

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

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,¹
Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Hearing Date: July 9, 2024 at 10:30 a.m. (ET)

Ref. Nos. 18 & 223

**DECLARATION OF TERESA C. KOHL IN SUPPORT OF PROPOSED ORDER
(I) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE
OF CERTAIN ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF
BUSINESS, (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (III) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

I, Teresa C. Kohl, hereby declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and belief, and after reasonable inquiry, the following is true and correct:

1. I submit this declaration (the “Declaration”) in support of the *Motion of Debtors for Entry of Orders: (A)(I) Approving Bid Procedures Relating to the Sale of Substantially All of the Debtors’ Assets, (II) Approving Stalking Horse Bid Protections, (III) Scheduling a Hearing to Consider the Sale, (IV) Approving the Form and Manner of Notice of Sale by Auction, (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief; and (B)(I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: InVivo Therapeutics Corporation (6670) and InVivo Therapeutics Holdings Corp. (8166). The Debtors’ mailing address is 1500 District Avenue, Burlington, MA 01803.



Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 18] filed February 1, 2024 (the “Sale Motion”) and specifically the sale of certain of the Debtors’ assets (the “Sale”) to Globus Medical, Inc. (“Globus”).

2. I am not being compensated separately for this testimony other than through payments received by SSG Advisors, LLC (“SSG”) as a professional retained by the above-captioned debtors and debtors in possession (the “Debtors”). Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by SSG employees working with me or under my supervision or information provided to me by the Debtors or the Debtors’ other professionals. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am authorized to submit this Declaration on behalf of the Debtors.

Professional Background and Qualifications

3. I am a Managing Director of SSG, an investment banking firm that maintains offices at 300 Barr Harbor Drive, Suite 420, West Conshohocken, PA 19428. I have over 25 years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies’ balance sheets both in court and out of court.

4. SSG is an independent boutique investment banking firm that assists middle market companies and their stakeholders in completing special situation transactions. SSG provides its clients with comprehensive investment banking services in the areas of mergers and acquisitions, private placements, financing restructurings, valuations, litigation and strategic advisory. Since

its inception, SSG has completed over 400 investment banking assignments in North America across a variety of industries.

5. SSG's professionals have extensive experience working with financially-distressed companies in and out of chapter 11, including through section 363 sales or a plan of reorganization. In particular, SSG has served as an investment banker for debtors and other parties in a number of bankruptcy cases in the Third Circuit, including, *inter alia*: *In re ICON Aircraft, Inc., et al.*, Case No. 24-10703 (CTG); *In re Burgess BioPower, LLC et al.*, Case No. 24-10235 (LSS); *In re Infinity Pharmaceuticals, Inc., et al.*, Case No. 23-11640 (BLS); *In re Pegasus Home Fashions, Inc., et al.*, Case No. 23-11235 (MFW); *In re Christmas Tree Shops, LLC, et al.*, Case No. 23-10576 (TMH); *In re EFS Parlin Holdings, LLC*, Case No. 23-10539 (JTD); *In re Nova Wildcat Shur-Line Holdings, Inc.*, Case No. 23-10114 (CTG); *In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO); *In re Electric Last Mile, Inc.*, Case No. 22-10538 (MFW); *In re Retrotope, Inc.*, Case No. 22-10228 (JTD); *In re Avadim Health, Inc.*, Case No. 21-10883 (CTG); *In re Connections Community Support Programs, P.C.*, Case No. 21-10723 (MRW); *In re PBS Brand Co., LLC*, Case No. 20-13157 (KSS); *In re PQ New York, Inc.*, et al, Case No. 20-11266 (JTD); *In re Sustainable Restaurant Holdings, Inc.*, Case No. 20-11087 (JTD); *In re Cedar Haven Acquisition, LLC*, Case No. 19-11736 (JKS); *In re THG Holdings LLC, et al.*, Case No. 19-11689 (JTD); *In re St. Christopher's Healthcare, LLC*, Case No. 19-11468 (KG); *In re Center City Healthcare, LLC d/b/a Hahnemann Univ. Hosp.*, Case No. 19-11466 (KG); *In re 1515-GEEnergy Holding Co. LLC, et al.*, Case No. 19-10303 (LSS); *In re Samuels Jewelers, Inc.*, Case No. 18-11818 (KJC); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC); *In re ABT Molecular Imaging, Inc.*, Case No. 18-11398 (CSS); *In re Nighthawk Royalties LLC*, Case No. 18-10989 (BLS); *In re Vitamin World, Inc., et al.*, Case No. 17-11933 (KJC); *In re Peekay Acquisition, LLC*,

