

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re:

**GENESYS RESEARCH  
INSTITUTE, INC.,**

**Debtor.**

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**Chapter 11  
Case No.: 15-12794-JNF**

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**UNITED STATES' OBJECTION TO TRUSTEE'S MOTION TO SELL RESEARCH  
EQUIPMENT AND DISPOSE OF BIOLOGICAL MATERIALS**

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The United States of America, on behalf of the Department of Energy ("DOE"), objects to the motions filed by the Trustee, Harold B. Murphy, to approve a compromise with the Steward entities (9019 Motion, at [D.<sup>1</sup> 292]) and authorize the disposition (Disposition Motion, [D. 293]) of certain biological materials (Biological Materials) and the sale of certain research equipment. Because the United States maintains the right of control over the Materials and any research equipment needed to continue the DOE-funded research, this Court should order that the Materials, along with any research equipment needed to complete the research, be turned over to the facility designated by DOE and Dr. Lynn Hlatky to continue the ongoing research. In support of its objection, the DOE states as follows:

**INCORPORATION OF PRIOR AND OTHER PLEADINGS**

DOE incorporates, as if fully set forth herein, (1) its prior objection (Prior DOE Objection) to Steward's motion for relief from the automatic stay [D. 138]; and (2) any objection filed to the 9019 or Disposition Motion by Dr. Hlatky.

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<sup>1</sup> D. shall refer to the docket entry number in the docket of this bankruptcy.

**STATEMENT OF RELEVANT FACTS**

1. A review of the Debtor's public patent filings indicate that it has received funding pursuant to multiple grants from the federal government, including through the National Institutes of Health (NIH), the National Aeronautics and Space Administration (NASA), and the DOE. Indeed, it is unclear whether the Debtor ever received any significant revenue outside of federal grant funding.

2. In 2009, DOE awarded Grant agreement (DOE Grant) DE-SC0002606 to Caritas St. Elizabeth's Medical Center ("Caritas"). The Grant was captioned as "Multi-Scale Systems Biology of Low-Dose Carcinogenesis Risk," ("Project"), and funded the entire Project without any contribution from Caritas. In 2012, the DOE novated the Grant to a new recipient, Steward Research and Specialty Projects Corporation, which became Genesys Research Institute, Inc. (Genesys) on December 18, 2012. (*See* Prior DOE Objection at ¶¶ 2-3.)

3. From 2009 to 2014, DOE provided nearly \$6 million in funding to Genesys and its predecessors in furtherance of the Project, including the Materials acquired for, or used in, the Project. (*See* Prior DOE Objection at ¶¶ 4-5.) Dr. Hlatky was the lead researcher on the Project.

4. On July 14, 2015, Genesys filed for bankruptcy protection in this Court under Chapter 11 of the Bankruptcy Code. [D. 1.]

5. On October 16, 2015, this Court appointed Harold B. Murphy as the Chapter 11 Trustee in this case. [D. 170.]

6. As of this filing, a total of \$1,012,566 remains obligated by DOE on the Grant to fund the Project.

7. The Trustee seeks approval of a settlement (Settlement) requiring him to file the Disposition Motion and, subject to this Court's approval, deliver to Steward the premises in which

the Materials are presently-stored. (*See* Settlement at ¶ 7, attached as Ex. A to 9019 Motion.)

8. The Disposition Motion seeks authorization to dispose the Materials contemplated in the Settlement and the sale of certain research equipment in the Debtor's custody. (*See* Ex. B to Disposition Motion.)

### **OBJECTION**

9. To the extent that the Research Equipment<sup>2</sup> was purchased with DOE Grant funds or was purchased with federal funds and is needed to continue the DOE-funded Project (such Research Equipment shall be referenced collectively as "Project Equipment"), and to the extent that Materials relate to research funded by the DOE Grant, the United States maintains a property interest in the Project Equipment and the Materials. This interest encompasses the right to control the disposition of the Project Equipment and the Materials because such federal interest is outside the debtor's estate; and thus, outside the control of the Trustee. *See* Prior DOE Objection at ¶¶ 9-13, citing *In re LAN Tamers, Inc.*, 329 F.3d 204 (1st Cir. 2003); *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 246 (3d Cir. 2001); *In re Joliet-Will County Community Action Agency*, 847 F.2d 430, 432-33 (7th Cir. 1988).

10. With respect to the Project Equipment purchased with DOE funds, the regulations expressly provide that the recipient "*shall use* the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. . . ." 10 C.F.R. 600.134(c). If the Project Equipment was funded by a federal agency other than the DOE, the recipient's rights to use such equipment are restricted to use in support of federally-funded projects, such as the DOE Project here. *See* 2 C.F.R. § 200.313(c). Confirming such restriction, the federal regulations provide that a grant recipient may not sell or dispose of any funded

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<sup>2</sup> The term carries the meaning as defined in the Disposition Motion.

equipment as long as it is still needed for activities currently or previously supported by a Federal awarding agency, including the DOE. 2 C.F.R. § 200.313(e) (contemplating disposition only if equipment “is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency.”).

