objection.<sup>579</sup> Florida stated that the disclosure statement inadequately described key considerations, including failing to sufficiently describe how the creditors' distributions were to be funded, by anything other than the limited funds of Insys at that time.<sup>580</sup> Similar to the MDL Plaintiffs, Florida asserted that the Class allocations gerrymandered a favorable.<sup>581</sup> Due to these assertions, Florida requested the Court to enter an order that denied Insys's disclosure statement and that the Court grant any proper relief.<sup>582</sup>

vii. Securities Lead Plaintiffs' Objection to the Disclosure Statement

On November 4, 2019, Clark Miller, who the court appointed as lead plaintiff in *Di Donato v. Insys Therapeutics, Inc.*, ("Secured Litigation"), pending in the U.S. District Court for the District of Arizona, ("Arizona Court") submitted an objection on behalf of himself and the

---

<sup>574</sup> [Docket 835](#) at 17.

<sup>575</sup> *Id.* at 18-19.

<sup>576</sup> *Id.* at 28.

<sup>577</sup> *Id.* at 30- 32.

<sup>578</sup> State of Florida's Objection to Disclosure Statement for Joint Chapter 11 Plan of Liquidation [Docket 836](#) at 11.

<sup>579</sup> Qualified Joinder of Various States to the Objection of the MDL Plaintiffs to Approval of Disclosure Statement for Joint Chapter 11 Plan of Liquidation Filed by Department of Law for the State of New York. [Docket 839](#).

<sup>580</sup> [Docket 836](#) at 11.

<sup>581</sup> *Id.* at 15.

<sup>582</sup> *Id.* at 18.

Securities Litigation’s certified class.<sup>583</sup> Miller stated that the disclosure statement failed to provide a proper Third Party Release because it attempted to waive the certified class’s claims against any non-debtor defendants, as those might have been their only way to recover.<sup>584</sup> Next, Miller stated that the Original Plan deemed the certified class as unable to vote, and would not have receive the disclosure statement, leaving them unaware of their ability to opt out of the Third Party Release.<sup>585</sup> Miller stated that it was impossible to understand the Third Party Release’s scope without distributing of the plan supplement, which was not to be filed for some time.<sup>586</sup> Which would leave certified class unknowing of their stance in the Third Party Release, and if included, leaving them without the ability to opt out of it.<sup>587</sup> Miller further stated that the Court lacked the jurisdiction to release the non-debtor’s liabilities.<sup>588</sup> For these reasons, Miller objected to the approval of the Disclosure Statement for the Original Plan.

*viii. U.S.’s Objection to the Disclosure Statement*

On November 4, 2019, the U.S. objected to the Original Plan and disclosure statement asserting that the Original Plan failed to comply with Bankruptcy Code section 1129 because the classifications and distributions were unfair for general unsecured claims in Classes 3-7.<sup>589</sup> The U.S. stated that Classes 4-5 were to receive “significantly more,” than the government in Classes 6-7.<sup>590</sup> Similarly, the U.S. asserted that by Insys favored the private creditors over the public creditors by allocating the first portion of cash to the Liquidation Trust.<sup>591</sup> Additionally, the U.S. alleged that Insys grouped the classes in order to obtain acceptance of the Original Plan by at least one unsecured creditors class.<sup>592</sup>

---

<sup>583</sup> Objection of Securities Lead Plaintiff to Approval of Disclosure Statement for Joint Chapter 11 Plan of Liquidation. [Docket 843](#) at 1.; see also *Di Donato v. Insys Therapeutics, Inc., et al.*, Case No. CV-16-00302-PHX-NVW

<sup>584</sup> *Id.* at 10.

<sup>585</sup> *Id.*

<sup>586</sup> *Id.*

<sup>587</sup> *Id.* at 11.

<sup>588</sup> *Id.* at 12.

<sup>589</sup> Objection to Disclosure Statement for Joint Chapter 11 Plan of Liquidation filed by the U.S. [Docket 845](#) at 1, 9.

<sup>590</sup> *Id.* at 9.

<sup>591</sup> *Id.* at 9-10.

<sup>592</sup> *Id.* at 10.

Next, the U.S. alleged that the disclosure statement lacked adequate information by failing to: (i) use evidence to support the estimated claim amounts highlighted in the Plan Settlement; (ii) to show an analysis of the distribution scheme under the Plan Settlement; (iii) prove that the creditors were being paid more from the chapter 11 proceedings than if converted to chapter 7 cases; and (iv) provide an estimate of the Estate Value Distribution, including potential and expected recoveries from the Preference and Indemnity Proceeds.<sup>593</sup> Lastly, the U.S. explained that without adequate information, the creditors could not determine their actual recoveries under the suggested Plan Settlement.<sup>594</sup> Thus, the U.S. requested the Court to reject the Original Plan and disclosure statement, requiring Insys and the Creditors' Committee to use more time and resources to provide adequate information on these issues.<sup>595</sup>

ix. U.S. Trustee's Objection to Insys's Motion for Entry of an Order

On November 4, 2019, the United States Trustee ("U.S. Trustee") objected to Insys's motion for entry of an order to approve the proposed disclosure statement.<sup>596</sup> U.S. Trustee objected to Insys proposed order and notices because Bankruptcy Rule 3017(d) was not satisfied, which permitted the Court to render another order with respect to one or more impaired classes giving Insys the opportunity to provide instructions on how to access the disclosure statement and Original Plan through their website or USB copy.<sup>597</sup> Under Bankruptcy Rule 3017(d), U.S. Trustee stated that Insys should be required to provide the copies to all creditors and interests holders.<sup>598</sup> Additionally, U.S. Trustee objected to Exhibit 1, claiming that the notice of a hearing contained contradictory language about ability to opt-out of Third Party Releases, and also objected to Exhibit 3-1, stating the notice of non-voting status for Classes 10-12 and the election to opt-out form, were for Classes 10-12 who were not to receive the forms directly, rendering them unable to consider giving any release.<sup>599</sup>

---

<sup>593</sup> [Docket 845](#) at 17.; see also [Docket 612](#).

<sup>594</sup> *Id.*

<sup>595</sup> *Id.* at 18.

<sup>596</sup> Objection U.S. Trustees Objection to the Debtors Motion for Entry of an Order (I) Approving the Proposed Disclosure Statement and the Form and Manner of the Notice of a Hearing Thereon, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors Plan Filed by the U.S. Trustee. [Docket 846](#) at 1.

<sup>597</sup> *Id.* at 3.; See Fed. R. Bankr. P. 3017(d).

<sup>598</sup> *Id.* at 3.; See Fed. R. Bankr. P. 3017(d)

<sup>599</sup> *Id.* at 5.

Next, U.S. Trustee claimed that the disclosure statement failed to provide adequate information allowing creditors to make informed judgments over the Original Plan relating to the amount they have received in chapter 7.<sup>600</sup> Similarly, U.S. Trustee asserted that the disclosure statement failed to describe injunction and Third Party Release provisions, which violated Bankruptcy Rule 3016(c).<sup>601</sup> 3016(c) states both the plan and the disclosure statement must clearly describe all acts enjoined and any entities subject to the injunction.<sup>602</sup> U.S. Trustee claimed that the Original Plan and disclosure statement failed to provide such language, violating 3016(c).<sup>603</sup> Due to the objections stated above, the U.S. Trustee requested the Court to deny the order for approval, and grant appropriate relief.<sup>604</sup>

*j. The Amended Plans*

Insys amended the Original Plan twice and modified the second amended plan before it could be confirmed. The first amendment changed the Original Plan significantly due to unresolved issues between Insys and various Creditors and implemented changes that were agreed upon by Insys and the SMT Group Representatives.<sup>605</sup> The second amended plan described the Distributions to be made to each Class in greater detail.

*i. First Amended Plan*

On November 14, 2019, Insys filed the First Amended Plan (“First Amended Plan”) along with the corresponding disclosure statement.<sup>606</sup> After filing the Original Plan, Insys, the Creditors’ Committee, and the SMT Group Representatives negotiated some issues regarding the Claims Analysis Protocol.<sup>607</sup> After a few weeks of negotiating, the parties mutually agreed to appointing a mediator to help resolve the Claims Analysis Protocol issues.<sup>608</sup> In the one day mediation, on October 23, 2019, the parties did not reach a complete agreement, but on November 8, 2019, the

---

<sup>600</sup> [Docket 846](#) at 7.

<sup>601</sup> *Id.* at 8; citing Fed. R. Bankr. P. 3016(c).

<sup>602</sup> *Id.*

<sup>603</sup> *Id.*

<sup>604</sup> *Id.* at 11.

<sup>605</sup> [Docket 894](#) at 59.

<sup>606</sup> Amended Chapter 11 Plan of Liquidation. [Docket 892](#) ; Disclosure Statement for Amended Joint Chapter 11 Plan of Liquidation. [Docket 893](#).

<sup>607</sup> *Id.* at 7.

<sup>608</sup> [Docket 894](#) at 34.

parties came to a mutual agreement over the Claims Analysis Protocol.<sup>609</sup> The Plan Settlement (“Plan Settlement”) to the First Amended Plan reflected these changes, by incorporating the compromises of controversies made between Insys, the Creditors’ Committee, and the Settling Creditors.<sup>610</sup> The First Amended Plan modified the initial settlement structure to a “Pro Rata Share,” which addressed the SMT Group objections, and accounted for Insys’s failure to reach a settlement with the SMT Group.<sup>611</sup>

Some classifications and how to calculate the “Allowed Claims,” changed the First Amended Plan.<sup>612</sup> The First Amended Plan provided a new Class for Class 3, the Convenience Claims Class, which refers to any general unsecured claim against Insys that was asserted “as liquidated or scheduled as neither contingent, disputed, or unliquidated,” while the Trade and Other General Unsecured Claims moved to Class 4.<sup>613</sup> The Insurance Related Claims moved to Class 5 with TPPs, ERISA Health Plan Claimants (“ERISA”), and Ratepayers.<sup>614</sup> The First Amended Plan also provided information about Classes 5 and 6’s motions for Class Proof of Claims (“Class Proof of Claims”), which Insys, the Creditors’ Committee, and the representative of the class agreed upon.<sup>615</sup> The Class Proof of Claims were to be filed with the Court on the given date as specified in the Class Claims Procedures, but the First Amended Plan did not specify a due date.<sup>616</sup>

### 1. Classification of Claims & Interests

Bankruptcy Code sections 1122 and 1123(a)(1) required claims and interests to be divided into classes for purposes of voting and distributing a plan.<sup>617</sup> The Classifications for the First Amended Plan were as follows:

<u>Classes</u>	<u>Claims and Interests</u>	<u>Status</u>	<u>Voting Rights</u>
----------------	-----------------------------	---------------	----------------------

<sup>609</sup> [Docket 894](#) at 34, 59.

<sup>610</sup> *Id.*

<sup>611</sup> *Id.*

<sup>612</sup> *Id.* at 60.

<sup>613</sup> *Id.* at 14, 76.

<sup>614</sup> *Id.* at 60.

<sup>615</sup> *Id.* at 76.

<sup>616</sup> *Id.*

<sup>617</sup> *Id.* at 65.

<b>Class 1</b>	Secured Claims	Unimpaired	No (Presumed to Accept)
<b>Class 2</b>	Other Priority Claims	Unimpaired	No (Presumed to Accept)
<b>Class 3</b>	Convenience Class Claims	Impaired	Yes
<b>Class 4</b>	Trade and Other Claims	Impaired	Yes
<b>Class 5</b>	Insurance Related Claims	Impaired	Yes
<b>Class 6</b>	Hospital & NAS Monitoring Claims	Impaired	Yes
<b>Class 7</b>	DOJ Claims	Impaired	Yes
<b>Class 8</b>	SMT Group Claims	Impaired	Yes
<b>Class 9</b>	Personal Injury Claims	Impaired	Yes
<b>Class 10</b>	510(a)/(b) Subordinate Claims	Impaired	Yes
<b>Class 11</b>	510(c) Subordinate Claims	Impaired	No (Presumed to Reject)
<b>Class 12</b>	Intercompany Claims	Impaired	No (Presumed to Reject)
<b>Class 13</b>	Equity Interests	Impaired	No (Presumed to Reject)

Insys also modified distribution procedures for some of the classes, including the Hospital Claims and NAS Monitoring Claims, now Class 6, which were to no longer receive distribution from the ILT of its Pro Rata Share determined by the ILT Claims Arbiter of 31% of all Category 2 Distributions.<sup>618</sup> Rather, Class 6 was to receive distributions by the ILT Claims Arbiter in accordance with the “Plan Distribution Formula.”<sup>619</sup> Additionally, the distribution for the DOJ Claim changed, adding an “Allowance” provision, providing that the DOJ Civil Claims were allowed \$243 million.<sup>620</sup> Rather than receiving 31.4% of all Category 3 Distributions, the DOJ Civil Claims, except any DOJ Restitution Claim, would be distributed from the ILT in an amount determined by “all Estate Distributable Value attributable to Class 7 calculated in accordance with the Plan Distribution Formula.”<sup>621</sup> The same change applied to SMT Group Claims, which, instead of receiving various percentages of different category distributions, became subject to the Estate Distributable Value attributable to Class 8 in accordance with the Plan Distribution Formula, plus a 10% interest in any Products Liability Insurance Proceeds and a 100% interest in any Excess Liability Insurance Proceeds.<sup>622</sup> In addition to shifting classes and claims around, Insys also got rid of the PHT, consolidating it into the already established ILT.<sup>623</sup>

---

<sup>618</sup> [Docket 894](#) at 42.

