

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

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

**Hearing Date: March 16, 2021, at 10:00 a.m. (ET)**

**Objection Deadline: March 5, 2021, at 4:00 p.m. (ET)**

**MOTION OF THE LIQUIDATING TRUSTEE OF THE INSYS  
LIQUIDATION TRUST FOR AUTHORIZATION TO PERMIT  
THIRD PARTY TO PERFORM INITIAL DISCLOSURE REQUIREMENTS  
UNDER SECTION 3.08(b) OF THE ILT AGREEMENT**

William Henrich, in his capacity as liquidating trustee (the “Trustee”) of the Insys Liquidation Trust (the “Liquidation Trust”), as successor in interest to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby moves this Court (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a) of 11 U.S.C. §§ 101-1532 (as amended and applicable herein, the “Bankruptcy Code”), authorizing the Office of the Attorney General for the State of New York, an interested third party, to facilitate the performance of the initial disclosure requirements under Section 3.08(b) of the Trust Agreement for the Insys Liquidation Trust (the “ILT Agreement”) and section 5.6(g) of the Plan<sup>2</sup> (the “Disclosure Requirements”) and receive reimbursement of reasonable documented outside expenses, as such expenses shall

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<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659), Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155).

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the ILT Agreement.

be limited by the Trustee's review and approval, as well as the limitations of the Disclosure Requirements. In support of the Motion, the Trustee respectfully represents as follows:

**BACKGROUND**

1. On June 10, 2019 (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

2. On June 20, 2019, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Committee"). No trustee or examiner has been appointed in these Chapter 11 Cases.

3. On January 16, 2020, this Court entered an order [Docket No. 1115] (the "Confirmation Order") confirming the *Second Amended Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc. and Its Affiliated Debtors* (the "Plan") in the Chapter 11 Cases.

4. On February 18, 2020 (the "Effective Date"), the Plan became effective in accordance with its terms and, in accordance with the Plan, Confirmation Order and the ILT Agreement, certain assets of the Debtors existing as of such date were transferred to and became vested in the Liquidation Trust, and William Henrich was appointed the Trustee of the Liquidation Trust.

5. The Disclosure Requirements are among the duties assigned to the Liquidation Trust, which require the Trustee to obtain the Debtors' documents, books, and records relating to the Debtors' sale, promotion, marketing, compliance, and reimbursement for, or payments made with respect to, the sale of SUBSYS® and SYNDROS®, review and redact such records for confidentiality, personally identifiable information, HIPAA requirements, etc. and publicly disclose such documents in accordance with section 3.08(b) of the ILT Agreement and 5.6(g) of

the Plan. Public access to such information was a key negotiation term of the Plan, however, the Trustee's duty and ability to honor such information request is limited, in that the Trustee is directed to expend no more than \$250,000 of Trust assets with respect to the Disclosure Requirements (the "Disclosure Cap").<sup>3</sup> The Disclosure Cap, in turn, is also important, because it serves to protect and preserve distributions to creditors.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334, Sections V of the Plan and Section X of the ILT Agreement. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicate for the relief requested herein is Bankruptcy Code section 105(a).

8. The Trustee consents pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

### **RELIEF REQUESTED**

9. The Trustee is mindful of the importance of the Disclosure Requirements, but is also cognizant of the extraordinary amount of professional time that would be spent in order to produce such records in the required format. In the Trustee's view, there is a delicate balance between a meaningful document production that accomplishes the goals on which the Disclosure

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<sup>3</sup> The Plan does provide a mechanism that could potential allow for an increase in the Disclosure Cap if certain conditions and approvals are satisfied.

Requirements are based (*i.e.* as complete a production as possible) and the Disclosure Cap imposed by the Plan and the ILT Agreement to accomplish such task.

10. Given the complex overlay of litigation associated with these Chapter 11 Cases, as well as cross-allegations and liability with respect to the various causes of action, there are other parties in interest who have agreed to substantially similar disclosure requirements and who, from a policy perspective, are invested in providing meaningful public disclosures and already possess the requisite expertise-to assist with the task. Among such parties is the State of New York, through its Office of the Attorney General (“NYS”).

11. The Trustee and representatives of NYS have been in discussions about the best way to meaningfully achieve the Disclosure Requirements to be as complete as possible while honoring the Disclosure Cap. The fruit of these discussions is something the Trustee believes would be of great service and benefit to the Liquidation Trust, yet is not expressly contemplated by the ILT Agreement -- NYS is facilitating effectuation of a meaningful portion of the Liquidation Trust’s Disclosure Requirements by making relevant documents in NYS’s possession and control public at a substantially reduced cost to the Liquidation Trust. The reduction in cost can be achieved because NYS is endeavoring to remove documents that may contain sensitive information (e.g., personal health information) and potentially privileged information from those already in its possession, and facilitating disclosure of the balance through a third party archivist that NYS is working with on this and similar projects. In exchange NYS only seeks payment of the costs of the archivists’ work, subject to the Disclosure Cap. NYS has pulled certain sensitive and potentially privileged information from the documents in its possession, and is now prepared to turn the balance over to the archivist. The archivist will perform some additional review (and culling if needed), organize and index the

data to make it usable, and ensure its posting on a publicly available website. This is all consistent with the goals of the required disclosure under the Plan, which is intended to be used by researchers, journalists, lawyers, patients' advocates groups, policymakers, and others to understand the causes of the opioid epidemic and to implement solutions to address the opioid epidemic public health crisis. Such disclosure is modeled on what has been done in the past in connection with resolution of tobacco litigation, and similar disclosure provisions have been agreed to in a recent settlement with McKinsey & Company, Inc.

