

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re	:
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INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:
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Debtors. ¹	:
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Chapter 11
Case No. 19-11292 (KG)
Jointly Administered

**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**

Andrew Yearley, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a Managing Director in the Restructuring Group at Lazard Frères & Co. LLC (“Lazard”), a global investment bank with expertise in financial restructuring, strategic advisory, and mergers and acquisitions. Lazard has been engaged as the investment banker to the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”).

2. I submit this declaration (the “Declaration”) in support of the *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*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, 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). The Debtors’ mailing address is 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

Manner of Notice of Sale, Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting 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, filed on June 10, 2019 [ECF No. 32] (the "Motion").²

Qualifications

3. Since 1998, I have been employed by Lazard, the primary U.S. operating subsidiary of a preeminent international investment banking, financial advisory and asset management firm. Together with its predecessors and affiliates, Lazard has been advising clients around the world for over 65 years. Lazard and its professionals have considerable expertise and experience in providing investment banking and financial advisory services to financially distressed companies and to creditors, equity holders, and other constituencies in reorganization proceedings and complex financial restructurings, both in and out of court. In addition, Lazard's investment banking professionals have extensive experience in advising debtors in chapter 11 cases and have served as investment bankers to numerous debtors, chapter 11 trustees, creditors' committees, and buyers in chapter 11 proceedings. Since 1990, Lazard professionals have been involved in over 250 restructurings, representing over \$1 trillion in debtor assets.

4. I am currently a Managing Director in Lazard's Restructuring Group, and am a member of the firm's Investment Banking Committee and Opinions Committee. I have a broad range of experience in financial advisory assignments, including extensive experience with advising companies, creditors, and investors in connection with numerous in-court and out-of-court restructurings, recapitalizations, financings and sale transactions. During the course of my

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career at Lazard, I have advised companies and creditor groups in connection with raising capital in the bankruptcy context, including assisting chapter 11 debtors in obtaining and negotiating the terms of debtor-in-possession and exit financing loans. I also have extensive experience representing companies, creditors, and other constituencies in transactions involving the sale of all or substantially all of a company's assets. Additionally, I have performed numerous enterprise valuations in the bankruptcy context. I have submitted declarations and provided expert testimony related to those matters in a number of chapter 11 cases.

5. Prior to joining Lazard, I was a Vice President in Deutsche Banc Alex Brown's Restructuring Group and spent five (5) years in the Restructuring and Reorganization Group at Ernst & Young LLP. I began my career in 1989 at Chase Manhattan Bank in the Structured Finance Division, and spent two (2) years at BZW in the Leveraged Transactions Group, at the time the investment banking arm of Barclays PLC. I have a Bachelors of Arts degree (Phi Beta Kappa) from Duke University and a Master of Business Administration degree (with honors) from Columbia University.

6. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, personal knowledge gleaned during the course of my engagement with the Debtors, my discussions with the Debtors' senior management, the Debtors' other advisors, or members of the Lazard team, my review of relevant documents, or my views based upon experience, knowledge, and information concerning the Debtors' operations and financial affairs. I am authorized to submit this Declaration. If called upon to testify, I could and would testify competently to the facts set forth herein.

Prepetition Marketing and Sales Process

7. As set forth in the *Declaration of Andrew G. Long in Support of the Debtors' Chapter 11 Petitions and First Day Relief*, filed on June 10, 2019 [ECF No. 11] (the “**Long Declaration**”), in November 2018, the Debtors announced that they commenced a process to review strategic alternatives for their opioid-related assets, including the Subsys Business, and had engaged JMP Securities LLC (“**JMP**”) to serve as their investment banker in connection therewith. I understand that the Debtors and JMP identified and contacted a broad array of parties that potentially could have the interest and ability to consummate a potential sale or license of rights with respect to SUBSYS® (“**Subsys**,” and such transaction, a “**Subsys Transaction**”) on terms acceptable to the Debtors.

8. In addition to a potential Subsys Transaction, in furtherance of their operational and financial goals, the Debtors continued to explore a comprehensive set of strategic alternatives to increase the Debtors' liquidity and maximize value for the Debtors and their stakeholders. In connection therewith, in December 2018, the Debtors engaged Lazard to, among other things, explore opportunities to engage in a strategic partnership or financing transaction with respect to some or all of the Debtors' assets related to product candidates currently in development, including cannabinoid and sublingual spray product candidates (the “**Pipeline Products**”), and the Debtors' marketed product SYNDROS® (“**Syndros**”). In addition, in connection with the Debtors' assessment of the possible need to file for chapter 11 protection, the marketing efforts with respect to the Subsys Transaction, including the data room, were transitioned to Lazard in April 2019, and Lazard has continued to market Subsys and Syndros (the Subsys Transaction and marketing of Syndros and the Pipeline Products, collectively, the “**Sale Process**”).

