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11	UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA		
12			
13	In re	) Case No. 2:14-bk-17602-MCW	
14	ARIZONA NEUROLOGICAL	) ) Chapter 11 Case	
15	INSTITUTE, P.C.,	) )	
16	Debtor and Debtor in Possession.	) LIMITED OBJECTION TO ) DEBTOR'S DISCLOSURE	
17		) STATEMENT TO ACCOMPANY ) CHAPTER 11 PLAN OF	
18		) REORGANIZATION DATED ) MARCH 2, 2015	
19 20		)	
20	The Pension Benefit Guaranty Corporation ("PBGC") submits this Limited		
21 22	Objection ("Limited Objection") to the Disclosure Statement to Accompany Chapter 11 Plan of		
22 23			
23 24	Reorganization Dated March 2, 2015 (the "Disclosure Statement") filed by Arizona Neurologica		
24 25	Institute, P.C. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned chapte		
23 26	11 bankruptcy.		
20			

The Disclosure Statement fails to make any mention of the Debtor's intentions with regard to the Arizona Neurology, P.C. Defined Benefit Pension Plan (the "<u>Pension Plan</u>"), or PBGC's related contingent claims. PBGC and the Debtor are working to develop language to

include in the Disclosure Statement that addresses these issues, and aim to reach a resolution prior to the hearing on the Disclosure Statement. Because a revised Disclosure Statement has not been filed as of the date on which this objection is due, PBGC submits this protective objection.

## **BACKGROUND**

A.

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## PBGC and the Employee Retirement Income Security Act.

1. PBGC is the United States government agency that administers the pension insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("<u>ERISA</u>" or "<u>Title IV</u>"), 29 U.S.C. §§ 1301-1461 (2012), which covers most private defined benefit pension plans. The program guarantees a secure, predictable retirement for approximately 43 million American workers and retirees.<sup>1</sup> When a pension plan covered by Title IV terminates without sufficient assets to pay promised benefits, PBGC typically becomes the statutory trustee of the plan and pays covered benefits up to the limits established by Title IV.<sup>2</sup> PBGC is selffinanced.

2. Pursuant to ERISA, the sponsor of a pension plan covered by Title IV and each of the sponsor's controlled group members, if any,<sup>3</sup> must satisfy certain financial obligations to the pension plan. These responsibilities to a pension plan include, *inter alia*: (1) paying the

PBGC 2012 Annual Report at 1, http://www.pbgc.gov/documents/2012-annual-report.pdf?fs=1.
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<sup>2</sup> See 29 U.S.C. §§ 1321, 1322, and 1361.

<sup>26</sup> <sup>3</sup> A group of trades or business under common control, referred to as a "controlled group,"
<sup>3</sup> includes, for example, a parent and its 80% owned subsidiaries. Another example is a brother<sup>27</sup> sister group of trades or business under common control. *See* 29 U.S.C. § 1301(14)(A), (B); 26
<sup>28</sup> U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-1, 1.414(c)-2.

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statutorily required minimum funding contributions to the pension plan;<sup>4</sup> (2) paying insurance 1 2 premiums to PBGC;<sup>5</sup> and (3) paying unfunded benefit liabilities to PBGC if the pension plan is 3 terminated.6 4 3. ERISA provides the exclusive means for terminating a pension plan covered by 5 ERISA. 29 U.S.C. § 1341(a)(1). Pursuant to Title IV, a pension plan may be terminated in only 6 three ways: (1) through a standard termination, (2) through a distress termination, or (3) through 7 a PBGC-initiated termination. 8 9 4. In a standard termination, the pension plan must have sufficient assets to pay all 10 of the pension plan's promised benefit liabilities to participants and their beneficiaries.<sup>7</sup> 11 5. In a distress termination or in a PBGC-initiated termination, the contributing 12 sponsor becomes liable to PBGC for the: 13 14 (i) unfunded benefit liabilities of the pension plan;<sup>8</sup> 15 (ii) unpaid minimum funding contributions due the pension plan, and;<sup>9</sup> 16 17 18 <sup>4</sup> 26 U.S.C.§ 412(c)(11) (2007) (effective for pension plan years beginning on or before Dec. 31, 19 2007); 29 U.S.C.A. § 1082(c)(11) (2007) (same); see also 26 U.S.C. § 412(b)(1), (2) (2009) 20 (effective for pension plan years beginning after Dec. 31, 2007); 29 U.S.C.A. § 1082(b)(1), (2) (2009) (same). 21 <sup>5</sup> 29 U.S.C. §§ 1306, 1307(e)(2). 22 <sup>6</sup> 29 U.S.C. § 1362 See 29 U.S.C. § 1341(b)(2)(A)(i)(III). 23 <sup>8</sup> 29 U.S.C. § 1362(a),(b). 24 <sup>9</sup> See 26 U.S.C. § 412(c)(11)(2007)(effective for pension plan years beginning on or before 25 December 31, 2007); 26 U.S.C. §§ 412(b)(1), (2), 430 (2008)(effective for pension plan years beginning after December 31, 2007). See also 29 U.S.C. § 1082(c)(11)(effective for pension 26 plan years beginning on or before December 31, 2007); 29 U.S.C. § 1082(b)(1), (2)(effective for pension plan years beginning after December 31, 2007). As statutory trustee, PBGC has the 27 authority to collect unpaid minimum funding contributions due the pension plan. See 29 U.S.C. 28 §§ 1082(c), 1342(d), 1362(a), (c).