12. Given that for the Liquidation Trust to perform the same tasks, not only would these same expenses accrue, but hourly professional fees in connection with the document review and other expenses would also be incurred, to permit NYS to facilitate an initial set of disclosures through its archivist would be extremely beneficial to the Liquidation Trust and its constituents. Not only would the cost of the Disclosure Requirement be dramatically reduced vis à vis the Liquidation Trust (which, in turn, enables the Disclosure Requirement to be more fulsome prior to implication of the Disclosure Cap), but the information will almost certainly be made publicly available in a more expeditious fashion.

13. The Liquidation Trustee and his professionals would remain involved in the Disclosure Requirement process and would work in tandem with NYS and its archivist as needed (whether by NYS or in accordance with the Trustee's duties to the Liquidation Trust), but a meaningful portion of the burden of the basic review and disclosure would be lifted from the Liquidation Trust. NYS is prepared and willing to facilitate the disclosures referenced above, relieving the Trust of significant labor and expense in exchange for assurance that it has a method to access the funds budgeted for these disclosures so the archivist will be paid (up to the Disclosure Cap). The proposed authority cedes no power from the Liquidation Trust, only

implements a different mechanism to accomplish a plan term and achieve more of the desired disclosure result within the limited budget to do so. The Trustee believes the arrangement will be a dramatic cost savings to the Liquidation Trust, that will enable the Trust to accomplish more disclosure than will otherwise be possible given the Disclosure Cap.

**APPLICABLE AUTHORITY**

14. The relevant provision of the ILT Agreement are as follows:

**Section 1.03. Nature and Purpose of the Trust.** (d) The Trust shall pay the ILT Operating Expenses.

(Accordingly, as is customary, the Liquidation Trust is already responsible for its own Operating Expenses).

**Section 3.02. Authority of the Trustee.** (a) In connection with the administration of the Trust, in addition to any and all of the powers enumerated elsewhere herein, the Trustee shall, in an expeditious but orderly manner, liquidate the Trust Assets, make timely distributions and not unduly prolong the duration of the Trust, and shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Trust Agreement and the provisions of the Plan and the Confirmation Order relating to the Trust, within the bounds of the Plan, the Confirmation Order and applicable law.

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(c) Subject in all cases to any limitations contained herein, in the Confirmation Order or in the Plan, the Trustee shall have the power and authority to: (iv) protect and enforce the rights to the Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity...(vi) without further order of the Bankruptcy Court, but subject to the terms of the Plan, the Confirmation Order and this Trust Agreement, employ various professionals, including counsel, tax advisors, consultants, and financial advisors, as the Trustee deems necessary to aid it in fulfilling its obligations under this Trust Agreement and the Plan, and on whatever fee arrangement the Trustee deems appropriate, including contingency fee arrangements. Professionals engaged by the Trustee shall not be required to file applications in order to receive compensation for services rendered and reimbursement of actual out-of-pocket

expenses incurred. All such compensation and reimbursement shall be paid by the Trustee from the Trust Assets.

(The Trustee is already authorized to protect the Trust Assets by any appropriate method and to engage third-party professionals as necessary).

**Section 3.04.** Payment of Expenses. The Trustee may incur any reasonable fees and expenses in pursuing the Trust Assets, administering the Trust, managing the Trust Assets, and making Distributions in accordance with the Plan. All fees, expenses, and costs of the Trust, including those of the ILT Board, shall be paid by the Trustee from the ILT Operating Reserve.

(The ILT Agreement expressly contemplates payment of out-of-pocket expenses for administering the Trust).

**Section 3.08(b).** Notwithstanding anything to the contrary herein, the Trustee shall obtain all of the Debtors' documents books, and records relating to the Debtors' sale, promotion, marketing, compliance, and reimbursement for, or payments made with respect to, the sale of SUBSYS® and SYNDROS®, and shall publicly disclose (i) such non-privileged documents, books, and records without regard to the status of litigation brought by or against Insys, and (ii) such privileged documents, books, and records as soon as all affirmative claims by or on behalf of the Trust, including any and all Causes of Action against Insurance Companies, have been resolved, but in no event later than the date the Trust is terminated; *provided, however*, that any disclosures shall redact personally identifiable information and comply with HIPAA, applicable law, and, unless modified, all contractual obligations and court orders; *provided, further*, that the Trustee will not incur ILT Operating Expenses in excess of \$250,000 in complying with this paragraph except solely to the extent the members of the ILT Board designated by the SMT Group Representatives allocate to the ILT Operating Reserve for purposes of complying with this paragraph, at their sole discretion, all or part of the Distributions constituting the DOJ Distribution Reallocation distributable to holders of Claims in Class 8(a) and Class 8(b) which, for the avoidance of doubt, does not include the SMT Reallocation.<sup>4</sup>

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<sup>4</sup> This section 3.08(b) of the ILT Agreement is referred to herein as the "Disclosure Requirements" and is identical to section 5.6(g) of the Plan.