Case No. 17-11722 (BLS); *In re Short Bark Indus., Inc.*, Case No. 17-11502 (KG); *In re Unilife Corp.*, Case No. 17-10805 (LSS).

6. As discussed in detail in the *Declaration of Richard Christopher in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 3] (the "First Day Declaration")² filed on the Petition Date, the Debtors engaged SSG as investment banker in July 2023. Since that time, SSG has become highly familiar with the Debtors' corporate and capital structure, management, operations, and assets. During the course of SSG's engagement by the Debtors, I, along with additional SSG personnel, have assisted the Debtors with the marketing and sale of their assets. I, or others under my supervision, have participated directly in discussions, due diligence and negotiations with the Debtors' outside counsel, other advisors, and potential purchasers and their representatives regarding the sale of all or substantially all of the Debtors' assets.

The Marketing of the Assets

7. I understand that the Debtors began exploring strategic alternatives in March 2023 to maximize the value of their enterprise for the benefit of all their stakeholders. SSG expounded upon the Debtors' efforts following its retention as investment banker and undertook a robust process to identify potential purchasers and investors in connection with any sale transaction. As part of this process, among other things, SSG organized a virtual data room ("VDR") and produced confidential informational and promotional material (the "Marketing Material") that contains operational, legal, financial and descriptive information about the Debtors. Following the approval of the Bidding Procedures and service of the Sale Notice, in furtherance of the process underway since SSG's engagement, the Debtors, with the assistance of SSG, continued to market their assets

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion or the First Day Declaration, as applicable.

to potential buyers by (a) engaging potential buyers and investors that may have an interest in bidding for the Assets, (b) delivering and presenting marketing materials to such interested parties, (c) managing and providing access to the VDR and Marketing Material, and (d) providing customized information packets to potential purchasers as appropriate. In this way, the Debtors, with the assistance of SSG, intended to maximize the number of participants that may participate as buyers at the Auction and, thereby, maximize the value of the Debtors' Assets to be achieved through the sale process. During the marketing process, SSG contacted a total of 205 target potential buyers, including a subset of which SSG understands had been contacted prior to the Chapter 11 Cases by the Debtors but did not proceed toward a sale transaction. One (1) prospective buyer requested a non-disclosure agreement (an "NDA") to secure access to the VDR, the Marketing Material and to continue their diligence process.

8. SSG worked with potential purchasers over the past several months, responding to information requests, discussing a potential sale, providing updates regarding these cases, the timing of matters, and many other topics relevant to their interests, and keeping them apprised of developments in the sales process.

9. Ultimately, the Debtors received no Qualified Bids for the sale of their assets by the Bid Deadline. Accordingly, on April 2, 2024, the Debtors cancelled the Auction. *See* D.I. 132.

The Sale of the Acquired Assets

10. Subsequent to the cancellation of the Auction, Globus expressed interest in purchasing the NSS Implant development program. Assisted by SSG, the Debtors and Globus engaged into arm's-length, good faith negotiations regarding the terms of a potential Sale. The *Asset Purchase Agreement* entered into by and among the Debtors and Globus, dated as of June 12, 2024 (the "Globus APA"), is the result of such negotiations.

11. With a prospective buyer prepared to purchase the Acquired Assets (as defined in the Globus APA), the Debtors filed a notice with the Court rescheduling the Sale Hearing for July 9, 2024 at 10:30 a.m. (prevailing Eastern Time) (the “Notice of Rescheduled Sale Hearing”). *See* D.I. 223. The Globus APA and the proposed order approving the Sale (the “Sale Order”) are attached as Exhibits A and B, respectively, to the Notice of Rescheduled Sale Hearing.