(iii) unpaid flat or variable rate premiums related to the pension plan.<sup>10</sup>

6. Additionally, if a pension plan terminates in a distress or PBGC-initiated termination, the plan sponsor and its controlled group members are liable to PBGC for a termination premium at the rate of \$1,250 per plan participant per year for three years.<sup>11</sup>

**B.** 

7.

The Pension Plan is covered by Title IV of ERISA and is insured by PBGC.

8. As of November 26, 2014, approximately 43 active employees and 34 terminated vested employees of the Debtor were participants in the Pension Plan.

## C. Debtor's Bankruptcy Proceedings.

The Pension Plan.

9. The Debtor filed a petition in this Court seeking relief under Chapter 11 of the United States Bankruptcy Code on November 26, 2014 (the "<u>Petition Date</u>").

10. PBGC estimated that the unfunded benefit liabilities of the Pension Plan on a termination basis were approximately \$3,328,543.00, as of the Petition Date. PBGC filed an estimated claim against the Debtor's bankruptcy estate for this amount. This claim is contingent upon the termination of the Pension Plan in a distress termination or a PBGC-initiated termination.

11. PBGC filed an unliquidated contingent claim against the Debtor's bankruptcy estate for unpaid minimum funding contributions due the Pension Plan. PBGC asserts priority status under 11 U.S.C. §§ 507(a)(2) and (5) for the normal cost portion of the unpaid minimum funding contributions due post-Petition Date and within the 180 day period before the Petition Date, respectively. The obligation to make minimum funding contributions continues until after the pension plan is terminated. The amount of this liability is increasing over time.

<sup>&</sup>lt;sup>10</sup> 29 U.S.C. § 1306.

<sup>&</sup>lt;sup>11</sup> See 29 U.S.C. § 1306(a)(7), as amended by § 8101(b) of the Deficit Reduction Act of 2005 (Pub. L. 109-B171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-B280).