<sup>619</sup> *Id.*; See appendix Plan Distribution Formula.

<sup>620</sup> *Id.*

<sup>621</sup> *Id.*

<sup>622</sup> [Docket 894](#) at 43.

<sup>623</sup> *Id.* at 24.

## 2. Objections to First Amended Plan

On November 20, 2019, Williamson filed another objection to the First Amended Plan.<sup>624</sup> Williamson stated that the First Amended Plan provisions dealing with Williamson's treatment failed to provide fair and equitable treatment of their secured claims pursuant to Bankruptcy Code sections 1129(b)(1) and (2)(A).<sup>625</sup> Similarly, they asserted that the First Amended Plan failed to provide when they were to be paid, and failed to provide them any amount for the interest that accrued on Insys taxes as they failed to pay them.<sup>626</sup> Thus, Williamson requested the Court order appropriate protection of their tax claims, and to order Insys to implement protective provisions.<sup>627</sup>

### ii. Omnibus Motions Rejecting Contracts.

Insys filed three omnibus motions to reject leases or executory contracts. The first was on October 8, 2019, and the second was filed on October 11, 2019.<sup>628</sup> There was a third omnibus motion filed on December 24, 2019, which came after the Final Plan, but requested the same relief.<sup>629</sup> These motions were brought pursuant to Bankruptcy Code section 365(a), which allows for debtors to assume or reject executory contracts or unexpired leases, pursuant to the Courts approval, so long as it is not in bad faith, and benefits the estate.<sup>630</sup> Insys also requested for the rejection to be made effective nunc pro tunc.<sup>631</sup> On October 18, 2019, the Court granted the first omnibus motion to reject executory contracts; on October 29, 2019, the Court granted the second omnibus motion to reject executory contracts; and lastly, January 10, 2020, the Court granted Insys's motion, deeming the contracts to be rejected, unless previously assigned by Insys, and in

---

<sup>624</sup> Objection to Confirmation of Plan Amended Joint Chapter 11 Plan of Liquidation Filed by Williamson County. [Docket 909](#) at 1.

<sup>625</sup> *Id.* at 2.; citing 11 U.S.C. § 1129(b)(1) and (2)(A).

<sup>626</sup> *Id.*

<sup>627</sup> *Id.* at 3.

<sup>628</sup> Debtors First Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts Nunc Pro Tunc to the Date of Filing of This Motion [Docket 714](#); Debtors Second Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts Nunc Pro Tunc to the Date of Filing of this Motion [Docket 736](#).

<sup>629</sup> Debtors Third Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts Nunc Pro Tunc to the Date of Filing of This Motion [Docket 1019](#).

<sup>630</sup> [Docket 714](#); [Docket 736](#).

<sup>631</sup> [Docket 714](#); [Docket 736](#); [Definition of Nunc Pro Tunc from UNC School of Government](#): Nunc pro tunc is a phrase used in an order or judgment when the court wants the order or judgment to be effective as of a date in the past rather than on the date the judgment or order is entered into the court record.

all three orders, stating that any claims arising out of the rejected contracts were to be filed within 30 day of the service of their order, and in accordance with the procedures established.<sup>632</sup>

***k. The Final Plan***

On November 29, 2019, Insys filed the second amended plan (the “Final Plan”) and disclosure statement (the “Final Disclosure Statement”).<sup>633</sup> Not a lot occurred between the First Amended and Final Plan. However, in the Final Plan Insys stated that they attempted to reach an agreement with shareholder Yu over his objections, but their attempts were unsuccessful, claiming that Yu’s objections were unsubstantiated legal theories to challenge the claims of creditors in hope to recover for the shareholders, and were not so much about the information in the Final Disclosure Statement, but rather an objection to the confirmation of the Original Plan and Disclosure Statement.<sup>634</sup> Additionally, the Final Plan split Class 8 into 8(a) and 8(b) and established a solidified version of the treatment of the Claims and Interests in each Class.<sup>635</sup>

***i. Creditor Classification***

<u>Classes</u>	<u>Claims and Interests</u>	<u>Status</u>	<u>Voting Rights</u>
<b>Class 1</b>	Secured Claims	Unimpaired	No (Presumed to Accept)
<b>Class 2</b>	Other Priority Claims	Unimpaired	No (Presumed to Accept)
<b>Class 3</b>	Convenience Class Claims	Impaired	Yes
<b>Class 4</b>	Trade and Other Claims	Impaired	Yes
<b>Class 5</b>	Insurance Related Claims	Impaired	Yes
<b>Class 6</b>	Hospital & NAS Monitoring Claims	Impaired	Yes
<b>Class 7</b>	DOJ Claims	Impaired	Yes
<b>Class 8(a)</b>	State Claims	Impaired	Yes
<b>Class 8(b)</b>	Municipality/Tribe Claims	Impaired	Yes
<b>Class 9</b>	Personal Injury Claims	Impaired	Yes
<b>Class 10</b>	510(a)/(b) Subordinate Claims	Impaired	Yes
<b>Class 11</b>	510(c) Subordinate Claims	Impaired	No (Presumed to Reject)
<b>Class 12</b>	Intercompany Claims	Impaired	No (Presumed to Reject)
<b>Class 13</b>	Equity Interests	Impaired	No (Presumed to Reject)

<sup>632</sup> Order Granting Debtors’ First Omnibus Motion for an Order Authorizing the Rejection of Certain Executory Contracts [Docket 786](#); Order Granting Debtors’ Second Omnibus Motion for an Order Authorizing the Rejection of Certain Executory Contracts [Docket 823](#); Order Granting Debtors Third Omnibus Motion for an Order Authorizing the Rejection of Certain Executory Contracts Effective Nunc Pro Tunc [Docket 1083](#); See also [Docket 294](#).

<sup>633</sup> Second Amended Joint Chapter 11 Plan of Liquidation [Docket 928](#); Disclosure Statement for Second Amended Joint Chapter 11 Plan of Liquidation. [Docket 929](#)

<sup>634</sup> [Docket 929](#) at 8. See also Yu Objection [Docket 719](#)

<sup>635</sup> Notice of Filing of Blacklines of Second Amended Plan and Second Amended Disclosure Statement. [Docket 930](#) at 29-30.



ii. Treatment of the Creditors

As set out in the Amended Plan, the information below was provided in the Final Plan but the Final Plan a more detailed list of percentage allocations that claims holders were to receive:

1. Administrative Expense Claims: were to receive an equal amount of the “Allowed Claim,” distributed from the Claims Reserve, within 30 days following either the Effective date, or the date which the Claim is deemed allowed, whichever came later.<sup>636</sup>
2. Priority Tax Claims: were to receive either cash in an equal amount to the Allowed amount of the Claim from the Priority Reserve, or other treatment satisfying Bankruptcy Code section 1129(a)(9).<sup>637</sup>
3. Class 1 Secured Claims: the legal, and equitable rights of these claimants were unaltered by this Plan.<sup>638</sup> Allowed Secured Claim were to receive: (i) payment in full in accordance with Bankruptcy Code section 506(a); (ii) reinstatement of their Claim under Bankruptcy Code section 1124; or (iii) another treatment to render them unimpaired.<sup>639</sup>
4. Class 2 Other Priority Claims: On, or soon after the Effective Date, the holders of these Claims were to receive: (i) full payment of their Allowed Claim; or (ii) treatment satisfying Bankruptcy Code section 1129(a)(9).<sup>640</sup>
5. Class 3 Convenience Class Claims: were to receive equal to 10% of the cash available on, or soon after the Effective Date, or when the Claim becomes “Allowed,” whichever is later.<sup>641</sup>
6. Class 4 Trade and Other Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed Trade and Other Unsecured Claim,” the Claimants were to receive its Pro Rata Share of Class 4’s Estate Distributable, which was calculated by

---

<sup>636</sup> Second Amended Joint Chapter 11 Plan of Liquidation For Solicitation. [Docket 955](#) at 26.; See appendix for Disputed Claims Reserve.

<sup>637</sup> *Id.* at 27.; See appendix for Priority Reserve.

<sup>638</sup> *Id.* at 29.

<sup>639</sup> *Id.*; citing 11 U.S.C §§ 506(a) and 1124.

<sup>640</sup> *Id.* at 30.

<sup>641</sup> *Id.*

multiplying the Category 1 Distributions by the Private Group Distribution Percentage for Class 4.<sup>642</sup> Distribution of these Allowed Claims were not to come before the TUC Class Amount Final Determination, and all Claims were to be held in a disputed claims reserve until TUC Class Claim Final Determination.<sup>643</sup>

7. Class 5 Insurance Related Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed Insurance Related Claim,” the ILT Claims Arbiter determined the following allocation between the ERISA, TPP, and Ratepayers: ILT was to Distribute the holder’s share of Class 5’s Estate Distributable Value.<sup>644</sup> This amount was calculated by multiplying the Category 1 Distributions by Class 5’s Private Group Plan Distribution Percentage, pursuant to all applicable procedures.<sup>645</sup>
8. Class 6 Hospital and NAS Monitoring Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed Hospital or NAS Monitoring Claim,” the ILT Claims Arbiter determined the following allocation between Hospital Claims and NAS Monitoring Claims: ILT was to distribute the share of each holder’s Estate Distributable Value, calculated by multiplying the Category 1 Distributions by Class 6’s Private Group Plan Distribution Percentage, pursuant to applicable procedures.<sup>646</sup>
9. Class 7 DOJ Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed DOJ Claims,” the DOJ was to receive restitution from the ILT, for any Allowed DOJ Claim’s Class 7’s Estate Distributable Value, not including the Allowed DOJ Restitution Claims.<sup>647</sup> Estate Distributable Value in this Class was calculated by multiplying the Category 2 Distribution with the Public Group Plan Distribution Percentage.<sup>648</sup> However, the DOJ Settlement Order required these Distribution were not to be made until the GUC Recovery and Reallocation Threshold was met.<sup>649</sup>

---

<sup>642</sup> [Docket 955](#) at 30.; See appendix for Estate Distributable Value, ILT Recovery Fund, and Private Group Distribution Percentage.

<sup>643</sup> *Id.*; See appendix TUC Class Amount Final Determination

<sup>644</sup> *Id.* at 31.

<sup>645</sup> *Id.*

<sup>646</sup> *Id.*

<sup>647</sup> *Id.* at 32.; See appendix for Allowed DOJ Restitution Claim.

<sup>648</sup> *Id.*; See appendix for Public Group Plan Distribution Percentage.

<sup>649</sup> *Id.*; See appendix for GUC Recovery Reallocation Threshold.

10. Class 8(a) State Claims & Class 8(b) Municipality/Tribe Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed State and Allowed Municipality/Tribe Claim,” were to receive restitution from the ILT and the VRT, its Pro Rata Share of: (i) its Estate Distributable Value, calculated by multiplying the Category 2 Distribution with Class 8(a) and (b)’s Public Group Plan Distribution Percentage collectively; (ii) 10% of Products Liability Insurance Proceeds; and (iii) 100% interest in Products Liability Insurance Proceeds.<sup>650</sup> These Claims were entitled to \$800,000 in Professional Fee Claims for Counsel employed in these cases.<sup>651</sup>
11. Class 9 Personal Injury Claims: “In full and final satisfaction, settlement, release, and discharge of an Allowed Personal Injury Claim,” each Claimant was to receive its Pro Rata Share of 90% of Products Liability Insurance Proceeds, distributed by the VRT.<sup>652</sup>
12. Class 10 510(a)/(b) Subordinate Claims: Pursuant to Bankruptcy Code section 510(a) and (b), holders of subordinate claims were extinguished without further action by the Court and were no longer effective.<sup>653</sup>
13. Class 11 510(c) Subordinate Claims: Pursuant to Bankruptcy Code section 510(c), subordinate Claims were extinguished, were no longer effective, and without further action by the Court.<sup>654</sup>
14. Class 12 Intercompany Claims: not to receive any property under the Final Plan for such Claims, and were expunged and extinguished, without further effect.<sup>655</sup>
15. Class 13: Equity Interests: were not to receive property under the Final Plan, and as of the Effective Date, Equity Interests were deemed to be surrendered or redeemed without further action of the Court.<sup>656</sup>

---

<sup>650</sup> [Docket 955](#) at 32.

