

Edward L. Schnitzer  
Wojciech F. Jung  
David M. Banker  
**WOMBLE BOND DICKINSON (US) LLP**  
950 Third Avenue, Suite 2400  
New York, New York 10022  
Telephone: (332) 258-8400  
Email: [edward.schnitzer@wbd-us.com](mailto:edward.schnitzer@wbd-us.com)  
[wojciech.jung@wbd-us.com](mailto:wojciech.jung@wbd-us.com)  
[david.banker@wbd-us.com](mailto:david.banker@wbd-us.com)

*Counsel for Ravi Theja Kambhampati,  
individually, and Meghana Seethamraju,  
individually and as guardian ad litem for  
AK, a minor child*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**OBJECTION OF RAVI THEJA KAMBHAMPATI AND MEGHANA SEETHAMRAJU  
TO AMENDED JOINT PLAN OF INVITAE CORPORATION AND ITS DEBTOR  
AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Ravi Theja Kambhampati, individually, and Meghana Seethamraju, individually and as guardian *ad litem* for AK, a minor child (collectively, the “**Family**”), creditors in the above-captioned debtors (the “**Debtors**”) in the jointly administered bankruptcy cases (the “**Cases**”) hereby files this objection (the “**Objection**”) to the *Amended Joint Plan of Invitae Corporation*

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.



*and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 615] (the “**Plan**”). In support of the Objection, the Family respectfully states as follows:

**PRELIMINARY STATEMENT**

Ravi Theja Kambhampati and Meghana Seethamraju are the parents of a three-year old boy with a likely fatal genetic condition known as “x-ALD.” Such condition would have been discovered pre-birth had the Debtor Invitae Corp. done its job properly in prenatal tests. Instead, Invitae was negligent, which it essentially acknowledged ninth months after it first issued its flawed report. Due to Invitae’s negligence, which has caused the Family significant pain and suffering and will cause them significant medical expense in addition to increased pain and suffering, the Family commenced an action against Invitae in February 2023. The action progressed through expert discovery (including expert depositions), was scheduled for trial, and the parties, including the Debtors’ insurer, agreed to mediation. Things came to an abrupt halt, however, when Invitae filed for bankruptcy in February 2024. To maintain momentum, after the bankruptcy filing, the Family sought consensual stay relief from the Debtors so they could liquidate their claims and secure payment from the proceeds of the Debtor’s insurance policy. But the Debtors refused to be cooperative and declined the Family’s request. Not only did the Debtors not consent to stay relief, they filed the Plan that could potentially impair the Family’s right to recover damages from the Debtors’ insurance policies. The Family, thus, is forced to object to the Debtors’ Plan to preserve their rights and access to insurance proceeds that were available to the Family when the Debtors filed for bankruptcy.

## **RELEVANT HISTORY**

### ***Invitae's Negligence and State Court Litigation***

1. In late 2020, Meghana Seethamraju underwent non-invasive prenatal screening, including blood testing by Invitae Corp. ("**Invitae**") for Adrenoleukodystrophy ("x-ALD").

2. By report dated December 15, 2020 (the "**December Report**"), Invitae raised no concerns.

3. In June 2021, Mr. Kambhampati and Ms. Seethamraju's son was born (the "**Child**"). Despite the December Report indicating no concerns, the Child was born with a genetic disorder known as "x-ALD" and will suffer severe consequences from that genetic disorder that Invitae negligently failed to diagnose and report.

4. On September 17, 2021, Invitae amended its December Report, thereby acknowledging that its December Report was seriously flawed.

5. On or about February 1, 2023, Mr. Kambhampati individually, and Ms. Seethamraju individually and as guardian *ad litem* for the Child, filed a complaint against Invitae in the Superior Court of the State of Washington in and for King County, Case No. 23-2-01992-0 SEA (the "**State Court Litigation**") asserting claims for, *inter alia*, personal injuries and Wrongful Life under the laws of the State of Washington.

6. Through discovery in the State Court Litigation, the Family learned that Invitae maintains insurance coverage applicable to the State Court Litigation, including a liability insurance policy through the Chubb Group of Insurance Companies, policy number 3605-06-44 SFO (the "**Chubb Policy**").

7. The State Court Litigation was scheduled for trial on January 29, 2024. Thereafter, by agreement of the parties, the trial date was adjourned to August 5, 2024.<sup>2</sup>

***Invitae Bankruptcy and Insurance Motion***

8. On February 13, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. On the same date, the Debtors filed the *Debtors’ Motion For Entry Of Interim And Final Orders Authorizing The Debtors To (I) Maintain Insurance And Surety Coverage Entered Into Prepetition And Pay Related Prepetition Obligations And (II) Renew, Supplement, Modify, Or Purchase Insurance And Surety Coverage* [Docket No. 9] (“**Insurance Motion**”). In the Insurance Motion, the Debtors sought the authority to continue existing insurance because their “ability to maintain the Insurance Policies ... is essential to preserving the value of the Debtors’ businesses, operations, and assets” and that “it is essential to their estates, and consistent with the Bankruptcy Code and the U.S. Trustee Guidelines, that the [Debtors] continue to satisfy all obligations related to the Insurance Policies ...” Insurance Motion, ¶¶7, 19.<sup>3</sup>