1	12. PBGC filed a claim for unpaid flat and variable rate premiums and termination		
2	premiums related to the Pension Plan in the amount of \$295,961.00. The obligation to pay		
3	unpaid flat and variable rate premiums to PBGC continues until a pension plan is terminated in a		
4	standard termination or until a statutory trustee is appointed in a distress or PBGC-initiated		
5	termination. Liability to PBGC for unpaid premiums will increase if the Debtor does not pay		
6	them as due.		
7	<b>OBJECTIONS</b>		
8 9	PBGC objects to the Disclosure Statement because it does not inform creditors of		
10	facts that may affect the value of their claims and the conformability of the Plan of		
11	Reorganization. A disclosure statement contains "adequate information" if it provides:		
12	information of a kind, and in sufficient detail, as far as is		
13	reasonably practicable in light of the nature and history of the debtor that would enable a hypothetical reasonable investor		
14	to make an informed judgment about the plan. <sup>12</sup>		
15	The Disclosure Statement submitted by the Debtors fails to provide adequate information as		
16	required by 11 U.S.C. § 1125(a), in the following respects:		
17	Standard Termination of the Pension Plan		
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10	13. The Disclosure Statement should disclose that the Debtor is conducting a standard		
19 20			
20	13. The Disclosure Statement should disclose that the Debtor is conducting a standard termination of the Pension Plan. <sup>13</sup>		
20 21	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). See also Enron Corp. v. New Power Co. (In re New Power Co.), 438		
20 21 22	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). See also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC, 337 F.3d 314, 321-22 (3d Cir. 2003) Mabey v. Southwestern Elec. Power Co.		
20 21	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). See also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC, 337 F.3d 314, 321-22 (3d Cir. 2003) Mabey v. Southwestern Elec. Power Co. (Matter of Cajun Elec. Power Co-op, Inc.), 150 F.3d 503, 518 (5th Cir. 1998); In re Keisler, 2009 WL 1851413 (Bankr. E.D. Tenn. 2009); In re Quigley Co., 377 B.R. 110, 115 (Bankr.		
20 21 22 23	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). See also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC, 337 F.3d 314, 321-22 (3d Cir. 2003) Mabey v. Southwestern Elec. Power Co. (Matter of Cajun Elec. Power Co-op, Inc.), 150 F.3d 503, 518 (5th Cir. 1998); In re Keisler, 2009 WL 1851413 (Bankr. E.D. Tenn. 2009); In re Quigley Co., 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a Disclosure Statement must contain adequate information describing a confirmable plan, and that if the plan is patently unconfirmable on its face, the		
<ul> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ul>	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). See also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC, 337 F.3d 314, 321-22 (3d Cir. 2003) Mabey v. Southwestern Elec. Power Co. (Matter of Cajun Elec. Power Co-op, Inc.), 150 F.3d 503, 518 (5th Cir. 1998); In re Keisler, 2009 WL 1851413 (Bankr. E.D. Tenn. 2009); In re Quigley Co., 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a Disclosure Statement must contain adequate information		
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). <i>See also Enron Corp. v. New Power Co.</i> ( <i>In re New Power Co.</i> ), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); <i>Krystal Cadillac-Oldsmobile GMC Truck,</i> <i>Inc. v. GMC</i> , 337 F.3d 314, 321-22 (3d Cir. 2003) <i>Mabey v. Southwestern Elec. Power Co.</i> ( <i>Matter of Cajun Elec. Power Co-op, Inc.</i> ), 150 F.3d 503, 518 (5th Cir. 1998); <i>In re Keisler</i> , 2009 WL 1851413 (Bankr. E.D. Tenn. 2009); <i>In re Quigley Co.</i> , 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a Disclosure Statement must contain adequate information describing a confirmable plan, and that if the plan is patently unconfirmable on its face, the application to approve the Disclosure Statement must be denied); <i>In re C.C. Ming (U.S.A.) Ltd.</i> <i>P'ship</i> , 2005 Bankr. LEXIS 2815 (Bankr. S.D.N.Y. Mar. 22, 2005). <sup>13</sup> <i>Cf. In re Philip Serv. Corp.</i> , 310 B.R.802, 806. (Bankr. S.D. Tex. 2004) (debtors did not prove		
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	termination of the Pension Plan. <sup>13</sup> <sup>12</sup> 11 U.S.C. § 1125(a). <i>See also Enron Corp. v. New Power Co.</i> ( <i>In re New Power Co.</i> ), 438 F.3d 1113, 1117-18 (11th Cir. 2006) (per curiam); <i>Krystal Cadillac-Oldsmobile GMC Truck</i> , <i>Inc. v. GMC</i> , 337 F.3d 314, 321-22 (3d Cir. 2003) <i>Mabey v. Southwestern Elec. Power Co.</i> ( <i>Matter of Cajun Elec. Power Co-op, Inc.</i> ), 150 F.3d 503, 518 (5th Cir. 1998); <i>In re Keisler</i> , 2009 WL 1851413 (Bankr. E.D. Tenn. 2009); <i>In re Quigley Co.</i> , 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a Disclosure Statement must contain adequate information describing a confirmable plan, and that if the plan is patently unconfirmable on its face, the application to approve the Disclosure Statement must be denied); <i>In re C.C. Ming (U.S.A.) Ltd.</i> <i>P'ship</i> , 2005 Bankr. LEXIS 2815 (Bankr. S.D.N.Y. Mar. 22, 2005).		

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1	<ul> <li>14. The Disclosure Statement should also reveal that, if the Pension Plan is not properly terminated in a standard termination, PBGC's claims remain obligations of the Debtor, and that a reserve must be established for that purpose.</li> </ul>		
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6	For the forgoing reasons, PBGC objects to Debtors' Disclosure Statement and		
7	requests that it be modified in accordance with this objection.		
8	8		
9	Washington, D.C.	Respectfully submitted,	
10		/s/ Louisa A. Fennell	
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