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11 **UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re) Case No. 2:14-bk-17602-MCW
14)
15 ARIZONA NEUROLOGICAL) Chapter 11 Case
INSTITUTE, P.C.,)
16 Debtor and Debtor in Possession.) **LIMITED OBJECTION TO**
17) **DEBTOR'S DISCLOSURE**
18) **STATEMENT TO ACCOMPANY**
19) **CHAPTER 11 PLAN OF**
20) **REORGANIZATION DATED**
21) **MARCH 2, 2015**

22 The Pension Benefit Guaranty Corporation (“PBGC”) submits this Limited
23 Objection (“Limited Objection”) to the Disclosure Statement to Accompany Chapter 11 Plan of
24 Reorganization Dated March 2, 2015 (the “Disclosure Statement”) filed by Arizona Neurological
25 Institute, P.C. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned chapter
26 11 bankruptcy.

27 The Disclosure Statement fails to make any mention of the Debtor’s intentions with
28 regard to the Arizona Neurology, P.C. Defined Benefit Pension Plan (the “Pension Plan”), or
PBGC’s related contingent claims. PBGC and the Debtor are working to develop language to

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

5 **BACKGROUND**

6 **A. PBGC and the Employee Retirement Income Security Act.**

7 1. PBGC is the United States government agency that administers the pension
8 insurance program under Title IV of the Employee Retirement Income Security Act of 1974
9 (“ERISA” or “Title IV”), 29 U.S.C. §§ 1301-1461 (2012), which covers most private defined
10 benefit pension plans. The program guarantees a secure, predictable retirement for approximately
11 43 million American workers and retirees.¹ When a pension plan covered by Title IV terminates
12 without sufficient assets to pay promised benefits, PBGC typically becomes the statutory trustee
13 of the plan and pays covered benefits up to the limits established by Title IV.² PBGC is self-
14 financed.
15

16 2. Pursuant to ERISA, the sponsor of a pension plan covered by Title IV and each of
17 the sponsor’s controlled group members, if any,³ must satisfy certain financial obligations to the
18 pension plan. These responsibilities to a pension plan include, *inter alia*: (1) paying the
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24 ¹ PBGC 2012 Annual Report at 1, <http://www.pbgc.gov/documents/2012-annual-report.pdf?fs=1>.

25 ² See 29 U.S.C. §§ 1321, 1322, and 1361.

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

1 statutorily required minimum funding contributions to the pension plan;⁴ (2) paying insurance
2 premiums to PBGC;⁵ and (3) paying unfunded benefit liabilities to PBGC if the pension plan is
3 terminated.⁶

4
5 3. ERISA provides the exclusive means for terminating a pension plan covered by
6 ERISA. 29 U.S.C. § 1341(a)(1). Pursuant to Title IV, a pension plan may be terminated in only
7 three ways: (1) through a standard termination, (2) through a distress termination, or (3) through
8 a PBGC-initiated termination.

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.⁷

11
12 5. In a distress termination or in a PBGC-initiated termination, the contributing
13 sponsor becomes liable to PBGC for the:

14 (i) unfunded benefit liabilities of the pension plan;⁸

15 (ii) unpaid minimum funding contributions due the pension plan, and;⁹

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19 ⁴ 26 U.S.C. § 412(c)(11) (2007) (effective for pension plan years beginning on or before Dec. 31,
20 2007); 29 U.S.C.A. § 1082(c)(11) (2007) (same); *see also* 26 U.S.C. § 412(b)(1), (2) (2009)
(effective for pension plan years beginning after Dec. 31, 2007); 29 U.S.C.A. § 1082(b)(1), (2)
(2009) (same).

21 ⁵ 29 U.S.C. §§ 1306, 1307(e)(2).

22 ⁶ 29 U.S.C. § 1362

23 ⁷ *See* 29 U.S.C. § 1341(b)(2)(A)(i)(III).

24 ⁸ 29 U.S.C. § 1362(a),(b).

25 ⁹ *See* 26 U.S.C. § 412(c)(11)(2007)(effective for pension plan years beginning on or before
26 December 31, 2007); 26 U.S.C. §§ 412(b)(1), (2), 430 (2008)(effective for pension plan years
27 beginning after December 31, 2007). *See also* 29 U.S.C. § 1082(c)(11)(effective for pension
28 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
authority to collect unpaid minimum funding contributions due the pension plan. *See* 29 U.S.C.
§§ 1082(c), 1342(d), 1362(a), (c).

1 (iii) unpaid flat or variable rate premiums related to the pension plan.¹⁰

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

5 **B. The Pension Plan.**

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

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

9 **C. Debtor's Bankruptcy Proceedings.**

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

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

17 11. PBGC filed an unliquidated contingent claim against the Debtor's bankruptcy
18 estate for unpaid minimum funding contributions due the Pension Plan. PBGC asserts priority
19 status under 11 U.S.C. §§ 507(a)(2) and (5) for the normal cost portion of the unpaid minimum
20 funding contributions due post-Petition Date and within the 180 day period before the Petition
21 Date, respectively. The obligation to make minimum funding contributions continues until after
22 the pension plan is terminated. The amount of this liability is increasing over time.
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26 ¹⁰ 29 U.S.C. § 1306.

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