**Section X. Amendment and Waiver.** Subject to Section 3.03(d) herein, any substantive provision of this Trust Agreement may be amended or waived in writing by the Trustee with the unanimous approval of the ILT Board, the approval of the Bankruptcy Court upon notice and an opportunity for a hearing, and the approval of the Delaware Trustee (but solely to the extent that the Delaware Trustee is affected by the amendment or waiver); *provided, however,* that no change may be made to this Trust Agreement that would adversely affect the payments, if any, to be made pursuant to the Plan. Technical amendments to this Trust Agreement, and amendments authorized by Section 3.10, may be made as necessary to clarify this Trust Agreement or enable the Trustee to effectuate the terms of this Trust Agreement, by the Trustee; *provided, however,* that all amendments of this Trust Agreement shall be consistent with the Plan and the Confirmation Order and the purpose and intention of the Trust as set out in the Plan.

15. It is clear in the Trust Agreement that the Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Trust Agreement, including the Disclosure Requirements. Accordingly, the Trustee is arguably entitled to advance the relief requested without express authority of the Court. However, out of a sense of transparency together with an abundance of caution, the Trustee seeks authorization of the Court to allow the Trust to pay actual costs of the archivist with whom NYS is working, which will be expenses undertaken in furtherance of the Disclosure Requirements, which is permitted under the amendment provisions of the ILT Agreement (Section X) to the extent not already within the Trustee's authority. The Trustee seeks the authority, but not the direction, to make such payments, as the Trustee will continue his review of such submissions to ensure each request is in furtherance of an obligation that would otherwise undoubtedly fall on the Liquidation Trust, as opposed to any other party.



**NOTICE**

16. Notice of this Motion has been given to: (i) the Office of the United States Trustee; and (ii) and any other party entitled to notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee submits that no further notice is required.

**CONCLUSION**

**WHEREFORE**, the Trustee respectfully requests that the Court enter the Proposed Order, authorizing NYS to facilitate the initial Disclosure Requirements through its archivist and receive payment of the archivist's documented invoices, as such expenses shall be limited by the reasonable review of the Trustee and the Disclosure Requirements, and granting to the Trustee such other and further the relief as is just and proper.

Dated: February 19, 2021

**MORRIS, NICHOLS, ARSHT & TUNNELL  
LLP**

*/s/ Matthew O. Talmo*

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Trust*

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

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

**Hearing Date: March 16, 2021, at 10:00 a.m. (ET)**

**Objection Deadline: March 5, 2021, at 4:00 p.m. (ET)**

**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE OF THE INSYS  
LIQUIDATION TRUST FOR AUTHORIZATION TO PERMIT  
THIRD PARTY TO PERFORM INITIAL DISCLOSURE REQUIREMENTS  
UNDER SECTION 3.08(B) OF THE ILT AGREEMENT**

PLEASE TAKE NOTICE that today, the Liquidating Trustee of the Insys Liquidation Trust filed the *Motion of the Liquidating Trustee of the Insys Liquidation Trust for Authorization to Permit Third Party to Perform Initial Disclosure Requirements Under Section 3.08(b) of the ILT Agreement* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the approval of the relief requested in the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **March 5, 2021, at 4:00 p.m. (ET)** (the “Objection Deadline”); and (c) served on the undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **MARCH 16, 2021 AT 10:00 A.M. (ET)** VIA TELECONFERENCE BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY JUDGE OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659), Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155).

Dated: February 19, 2021

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Matthew O. Talmo

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*Counsel to the Trustee of the Insys  
Liquidation Trust*

**Exhibit A**

**Proposed Order**

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

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

Re: \_\_\_\_\_

**ORDER AUTHORIZING THIRD PARTY TO PERFORM INITIAL DISCLOSURE  
REQUIREMENTS UNDER SECTION 3.08(B) OF THE ILT AGREEMENT**

Upon the motion (the “Motion”)<sup>2</sup> of the William Henrich, in his capacity as liquidating trustee (the “Trustee”) of the Insys Liquidation Trust (the “Liquidation Trust”), as successor in interest to the above captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order, pursuant to section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, authorizing the State of New York, an interested third party, to facilitate the initial disclosure requirements through its third party archivist under Section 3.08(b) of the ILT Agreement, all as more fully set forth in the Motion; and it appearing that the Court has jurisdiction over this matter; and it appearing that the notice of the Motion as set forth therein is sufficient, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Liquidation Trust, its beneficiaries and all other parties-in-interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Trustee is authorized, but not directed, to pay documented invoices of NYS's archivist in connection with the Liquidation Trust's Disclosure Requirements; provided that such payments, together with any fees and expenses of the Liquidation Trust with respect to the Disclosure Requirements, shall not exceed the Disclosure Cap.

Dated: \_\_\_\_\_, 2021  
Wilmington, Delaware

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THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE