

COMPANIES

Pharmaceuticals

Insys bankrupted by opioid lawsuits

Drugmaker overwhelmed by wave of litigation following addiction crisis

HANNAH KUCHLER — NEW YORK

The opioid drugmaker Insys, whose products include the fentanyl-based spray Subsys, has filed for Chapter 11 bankruptcy in the wake of a \$225m settlement with the US government.

The government had been pursuing criminal and civil claims against the company over its role in promoting the opioid during an epidemic of abuse. The company is also struggling to fund liabilities after being named in about 1,000 lawsuits, with potentially more to follow.

Some 90 per cent of its revenue comes from opioids, which clinicians are increasingly reluctant to prescribe because of the addiction crisis. Losses

were compounding at the company, which reported a net loss of \$125m in 2018 on top of a \$227m loss in 2017.

Insys shares dropped 45 per cent in morning trading in New York after it said it would pursue court-supervised sales of substantially all of its assets and address its legacy legal liabilities.

It said it intended to carry on doing business using cash on hand and operating cash flows to pay employees and fund operations. The company had \$104m in cash, cash equivalents and short term and long term investments at the end of 2018.

It had already said it was considering selling Subsys, as it tried to move away from opioids into pharmaceutical-grade cannabinoids.

Andrew Long, who was appointed chief executive in April, said Insys had "compelling assets" and a "highly talented team".

"This process will provide us with a

forum to negotiate an equitable resolution with our creditors and represents the best opportunity for our people and our business," he said in a statement.

The bankruptcy filing comes after Insys agreed last week to pay \$225m to settle all the outstanding US criminal and civil claims against the company. The US government is listed as the largest unsecured creditor with the right to recover up to \$195m. If the bankruptcy court does not approve the settlement, the government may be able to assert a claim of more than \$1bn.

In total, eight former Insys executives have been prosecuted, including founder John Kapoor. Along with four colleagues, he was found guilty last month of racketeering conspiracy, for a bribery scheme that boosted the sales of Subsys. Mr Kapoor owns 63.2 per cent of Insys stock, according to the bankruptcy filing.

Insys also owes \$30m to the health-

\$225m

Settlement with US government over marketing of opioid products

63%

Holdings of founder John Kapoor, who used bribery to boost sales

care fraud unit of the US attorney's office for the district of Massachusetts, and about \$11m for counsel for Mr Kapoor. There are more than 5,000 creditors and interested parties.

The company admitted illegal conduct when promoting Subsys, a very powerful opioid designed for the worst pain suffered by cancer patients, but which was prescribed more widely. The accusations included paying kickbacks to clinicians, encouraging them to prescribe beyond cancer patients and lying to insurers about diagnoses.

As the opioid epidemic roared across the US, with 2m people suffering from opioid use disorder according to estimates from the Centers for Disease Control, thousands of lawsuits were filed against opioid makers.

Insys aims to complete the asset sales and address its liabilities within 90 days. Its shares have fallen more than 97 per cent since their peak in 2015.

INSIDE BUSINESS

FINANCE

Patrick Jenkins



Woodford's undoing is a cautionary tale for all asset managers

When Nobel Prize-winning markets theorist Harry Markowitz published his paper on modern portfolio theory in 1952, it was soon hailed as a seminal work.

This theory helped guide the asset management industry that burgeoned over the next half-century by balancing considerations of market risk and expected return. Over the generally booming markets of recent decades — notwithstanding the equities shocks of 2000 and 2008 — MPT has helped fund managers around the world maximise potential returns for their investors.

But some market practitioners are realising the shortcomings of thinking in binary risk-return terms. Markowitz omitted a crucial third element, says Pascal Blanché, chief investment officer at France's Amundi Liquidity.

"Financial markets," he wrote in a recent report, "seem more and more a bigger house with smaller exit doors. The ability to transact in any meaningful size... has in some ways diminished across all asset classes and that would be exacerbated in case of market turmoil." And that, he believes, fundamentally undermines traditional risk-return expectations.

It is a timely observation. Last week in the UK, one of the country's best-known stockpickers, Neil Woodford, saw his principal fund all but implode as investors responded to a period of underperformance with unsustainable requests to withdraw their money.

Mr Woodford, many of whose holdings were in illiquid or unlisted companies, triggered an emergency clause in the fund's articles, barring redemptions. The fund's army of retail investors are now trapped inside the fund, as the value of its underlying holdings continues to plunge.

The story has attracted vast coverage in the media, due to a combination of Mr Woodford's colourful persona and his widespread popularity, first as a fund manager at Invesco Perpetual and then at the helm of his own group, Woodford Investment Management.

But amid the populist attention, the broader relevance of Woodford's implosion has been generally dismissed. The consensus view seems to be that he was an idiosyncratic manager whose plight holds no lessons for others.