10. Furthermore, with respect to the Debtors’ policies containing deductibles or self-insured retentions, the Debtors explained:

Pursuant to certain of the Insurance Policies, the Debtors are required to pay various deductibles (the “Deductibles”) or self-insured retentions (the “Self-Insured Retentions”), depending upon the type of claim and Insurance Policy involved. ... Generally, if a claim is made against the Insurance Policies that is subject to a Deductible, the applicable Insurance Carrier may pay the claimant directly and then invoice the Debtors for any Deductibles. When a policy is subject to a Deductible, a compensable claim is typically assessed from dollar one and then the Deductible is subtracted from the claim. In such situations, the Insurance Carriers may have prepetition claims against the

---

<sup>2</sup> The State Court Litigation parties exchanged documents and identified witnesses, and Invitae deposed the Family and their expert. Mediation (agreed to by Invitae and its insurer) was scheduled for April 1, 2024, but not held due to the Debtors’ subsequent bankruptcy filing.

<sup>3</sup> Upon information and belief, the Chubb Policy was one of the policies at issue in the Insurance Motion.

Debtors due to the prepetition payment of the claims without a corresponding Deductible. In addition, if a claim is made under an Insurance Policy that uses Self-Insured Retentions, the Debtors must make payments in the first instance up to the limit of the Self-Insured Retentions and, once the Debtors have made such payments, the applicable Insurance Carrier is obligated to cover any remaining costs.

Insurance Motion, ¶11.

11. The Family understands that the Chubb Policy has a deductible, which deductible may have been satisfied, in whole or in part, as of the Petition Date.<sup>4</sup>

12. On March 18, 2024, the Bankruptcy Court approved the relief sought in the Insurance Motion on a final basis [Docket No. 194] (the “**Insurance Order**”). The Debtors were authorized, *inter alia*, to:

pay any prepetition or postpetition obligations related to the Insurance Policies, including any amounts owed on account of the Premiums, Insurance Policy Audits, Deductibles and Self-Insured Retentions, ....

Insurance Order, ¶2.

### ***Stay Relief***

13. On February 29, 2024, counsel for the Family contacted counsel for the Debtors and requested that the Debtors stipulate to relief from the stay. On that same date, Debtors’ counsel acknowledged receipt of the request.

14. On March 6, 2024, counsel for the Family sent a follow-up request to counsel for the Debtors and received a response of “We’re actively working on this and will reach out as soon as we have information regarding next steps.”

---

<sup>4</sup> To the extent applicable, any remaining deductible applicable to the State Court Litigation is the responsibility of the Debtors which the Debtors have already decided to honor in the context of their assumption of the insurance policies, including the Chubb Policy. *See, e.g., In the Matter of Thornhill Bros. Fitness, L.L.C.*, 85 F.4th 321 (5th Cir. 2023) (reinforcing “*cum onere*” principle and holding that “when a trustee relies on § 365(f) to assign an executory contract in bankruptcy, it must assign the contract in whole, not in part.”). The Debtors cannot “keep the wheat and not the chaff.” *Id.*

15. On March 27, 2024, counsel for the Family sent a follow-up request to counsel for the Debtors again asking, “Has there been any decision on whether to explore relief from stay in exchange for limiting our claim to the insurance limits?” and received a response of “We sincerely appreciate your patience. We are still discussing with the Company, but the stay still applies. As soon as we can provide an update we will do so.” For unexplained reasons, no update was ever provided.

16. In light of confirmation of the Plan approaching, on July 11, 2024, counsel for the Family contacted counsel for the Debtors and again requested that the Debtors consent to relief from the automatic stay to permit the State Court Litigation to continue. After months of non-substantive responses, Debtors’ counsel then declined.

17. Contemporaneous with the filing of this Objection, the Family is filing a motion for relief from the automatic stay to permit the State Court Litigation to continue.

### ***Proof of Claim***

18. On or about April 2, 2024, Mr. Kambhampati and Ms. Seethamraju, through counsel, filed a proof of claim which is identified as Claim 362 in the claim register maintained by the Debtors’ claim agent (the “**Proof of Claim**”).<sup>5</sup> The Proof of Claim is based on the claims set forth in the State Court Litigation.

### ***Amended Joint Plan***

19. On June 13, 2024, the Debtors filed their Plan. In the Plan, the Debtors confirmed that all insurance policies, and related agreements “are treated as Executory Contracts, ... Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and

---

<sup>5</sup> For avoidance of doubt, the Family incorporates herein in its entirety the Proof of Claim that is on file with the Debtors’ claims agent, as if such claim has been set forth herein.

instruments relating to coverage of all insured Claims ... [and] such insurance policies ... shall revest in the Wind-Down Debtors.” Article V(E).