<sup>651</sup> *Id.*

<sup>652</sup> *Id.* at 33.

<sup>653</sup> *Id.*

<sup>654</sup> *Id.* at 33-34.

<sup>655</sup> *Id.*

<sup>656</sup> *Id.*

### *l. Disclosure Statement for the Second Amended Plan*

On December 4, 2019, the Court entered an order approving Insys's Final Disclosure Statement ("Approval Order").<sup>657</sup> The Approval Order deemed the Final Disclosure Statement to have adequate information pursuant to the Bankruptcy Code.<sup>658</sup> Similarly, the Approval Order specified that all objections filed before the Final Plan, as well as those filed at the Final Disclosure Statement hearing, were either deemed as solved or overruled by the Final Plan.<sup>659</sup> Further, the Approval Order summarized all approved provisions in the Final Plan, including Voting ("Voting Procedures") and Solicitation Procedures ("Solicitation Procedures").<sup>660</sup> The Approval Order provided the dates for both the Confirmation hearing, January 16-17, 2020, and the objection deadline, January 6, 2020 ("Plan Objection Deadline").<sup>661</sup>

### *m. Solicitation*

The Approval Order also provided Solicitation and Voting Procedures for the Final Plan.<sup>662</sup> Pursuant to Bankruptcy Rule 3019, the Solicitation Procedures required Insys to mail all required materials to each class ("Solicitation Packages") within three business days of the entry of order ("Solicitation Deadline").<sup>663</sup> 3017(d) provides that Solicitation Packages obtained: (1) the Approval Order, (2) the Final Plan; (3) the Final Disclosure Statement, (4) the Confirmation Hearing Notice, (5) a Ballot to vote with, and (6) a pre-paid, pre-address return envelope.<sup>664</sup>

The Approval Order allowed Insys to distribute the Approval Order, Final Plan, and Final Disclosure Statement in an electronic format, including CD or flash drive.<sup>665</sup> However, it required the ballot, Confirmation Hearing Notice, and other required materials to be in paper format.<sup>666</sup> Any

---

<sup>657</sup> Order (I) Approving the Disclosure Statement and the Form and Manner of the Notice of a Hearing Thereon, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors Plan, and (V) Granting Related Relief. [Docket 952](#).

<sup>658</sup> *Id.* at 8.

<sup>659</sup> *Id.*

<sup>660</sup> *Id.*

<sup>661</sup> *Id.* at 16-17.

<sup>662</sup> [Docket 952](#) at 16-17.

<sup>663</sup> *Id.* at 11.

<sup>664</sup> *Id.*

<sup>665</sup> *Id.* at 12

<sup>666</sup> *Id.* at 11-12.

Claimant that received electronic distributions could request a paper copy from EPIQ (“Soliciting Agent”).<sup>667</sup> Under the Solicitation Procedures, the “Voting Classes,” could turn in both paper and electronic.<sup>668</sup> The Voting Classes were those Impaired by the Final Plan, and allowed to vote to accept it or reject it.<sup>669</sup> If Voting Class member could not be reached by mail, Insys was excused from mailing the Solicitation Packages, unless an accurate address was provided to Insys was before the Voting Deadline (“Voting Deadline”), on January 6, 2020.<sup>670</sup>

Additionally, the Approval Order stated that Voting Classes were not entitled to vote if the claim: (1) was no greater than \$0.00; (2) was disallowed as of the Voting Record Date; (3) was not scheduled, or was scheduled but deemed as contingent, unliquidated, or disputed, and was not timely filed according to the “Bar Date Order”; or (4) was subject to objection or request for estimation before the “Claim Dispute Deadline.”<sup>671</sup> However, Classes 8(a) and (b) Claims were able to vote even if they were scheduled as contingent, unliquidated, or disputed.<sup>672</sup> “Non-Voting Classes,” were unimpaired Classes and subordinate classes, and were to receive: (1) the Confirmation Hearing Notice, (2) the Non-Voting Class Notice, and (3) the Opt Out Election Form (“Opt Out Election Form”) allowing the classes to opt of releases set out in the Final Plan.<sup>673</sup> The deadline to opt out of certain Third Party Release provisions in the Final Plan was January 6, 2020 (“Opt Out Deadline”).<sup>674</sup>

Lastly, Insys was required to distribute copies of the Final Plan or Disclosure Statement to any party that held an executory contract or unexpired lease, and whose claim was not allowed, filed, or scheduled.<sup>675</sup> The Final Plan deemed each of the counterparties to be assumed and assigned to the ILT, thus requiring them to receive an Assumption and Assignment notice by the Solicitation Date.<sup>676</sup>

---

<sup>667</sup> [Docket 952](#) at 12.

<sup>668</sup> *Id.*

<sup>669</sup> [Docket 956](#) at 39.

<sup>670</sup> [Docket 952](#) at 11.

<sup>671</sup> *Id.* at 7.; Voting Record Date – November 25, 2019.

<sup>672</sup> *Id.*

<sup>673</sup> [Docket 956](#) at 24.

<sup>674</sup> [Docket 952](#) at 14.

<sup>675</sup> *Id.* at 15.

<sup>676</sup> *Id.*

*i. Tabulation Procedures*

When a ballot was casted more than one time for the same claim, the last ballot received was deemed to reflect the voter's intention.<sup>677</sup> Any ballot that did not clearly indicate acceptance or rejection of the Final Plan was not counted.<sup>678</sup> Similarly, any Ballot or Class Ballot that was received after the Voting Deadline, illegible, contained insufficient information, was casted by a Non-Voting Class Claim, did not have a signature, or transmitted by unapproved means, were not counted in the vote.<sup>679</sup> Any party with multiple claims against Insys was allowed one vote total for all claims.<sup>680</sup> Any Voting Class that did not render valid votes was deemed to accept the Final Plan.<sup>681</sup> If a Voting Class Claim was transferred, the transferor of the claim was entitled to vote so long as they filed documentation with the Court within 21 days prior to the Voting Record Date, and no timely objection was made by the transferor.<sup>682</sup> The Soliciting Agent was allowed, but not required, to contact any party that submitted incomplete or otherwise deficient ballots to cure the deficiencies.<sup>683</sup>

*n. **Voting Results***

On January 13, 2020, EPIQ filed a declaration certifying the validity of the ballots on the Final Plan.<sup>684</sup> The Classes where all claims accepted the Final Plan were: (1) Class 3 Convenience Claims; (2) Class 5 Insurance Related Claims; (3) Class 6 Hospital and NAS Monitoring Claims; (4) Class 8(a) State Claims; and (5) Class 9 Personal Injury Claims.<sup>685</sup> Class 4 Trade and other Unsecured Claims accepted 77.54% or 11 claims amounted to \$2,473,659.27, and rejected 9 of the claims amounting to \$716,474.74.<sup>686</sup> Class 8(b) Municipality/Tribe Claims accepted 97.74%

---

<sup>677</sup> [Docket 952](#) at 15.

<sup>678</sup> *Id.*

<sup>679</sup> *Id.*

<sup>680</sup> *Id.* at 16.

<sup>681</sup> *Id.*

<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

<sup>684</sup> Certification of Ballots. [Docket 1086](#).

<sup>685</sup> *Id.* at Exhibit A Tabulation Summary.

<sup>686</sup> *Id.*

or 1,722 claims amounting to \$1,1771.00, rejecting 41 Claims amounting to \$41.00.<sup>687</sup> Class 7 DOJ Claims did not submit votes to accept or reject the Final Plan, and were therefore deemed to accept the Final Plan pursuant to section 3.3 of the Final Plan.<sup>688</sup> As the Final Plan stated, Class 1, Secured Claims, and Class 2, Other Priority Claims, were deemed to accept the plan under Bankruptcy Code section 1126(f).<sup>689</sup> Due to acceptance from one impaired voting class by the majorities required in the Final Plan, Bankruptcy Code section 1129(a)(10) was satisfied.<sup>690</sup>

*i. Extending Time for Approval*

On January 3, 2020, Insys requested the Court extend the exclusivity period by which Insys could file a chapter 11 plan and solicit acceptances of such plan.<sup>691</sup> The Court granted this request on January 22, 2020, permitting Insys through and until April 27, 2020.<sup>692</sup>

*o. **Objections to Confirmation of the Final Plan***

*i. Limited Objection of Securities Lead Plaintiff*

On January 6, 2020, Securities Lead Plaintiff, Clark Miller, filed a limited objection to Confirmation of the Final Plan. The limited objection requested the Confirmation Order clarify: (1) clarify that the Third-Party Release did not impact the certified class against the non-debtor defendants;<sup>693</sup> (2) Miller was permitted to pursue the Class Claims against Insys for available insurance proceeds;<sup>694</sup> (3) that confirmation of the Final Plan did not modify or expand the rights of any party relating to the D&O Policies;<sup>695</sup> and (4) the VRT and the ILT were to preserve evidence that was relevant to the Securities Litigation until it concluded.<sup>696</sup>

---

<sup>687</sup> [Docket 1086](#) at Exhibit A Tabulation Summary.

<sup>688</sup> Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Plan. [Docket 1115](#) at 16

<sup>689</sup> *Id.*

<sup>690</sup> *Id.*; citing 11 U.S.C. §1129(a)(10).

<sup>691</sup> Limited Objection of Securities Lead Plaintiff to Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation. [Docket 1064](#) at 5.

<sup>692</sup> *Id.*

<sup>693</sup> [Docket 1064](#) at 5.

<sup>694</sup> *Id.* at 6.

<sup>695</sup> *Id.* at 7.; [Investopedia Definition of D&P Policies](#): Directors and officers (D&O) liability insurance is insurance coverage intended to protect individuals from personal losses if they are sued as a result of serving as a director or an officer of a business or other type of organization.

ii. Limited Objection of the SEC

On January 6, 2020, the SEC filed an objection to the Final Plan regarding non-debtor third party releases.<sup>697</sup> The SEC argued that the releases violated Bankruptcy Code section 524(e).<sup>698</sup> Moreover, the SEC stressed the significance of non-debtor third party releases, arguing that such releases enabled non-debtors to benefit from Insys's bankruptcy by allowing the non-debtors a release for their own past misconduct that violated federal securities law or breached state law fiduciary duties.<sup>699</sup> Therefore, the SEC believed that the release and exculpation provisions should be removed from the Final Plan so that the Class 13, Equity Interests, could be removed from the releases or be required to "opt in", instead of Class 13 having to affirmatively opt out.<sup>700</sup>

Pursuant to Bankruptcy Code section 524(e), the SEC believed that the Final Plan's Third Party Release was not consensual, therefore violating the standard requiring it to be a consensual release.<sup>701</sup> Moreover, the SEC argued that the Third Party Release violated Bankruptcy Code 1123(e)(4) by creating the possibility of treating of similarly situated class members disparately.<sup>702</sup> Thus, the SEC requested that the Class 13, Equity Interests, be removed from the Third Party Release and injunction, or they be required to opt in instead of having to opt out.<sup>703</sup>

iii. The U.S. Trustee's Objection

On January 6, 2020 the U.S. Trustee, like the SEC, filed an objection to the Final Plan requiring the Equity Interest holder to opt-out of such releases.<sup>704</sup> The U.S. Trustee argued that (1) Third Party Release require affirmative consent; (2) Insys did not meet the standards for non-consensual Third Party Release, and (3) pursuant to Bankruptcy Code Section 503(b)(3)(D), the

---

<sup>696</sup> [Docket 1064](#) at 10.

<sup>697</sup> Limited Objection to Confirmation of Plan Filed by Securities And Exchange Commission. [Docket 1065](#) at 2.

<sup>698</sup> *Id.*; citing 11 U.S.C §534(e).

<sup>699</sup> *Id.*

<sup>700</sup> *Id.* at 2-3.

<sup>701</sup> *Id.* at 6.

<sup>702</sup> *Id.* at 12.

<sup>703</sup> *Id.* at 14.

<sup>704</sup> Objection to Confirmation of Plan U.S. Trustees Objection to Second Amended Joint Chapter 11 Plan of Liquidation. [Docket 1066](#).