This is a dangerously smug view to take. As Mr Blanché's analysis suggests, the way in which Woodford has been undone by illiquid investments should be a cautionary tale for the whole asset management sector.

The Arundi commentary was focused principally on emerging markets risk where investor nervousness has intensified of late but that analysis, equally, should resonate more generally. Indeed, Bank of England governor Mark Carney made the link explicit in a speech last week that highlighted the danger of the mismatch between instant-access funds and illiquid underlying investments.

"More than \$30tn of global assets are held in investment funds that promise daily liquidity to investors despite investing in potentially illiquid underlying assets, such as [emerging market] debt," Mr Carney said. "We have recently seen analogous situations in the UK."

A freeze-up in emerging market debt liquidity would not only hurt end investors trapped in funds that could not liquidate; it could also cause economic mayhem given the emerging markets' growing reliance on bond rather than bank finance. The proportion of emerging market finance provided by banks has shrunk by a third in the past decade, while the share of market-based funding has doubled.

The shift — welcome for the added diversity but concerning given its potentially destructive volatility — was triggered in part by banks' retrenchment from lending as a result of more stringent post-2008 regulations.

There is another threat linking today's nascent market liquidity concerns with 2008. Liquidity, or the lack of it, was the buzzword behind the 2007-08 financial crisis, when the availability of liquid funding for banks from Lehman Brothers to Northern Rock dried up, sending markets and the global banking system into meltdown.

Banks are no longer the centre of concern, but corporate debt is. Today, it is less the ability of banks to finance themselves by selling bonds that is at issue, and more the market's appetite to keep buying corporate bonds and shares at ultra-high prices after a years-long boom.

Growing illiquidity in rarer assets, from EM bonds to high-yield western names, could freeze funds across the asset management sector, causing meaningful damage to end investors — both private individuals directly and the pension funds we count on for retirement. Be warned: Neil Woodford could well be the canary in the coal mine.

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Business influence. Parenthood debate

CEOs take stand against US abortion curbs

Nearly 200 bosses from tech to fashion sign open letter against states' 'heartbeat laws'

ANDREW EDGECLIFFE-JOHNSON
NEW YORK

Almost 200 US executives have signed an open letter arguing that restricting access to abortion is "bad for business", putting pressure on state politicians in a polarising issue companies had long preferred to avoid.

The campaign brings together CEOs of technology companies Slack, Square and Yelp; fashion retailers Eileen Fisher and Diane von Furstenberg; and Bloomberg chairman Peter Grauer alongside leaders of scores of smaller companies.

Organised by advocacy groups including the American Civil Liberties Union and Planned Parenthood Federation of America, it comes in response to "heartbeat laws" introduced in several US states this year that would prohibit

'It impairs our ability to protect the wellbeing of all the people who keep our businesses thriving'

abortions once doctors can detect a fetal heartbeat, as soon as six weeks after conception.

The letter, published in the New York Times, frames access to abortion as an issue of workplace equality and economic prosperity and follows a trend of business leaders becoming more willing to join the most sensitive political debates.

"Restricting access to comprehensive reproductive care, including abortion, threatens the health, independence and economic stability of our employees and customers," it reads. "It impairs our ability to build diverse and inclusive workforce pipelines, recruit top talent across the states, and protect the wellbeing of all the people who keep our businesses thriving day in and out."

The "Don't Ban Equality" campaign follows threats by television and film producers to boycott Georgia if a new anti-abortion law takes effect in the state where Netflix made *Stranger Things* and Walt Disney filmed *Black Panther*. Stacy Abrams, a prominent Georgia Democrat, has been among those arguing that a boycott will harm local workers and



The designer Diane von Furstenberg, below, is among business leaders backing protests against the clampdown on abortion. — Mike McElwain/Indraposts/StarAP



urging Hollywood instead to fund groups helping local women.

The letter makes no mention of individual states, or of threats to cancel investments. America's most valuable companies, including Microsoft, Apple, Amazon and Alphabet, are absent from the list of signatories, despite having become more vocal on other political issues ranging from immigration to gay rights and gun violence.

"Business is a powerful platform and can truly make a difference, especially when we speak collectively," said Eileen Fisher, founder of the eponymous retailer. She did not want "to further divide this already divided country", she said, but she was not afraid of alienating some customers. "I am not worried about losing customers. I'm deeply worried about women losing the right to make their own choices," she said.

Louise Melling, deputy legal director of the ACLU, said: "I don't recall a letter with so many CEOs stepping out on the particular issue of repro-

ductive rights and abortion." She said that she hoped the signatories would "embolden" others to speak up.