11. The specific NIH regulation applicable to equipment purchased through grants issued prior to December 26, 2014 (which encompass the NIH grants at issue here) is found in 45 C.F.R. § 74.34 (2014). That regulation states, in relevant part:

The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. . . . When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities. . . . 45 C.F.R. § 74.34(c)

If the recipient has no need for the equipment, the recipient shall request disposition instructions from the HHS awarding agency[.] 45 C.F.R. § 74.34(g)

12. Here, the Trustee wishes to sell the Project Equipment, despite the regulatory mandate that the equipment be used for other federally-sponsored projects and the requirement that the recipient request disposition instructions from the United States. The Trustee has not made any request for disposition instructions from the United States.

13. That the recipient entered bankruptcy does not expand the universe of its rights (or that of the Trustee) in equipment purchased exclusively with federal money. 5-541 Collier on Bankruptcy ¶ 541.02 (“Under section 541(a), and with a few enumerated exceptions, the bankruptcy estate consists of all of the debtor’s legal and equitable property interests that *existed as of the commencement of the case*, that is, as of the time that the bankruptcy petition, voluntary or involuntary, is filed.”) (emphasis added). Section 541 does not “expand the debtor’s rights against others beyond what rights existed at the commencement of the case.” See *Claybrook v. Consol. Foods, Inc. (In re Bake-*

*Line Group, LLC*), 359 B.R. 566, 570 (D. Del. 2007).

14. Because the Trustee has not shown that any of the Research Equipment it seeks to sell has been acquired with the Debtor's own funds, i.e., funds not reimbursed by the federal government, the Trustee cannot sell any of the Research Equipment still needed to support the DOE-funded Project.

15. DOE believes that the Project Equipment and the Materials are important because they represent the exclusive means of concluding and potentially utilizing the Grant's research in a meaningful manner. One of Dr. Hlatky's projects was part of a DOE program seeking to understand the impact of low doses of radiation on cellular processes and metabolism. DOE has a long history working with and developing radioactive materials for a wide variety of energy-related missions. While it is well established that high doses of radiation cause cancer in humans, there is some debate on whether low doses of radiation also cause cancer. Gaining a fundamental understanding of how low dose radiation affects cellular processes could lead to better insights on the health risks, including cancer, posed by low dose radiation. Such information is potentially useful not only to DOE but also regulatory agencies responsible for setting radiation protection standards for the public. Dr. Hlatky was in the last year of her five-year DOE project when these court proceedings began, and DOE is interested in seeing the research completed.

16. Dr. Hlatky has informed DOE that: (1) she has reached an agreement with a third party to continue her research efforts, including the Project, using the Project Equipment and the Materials; and (2) the third party has agreed to accept transfer of Project Equipment and the Materials to facilitate the continuing research.

17. Here, DOE's legal interest and the public interest align to require the transfer of the Equipment and the Materials to facilitate Dr. Hlatky's continuing research, rather than be sold to an

unknown party or disposed as trash (as suggested by the Trustee).

**CONCLUSION**

Accordingly, in recognition of DOE's continuing property interest in the Project Equipment and the Materials, and the public interest in continuing the research funded by the DOE, any order in connection with the Disposition Motion shall replace the language in paragraph 3 of the current version with the following language:

1. On or before May 20, 2016, Dr. Hlatky and the DOE may jointly designate a physical facility (Facility) to accept transfer of the Project Equipment and Materials from the Estate. Promptly following the designation, the Trustee shall arrange with Dr. Hlatky a mutually-agreeable means to transfer the Project Equipment and Materials to the Facility. If means of transfer cannot be agreed upon on or before May 27, 2016, the Trustee would then be authorized to dispose of the Materials through a Licensed Site Professional.
2. Notwithstanding any other provision of this order, this order does not authorize the sale of any Research Equipment needed to continue the DOE-funded research (Project Equipment). To the extent that the Trustee, Dr. Hlatky and DOE agree that any Research Equipment does not constitute Project Equipment, such equipment may be sold by the Trustee pursuant to the terms of this order.

Dated: May 13, 2016

Respectfully Submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
RUTH A. HARVEY  
Director

/s/ Victor W. Zhao  
VICTOR W. ZHAO  
MARGARET M. NEWELL

Department of Justice  
Commercial Litigation Branch, Civil Division  
1100 L Street, NW  
Washington, DC 20530  
TEL: (202) 307-0958  
FAX: (202) 514-9163  
Email: [victor.w.zhao@usdoj.gov](mailto:victor.w.zhao@usdoj.gov)

**CERTIFICATE OF SERVICE**

I certify that on May 13, 2016, a true and correct copy of this Objection was served via electronic means through transmission facilities from the Court upon those parties authorized to participate and access the Electronic Filing System in the above-captioned action.

/s/ Victor W. Zhao

Victor W. Zhao