

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

In re:

INSYS THERAPUTICS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-11292 (KG)

(Jointly Administered)

**Hearing Date: : July 8, 2019 at 9:00 a.m. (ET)**

**Objection Deadline: July 1, 2019**

**Related to Docket No. 28**

**STATE OF FLORIDA’S LIMITED OBJECTION TO DEBTORS’ MOTION  
TO APPROVE COMPROMISE WITH THE UNITED STATES**

Creditor, the State of Florida (the “State of Florida”), by and through undersigned counsel, objects, on a limited basis, to the *Motion of Debtors Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Stipulation and Agreement Between the Debtors and the United States* (the “9019 Motion”) [ECF No. 28], filed by Insys Therapeutics, Inc. (“Insys”) and its affiliated debtors in the above-captioned chapter 11 cases (“Chapter 11 Cases”), as debtors and debtors in possession (the “Debtors”), and in support states as follows:

1. On June 10, 2019, the Debtors filed the 9019 Motion. Through the 9019 Motion, the Debtors seek Court approval of a settlement agreement between the Debtors and United States of America (the “United States”), on behalf of the Office of Inspector General of the U.S. Department of Health and Services and the Defense Health Agency.

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<sup>1</sup> 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.

2. The proposed settlement agreement purports to resolve all issues between the Debtors and the United States.

3. The State of Florida does not object to the majority of the terms of the proposed settlement agreement. However, the treatment of the United States' claim as an allowed claim that cannot be subordinated, and the waiver of potential causes of action under Chapter 5, are not consistent with the Debtors responsibility to the estate. While it is basic bankruptcy law that the business judgment of a debtor in possession is afforded great deference, such discretion is not unlimited. In a bankruptcy case, the debtor in possession is a fiduciary for the estate and where there is an abandonment of such obligations, such business judgment must be challenged.

4. First, according to the 9019 Motion, the Debtors request an Order adjudging that the claim of the United States "shall not be subject to subordination." See Proposed Order Attached as Exhibit A to the 9019 Motion, ¶ 3. Concurrently with the 9019 Motion, the Debtors filed their *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* (the "Estimation Motion") [ECF No. 29], which among other things, seeks to subordinate claims held by the states and municipalities on the basis that they constitute penalties and/or punitive damages. Providing the United States with a substantial allowed claim, that cannot be subordinated, gives the United States unequal treatment in relation to other similarly situated creditors, and is unjustified under the circumstances.

5. Second, the State of Florida does not believe it is prudent at this stage of the bankruptcy proceedings for the Debtors to waive potential causes of action under chapter 5 of the Bankruptcy Code. Thus far, the Debtor has been burning through cash at a rapid pace and has

been unable to find a buyer for its assets. Depending on the future circumstances of this case, the Chapter 5 causes of action may prove necessary and essential to the administration of these estates. In the event that this Court approves the settlement agreement, the State of Florida requests that the Order provide that third-parties are not bound by the provision waiving chapter 5 claims and may seek approval from the Court to pursue chapter 5 claims related to the DOJ Prepetition Settlement Agreement and/or the Covered Conduct.

WHEREFORE, the State of Florida requests that this Court enter an Order (i) denying the 9019 Motion unless the terms are modified to render this objection moot, and (ii) granting such other and further relief that may be just and proper.

Respectfully submitted on July 1, 2019 by:

**ASHLEY MOODY**  
**Attorney General**

/s/ Russell S. Kent

Patricia A. Conners (FBN #361275)  
Chief Associate Deputy Attorney  
General  
Trish.Conners@myfloridalegal.com  
Russell S. Kent (FBN#20257)  
Special Counsel for Litigation  
Russell.Kent@myfloridalegal.com  
Gregory S. Slep (FBN #478865)  
Senior Assistant Attorney General  
Greg.Slep@myfloridalegal.com  
R. Scott Palmer (FBN #220353)  
Chief of Complex Enforcement  
Scott.Palmer@myfloridalegal.com  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel: (850) 414-3300

**AGENTIS PLLC**

/s/ Robert P. Charbonneau

Robert P. Charbonneau (admitted *pro hac vice*)  
Florida Bar Number 968234  
rpc@agentislaw.com  
Jacqueline Calderin (admitted *pro hac vice*)  
Florida Bar Number 134414  
jc@agentislaw.com  
Jesse R. Cloyd (*pro hac vice* pending)  
Florida Bar Number 58388  
jrc@agentislaw.com  
55 Alhambra Plaza, Suite 800  
Coral Gables, FL 33134  
Tel: (305) 722-2002

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Christopher A. Jones, Esq.  
**WHITEFORD TAYLOR & PRESTON LLP.**  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042-4510  
Tel: (703) 280 9260  
cajones@wtplaw.com

**WHITEFORD TAYLOR & PRESTON LLP**

/s/ Richard W. Riley  
Richard W. Riley (DE #4052)  
The Renaissance Centre, Suite 500  
405 North King Street  
Wilmington, DE 19801-3700  
Tel: (302) 357-3265  
rriley@wtplaw.com

*Counsel for the State of Florida*