"As with all issues there comes a moment of recognition... They recognise they can't just sit on the sidelines any more," she said of the CEOs who had signed the letter. Support from business leaders was valuable to campaigners, she said, because "it is a statement of their economic power and it's also a way of showing to politicians as well as the country that this issue matters to employers and it matters to the public".

Leana Wen, Planned Parenthood's president and CEO, said the group was grateful for the support from business leaders. "Now more than ever, we must stand together to declare that reproductive healthcare, including abortion care, is necessary for all people to live healthy, successful lives," she said.

The latest poll from PBS NewsHour, National Public Radio and Marist showed that just 33 per cent of adult Americans support "heartbeat laws", and only 24 per cent believe it should be a crime for a doctor to perform an abor-

tion.

Separate polling by Morning Consult shows that new legislation in Alabama and Georgia has made abortion, contraception and equal pay higher-priority electoral issues, particularly for Democratic women and young voters. Candidates appear to have taken note, with Joe Biden, the early frontrunner in the Democrats' 2020 election race, last week dropping his opposition to federal funding for abortions.

Few of the executives who joined the campaign commented beyond the wording of the letter, but Philippe Pinalet, general manager of MAC Cosmetics, said it had long advocated "for the rights of everyone to make their own choices about their health and wellbeing".

"As a brand that stands for equality and women's empowerment, we believe it's important that we take a stand and join this cause," said Andrea Blieden, US general manager of The Body Shop. "We completely understand that this is a sensitive topic and that every person has their own beliefs and we respect their right to do so."

Pharmaceuticals

Roche's bid for Spark held up by regulators

SARAH PROVAN — LONDON

Roche's planned \$4.8bn acquisition of Spark Therapeutics, a US gene therapy group, may be delayed beyond this quarter after US regulators demanded more information about the deal.

The Swiss pharmaceuticals group and Philadelphia-based Spark said yesterday that they had received requests for more information from the Federal Trade Commission. As a result, Roche has extended until the end of next month the deadline for Spark shareholders to tender their shares.

Roche's February agreement to buy Spark Therapeutics was the latest example of a major pharmaceutical

company paying a premium for a promising biotechnology group. Drug companies have spent huge amounts of money to outbid each other for technologies seen as cutting edge.

When the deal was announced in February, the groups said they had aimed to close the deal in the second quarter of this year. Shares in Spark tumbled 9 per cent to just over \$100 yesterday.

Founded in March 2013, Spark has raised more than \$1bn in capital and has over 300 employees.

"The effect of the Second Request is to extend the waiting period until 10 days after Roche has substantially complied with the Second Request, unless the waiting period is terminated earlier by

the FTC or the parties have entered into a timing agreement with the FTC," according to a statement from the companies.

UK regulators are also examining whether they have jurisdiction over the acquisition and, if so, what the purchase would mean for competition.

Roche offered \$114.50 for each Spark share, a premium of more than 122 per cent to Spark's closing price on February 22. The offer valued Spark at \$4.8bn.

"The parties remain committed to the transaction and are working cooperatively and expeditiously with the FTC in connection with its review," the two companies said yesterday.

Additional reporting by Sarah Neville

Travel & leisure

China's Fosun in talks for Thomas Cook arm

MYLES MCCORMICK AND
ALICE HANCOCK — LONDON
TOM HANCOCK — SHANGHAI

Thomas Cook is in talks with Fosun, the China-based owner of Club Med, to sell its tour operator business in a move that would lead to a break-up of the 178-year-old UK travel group.

A deal would include the package holiday business and hotel estate, leaving only Thomas Cook's profitable airline, which it is trying to sell separately.

The Chinese group owns almost a fifth of the shares and had been cited as a potential source of rescue funds for Thomas Cook, which has suffered a difficult month. The share price plummeted in May after Thomas Cook reported a

record pre-tax loss of £1.5bn and revealed its auditor had noted material uncertainties over its recovery plans.

The group, which has heavy debts and has been hit by falling demand for traditional package holidays, said this year it would offload parts of the business and close more than 20 stores to shore up its balance sheet.

Richard Clarke, an analyst at Bernstein, said a sale of the tour operator business would be "the clearest out for Thomas Cook", adding: "It takes them out of the public eye, which would help with their trading performance because there would be less focus on their financials."

Analysts' estimates for the tour operator arm range from £450m to £550m.

James Ainley, an analyst at Citi, who last month said Thomas Cook's shares were worthless, added the only way for shareholders to recoup value would be if Fosun paid "a very high price" for the tour operator.

"Under the current capital structure we continue to see no value for current shareholders," he said.

Thomas Cook's shares yesterday rose as much as 24 per cent to 20p after it confirmed it was in discussions, following a preliminary approach by Fosun.

Thomas Cook said: "The board will consider any potential offer alongside the other strategic options that it has, with the aim of maximising value for all its stakeholders."

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