



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Addon

J.7.

1/7/2020

**Subject:**

Opioid Litigation

**Fiscal Impact:**

None.

**Dept/Office:**

County Attorney's Office

**Requested Action:**

Request the Board Provide Direction as to the Bankruptcy Liquidation Plan for Insys Therapeutics, Incorporated

**Summary Explanation and Background:**

One of the defendants in the lawsuit filed by the County is Insys Therapeutics, Incorporated (Insys). Insys filed for Chapter 11 Bankruptcy to liquidate its assets and as part of that proceeding, a liquidation plan has been proposed. The County, as an unsecured creditor, can submit a ballot by the deadline of January 10, 2020, to either accept or reject the liquidation plan, or abstain from voting.

The plan includes a path forward for the states, counties, cities and Indian Tribes to receive a set-aside of some of the assets. Acceptance of the plan also requires a third-party release of all claims. Because the Company's assets are in the millions and the opioid claims alone are in the billions, any recovery against this particular company is expected to be very modest.

Nonetheless, our outside Counsel believe the negotiation and confirmation of this Plan is an important step in moving the opioid litigation forward in large part because it provides that governmental entities claims should receive a majority of the assets of the opioid defendants and should maintain control of the post-bankruptcy trust.

The opioid litigation is being handled by outside Counsel, including Mr. Steve Charpentier (Charpentier Law Firm, P.A.); Mr. Matthew Mokwa (Maher Law Firm, P.A.); and Ms. Paulina do Amaral (Lieff, Cabraser, Heimann & Bernstein, LLP). All of the outside attorneys are recommending approval of the Insys Therapeutics liquidation plan, which is option 1 below. Additionally, the Plaintiff's Executive Council for the Middle District Litigation (PEC MDL) hired a bankruptcy attorney, Gerard Cicero (Brown Rudnick, LLP). Both the PEC MDL and the bankruptcy attorney are recommending that the local governments accept the plan. Two letters from the outside counsel providing their recommendations are attached.

Options:

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1. Accept the Plan, which requires a 3rd Party Release;
2. Reject the Plan and Opt-out of the 3rd Party Release;
3. Abstain from Voting and Opt-out of the 3rd Party Release;
4. Other direction as specified by the Board.

**Clerk to the Board Instructions:**

Provide Memo of Board's decision to County Attorney's Office.



January 8, 2020

**MEMORANDUM**

**TO:** Eden Bentley, County Attorney

**RE:** Item J.7., Opioid Litigation

The Board of County Commissioners, in regular session on January 7, 2020, directed staff to proceed with Option 1, accepting the Bankruptcy Liquidation Plan which requires a 3<sup>rd</sup> party release for Insys Therapeutics, Inc.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/kp

**CHARPENTIER**  
**LAW FIRM**  
PROFESSIONAL ASSOCIATION  
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December 31, 2019

ATTORNEYS

STEPHEN G. CHARPENTIER\*

Commissioners, Brevard County Board of Commissioners  
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FLORIDA REGISTERED  
PARALEGALS

JOANNA E. STEVENS

CHRIS VAUPEL

ANA WRIGHT

**RE: Brevard County Opioid Matter**  
**In re Insys Therapeutics, Inc., et al – Chapter 11**  
**Case No. 19-11292**

Dear Commissioners:

This letter involves the bankruptcy of the opioid manufacturer Insys Therapeutics, Inc. Insys markets a drug called Subsys, which is a form of fentanyl. Brevard County named Insys as a defendant in its opioid lawsuit.

Insys filed bankruptcy in June of 2019. The Plaintiff Executive Committee has hired bankruptcy counsel from the law firm of Brown Rudnick, LLP to represent the interests of governmental entities with pending opioid claims during the Insys bankruptcy proceedings.

PERSONAL INJURY

WRONGFUL DEATH

WORKERS\*  
COMPENSATION

ADMIRALTY &  
MARITIME

NURSING HOME  
ABUSE

On December 4, 2019, Insys filed its Second Amended Joint Chapter 11 Plan of Liquidation. I have reviewed the plan and discussed the plan with Brevard County's outside counsel in the opioid litigation: Matthew Mokwa (The Maher Law Firm); Paulina do Amaral (Lieff, Cabraser, Heimann & Bernstein); and Mark Dearman (Robbins Geller Rudman & Dowd). I have also discussed the plan with bankruptcy counsel from Brown Rudnick, LLP. **Our recommendation is that Brevard County vote in favor of the plan.** Brevard County's vote can be submitted electronically and is due by January 10 at 5:00 pm.

It is important to note that Insys has very limited cash assets and significant liabilities. Accordingly, we do not expect a significant financial recovery from the bankruptcy. Nevertheless, we believe the plan is favorable to all governmental entities and confirmation is important.

