

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

In re:

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

Liquidating Debtors.¹

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

**Hearing Date: December 21, 2021, at 2:00
p.m. (ET)**

**Objection Deadline: December 3, 2021, at
4:00 p.m. (ET)**

**MOTION OF THE LIQUIDATING TRUSTEE OF THE
INSYS LIQUIDATION TRUST FOR ENTRY OF AN ORDER
FURTHER EXTENDING THE TIME TO OBJECT TO ALL CLAIMS**

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, pursuant to section 105(a) of title 11 of the U.S. Code (as amended and applicable herein, the “Bankruptcy Code”) and Rules 3007 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), extending the Claims Objection Deadline (defined below) through and including January 27, 2023. 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”).

¹ 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).

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 that certain *Trust Agreement for Insys Liquidation Trust* (the “Trust Agreement”), certain assets² 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. In accordance with the Plan and the Trust Agreement, from and after the Effective Date, objections to various claims³ may be prosecuted by the Trustee. *See e.g.*, Section 7.1 of the Plan.

6. Pursuant to the Confirmation Order and the Plan, the deadline to object to claims (other than Administrative Claims) (the “Non-Administrative Claims”) was one-hundred eighty (180) days following the later of the (a) Effective Date and (b) the date that a proof of claim is filed or amended or on such later date as fixed by this Court (the “Non-Administrative Claims Objection Deadline”). *See* Section 7.1 of the Plan. Upon motion, an order was entered extending the Non-Administrative Claims Objection Deadline to February 16, 2021 [Docket No.

² These assets include all assets of the Debtors other than (i) the VRT Operating Reserve, (ii) the Products Liability Insurance Rights, and (iii) any Interests held by Liquidating Debtors in other Liquidating Debtors, as defined in the Plan.

³ Other than Personal Injury Claims (as defined in the Plan).

1353]. Upon further order, the Non-Administrative Claims Objection Deadline was further extended to August 31, 2021 [Docket No. 1468].

7. Pursuant to the Confirmation Order and the Plan, the deadline to file for unpaid claims arising between the Petition Date and through and including the Effective Date (the “Administrative Claims”, together with the Non-Administrative Claims, the “Claims”) was April 20, 2020 (the “Administrative Bar Date”). Under the Plan, objections to Administrative Claims were to be filed no later than one hundred-twenty (120) days after the Effective Date, or such other date may be fixed by the Bankruptcy Court. *See* Section 2.2 of the Plan (the “Administrative Claims Objection Deadline”). Given the foregoing, the Trustee’s initial deadline to file objections to Administrative Expense Claims (other than Professional Fee Claims) was June 17, 2020. Upon motion, an order was entered extending the Administrative Claims Objection Deadline through and including December 17, 2020 [Docket No. 1337]. Upon further order, the Administrative Claims Objection Deadline was further extended to June 17, 2021 [Docket No. 1446].

8. On May 14, 2021, the Court entered an order [Docket No. 1661] further extending both the Non-Administrative Claims Objection Deadline and the Administrative Claims Objection Deadline to January 28, 2022 (the “Claims Objection Deadline”).

9. To date, the Trustee has filed sixteen (16) omnibus claims objections (the “Claims Objections”) and has expunged approximately eight-hundred (800) claims. [Docket Nos., 1396, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1674, 1670, 1704, 1715, 1716, 1749, and 1750]. In addition to filing claims objections, the Trustee has resolved many claims informally, resulting in a reduction of hundreds of thousands of dollars in administrative priority, and general unsecured claims. The Trustee continues to actively evaluate many claims and

anticipates that more substantive claim objections will be filed as a result of that ongoing review in the coming months. That review process includes evaluating a variety of claims across the myriad claims classes in this case and working with both claimants' counsel and multiple class claimants' counsel to resolve claims. Finally, the Trustee continues to be involved in numerous active discussions with claimants in an effort to try to resolve additional claims.

10. Further, in the last year, the Liquidation Trust has commenced approximately ninety (90) adversary proceedings under §§547(b), 548 and 550 of the Bankruptcy Code (the "Adversary Proceedings") and continues to resolve many of those cases on an ongoing basis. The Trustee is also working on numerous other tasks he is charged with by the Trust.

11. Given the foregoing, the volume of work the Trustee and his professionals are undertaking to work through the thousands of claims in this case as well as other tasks with which they are charged, and the reasons set forth below, the Trustee seeks to extend the Claims Objection Deadline for an additional year to January 27, 2023.

JURISDICTION AND VENUE

12. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and Sections VII and II of the Plan. 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.

13. 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

14. By this Motion, the Trustee seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to section 105 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9006 and Local Rule 9006-2, extending the Claims Objection Deadline through and including January 27, 2023.

15. To date, over four thousand (4,000) proofs of claim aggregating approximately at least \$10,800,000,000⁴ have been filed. Since the Effective Date, the Trustee and his professionals have been diligently reconciling and reviewing claims, and have been in continuous discussions with claimants in an effort to consensually resolve such claims. Numerous claims and hundreds of other claims have been resolved or expunged through the Claims Objections and directly with claimants.

16. To date, the Trustee has reduced the number and amount of asserted administrative, priority and general unsecured claims by approximately eighty-five (85) percent through settlement and the Claims Objections. The previous extension of the Claims Objection Deadline was critical to the Trustee's ability to reduce the number and amount of such claims

17. Additionally, the Trustee and his professionals have begun the process of evaluating the claims filed in other classes established under the Plan and undertaking certain Trustee obligations with respect to those classes. For example, the Trustee engaged in a notice and data collection procedure required by the Class Claims Procedures⁵ and Class Representatives for Third Party Payor Class Claims [First Plan Supplement, Ex. O; Docket No. 1049] and then undertook to review such data. The Trustee has also engaged with class representatives for other classes concerning anticipated noticing and claims procedures for those

⁴ Upon information and belief, these figures do not include Personal Injury Claims and are subject to many unliquidated and contingent claims.