SMT Group failed to demonstrate that the release made substantial contribution to outcome.<sup>705</sup> For those three reasons, the U.S. Trustee requested the Court deny confirmation of the Final Plan or grant appropriate relief.<sup>706</sup>

iv. Chubb's Objection

On January 9, 2020, the Chubb filed an objection to the Final Plan's treatment of Insurance Programs.<sup>707</sup> Chubb stated the insurance programs were improperly assigned by the Final Plan, arguing that the Insurance Programs could not be assigned without prior written consent from Chubb, and stating Chubb was not requested to and did not give consent.<sup>708</sup> Furthermore, Chubb objected to the ILT and the VRT receiving benefits of the programs, while avoiding liability for failing to comply with the provisions of the policies and applicable non-bankruptcy law.<sup>709</sup> Further, Chubb claimed the Final Plan disregarded coverage defenses, arguing that disputes related to such defenses should be adjudicated and determined under the original terms of the Insurance Programs along with applicable law.<sup>710</sup> Similarly, Chubb asserted the Final Plan failed to provide the process for the handling of WC Policy Claims and direct action claims.<sup>711</sup> Chubb mentioned the negotiating and requesting appropriate and necessary language in the Original Plan that would have resolved this objection, but they failed to reach an agreement.<sup>712</sup> Finally, Chubb requested the Court either (a) deny confirmation of the Final Plan, or (b) modify it to reflect their objections, and to grant appropriate relief.<sup>713</sup> On January 14, 2020, Insys responded to the objections by filing a modification to the Final Plan.<sup>714</sup>

---

<sup>705</sup> [Docket 1066](#) at 6, 9, 13.

<sup>706</sup> *Id.* at 17.

<sup>707</sup> Objection of the Chubb Companies to the Second Amended Joint Chapter 11 Plan of Liquidation Filed by Chubb. [Docket 1080](#).

<sup>708</sup> *Id.* at 8

<sup>709</sup> *Id.* at 10.

<sup>710</sup> *Id.* at 14.

<sup>711</sup> *Id.* at 15.

<sup>712</sup> *Id.* at 16.

<sup>713</sup> *Id.* at 17.

<sup>714</sup> Modification to the Second Amended Joint Chapter 11 Plan of Liquidation. [Docket 1095](#).

***p. Final Plan Modification***

As stated above, on January 14, 2019 Insys filed a modification to the Final Plan (“Final Plan Modification”).<sup>715</sup> In the Confirmation Order of the Final Plan, filed January 16, 2019, the Court stated that “modification made to the Final Amended Plan, (i) complied with Bankruptcy Code section 1127 and Bankruptcy Rule 3019, (ii) did not adversely affect the treatment Allowed Claims holders, and (iii) did not require re-solicitation of votes with respect to the Final Plan.”<sup>716</sup> The Final Plan was deemed to be accepted by the previous vote, and the modifications made did not affect the previous acceptance.<sup>717</sup>

Similarly, the Final Plan Modification added more categories for Allowed DOJ Claims, including DOJ Civil Claims, DOJ Forfeiture Claims, and DOJ Restitution Claims that included DOJ Residual Restitution Claims.<sup>718</sup> DOJ forfeiture Claim was DOJ’s Claim in the amount of \$30,002,000.00 pursuant to the June 4, 2029 plea agreement between the U.S. Attorney for the District of Massachusetts (“MA District Court”) and Insys Pharma, Inc., and relating to the deferred prosecution agreement between Insys and the DOJ.<sup>719</sup>

DOJ Residual Restitution Claims related to, or made on behalf of any creditor of Insys that (1) failed to file a proof of claim in these cases by the Bar Date, (2) that was not listed to have contingent, unliquidated, or disputed scheduled claims as set forth in the schedules, and (3) was not part of any class claim.<sup>720</sup> These claims were only for criminal restitution claims that were not duplicative of the claims already made for these cases.<sup>721</sup> DOJ Restitution Claims were any Claims filed by the DOJ seeking restitution pursuant to a final order awarding restitution in the MA District Court in U.S. v. Insys Pharma, Inc., pursuant to the June 4, 2019 plea agreement between the U.S. Attorney for the District of Massachusetts (“MA District Court”) and Insys Pharma, Inc.

---

<sup>715</sup> [Docket 1095](#).

<sup>716</sup> *Id.* at 6.

<sup>717</sup> *Id.* at 6-7.

<sup>718</sup> *Id.* at 2.

<sup>719</sup> *Id.*; Money Judgment – U.S. District Court for Massachusetts in case No. 1:19-cr-10191-RWZ.

<sup>720</sup> *Id.*

<sup>721</sup> *Id.*

## VIII. Confirmation

On January 16, 2020, the Court entered its order confirming the Final Plan under Bankruptcy Code section 1129 (“Confirmation Order”).<sup>722</sup> The Final Plan’s acceptance was still applicable after the Final Plan modification, and thus, the Final Plan and applicable documents did not need to be re-solicited.<sup>723</sup> The Final Plan went in to effect on February 20, 2020.<sup>724</sup>

### *a. Solicitation of the Final Plan*

The Court found that Solicitation Packages transmission complied with Bankruptcy Rules 3017 and 3018, Local Rules, and the Final Disclosure Statement.<sup>725</sup> The Voting Classes received adequate ballots, the period for voting was reasonable, and all other procedures were satisfied under the Final Plan.<sup>726</sup> The Solicitation Packages were adequate, and sufficiently provided a notice of the Confirmation Hearing, as well as adequate notice for the filing and serving of objections to the Confirmation.<sup>727</sup>

### *b. Voting*

The Voting Classes were served the Solicitation Packages within a reasonable time to make a sufficiently informed vote to accept or reject the Final Plan.<sup>728</sup> Again, under Bankruptcy Code section 1126(f) and 1126(g), Insys was not required to serve the Non-Voting Classes, including the unimpaired classes, and the fully impaired Subordinate classes as these Classes were deemed to accept or reject the plan before the Solicitation.<sup>729</sup> Solicitation Packages were sufficient to provide notice of the Confirmation Hearing, including when the objection to the confirmation

---

<sup>722</sup> [Docket 1115](#) at 30.

<sup>723</sup> *Id.* at 6-7.

<sup>724</sup> *Id.* at 6.

<sup>725</sup> *Id.* at 7.

<sup>726</sup> *Id.* at 7 -8.

<sup>727</sup> *Id.* at 8.

<sup>728</sup> *Id.* at 7.

<sup>729</sup> *Id.*

deadline was.<sup>730</sup> The Court approved the method of vote tabulation, stating that it was consistent with the Disclosure Statement Order.<sup>731</sup>

***c. Plan Supplement***

The Court then approved the Plan Supplements that Insys filed on December 30, 2019, and January 6, 2020.<sup>732</sup> All materials in the Plan Supplement provided notice of all documents therein and were proper under all applicable rules, requiring no further notice.<sup>733</sup>

***d. Liquidating Trustee***

The Court approved the use of Liquidating Trustee by mutual agreement of Insys, the Creditors' Committee, and the SMT Group Representatives as provided in section 5.6 of the Final Plan.<sup>734</sup> They mutually appointed Mr. Carmin Reiss as the Liquidating Trustee for the VRT, and William Henrich as the Liquidating Trustee for the ILT.<sup>735</sup>

***e. Compliance with Bankruptcy Rule 3016***

The Court stated that the Final Plan satisfied Bankruptcy Rule 3016(a) by being dated and identifying Insys as proponents.<sup>736</sup> Similarly, the Court stated that it met Bankruptcy Rule 3016(b) by appropriately filing the Disclosure Statement and Final Plan with the Court, and lastly, the Final Plan complied with 3016(c) the release and injunction provisions were bolded and set out in , conspicuous language.<sup>737</sup>

---

<sup>730</sup> [Docket 1115](#) at 8.

<sup>731</sup> *Id.*; see also [Docket 956](#).

<sup>732</sup> *Id.*

<sup>733</sup> *Id.* at 9.

<sup>734</sup> *Id.* at 10.

<sup>735</sup> *Id.*

<sup>736</sup> *Id.*

<sup>737</sup> *Id.*

*f. Classification of Claims*

The Court approved the Classification of Claims, stating that grouping was valid for business, factual, and legal reasons, satisfying the applicable sections of the Bankruptcy Code.<sup>738</sup> The unimpaired classes were set out by meaning of Bankruptcy Code section 1124, which thus satisfied 1123(a)(2).<sup>739</sup> The Final Plan satisfied Bankruptcy Code section 1123(a)(3), providing equal treatment for each claim or interests in each Class, unless agreed otherwise.<sup>740</sup>

*g. Implementation*

Pursuant to Bankruptcy Code section 1123(a)(5), all documents filed relating to the Final Plan provided an adequate means for its implementation, including: (1) establishing the Liquidating Trusts and appointing the Liquidating Trustees to administer the Final Plan; (2) appointing the Liquidating Trustee for the VRT to administer the Final Plan, (3) appointing the VRT Claims Administrator and establishing the VRT to administer the Personal Injury Claims; (4) appointing the ILT Board and the VRT Board; (5) substantive consolidation of Insys for procedural reasons; (6) transferring of assets to the Trusts; (7) establishing procedures for class claims; and (8) funding the Trust Operating Reserves.<sup>741</sup>

*h. Non-Voting Equity Securities*

New securities were issued under the Final Plan, facilitating Insys's winding up and dissolution.<sup>742</sup> Complying Bankruptcy Code section 1123(a)(6), these new securities were issued as Parent Equity Interest to the ILT, allowing the ILT Liquidating Trustee to control Insys.<sup>743</sup>

*i. Assumption and Rejection of Contracts*

Bankruptcy Code sections 365 and 1123(b)(2) were satisfied by the Final Plan , providing all contracts and leases left unresolved on the Effective Date were deemed to be rejected unless:

---

<sup>738</sup> [Docket 1115](#) at 10 -11.

<sup>739</sup> *Id.* at 11

<sup>740</sup> *Id.*

<sup>741</sup> *Id.*; See appendix for the Trust Operating Reserves.

<sup>742</sup> *Id.*

<sup>743</sup> *Id.*

(1) listed in the scheduled Assumed and Assigned Contracts, or (2) a motion was pending on the Effective Date to assume, reject, or assign such contract.<sup>744</sup>

***j. Injunctions, Releases, & Exculpation***

The Court approved the releases, exculpations, and injunctions in the Final Plan.<sup>745</sup> Bankruptcy Code sections 105(a) and 1123(b) permits the issuance of injunctions and approvals of releases, exculpations, and injunctions in the Final Plan.<sup>746</sup> Further the Court stated that the releases included in the Final Plan were key components and were a valid business decision.<sup>747</sup>

***i. Third Party Releases***

The Court approved the Third Party Releases, deeming them essential to the Final Plan, thus approving such releases as they were agreed to by Insys, the Creditors' Committee, the SMT Group Representatives had agreed to them as they were narrowly tailored to the Final Plan.<sup>748</sup>

***k. 9019 Settlement***

Pursuant to Bankruptcy Rule 9019, factors such as duration of litigation, probability of success, and complexity of the cases were determined to weigh in favor of resolving the disputes as set forth in the Final Plan.<sup>749</sup> The Court stated that Insys reached its burden of proving that the Plan Settlement and treatment of the Classes was fair and in the best interest all parties.<sup>750</sup>

***l. Objections***

The Court over ruled all were overruled on the merits by the Confirmation order, that were not withdrawn, waived, or deferred, and all reservations of rights pertaining the Confirmation of the Final Plan, other than those withdrawn with prejudice prior to or at the Confirmation Hearing.<sup>751</sup> The Confirmation Order constituted the Court's approval of the Plan Settlement,

---

<sup>744</sup> [Docket 1115](#) at 12.

<sup>745</sup> *Id.* at 21.

<sup>746</sup> *Id.*

<sup>747</sup> *Id.*

<sup>748</sup> *Id.* at 21-22.

<sup>749</sup> *Id.* at 26.

<sup>750</sup> *Id.*

<sup>751</sup> *Id.* at 30.

including that: (1) it was in the best interests of Insys and the Estates, as well as their respective property and stake holders; (2) it was fair, equitable, and reasonable.<sup>752</sup>

## **IX. Post-Confirmation**

After Confirmation Order was entered, there were still matters to be resolved before transfers could occur and Insys could begin to windup business. This section details the various motions and orders filed after confirmation of the Final Plan.