12. The Debtors have concluded in the exercise of their business judgment that the terms of the proposed Sale of the Acquired Assets to Globus as set forth in the Globus APA are fair and reasonable, constitute full, fair and adequate consideration and provide reasonably equivalent value for the Acquired Assets. The Globus APA constitutes the highest or otherwise best offer for the Acquired Assets and will provide a greater overall recovery for the Debtors’ estates than would be provided by any other available alternative.

13. I believe that the Debtors, their estates and creditors would be adversely affected if the Acquired Assets are not sold free and clear of all claims, liens and encumbrances. A sale of the Acquired Assets other than free and clear of all claims, liens and encumbrances would yield substantially less value for the Debtors’ estates. It is my understanding that Globus would have declined to enter into the Globus APA, and any agreements, documents or other instruments entered into pursuant thereto or in connection therewith, and would not desire to consummate the Sale if the Acquired Assets were not sold free and clear of all claims, liens and encumbrances or if Globus would or could be liable for any such claims, liens and encumbrances. I believe that the consideration provided under the Globus APA reflects Globus’s expectation and belief that the Sale Order would provide Globus with title to and possession of the Acquired Assets free and clear of all claims pursuant to Bankruptcy Code sections 105(a) and 363(f). This is my testimony not only based on conversations with Globus (and the many other parties with whom I spoke during

the sale process), but it is also my opinion based on having been involved in, having designed, and having taken a lead role in many other distressed sales over the course of my career.

14. The Sale of the Acquired Assets has been duly and validly authorized by all necessary corporate authority of the Debtors to consummate the transaction contemplated by the Globus APA. No consents or approvals, other than as may be expressly provided for in the Globus APA, are required by the Debtors to consummate the sale of the Acquired Assets. Moreover, it is essential that the Sale occur within the timeframe set forth in the Globus APA, as time is of the essence not only to maximize the value of the Acquired Assets but also to minimize diminution of the Debtors' estates on account of administrative expenses.

15. To the best of my knowledge, (i) the Globus APA was the product of good faith, arm's-length negotiations between the Globus and the Debtors, (ii) Globus has not engaged in any collusion with regard to the Sale; (iii) Globus is not related to or an affiliate of the Debtors or any of their insiders or former insiders; (iv) Globus is not a successor to nor has it merged or consolidated with the Debtors; and (v) no non-debtor affiliate or current or former officer, director, employee, managing member or affiliate of any of the Debtors (other than as the seller) is a party to, or broker in connection with, the Sale.

16. The Globus APA was not entered into and the Sale is not being consummated for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. All payments to be made by Globus in connection with the Sale have been disclosed in the Globus APA. Neither the Debtors nor Globus entered the Globus APA or is proposing to consummate the Sale fraudulently.

17. Based on my experience and personal knowledge of the Debtors' robust marketing efforts and the terms of the Globus APA, as well as my knowledge and experience in distressed

sales generally, I believe the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the approval of and entry into the Globus APA and approval of the Sale. I believe that entry into the Globus APA and consummation of the Sale constitutes a sound and reasonable exercise of the Debtors' business judgment, consistent with their fiduciary duties, because, among other things: (a) the terms of the Globus APA constitute the highest and best offer received by the Debtors for the Acquired Assets, (b) the Globus APA presents the best opportunity to maximize the value of the Acquired Assets, and (c) the Sale will provide a greater recovery for the Debtors' estates on the Acquired Assets than would any other available alternative.

18. I further believe the Sale as contemplated by the Globus APA is in the best interests of the Debtors, their estates, their creditors, and other parties in interest and is necessary and appropriate to maximize the value of the Debtors' estates. Accordingly, I believe that the Court should enter the Sale Order and approve the Sale.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 2, 2024

/s/ Teresa C. Kohl

Teresa C. Kohl
Managing Director
SSG Advisors, LLC