⁵ Undefined terms used herein shall have the meanings ascribed to them in the Plan.

classes. The Trustee expects that there will be substantial additional work to be done with respect to many of the classes.

18. Due to the complexity of the claims and distribution processes in this case, the Trustee and his professionals have spent an extensive amount of time setting up and working on multiple tracks to review and reconcile certain classes of claims. As set forth under the Plan and related supplements, such processes require a comprehensive review of claims. The Trustee and his professionals have been and will continue to diligently and efficiently working to review and reconcile claims through these processes. However, some of these processes require the work of parties other than the Trustee (e.g., the representatives for the various claims classes) that has made the Trustee's efforts more time consuming.

19. In addition to the claims review process, the Trustee and his professionals have been working to liquidate and recover assets, including prosecuting the Adversary Proceedings, numerous other actions against former Insys professional, insurance providers, and Insys personnel, and evaluating other potential causes of action, liquidating assets, following-up on asset sales from the Chapter 11 cases, addressing lawsuits that continue to be filed across the country, responding to creditor inquiries, responding to subpoenas, and attending to Trust administration, among other things.

20. Finally, as a result of the complexity of the Plan and the filed Claims, along with the unanticipated complications created by the current pandemic, the Trustee will require more time to review, analyze and if necessary, object to the Claims.

APPLICABLE AUTHORITY

21. Bankruptcy Rule 9006(b) provides that the Court may extend a time period provided under the Bankruptcy Rules or order of the Court, except for time periods provided under certain Bankruptcy Rules that are not applicable here. *See* Fed. R. Bankr. P. 9006(b).

22. Bankruptcy Code section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In addition, it is generally recognized that “[s]ection 105(a) authorizes the bankruptcy court, or the district court sitting in bankruptcy, to fashion such orders as are required to further the substantive provisions of the Code.” *See In re Morristown & E. R. Co.*, 885 F.2d 98, 100 (3d Cir. 1989) (citing COLLIER ON BANKRUPTCY, ¶ 105.04 at 105-15 & n. 5 (15th rev. ed. 1989)). Moreover, the Confirmation Order provides that the Claims Objection Deadline may be extended to a date as designated in a final order of this Court.

23. For the reasons described above, and given the competing demands and the sheer volume of Claims filed in these cases, a further extension of the Claims Objection Deadline, as requested herein, is necessary for the Trustee and the Trust’s professionals to review, conduct due diligence and object, if necessary, to all Claims. Accordingly, the requested extension is in the best interests of the Debtors’ estates and their creditors

NOTICE

24. Notice of this Motion has been given to the Office of the United States Trustee 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 an order, substantially in the form attached hereto as **Exhibit A**, extending the Claims Objection Deadline through and including January 27, 2023, and granting to the Trustee such other and further the relief as is just and proper.

Dated: November 19, 2021

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew O. Talmo

Derek C. Abbott (No. 3376)
Matthew O. Talmo (No. 6333)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
dabbott@morrisnichols.com
mtalmo@morrisnichols.com

-and-

**HALPERIN BATTAGLIA BENZIJA,
LLP**

Alan D. Halperin
Scott A. Ziluck
Ligee Gu
40 Wall Street, 37th Floor
New York, NY 10005
Telephone: (212) 765-9100
Facsimile: (212) 765-0964
ahalperin@halperinlaw.com
sziluck@halperinlaw.com
lgu@halperinlaw.com

*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.¹

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

Re: ___

**ORDER GRANTING MOTION OF THE LIQUIDATING TRUSTEE
OF THE INSYS LIQUIDATION TRUST FOR ENTRY OF AN ORDER
FURTHER EXTENDING THE TIME TO OBJECT TO ALL CLAIMS**

Upon the motion (the “Motion”)² of 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 sections 105 and 502 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, Rules 3007 and 9006 of the Federal Rules of Bankruptcy Procedure, and Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, extending the time to object to all Claims filed in the Chapter 11 Cases, 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

¹ 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).

² 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 Claims Objection Deadline is hereby extended through and including January 27, 2023.
3. Entry of this Order is without prejudice to the rights of the Liquidation Trust to seek further extensions of the Claims Objection Deadline.

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

In re:

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

Liquidating Debtors.¹

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

Hearing Date: December 21, 2021, at 2:00 p.m. (ET)

Objection Deadline: December 3, 2021, at 4:00 p.m. (ET)

**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE OF THE
INSYS LIQUIDATION TRUST FOR ENTRY OF AN ORDER
FURTHER EXTENDING THE TIME TO OBJECT TO ALL CLAIMS**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Motion of the Liquidating Trustee of the Insys Liquidation Trust for Entry of an Order Further Extending the Time to Object to All Claims* (the “Motion”).

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

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 **DECEMBER 21, 2021, AT 2:00 P.M. (ET)** VIA VIDEOCONFERENCE BEFORE THE HONORABLE JOHN T. DORSEY OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.

¹ 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).

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.

Dated: November 19, 2021

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew O. Talmo

Derek C. Abbott (No. 3376)
Matthew O. Talmo (No. 6333)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
dabbott@morrisnichols.com
mtalmo@morrisnichols.com

-and-

**HALPERIN BATTAGLIA BENZIJA,
LLP**

Alan D. Halperin
Scott A. Ziluck
Lige Gu
40 Wall Street, 37th Floor
New York, NY 10005
Telephone: (212) 765-9100
Facsimile: (212) 765-0964
ahalperin@halperinlaw.com
sziluck@halperinlaw.com
lgu@halperinlaw.com

*Counsel to the Trustee of the Insys
Liquidation Trust*