### ***a. Assumption and Assignments***

On January 23, 2020, Insys filed a stipulation between them and Hikma and IMA North America regarding the assumption and assignment of a contract for the purchase order of Nasal Peelable Tooling (the “NPT Contract”).<sup>753</sup> Although the Bankruptcy Court already approved the assumption and assignment of certain contracts regarding the transaction between these parties on August 22, 2019, the NPT Contract was not included.<sup>754</sup> The Court approved this acquisition on January 24, 2020.<sup>755</sup> On February 19, 2020, the Court entered an order approving a stipulation between Insys and Senzer Limited regarding the assumption and assignment of certain contracts.<sup>756</sup>

### ***b. Payment of Administrative Claims***

On January 28, 2020, the Court approved Ascent Health Services’ motion for allowance and payment of administrative claims pursuant to Bankruptcy Code section 503(b)(1)(A).<sup>757</sup> On March 17, 2020, the Court approved another motion by Ascent Health Services regarding the

---

<sup>752</sup> [Docket 1115](#) at 31.

<sup>753</sup> Certification of Counsel Regarding Order Approving Stipulation by and Among the Debtors, Hikma Pharmaceuticals USA Inc., and IMA North America, Inc. Regarding Assumption and Assignment of a Contract for Peelable Tooling. [Docket 1146](#) at 1; Nasal Peelable Tooling was one of Insys’s products purchased by Hikma and IMA North America.

<sup>754</sup> *Id.* at 2.

<sup>755</sup> Order Approving Stipulation by and Among the Debtors, Hikma Pharmaceuticals USA, INC., and IMA North America, Inc. Regarding Assumption and Assignment of a Contract for Peelable Tooling. Case No. 19-11292. [Docket 1148](#) at 2.

<sup>756</sup> Order Approving Stipulation by and Among the Debtors and Senzer Limited Regarding Assumption and Assignment of Certain Contracts. [Docket 1207](#) at 2.

<sup>757</sup> Order Approving Stipulation with Respect to the Motion of Ascent Health Services for Allowance and Payment of Administrative Claims Pursuant to 11 U.S.C. § 503(b)(1)(A). [Docket 1152](#) at 2.

payment of administrative claims.<sup>758</sup> The parties filed a stipulation providing that Insys had until April 20, 2020 to respond to Ascent's motion.<sup>759</sup> Furthermore, the stipulation gave Insys 10 days to pay any and all claims not in dispute to Ascent.<sup>760</sup> For claims in dispute, a hearing was to be held.<sup>761</sup> The stipulation allowed either party to extend any deadline established by the agreement, to which Insys took advantage of on April 20, 2020.<sup>762</sup> Insys requested that the Court would extend this deadline through December 17, 2020.<sup>763</sup> The Court granted this order on May 1, 2020.<sup>764</sup>

On March 9, 2020, AlphaScrip, Inc. filed a motion requesting authority to pay an Administrative Expense Claim for \$53,102.95, plus attorneys' fees, indemnification, and other costs as recoverable under the ICO Agreement and applicable law for unpaid post-petition services provided to Insys.<sup>765</sup> Before Insys filed for bankruptcy, they entered into an agreement with ICO, agreeing to provide ICO with discount vouchers for prescription medications and to facilitate payments to pharmacies for the vouchers.<sup>766</sup> In return, ICO would make payments to Insys equal to invoiced amounts within 10 days of such invoices.<sup>767</sup> As of the Petition Date, Insys had a security deposit for \$324,000.00 relating to the ICO Agreement.<sup>768</sup> As of the date of rejection, Insys still owed \$53,102.95, net of the deposit, for fees incurred under terms the ICO Agreement,

---

<sup>758</sup> Order Approving Stipulation with Respect to the Motion of Ascent Health Services for Allowance and Payment of Administrative Claim Pursuant to 11 U.S.C. § 503(b)(1)(A). [Docket 1247](#) at 2.

<sup>759</sup> Certification of Counsel Regarding Order Approving Stipulation with Respect to the Motion of Ascent Health Services. [Docket 1246](#) at 6.

<sup>760</sup> *Id.*

<sup>761</sup> *Id.*

<sup>762</sup> *Id.*; Motion to Extend Time to Object to Administrative Claims. [Docket 1310](#) at 1.

<sup>763</sup> *Id.*

<sup>764</sup> Order Granting Motion for Entry of an Order Extending the Time to Object to Administrative Claims. [Docket 1337](#).

<sup>765</sup> Motion for Payment of Administrative Expenses/Claims filed by AlphaScrip Incorporated. [Docket 1237](#) at 1; See *Id.* at 3; ICO Agreement: compilation of a Master Service Agreement and supplemental agreements between the parties.

<sup>766</sup> *Id.* at 3.

<sup>767</sup> *Id.*

<sup>768</sup> *Id.* at 4.



after the Petition Date.<sup>769</sup> On April 16, 2020, the Court entered an order granting AlphaScrip, Inc. its motion, requiring Insys to pay this claim within five business days after entry of the order.<sup>770</sup>

On June 3, 2020, the Liquidating Trustee filed a stipulation regarding administrative claims of Bessemer Trust Company (“Bessemer”) totaling \$458,000.<sup>771</sup> Pursuant to Bankruptcy Code section 503, the stipulation provided Bessemer an allowed claim of \$230,000 to be paid within 10 days of this agreement.<sup>772</sup> In addition, Bessemer received an allowed general unsecured claim (placing Bessemer in Class 4 of the Plan) for \$230,000.<sup>773</sup> On July 9, 2020, Bessemer transferred their claims against Insys to Contrarion Funds, LLC.<sup>774</sup>

### *c. Late Proof of Claims*

On May 12, 2020, Richard Landucci, Paul Lara, Kimberlee Kossup, William Thornton, and Andrew Lasky (the “Movants”) filed a motion requesting the Court to allow them to file a late proof of claim.<sup>775</sup> The bar date order required any claim arising before the Petition Date to be filed on September 16, 2019.<sup>776</sup> However, the Movants did not receive proper notice as they were unknown personal injury claimants.<sup>777</sup> Bankruptcy Rule 9006(b)(1) provides an exception to bar dates if “failure to act was the result of excusable neglect,” which each claimant must prove for themselves.<sup>778</sup> The Court granted leave to file proofs of claim on each claimants behalf no later than July 31, 2020.<sup>779</sup>

---

<sup>769</sup> [Docket 1237](#) at 4.

<sup>770</sup> Order Granting AlphaScrip Incorporated for Allowance of Administrative Expense Claim. [Docket 1308](#) at 2.

<sup>771</sup> *Id.* at 3.

<sup>772</sup> *Id.*

<sup>773</sup> Stipulation between William H. Henrich and Bessemer Trust Company. [Docket 1350](#) at 4.

<sup>774</sup> Transfer/Assignment of Claim. [Docket 1376](#).

<sup>775</sup> Motion for Leave to File a Late Proof of Claim by Andrew Lasky, William Thornton, Kimberlee Kossup, Paul Lara, and Richard Landucci. [Docket 1342](#) at 1.

<sup>776</sup> *Id.* at 2.

<sup>777</sup> *Id.* at 3-6.

<sup>778</sup> *Id.* at 3-6; citing Fed. R. Bankr. P. 9006(b)(1).

<sup>779</sup> Order Granting Motion of Richard Landucci, Paul Lara, Kimberlee Kossup, William Thornton, and Andrew Lasky. [Docket 1347](#) at 2.

*d. Orders Extending Time*

On January 3, 2020, prior to confirmation, Insys requested the Court extend the period within which Insys could remove actions under Bankruptcy Code section 1452 and Bankruptcy Rule 9006(b) and 9027 by 120 days, allowing Insys through May 5, 2020.<sup>780</sup> On January 22, 2020, the Court granted Insys's request.<sup>781</sup>

On February 14, 2020, Insys filed a motion to extend the ILT Claim Arbitrator's time to determining the allocation of claims under the Final Plan.<sup>782</sup> This motion was filed as a stipulation between Insys and the Creditors' Committee and Class Representatives.<sup>783</sup> Rather than giving the ILT Claims Arbitrator "60 days following the Effective Date," as requested in section 5.7(i) of the final Plan, the stipulation provided that ILT Claims Arbitrator was to begin responsibilities on June 1, 2020, or a date that is later agreed to by the Class Representatives.<sup>784</sup> The Court approved this order that same day.<sup>785</sup> On June 19, 2020, the date for ILT Claims Arbitrator to begin was set for September 1, 2020 and on June 22, 2020, the Court approved it.<sup>786</sup> However, another stipulation was filed further modifying the date to be between September 1, 2020, and November 1, 2020, only affecting the Hospital Class Representative and NAS Monitoring Class Representative by allowing them time to complete arbitration required by the Final Plan.<sup>787</sup> The Court approved this modification as it pertains to the Hospital Class Representative and NAS Monitoring Class Representative on September 21, 2020.<sup>788</sup>

---

<sup>780</sup> Second Motion of Debtors for an Order Extending Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9006(b) and 9027. [Docket 1063](#) at 1.

<sup>781</sup> Order Extending Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9006(b) and 9027. [Docket 1142](#) at 2.

<sup>782</sup> Certification of Counsel Regarding Order Approving Stipulation by and Between the Debtors, the Official Committee of Unsecured Creditors, and Class Representatives Modifying Certain Plan Deadlines. [Docket 1192](#) at 1.

<sup>783</sup> *Id.*

<sup>784</sup> *Id.* at 2.

<sup>785</sup> Order Approving Stipulation by and Between the Debtors, the Official Committee of Unsecured Creditors, and Class Representatives Modifying Certain Plan Deadlines. [Docket 1193](#) at 2.

<sup>786</sup> Certification of Counsel Regarding Stipulation to Amend Certain Plan Deadlines. [Docket 1369](#) at 2; Order Approving Stipulation by and Among the Liquidating Trustee and Class Representatives Modifying Certain Plan Deadlines. [Docket 1370](#) at 2.

<sup>787</sup> Certification of Counsel Regarding the Second Stipulation by and Among Certain Class Representatives and the Liquidating Trustee Modifying Certain Plan Deadlines. [Docket 1405](#) at 7.

<sup>788</sup> *Id.* at 2.

On June 2, 2020, the Liquidating Trustee filed a motion extending the claim's objection deadline through February 16, 2021.<sup>789</sup> In about three and a half months, over 4,200 claims totaling about \$12 billion were filed.<sup>790</sup> The Liquidating Trustee claimed that he and his professionals were working diligently to set up various processes for reconciling and reviewing claims, especially with certain Administrative Claims, along with juggling tax issues and returns and the wind down of Insys's 401K plan.<sup>791</sup> On top of the volume of work, the Coronavirus pandemic had shut down much of society and getting work done in and of itself was a difficult task at this time.<sup>792</sup> Due to these issues, the Liquidating Trustee knew he would run out of time to handle it all.<sup>793</sup> On June 11, 2020, the Court granted the Liquidating Trustee's motion extending the claim's objection deadline through February 16, 2021.<sup>794</sup>

On November 9, 2020, the Liquidating Trustee filed a motion requesting an extension for the time to object to administrative claims by six more months, through June 17, 2021.<sup>795</sup> The Court granted the motion on November 25, 2020.<sup>796</sup> On December 22, 2020, the Liquidating Trustee, having filed nine omnibus objection claims and expunged over 700 claims, filed a motion requesting the Court to extend the objection deadline through August 31, 2021.<sup>797</sup> The Court granted the motion on January 13, 2021, extending the claims objection deadline through August 31, 2021.<sup>798</sup> Another motion to extend the time to object to claims was filed on May 3, 2021.<sup>799</sup>

---

<sup>789</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to Claims (Other than Administrative Claims). [Docket 1348](#) at 1.

<sup>790</sup> *Id.* at 3.

<sup>791</sup> *Id.* at 4

<sup>792</sup> *Id.*

<sup>793</sup> *Id.*

<sup>794</sup> Order Granting Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to Claims (Other than Administrative Claims). [Docket 1353](#) at 2.

<sup>795</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to Administrative Claims. [Docket 1430](#) at 4.

<sup>796</sup> Order Granting Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to Administrative Claims. [Docket 1446](#) at 2.

<sup>797</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to Claims (Other than Administrative Claims). [Docket 1464](#) at 3.

<sup>798</sup> Order Extending The Time to Object to Claims. [Docket 1468](#).

<sup>799</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to All Claims. [Docket 1640](#).