9. The Debtors and Lazard identified and contacted a broad array of parties that potentially could have the interest and ability to consummate transaction(s) with respect to some or all of the Pipeline Products on terms acceptable to the Debtors. Lazard had contact with fifty-one (51) entities, including thirty-nine (39) potential strategic buyers and twelve (12) potential financial sources. All of the entities were provided limited, public information to gauge interest and were given the opportunity to enter into a Non-Disclosure Agreement (“NDA”). Based on responses from those entities, as well as five (5) additional entities that emerged with interest, twenty-eight (28) parties executed NDAs, including twenty-two (22) strategic buyers and six (6) financial buyers. Lazard provided those twenty-eight (28) parties with initial access to a virtual data room containing confidential information regarding the assets which they expressed interest in (i.e., Pipeline Products, as well as Syndros and Subsys). This information included management presentation materials and marketing materials. Of those parties, four (4) expressed interest in consummating a transaction with the Debtors and were granted access to a virtual data room containing additional confidential information regarding the Pipeline Products.

10. By March 2019, the Debtors had received four (4) non-binding indications of interest for assets related to Epinephrine, Naloxone, or a combination of the two. Based on the quality and structure of the proposals presented, three (3) parties were selected to continue to the second round of submissions. Prior to the submission of these indications of interests, the Debtors’ management held several management presentations regarding the Debtors’ assets. In addition, each of those parties conducted on-site visits in the Debtors’ corporate offices in April 2019 to further their diligence, review the Debtors’ ongoing correspondence with the Food and Drug Administration, and review the latest study data. The Debtors offered each of the three (3) interested parties the opportunity to conduct a site visit of the Debtors’ manufacturing facility, and

one (1) party ultimately conducted such a visit. Further, each of the three (3) interest parties were granted access to a more expanded virtual data room.

11. In April 2019, the Debtors received two (2) non-binding second-round bids for worldwide Naloxone and Epinephrine rights. Both bidders were given a diligence tracker and additional materials. The Debtors and their advisors engaged in negotiations with one of these bidders regarding the terms of an asset purchase agreement. Both of these parties have withdrawn their offers as of the Petition Date.

12. The marketing process for the Debtors' assets has been, and is expected to remain, robust. Multiple bidders have expressed interest in participating in an auction for the sale of the Debtors' two marketed products, including Subsys and Syndros, and certain of the Pipeline Products, including Epinephrine, Naloxone, Buprenorphine, and assets related to CBD (each individually, an "Asset" and, collectively, the "Assets"). I also believe that proceeding with a postpetition marketing and competitive bidding and auction process may result in the submission of offers for the Assets by new or existing bidders.

Postpetition Global Bidding Procedures

13. The postpetition phase of the Debtors' Sale Process will consist of the sale of the Debtors' Assets through a global auction process. As described in more detail in the Motion, the Debtors, in consultation with their advisors, have developed procedures to govern various aspects of the postpetition Sale Process (the "**Bidding Procedures**").

14. The Bidding Procedures are designed to achieve the maximum interest in the Debtors' Assets, and to facilitate the most robust and competitive bidding process possible under the circumstances. The Bidding Procedures also provide a framework and flexibility for the

Debtors to review, analyze, and compare all bids received to facilitate the Debtors' evaluation of such bids and determination as to which bid(s) to select.

15. Some prospective purchasers may only be interested in purchasing a subset of the Assets. Accordingly, the Bidding Procedures allow interested parties to submit bids for any individual Asset or a combination of Assets, subject to the terms and provisions of the Bidding Procedures. They also permit, but do not require, the Debtors to conduct separate auctions for such Assets. The goal of the process is to have new or existing interested parties submit offers for the Assets, and, to the extent appropriate and permitted by the Bidding Procedures, consider bids in combination, all in an effort to obtain the maximum value for the Debtor's Assets and maximize the value of the Debtors' estates. If, however, the Debtors determine that the bids for any of the Assets do not provide sufficient value for such Assets, the Debtors reserve the right not to sell such Assets.

16. Given the prepetition marketing efforts, the due diligence conducted to date by potential interested parties, and the proposed continuing Sale Process, all as described above, it is my view, based on my experience, that the proposed post-petition sale process set forth in the Bidding Procedures is reasonable and appropriate under the circumstances.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2019, in New York, New York.

/s/ Andrew Yearley
Andrew Yearley

UNITED STATES BANKRUPTCY COURT
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In re : **Chapter 11**

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2019, in New York, New York.

/s/ Andrew Yearley
Andrew Yearley