20. Additionally, the Plan provides that nothing in the Plan “alters, modifies, or otherwise amends the terms and conditions of (or the coverage provided by) any of such insurance policies or (ii) alters or modifies the duty, if any, that the insurers or third party administrators have to pay claims covered by such insurance policies and their right to seek payment or reimbursement from the Debtors or the Plan Administrator, as applicable, or draw on any collateral or security therefor.” Article V(E).

21. Pursuant to Article VI of the Plan, holders of allowed claims are required to “exhaust[] all remedies with respect to such insurance policy” before receiving any distributions under the Plan and that any insurance payment on a claim will reduce that claim accordingly. Plan, Art VI(K)(2). Additionally, the Plan provides that “distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy.” Plan, Art VI(K)(3).

22. Through Article VIII of the Plan, the Debtors seek entry of a confirmation order that would provide broad releases, exculpation, and the following broad injunction:

Except as otherwise specifically provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released, compromised, settled, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtors, the Related Parties, or the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due

from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, compromised, or settled pursuant to the Plan.

Plan, Art. VIII(F) (the “**Plan Injunction**”).

23. On June 13, 2024, this Court entered its *Order Approving (I) The Adequacy Of The Disclosure Statement, (II) The Solicitation And Voting Procedures, (III) The Forms Of Ballots And Notices In Connection Therewith, And (IV) Certain Dates With Respect Thereto* [Docket No. 633] by which, *inter alia*, the Court set July 15<sup>th</sup> as the deadline for all plan objections and July 22<sup>nd</sup> as the confirmation hearing date.

### **Objection**

24. The Family has suffered and continues to suffer significant life-long injury, both emotional and monetary, from the negligent actions of Debtor Invitae. Given the seriousness of the matter, the Family sought consensual stay relief from the Debtors on multiple occasions but received non-substantive responses. On their last attempt, after delaying for months, they were told “no.” They are now left potentially (a) receiving no distribution under the Debtors’ Plan as a Class 6 creditor, (b) being enjoined from pursuing their state court action (perhaps for years to come) and (c) being prohibited from accessing the proceeds of the Debtors’ insurance policies (including the Chubb Policy), the same policies that the Debtors called “essential” in its first-day Insurance Motion. Such a result would be patently unfair and unacceptable.

25. While Article V of the Plan makes clear that all insurance policies are being assumed and revested in the Wind-Down Debtors and that all holders of allowed claims must “exhaust” all remedies with respect to an insurance policy in order to receive a distribution, the

Plan provides **no** avenue for how such a holder can exhaust those remedies and does not provide any detail how and when the Family's claim will be liquidated. As the automatic stay is in place until at least the Effective Date (see Amended Joint Plan, Art. XII(I)) and the Plan Injunction will be in place following the Effective Date, it is unclear how any holder of an allowed claim that has potential insurance coverage can exhaust any remedy. As such, families injured by the Debtors' negligence, such as the Family, are being forced to wait for an indefinite period of time and are unable to monetize their claim with deliberate speed. The Family deserve better. For these reasons, the Family objects to the Plan.

26. In order for Articles V and VI of the Plan to function and not be mere words, holders of allowed claims for which insurance is applicable must have adequate means by which such claims can be liquidated, allowed and paid from the proceeds of the Debtors' insurance, which policies the Debtors seek to assume and revest with the Wind-Down Debtors. The Family submits that the Plan should be amended to provide that nothing in the Plan or Confirmation Order, or any document related thereto, shall prevent a Holder of a Claim from seeking coverage through one or more of the Debtors' insurers including, if necessary, naming the applicable Debtor(s) nominally. Furthermore, the Plan should provide that, as to the State Court Litigation, the Injunction shall be lifted on the 30<sup>th</sup> date following the Effective Date of the Plan. As the Family's claim cannot be resolved by the Bankruptcy Court, there is no reason or need for additional delays.

**WHEREFORE**, the Family respectfully requests the Court (a) deny confirmation of the Plan unless the Plan is amended as set forth above; and (b) grant such further relief as may be appropriate.

Dated: July 15, 2024  
New York, New York

**WOMBLE BOND DICKINSON (US) LLP**

*/s/David M. Banker*

David M. Banker

Wojciech F. Jung

Edward L. Schnitzer

950 Third Avenue, Suite 2400

New York, NY 10022

Telephone: (332) 258-8400

Facsimile: (332) 258-8949

Email: [david.banker@wbd-us.com](mailto:david.banker@wbd-us.com)

[wojciech.jung@wbd-us.com](mailto:wojciech.jung@wbd-us.com)

[edward.schnitzer@wbd-us.com](mailto:edward.schnitzer@wbd-us.com)

-and-

Law Office Of David A. Williams

David A. Williams

9 Lake Bellevue Drive, Suite 104

Bellevue, Washington 98005

(425) 646-7767

Email: [daw@bellevue-law.com](mailto:daw@bellevue-law.com)