This motion, however, was for all claims, meaning administrative ones also.<sup>800</sup> The Court granted this motion on May 14, 2021, extending all claims through January 28, 2022.<sup>801</sup>

The final motion requesting the Court to extend the time to object to all claims was filed on November 19, 2021.<sup>802</sup> Realizing the Liquidating Trustee needed much more time than just a couple month extension, the motion requested the Court to extend the time an entire year for all claims, through January 28, 2023.<sup>803</sup> The Court granted this motion in its entirety on December 12, 2021.<sup>804</sup>

*e. Classification of Claims*

On January 17, 2020, the Court entered an order approving a stipulation concerning the classification of claims of Steve Meyer and Pierre Lapalme.<sup>805</sup> The Final Plan classified Meyer and Lapalme in Class 11, 501(c) Subordinated Claims, but they argued their claims should be classified in Class 4, Trade and Other Unsecured Claims.<sup>806</sup> On February 19, 2020, the Court approved a stipulation between Insys and Pharmaceutical Research Associates, Inc. classifying their claims in Class 4.<sup>807</sup>

---

<sup>800</sup> [Docket 1640](#) at 2-4.

<sup>801</sup> Order Granting Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to All Claims. [Docket 1661](#) at 2.

<sup>802</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to All Claims. [Docket 1772](#) at 1.

<sup>803</sup> *Id.* at 5-6.

<sup>804</sup> Order Granting Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to All Claims. [Docket 1775](#) at 2.

<sup>805</sup> Order Approving Stipulation Concerning Classification of Claims of Steve Meyer and Pierre Lapalme for Confirmation and Voting Purposes. [Docket 1125](#).

<sup>806</sup> Certification of Counsel Regarding Order Approving Stipulation Concerning Classification of Claims of Steven Meyer and Pierre Lapalme for Confirmation and Voting Purposes. [Docket 1123](#) at 5.

<sup>807</sup> Order Approving Stipulation and Agreement Between Debtors and Pharmaceutical Research Associates Regarding Treatment of Certain Contracts. [Docket 1206](#).

*f. Asset Transfers*

On December 13, 2019, Insys filed a motion requesting the Court's approval to expedite procedures for the De Minimis assets and to expedite an exclusive auction and sales agreement.<sup>808</sup> In this motion, Insys requested the Court's approval over the sale and transfer of any De Minimis Asset, and if Insys was unable to find a buyer for such assets, they requested to abandon the property.<sup>809</sup> Furthermore, Insys requested permission to pay any fees incurred with the sale, transfer, or abandonment of the De Minimis assets and with the Creditors' Committee's consent, Insys requested to enter into an exclusive auction and sales agreement with their chosen liquidator.<sup>810</sup> If property was not sold, Insys requested to abandon such property, as provided in the sales agreement regarding the location of De Minimis assets, any personal property left on the premises would be deemed abandoned as of December 31, 2019.<sup>811</sup> The Court granted this motion on December 30, 2019.<sup>812</sup> On February 3, 2020, Insys filed a motion reporting on the De Minimis asset transfers for the period from between December 30, 2019 and January 31, 2020.<sup>813</sup>

*g. Orders Regarding Plan Administration*

On February 19, 2021, the Liquidating Trustee filed a motion requesting the Court to authorize a third party's work on initial disclosure requirements under section 3.08 of the ILT Agreement.<sup>814</sup> The issue was that the Liquidating Trustee had a cap of \$250,000 to which he was he spend on fulfilling the disclosure requirements under the Final Plan.<sup>815</sup> Meanwhile, the New York Attorney General's office was already in the middle of making documents it had in its possession public.<sup>816</sup> This endeavor included removing documents that contained sensitive

---

<sup>808</sup> Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363, and 554 and Fed. R. Bank. P. 2002 for Approval of (I) Procedures for the Expedited Sale, Transfer or Abandonment of De Minimis Assets, and (II) Entry into an Exclusive Auction and Sales Agreement. [Docket 985](#) at 1.

<sup>809</sup> *Id.* at 2.

<sup>810</sup> *Id.*

<sup>811</sup> *Id.* at 5-6.

<sup>812</sup> Order for Approval of (I) Procedures for the Expedited Sale, Transfer, or Abandonment of De Minimis Assets, and (II) Entry Into An Exclusive Auction and Sales Agreement. [Docket 1041](#).

<sup>813</sup> Debtor's Report of De Minimis Asset Transfers for the Period From December 30, 2019, Through and Including January 31, 2020. [Docket 1161](#).

<sup>814</sup> Motion of the Liquidating Trustee of the Insys Liquidation Trust for Authorization to Permit Third Party to Perform Initial Disclosure Requirements Under Section 33.08(b) of the ILT Agreement. [Docket 1495](#) at 3-8.

<sup>815</sup> *Id.* at 3.

<sup>816</sup> *Id.* at 4.

information or that were potentially privileged.<sup>817</sup> The Liquidating Trustee requested authority from the Court to use the documents the New York Attorney General’s office had already sifted through, and that were made public to save valuable resources and valuable time.<sup>818</sup> On March 9, 2010, the Court granted Insys’s motion.<sup>819</sup>

On March 1, 2021, Complete Fleet Services, as the Final Plan’s Class 5 Representatives, filed a motion for the Court’s approval of the allocation plan.<sup>820</sup> On March 30, 2021, Class 5 TPP Claimants filed an objection, stating that the allocation plan lacked detail and analysis, and failed to allocate any real value to Class 5.<sup>821</sup> Most importantly, TPP Claimants objected to the professional fees being paid by the Final Plan, leaving almost no recovery for the class members.<sup>822</sup>

In their reply, the Class 5 Representative stated that TPP Claimants did not have standing to object, under Bankruptcy Code section 1109(b), which states that a claimant must have a “significant stake” to have standing for objections.<sup>823</sup> In addition, the Class 5 Representative argued that TPP Claimants could not change an arbitration award by objecting to them.<sup>824</sup> Finally, at a telephone hearing on April 13, 2021, the Court sustained TPP Claimants objection and denied the Class 5 Representative’s motion.<sup>825</sup> The Court ordered the parties to confer and submit a form of order incorporating the Court’s ruling under certification of counsel.<sup>826</sup>

---

<sup>817</sup> [Docket 1495](#) at 4.

<sup>818</sup> *Id.* at 5.

<sup>819</sup> Order Authorizing Third Party to Perform Initial Disclosure Requirements Under Section 3.08(b) of the ILT Agreement. [Docket 1540](#).

<sup>820</sup> Motion to Approve the Insurance Ratepayer Class Claimants for the Entry of an Order (A) Approving the Insurance Ratepayers’ Allocation Plan, (B) Approving the Forms and Methods for Notifying the Class of Resolution of the Ratepayers Claims, and (C) Granting Related Relief. [Docket 1538](#) at 1, 5.

<sup>821</sup> Objection to the Motion of the Insurance Ratepayer Class Claimants for the Entry of an Order (A) Approving the Insurance Ratepayers’ Allocation Plan, (B) Approving the Forms and Methods for Notifying the Class of Resolution of the Ratepayers Claims, and (C) Granting Related Relief. [Docket 1557](#) at 3.

<sup>822</sup> *Id.*

<sup>823</sup> Reply in Further Support of Motion of the Insurance Ratepayer Class Claimants for the Entry of an Order (A) Approving the Insurance Ratepayers’ Allocation Plan, (B) Approving the Forms and Methods for Notifying the Class of Resolution of the Ratepayers Claims, and (C) Granting Related Relief. [Docket 1566](#) at 4; citing 11 U.S.C. § 1109(b).

<sup>824</sup> *Id.* at 5.

<sup>825</sup> Minute Entry. [Docket 1583](#)

<sup>826</sup> *Id.*

On May 5, 2021, the trustee for the Victims Restitution Trust filed a motion to enforce the plan injunction established in the Final Plan’s section 10.4, which bars any action against trust assets.<sup>827</sup> This motion was filed against a former employee, Jessica Larichuita, who faced litigation for her role in Insys’s wrongful marketing of opioid products.<sup>828</sup> On May 13, 2021, the Court granted this motion, approving the injunction against Larichuita.<sup>829</sup>

#### *h. Omnibus Objections*

After the Final Plan was confirmed, the ILT Trustee and the VRT Trustee reviewed and accepted or rejected claims brought pursuant to the assets in each given trust.

##### *i. ILT Omnibus Objections*

Between July 24, 2020 and February 28, 2020, the ILT Trustee filed 20 omnibus objections to claims brought under the ILT.<sup>830</sup> The ILT Trustee filed the omnibus objections, claiming that

---

<sup>827</sup> Motion to Enforce the Plan Injunction by the Trustee of the Victims Restitution Trust. [Docket 1647](#) at 9-10.

<sup>828</sup> *Id.* at 4.

<sup>829</sup> Order Granting Motion to Enforce the Plan Injunction by the Trustee of the Victims Restitution Trust. [Docket 1659](#).

<sup>830</sup> First Omnibus Objection to Claims of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1382](#); Second Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1416](#); Third Omnibus Objection to Claims Third Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1417](#); Omnibus Objection to Claims Fourth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1418](#); Omnibus Objection to Claims Fifth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1419](#); Omnibus Objection to Claims Sixth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1420](#); Omnibus Objection to Claims Seventh Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1421](#); Omnibus Objection to Claims Eighth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1422](#); Omnibus Objection to Claims Ninth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1423](#); Omnibus Objection to Claims Tenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1589](#); Omnibus Objection to Claims Eleventh Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1590](#); Omnibus Objection to Claims Twelfth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1662](#); Omnibus Objection to Claims Thirteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1707](#); Omnibus Objection to Claims Fourteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1708](#); Omnibus Objection to Claims Fifteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1737](#); Omnibus Objection to Claims Sixteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1740](#); Omnibus Objection to Claims Seventeenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1777](#); Omnibus Objection to Claims Eighteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1778](#); Omnibus Objection to Claims Nineteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1804](#); Omnibus Objection to Claims Twentieth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1805](#).



they were one of various types of claims, including: (1) late claims;<sup>831</sup> (2) duplicate claims;<sup>832</sup> (3) claims that had insufficient information;<sup>833</sup> (4) claims reclassified as Equity interests and changed to Class 13 disallowed claims;<sup>834</sup> (5) misclassified claims;<sup>835</sup> (6) reduced claims;<sup>836</sup> (7) reclassified claims;<sup>837</sup> (8) amended claims;<sup>838</sup> and (9) claims that Insys was not deemed liable for.<sup>839</sup> Between August 20, 2020 and April 8, 2022, the Court granted the first omnibus objection of the ILT Trustee.<sup>840</sup>

---

<sup>831</sup> Order Granting First Omnibus Objection of the Trustee of the Insys Liquidation Trust. [Docket 1396](#); Order Granting Fourteenth Omnibus Objection to Claims of the Trustee of the Insys Liquidation Trust. [Docket 1716](#).

<sup>832</sup> [Docket 1396](#); Order Granting Second Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1447](#); Order Granting Third Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1448](#); Order Granting Fourth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1449](#); Order Granting Fifth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1450](#); Order Granting Sixth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1451](#); Order Granting Seventh Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1452](#); Order Granting Eighth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1453](#); Order Granting Ninth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1454](#)

<sup>833</sup> [Docket 1396](#); [Docket 1716](#); Order Granting Nineteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1813](#)

<sup>834</sup> Order Granting Tenth Omnibus Objection of the Trustee of The Insys Liquidation Trust to Claims. [Docket 1674](#); Order Granting Eleventh Omnibus Objection of the Trustee of the Insys Liquidation Trust Claims. [Docket 1670](#); Order Granting Twelfth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1704](#); Order Granting Thirteenth Omnibus Objection to Claims of the Trustee of the Insys Liquidation Trust. [Docket 1715](#)

<sup>835</sup> Order Granting Sixteenth Omnibus Objection of the Trustee of The Insys Liquidation Trust to Claims. [Docket 1750](#); Order Granting Twentieth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1814](#).

<sup>836</sup> [Docket 1715](#)

<sup>837</sup> [Docket 1704](#); [Docket 1715](#)

<sup>838</sup> [Docket 1716](#); Order Granting Seventeenth Omnibus Objection of the Trustee of The Insys Liquidation Trust to Claims. [Docket 1789](#); Order Granting Eighteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims. [Docket 1788](#); [Docket 1813](#).

<sup>839</sup> [Docket 1715](#); Order Granting Sixteenth Omnibus Objection of the Trustee of The Insys Liquidation Trust to Claims. [Docket 1750](#); [Docket 1814](#).