Sincerely,

Stephen G. Charpentier, Esq.

cc: Christine M Schverak, Esq.  
Paulina do Amaral, Esq.  
Matthew Mokwa, Esq.  
Mark Dearman, Esq.  
Gerald T. Cicero, Esq.

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December 31, 2019

Paulina do Amaral  
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Christine M. Schverak, Esq.  
Assistant County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way, Suite 308  
Viera, FL 32940

Dear Ms. Scheverak:

We write to recommend that Brevard County follow the recommendation of the Plaintiffs' Executive Committee appointed in the National Prescription Opiate Multi-District Litigation (the "PEC") and vote to "accept" the Bankruptcy Plan proposed in *In re Insys Therapeutics Inc.*, Case No. 19-11292 (Bankr. D. Del.). The PEC was a party to the negotiations of the Bankruptcy Plan that is the subject of the Ballot under your consideration and was represented in those negotiations specifically and in the bankruptcy case generally by Brown Rudnick LLP. Your vote and third party release opt-out decision (as described further below) must be received by the Debtors' voting agent by January 10, 2020, at 5:00 PST.

By way of background, Insys is a small opioid manufacturer, whose opioid sales constituted significantly less than 1% of total sales nationwide over the relevant time period when it was engaged in the marketing and sale of the opioid product at issue in the litigations against it (beginning in 2012). Insys's bankruptcy estates contain comparatively small amounts of money and assets (in the tens of millions of dollars range, plus speculative proceeds from third party causes of action and royalties), when compared to the claims asserted against them, which are asserted in the billions of dollars by, among others, states, cities and counties, American Indian Tribes, hospitals, third party payors, personal injury claimants, and infants with Neonatal abstinence syndrome.

Given this, we do not expect any litigants (governmental or private) to receive funds of a substantial nature from the bankruptcy estates, whether or not the Bankruptcy Plan is approved (or the bankruptcy cases are resolved in another manner or otherwise converted to a Chapter 7 liquidation). Nonetheless, acceptance of this Plan by counties and cities, including Brevard County, is beneficial to all the cities and counties who have initiated lawsuits against Insys and other opioid manufacturers. First, acceptance of the Plan will lock in its advantageous features, including a post-confirmation trust whose five member board has three members selected by non-federal governmental units. Second, and importantly, acceptance of this Plan assures that an alternative Plan or resolution of the Insys bankruptcy cases that would prejudice Brevard County alongside the other counties and cities in other opioid litigations, negotiations,

and bankruptcy cases, where much more substantial recoveries are at stake, will not be proffered or approved.

We note that there are two interrelated parts to your vote. The first vote is to “accept,” “reject” or “abstain” with respect to the Plan described above and in the disclosure statement. Accepting or rejecting the Plan will have no effect on Brevard County’s right to receive distributions under the Plan if the Plan is approved. The second part of the vote is to release all non-culpable Insys employees from liability. You may opt-out of this third-party release by either voting to reject the Plan or abstaining, while simultaneously choosing to opt-out of the release.

One important consideration to note in considering whether to accept the plan and not opt out of the release is that by accepting the Plan and the third-party release, your vote would **NOT** release any officers or employees who engaged in misconduct. In addition, your release would **NOT** release certain employees and officers that are currently suspected of misconduct (even if they are not currently sued or indicted), nor any employees who are later found to have participated in criminal wrongdoing (or fraud, negligence, or willful misconduct); by the terms of the release, such persons would have their release revoked. Potentially, there could be efforts by the post-confirmation Trust to, *inter alia*, go after personal assets of those employees not released to supplement the funds available for Insys creditors, including Brevard County. And with regard to Insys itself, Brevard County’s claims against Insys (the Company) will be discharged by operation of Bankruptcy Code Section 1141(d) upon Confirmation of the Plan (of course, Brevard County’s claim in the bankruptcy against Insys will be addressed and treated solely in and through the post-confirmation trust), regardless of whether Brevard County accepts the Plan, rejects the Plan, abstains or opts out from the third party release.

What you are now asked to do is vote to: (1) accept the Bankruptcy Plan and the release of **non-culpable** Insys employees or (2) reject/abstain the Bankruptcy Plan and accept or opt out of the release of **non-culpable** Insys employees. No matter your vote, your claims against Insys, itself, will be permanently released and enjoined by operation of the Bankruptcy Code, if the Plan is confirmed. We emphatically recommend you accept both the Plan and the release. Doing so will ensure that the advantageous aspects of the Plan for cities and counties, including Brevard County are maintained, provide the optics that Brevard County stands unified with other cities and counties in respect of opioid litigation, and further ensure that no prejudicial resolution to these cases is approved.

Christine M. Schverak, Esq.  
December 31, 2019  
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As always, we thank you for the continued opportunity to represent Brevard County in this litigation.

Very truly yours,

A handwritten signature in black ink, reading "Paulina do Amaral". The signature is written in a cursive, flowing style.

Paulina do Amaral

PD/wp