<sup>840</sup> [Docket 1396](#); [Docket 1814](#).



ii. VRT Omnibus Objections

On May 4, 2021, the VRT Trustee filed 5 objections to claims brought under the VRT.<sup>841</sup> The VRT Trustee filed the omnibus objections, claiming that they were one of various types of claims, including: (1) late filing of claims;<sup>842</sup> and (2) duplicate claims.<sup>843</sup> On June 8, 2021, the Court entered orders granting all 5 of the omnibus objections.<sup>844</sup>

**X. Adversary Proceedings**

Beginning February 18, 2021, William Henrich, Liquidating trustee, under Bankruptcy Code section 547, brought 86 preference claims against a variety of creditors for sums ranging from \$7,000 to \$1 million, seeking to avoid payments made during the 90 days prior to the Petition Date.<sup>845</sup> Bankruptcy Code section 547(f) provides “the debtor is presumed to have been insolvent

---

<sup>841</sup> First Omnibus Objection of Carmin Reiss, In Her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1664](#); Second Omnibus Objection of Carmin Reiss, In Her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1665](#); Third Omnibus Objection of Carmin Reiss, In Her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1666](#); Fourth Omnibus Objection of Carmin Reiss, In Her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1667](#); Order Granting First Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1688](#).

<sup>842</sup> [Docket 1688](#); Order Granting Second Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust Order Granting Third Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1689](#); Order Granting Fourth Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1690](#); Order Granting Fourth Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1691](#); Order Granting Fifth Omnibus Objection of Carmin Reiss, in her Capacity as Trustee of the Insys Victims Restitution Trust. [Docket 1692](#).

<sup>843</sup> [Docket 1692](#).

<sup>844</sup> [Docket 1688](#); [Docket 1689](#); [Docket 1690](#); [Docket 1691](#); [Docket 1692](#).

<sup>845</sup> Adversary Case 21-50140, Adversary Case 21-50141, Adversary Case 21-50142, Adversary Case 21-50143, Adversary Case 21-50144, Adversary Case 21-50145, Adversary Case 21-50146, Adversary Case 21-50147, Adversary Case 21-50148, Adversary Case 21-50149, Adversary Case 21-50150, Adversary Case 21-50151, Adversary Case 21-50152, Adversary Case 21-50153, Adversary Case 21-50154, Adversary Case 21-50155, Adversary Case 21-50156, Adversary Case 21-50157, Adversary Case 21-50158, Adversary Case 21-50159, Adversary Case 21-50160, Adversary Case 21-50161, Adversary Case 21-50162, Adversary Case 21-50163, Adversary Case 21-50164, Adversary Case 21-50165, Adversary Case 21-50166, Adversary Case 21-50167, Adversary Case 21-50168, Adversary Case 21-50169, Adversary Case 21-50170, Adversary Case 21-50171, Adversary Case 21-50172, Adversary Case 21-50173, Adversary Case 21-50174, Adversary Case 21-50175, Adversary Case 21-50176, Adversary Case 21-50177, Adversary Case 21-50178, Adversary Case 21-50179, Adversary Case 21-50180, Adversary Case 21-50181, Adversary Case 21-50182, Adversary Case 21-50183, Adversary Case 21-50184, Adversary Case 21-50185, Adversary Case 21-50186, Adversary Case 21-50187, Adversary Case 21-50188, Adversary Case 21-50189, Adversary Case 21-50190, Adversary Case 21-50191, Adversary Case 21-501092, Adversary Case 21-50193, Adversary Case 21-50194, Adversary Case 21-50195, Adversary Case 21-50196, Adversary Case 21-50320, Adversary Case 21-50321, Adversary Case 21-50330, Adversary Case 21-50331, Adversary Case 21-50336, Adversary Case 21-50337, Adversary Case 21-50338, Adversary Case 21-50339, Adversary Case 21-50340, Adversary Case 21-50341, Adversary Case 21-50343,

on and during the 90 days immediately preceding the date of the filing of the petition,” meaning the alleged transfers were made while Insys was presumed to be insolvent.<sup>846</sup> Bankruptcy Code section 547 provides that preferential transfers should be avoided and are recoverable by the Liquidating Trustee pursuant to Bankruptcy Code section 550.<sup>847</sup> However, it appears that the majority of these claims were dismissed.<sup>848</sup>

On June 10, 2021, William Henrich brought four fraudulent transfer claims under Bankruptcy Code section 548 for no less than \$750,000 against Elizabeth Gurrieri, Jeffrey Pearlman, Richard Simon, and John Kapoor.<sup>849</sup> Every claim except that against John Kapoor was dismissed.<sup>850</sup> On April 27, 2022, the Court extended Kapoor’s time to answer to May 10, 2022.<sup>851</sup>

## **XI. Professional Compensation**

On May 1, 2020, the Court entered an omnibus order awarding final compensation for Professional Fee Claims.<sup>852</sup> The Court approved all final fee applications without reduction, listed in the chart below:

<b>Applicant</b>	<b>Role</b>	<b>Total Approved Fees &amp; Expenses</b>
Cooley LLP	Special Counsel to Insys	\$471, 568.29
Ernst & Young LLP	Accounting Services Provider to Insys	\$26,452.50
Rakoczy Molino Mazzochi Siwik LLP	Lead Patent Litigation Counsel to Insys	\$528,469.69
Holland & Knight LLP	Special Litigation Counsel to Insys	\$534,826.90
Weil, Gotshal, & Manges LLP	Counsel to Insys	\$12,024,711.07
Richards, Layton & Finger, P.A.	Co-Counsel to Insys	\$2,830,780.90

---

Adversary Case 21-50344, Adversary Case 21-50345, Adversary Case 21-50346, Adversary Case 21-50347, Adversary Case 21-50348, Adversary Case 21-50349, Adversary Case 21-50350, Adversary Case 21-50351, Adversary Case 21-50352, Adversary Case 21-50353, Adversary Case 21-50354, Adversary Case 21-50355, Adversary Case 21-50356, Adversary Case 21-50357, Adversary Case 21-50358, Adversary Case 21-50359, Adversary Case 21-50360, Adversary Case 21-50361, Adversary Case 21-50362, Adversary Case 21-50363.

<sup>846</sup> Citing 11 U.S.C. § 547(f).

<sup>847</sup> Citing 11 U.S.C. 547 and 11 U.S.C. 550.

<sup>849</sup> Adversary case 21-50556; Adversary case 21-50558; Adversary case 21-50559

<sup>850</sup> Adversary case 21-50556, [Docket 11](#); Adversary case 21-50558, [Docket 5](#); Adversary case 21-50559, [Docket 3](#).

<sup>851</sup> Adversary case 21-50557, Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 521(a) and Fed. R. Bankr. P 1007 for Entry of Order Extending Time to File Schedules of Assets and Liabilities and Statements of Financial Affairs. [Docket 26](#).

<sup>852</sup> Omnibus Order Awarding Final Allowance of Compensation for Services Rendered and Reimbursement of Expenses. [Docket 1336](#).

Wilson, Sonsini, Goodrich & Rosati, P.C.	Special Litigation Counsel to Insys	\$752,406.01
Epiq Corporate Restructuring, LLC	Administrative Advisor to Insys	\$139,806.88
Carlton Fields, P.A.	Special Counsel to Insys	\$792,390.97
Bayard, P.A.	Co-Counsel to the Creditors' Committee	\$777,574.33
Akin, Gump, Strauss, Hauer & Feld, LLP	Counsel to the Creditors' Committee	\$5,602,691.75
Province, Inc.	Financial Advisor to the Creditors' Committee	\$2,895,215.50
FTI Consulting, Inc.	Financial Advisor to Insys	\$5,256,149.27
Lazard Frères & Co. LLC	Investment Banker to Insys	\$4,114,524.06
<b>TOTAL</b>		<b>\$36,747,568.10</b>

## **XII. Current Status**

While Insys went through most of the chapter 11 bankruptcy proceedings, the Adversary Proceedings continue today, and the objections deadline for all claims was extended to January 28, 2023.<sup>853</sup> Insys paid some Professional Fee Claims, and as of May 16, 2022, had paid \$21,418,420.<sup>854</sup> As stated previously, many of Insys's patents and patent applications were to expire in the next coming years, and due to the fraudulent schemes to the Insys's downfall, it is likely that this is the end for Insys Therapeutics, Inc.<sup>855</sup>

---

<sup>853</sup> Motion of the Liquidating Trustee of the Insys Liquidating Trust for Entry of an Order Extending the Time to Object to All Claims. [Docket 1772](#) at 1.

<sup>854</sup> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/21 filed by ILT. [Docket 1822](#) at 2.

<sup>855</sup> See III. b. Products for more.

### **XIII. Appendix of Defined Terms**

***Adequate Assurance:*** allows a contract party with reasonable grounds to believe that its counterparty will be unable to perform, to demand that the counterparty provide “adequate assurances” that the counterparty will perform its contractual obligations. ([Adequate Assurance](#)).

***Administrative Expense Claims:*** any Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 327, 328, 330, 365, 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code, including (i) the actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the Debtors’ business, (ii) Professional Fee Claims, (iii) all fees and charges assessed against the Estates pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, (iv) all Allowed Claims that are to be treated as Administrative Expense Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2) of the Bankruptcy Code, and (v) Cure Claims.

***Allowed:*** with respect to any Claim against or Interest in a Debtor, any Claim or Interest (i) the amount of which has been agreed by, as applicable, the Debtors, the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, (ii) that has been determined by Final Order of a court of competent jurisdiction, which may include the Bankruptcy Court, (iii) that is compromised, settled, or otherwise resolved after the Effective Date pursuant to the authority of the Debtors, the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, as applicable, (iv) that is listed in the Schedules as liquidated, non-contingent, and undisputed, (v) arising on or before the Effective Date as to which no objection to allowance has been interposed within the time period set forth in the Plan, and (vi) that is expressly allowed hereunder; provided, however, that the Liquidating Debtors and the Liquidating Trustee shall retain all Claims and defenses with respect to Allowed Claims that are reinstated or otherwise Unimpaired pursuant to this Plan.

***Authorized Acts:*** those actions that the Liquidating Trustee (through the Trusts, Debtors, the Liquidating Debtors, or otherwise) is authorized to perform in accordance with the applicable Trust Agreement including, but not limited to: (i) wind down, dissolve, and liquidate the Liquidating Debtors and their Estates and the Trust Assets; (ii) prosecute and liquidate Causes of Action, other than those released pursuant to Section 10.5(a) of this Plan; (iii) collect and administer all consideration to be provided to the Debtors or the Liquidating Debtors under the Subsys Asset Purchase Agreement; (iv) if applicable, continue limited operations of the Liquidating Debtors during the Operating Term to the extent reasonably necessary, in the discretion of the Liquidating Trustee, and subject to the approval of the ILT Board, to maximize value; (v) administer, process, settle, resolve, liquidate, satisfy, and pay (from the designated funds therefor), as applicable, Claims against the Debtors; (vi) maintain, administer, and make Distributions from the Priority Reserve to satisfy Allowed (a) Administrative Expense Claims, (b) Secured Claims, and (c) Priority

Claims; (vii) maintain, administer, and make Distributions from the Trust Operating Reserves to satisfy Trust Operating Expenses; (viii) maintain, administer, and make distributions from the Disputed Claims Reserves to the Recovery Funds; (ix) maintain, administer, and make Distributions from the Recovery Funds to holders of Allowed General Unsecured Claims as set forth in this Plan; (x) upon expiration of the Operating Term, liquidate all Remaining Assets and make any final Distributions pursuant to Section 6.14 of this Plan; (xi) administer the closing of the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules; (xii) (a) obtain all of the Debtors' and the Liquidating Debtors' documents, books, and records, (b) retain such documents, books, and records subject to the Debtors' obligations with respect to record retention existing as of the Effective Date, and (c) in consultation with the ILT Board and considering all factors, make determinations with regard to the use of such documents, books, and records; provided, however, that (1) any such use will be in a manner that reasonably protects against disclosure of personally identifiable information and that complies with all applicable laws, including HIPAA, and, in the absence of modification, any confidentiality agreements, protective orders, or other similar obligations regarding the use of the Debtors' and the Liquidating Debtors' documents, books, and records, and (2) the publication of any such documents, books, and records required by Section 5.6(g) of this Plan will be governed by that section of the Plan; and (xiii) carry out the purposes and obligations of the Trusts as set forth in the Trust Agreements.

**Bar Date Order:** Counterparties to any such contracts, engagement letters, retention agreements, and similar arrangements were required to file proofs of claim by the General Bar Date.

**Case Protocol:** a document with a schedule and a potential path forward to resolve issues regarding claim estimation, plan classification, allocations, and related issues.

**Category 1 Distributions:** Distributions of the first \$3 million of Estate Distributable Value from the ILT Recovery Fund on account of Allowed Claims, which shall be made only on account of Allowed Trade and Other Unsecured Claims. Category 1 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

**Category 2 Distributions:** (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the Distribution of \$3 million in Category 1 Distributions to holders of Allowed Trade and Other Unsecured Claims, fifty-five percent (55%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, twenty percent (20%) of the incremental Estate Distributable Value composing such Distributions. Category 2 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

**Category 3 Distributions:** (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the payment of \$3 million in Category 1 Distributions to holders of

Allowed Trade and Other Unsecured Claims, forty-five percent (45%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, eighty percent (80%) of the incremental Estate Distributable Value composing such Distributions. Category 3 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

***Claims Dispute Deadline:*** December 20, 2019, the deadline for all interested parties to object to claims for voting procedures.

***Class Representative(s):*** refers to the representative appointed for each class of Insys's Final Plan for Liquidation.

***Confirmation Date:*** date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

***Disputed Claims Reserves:*** collectively, the reserves to be established with respect to each Class of General Unsecured Claims (which may be a single or collective reserve for one or more Classes of Claims), each maintained and administered by the Liquidating Trustee, and each to be held for the benefit of holders of subsequently Allowed Claims in the applicable Class for Distributions in accordance with the procedure set forth in Article VII hereof. The Disputed Claims Reserves with respect to Disputed Non-PI General Unsecured Claims shall be held by the Insys Liquidation Trust and the Disputed Claims Reserve with respect to Disputed Personal Injury Claims shall be held by the Victims Restitution Trust and administered by the Liquidating Trustee. There shall also be considered to be held in the Disputed Claims Reserves an undivided interest in the ILT Assets allocable to Disputed Claims of such Class(es).

***ERISA Health Plan Claimants:*** means, collectively, Pioneer Telephone Cooperative, Inc. Employee Benefits Plan; Bios Companies, Inc. Welfare Plan; Pioneer Telephone Cooperative, Inc. as Plan Sponsor and Fiduciary of Pioneer Telephone Cooperative, Inc. Employee Benefits Plan; and Bios Companies, Inc. as Plan Sponsor and Fiduciary of Bios Companies, Inc. Welfare Plan and all other private employer sponsored self-insured health plans subject to ERISA.

***Estate Distributable Value:*** any available cash in the ILT Recovery Fund

***GUC Recovery Reallocation Threshold:*** the point at which aggregate Distributions on account of Non-PI General Unsecured Claims (including Distributions from the ILT Recovery Fund to holders of Allowed Non-PI General Unsecured Claims and Distributions to Disputed Claims Reserves for Disputed Non-PI General Unsecured Claims) is equal to or greater than \$40.9 million.

***Insurance Ratepayers Class Claims:*** the Insurance Related Claims asserted against the Debtors by one or more class representatives on behalf of the class of all individual holders of Insurance Ratepayer Claims for the alleged increase in premium rates for such health insurance arising from the Debtors' acts or omissions leading to the improper payment of prescription drug costs for Products of the Debtors.

***Insurance Proceeds*** any proceeds recovered under the Insurance Policies, not including the Products Liability Insurance Proceeds, for the Insys Liquidation Trust. Excess Products Liability Insurance Proceeds means any Products Liability Insurance Proceeds held by the Victims Restitution Trust after all Allowed Personal Injury Claims to have been satisfied in full.

***ILT Claims Arbiter:*** the individual to be appointed pursuant to this Plan and the ILT Agreement to determine the allocation of recoveries among holders of Allowed Claims within Class 4 and Class 5, as necessary, if such Classes fail to agree with respect to such allocations prior to the Effective Date. The identity of the ILT Claims Arbiter shall be disclosed as part of the Plan Supplement, if the ILT Claims Arbiter has been selected by the time the Plan Supplement is filed. For the avoidance of doubt, with respect to Class 4, the ILT Claims Arbiter will solely be responsible for allocating aggregate recoveries between holders of Third Party Payor Claims, on the one hand, and holders of Insurance Ratepayers Claims, on the other hand, and in Class 5, the ILT Claims Arbiter will solely be responsible for allocating aggregate recoveries between the holders of Hospital Claims, on the one hand, and the NAS Children, on the other.

***ILT Recovery Fund:*** the fund established pursuant to this Plan to make Distributions on account of Allowed Non-PI General Unsecured Claims, or as contemplated by agreement pursuant to Section 4.8(c)(i) and funded periodically with Available Cash pursuant to Section 5.14 and Surplus Reserved Cash pursuant to Section 5.15 of this Plan. The ILT Recovery Fund shall be held by the Insys Liquidation Trust and administered by the Liquidating Trustee.; Priority Reserve means the amount of Cash and Cash equivalents of the Debtors necessary to pay, if any: (i) Allowed Administrative Expense Claims, (ii) Allowed Secured Claims, and (iii) Allowed Priority Claims, to be reserved on the Effective Date. The amount to be placed in the Priority Reserve shall be determined by Insys and the Creditors' Committee, acting jointly. The Priority Reserve shall be held by the Insys Liquidation Trust and administered by the Liquidating Trustee.

***ILT Operating Expenses*** any and all costs, expenses, fees, taxes, disbursements, debts, or obligations incurred from the operation and administration of the Insys Liquidation Trust, including in connection with the reconciliation and administration of all Claims (other than Personal Injury Claims), working capital, wind-down of the Liquidating Debtors and the Remaining Assets and Causes of Action, recovery of Insurance Proceeds (other than Products Liability Insurance Proceeds), and costs and fees of the Liquidating Trustee, the ILT Claims Arbiter, the ILT Board, and any other professionals retained by the Insys Liquidation Trust. In the

first instance, the ILT Operating Expenses are to be satisfied and paid from the ILT Operating Reserve.

***ILT Operating Reserve*** Cash in an amount estimated to be necessary to fund the ILT Operating Expenses, which shall be held in a separate account established by the Liquidating Trustee.

***Non-General Unsecured Claims:*** means any General Unsecured Claim other than any Claim in Class 8 (Personal Injury Claims).

***Non-Voting Classes:*** Either unimpaired or subordinated claims unaffected by the Final Plan.

***Periodic Distribution Date*** means “periodically as determined by the Liquidating Trustee in its reasonable discretion but, unless otherwise ordered by the Court, (i) the first Periodic Distribution Date shall be no later than the first Business Day that is 180 days after the Initial Distribution Date, (ii) until the second anniversary of the Effective Date, every subsequent Periodic Distribution Date shall be no later than the date that is the first Business Day 180 days after the immediately preceding Periodic Distribution Date, and (iii) after the second anniversary of the Effective Date, every subsequent Periodic Distribution Date shall be no later than the first Business Day that is 365 days after the immediately preceding Periodic Distribution Date; provided, however, that the timing of periodic distribution under this definition is subject to the terms of the Trust Agreements.”

***Plan Distribution Formula:*** applicable Class Formula Amount divided by the sum of all Class Formula Amounts,” with respect to a particular Class.

***Preference and Indemnity Proceeds:*** the amount of any value recovered from the prosecution or settlement by the Liquidating Trustee of any and all actual or potential Claims or Causes of Action to (i) avoid a transfer of property or an obligation incurred by any of the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code, or under similar or related state or federal statutes and common law or (ii) recover on theories of contribution or indemnity under state or federal statutes, contract law, and common law, if the recovery of such amounts results in a Claim against the Debtors held by the party from which the recovery of value was obtained. Any Preference and Indemnification Proceeds not designated for Distribution to holders of Allowed Trade and Other Unsecured Claims pursuant to Sections 4.3(a) and 6.2(d) of this Plan shall be allocated to the ILT Recovery Fund and be deemed to be Estate Distributable Value for the benefit of holders of Allowed Non-PI General Unsecured Claims.

***Private Group Plan Distribution Percentage:*** with respect to a particular Class, the applicable Private Group Formula Amount divided by the sum of the Private Group Formula Amounts.



**Priority Reserves:** the amount of Cash and Cash equivalents of the Debtors necessary to pay, if any, (i) Administrative Expense Claims, (ii) Secured Claims, and (iii) Priority Claims, to be reserved on the Effective Date. The amount to be placed in the Priority Reserve shall be determined by the Debtors and the Creditors' Committee, acting jointly. The Priority Reserve shall be held by the Insys Liquidation Trust and administered by the Liquidating Trustee.

**Pro Rata Share:** means allocated in accordance with the proportion that an Allowed Claim bears to the aggregate amount of Allowed Claims and Disputed Claims within the same Class as such Claim.

**Product Liability Insurance Rights:** any and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtors to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity arising under, or attributable to, any and all Products Liability Insurance Policies, now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed, or contingent.

**Professional Fee Claims:** a Claim for professional services rendered, or costs incurred, on or after the Petition Date and on or prior to the Effective Date by Professional Persons that is unpaid as of the Effective Date, less any existing amounts held in escrow as security by a Professional Person that such Professional Person is authorized to use to satisfy Allowed Professional Fee Claims pursuant to the Interim Compensation Order.

**Professional Fee Escrow Account:** an interest-bearing account in an amount equal to the total estimated amount of Professional Fee Claims and funded by the Debtors on the Effective Date.

**Public Group Plan Distribution Percentage:** (i) for Class 7, the DOJ Class Amount, and (ii) for Class 8(a) and Class 8(b), collectively, \$597 million.

**Third Party Payor Claim:** any Claim against the Debtors by health insurers, employer-provided health care plans (including ERISA Health Plan Claims), union health and welfare funds, and all other private providers of health care benefits, and any third party administrator or agents on their behalf, arising from the Debtors' acts or omissions leading to the improper payment of prescription drug costs for Products of the Debtors, including the Third Party Payor Class Claim

**Third Party Release:** provides for releases for the Released Parties by a) the holders of all Claims who vote to accept the Plan, (b) the holders of all Claims that are Unimpaired under the Plan, (c) the holders of all Claims whose vote to accept or reject the Plan is solicited but who (i) do not vote either to accept or to reject the Plan and (ii) do not opt out of granting the releases set forth in the Plan, (d) the holders of all Claims or Interests who vote, or are deemed, to reject the Plan but do

not opt out of granting the releases set forth in the Plan, and (e) all other holders of Claims and Interests to the maximum extent permitted by law.

***Trust Operating Expenses:*** collectively, the ILT Operating Expenses and the VRT Operating Expenses.

***Trust Operating Reserves:*** collectively, the ILT Operating Reserve and the VRT Operating Reserve. The Trust Operating Reserves shall be administered by the Liquidating Trustee.

***Trust Formation Transactions:*** means one or more transactions pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, including any transactions that may be necessary or appropriate to effectuate the actions described in Sections 5.4 through 5.9 of this Plan, which include (i) the establishment of the Trusts, (ii) the issuance and vesting of the Parent Equity Interest in the Parent Holding Trust, (iii) the assignment and vesting of the ILT Assets in the Insys Liquidation Trust, (iv) the assignment and vesting of the VRT Assets in the Victims Restitution Trust, (v) the creation of the Recovery Funds to make Distributions to holders of Allowed Claims, (vi) the creation of the Trust Operating Reserves to satisfy and pay Trust Operating Expenses, and (vii) the execution of the Trust Transfer Agreement(s). The Debtors, the Liquidating Debtors, and the Liquidating Trustee may take all actions consistent with this Plan and the Trust Agreements as may be necessary or appropriate to affect the Trust Formation Transactions.

***VRT Agreement*** the trust agreement establishing and delineating the terms and conditions for the creation and operation of the Victims Restitution Trust, as it may be amended from time to time. The VRT Agreement shall be filed with the Plan Supplement and shall be in form and substance reasonably acceptable to the Creditors' Committee.

***VRT Claims Administrator:*** the individual to be appointed pursuant to the Plan and the VRT Agreement to administer, dispute, object to, compromise, or otherwise resolve Personal Injury Claims subject to the terms of this Plan. The identity of the VRT Claims Administrator shall be disclosed as part of the Plan Supplement, if the VRT Claims Administrator has been selected by the time the Plan Supplement is filed.

***VRT Insurance Negotiator:*** means the individual that may be appointed pursuant to this Plan and the VRT Agreement to negotiate with and, if necessary, litigate against the Products Liability Insurance Companies to recover Products Liability Insurance Proceeds for the benefit of holders of Allowed Personal Injury Claims and Allowed SMT Group Claims. ILT Insurance Negotiator means the individual as defined in Section 5.8 of this Plan.

***VRT Operating Reserve:*** The VRT Operating Reserve was established by the Liquidating Trustee and meant the Cash in an amount estimated to be necessary to fund the VRT Operating Expenses in accordance with Section 5.9(d) of this Plan, which shall be held in a separate account established

by the Liquidating Trustee. The VRT Operating Reserve is to be reserved in a segregated account on the Effective Date or as soon as practicable thereafter from the Debtors' Cash and Cash equivalents in the amount of \$[1 million].<sup>856</sup>

---

<sup>856</sup> [Docket 612](#); [Docket 894](#); [Docket 955](#).