

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SynCardia Systems, Inc.<sup>1</sup>

Debtor.

Chapter 11

Case No. 16-11599 ( )

**DECLARATION OF STEPHEN MAROTTA IN SUPPORT OF  
DEBTOR'S CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Stephen Marotta, hereby declare under penalty of perjury:

1. I am the Chief Restructuring Officer of SynCardia Systems, Inc., a corporation organized under the laws of Delaware and the above-captioned debtor and debtor in possession ("SynCardia," the "Company" or the "Debtor"). In this capacity, I am familiar with the Debtor's day-to-day operations, business, financial affairs, and books and records.

2. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its affairs as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. I submit this declaration (this "First Day Declaration") to provide an overview of the Debtor and this chapter 11 case and to support the Debtor's chapter 11 petition and "first day" motions (each, a "First Day Motion," and collectively, the "First Day Motions").<sup>2</sup> Except as otherwise indicated herein, all facts set forth in this First Day Declaration are based upon my personal knowledge of the Debtor's operations and finances, information learned from my

<sup>1</sup> The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

<sup>2</sup> All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the relevant First Day Motion.

review of relevant documents, information supplied to me by other members of the Debtor's management, other Ankura professionals and the Debtor's other professional advisors, or my opinion based on my experience, knowledge, and information concerning the Debtor's operations and financial condition. I am authorized to submit this First Day Declaration on behalf of the Debtor, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

**Preliminary Statement**

4. SynCardia is a medical technology company, incorporated in 2001, that is focused on developing, manufacturing and commercializing the SynCardia temporary Total Artificial Heart, or TAH-t, an implantable system designed to assume the full function of a failed human heart in patients suffering from advanced heart failure. SynCardia TAH-t's account for approximately 95 percent of all artificial heart implants ever performed.

5. The SynCardia TAH-t is the only total artificial heart that is commercially available in the United States, European Union and Canada for use primarily as a Bridge-to-Transplant. As a total artificial heart, the SynCardia TAH-t replaces the functionality of both the left and right ventricles of the heart as well as all four heart valves. In combination with an external driver also manufactured by SynCardia, the SynCardia TAH-t provides blood flow through each ventricle, and promotes the recovery of other vital organs. Before it will sell its TAH-t's, SynCardia requires each medical center to be trained and certified in the implantation and management of the SynCardia TAH-t and appropriate patient aftercare. SynCardia refers to centers that have successfully completed these certification programs as "SynCardia Certified Centers." As of February 29, 2016, over 1,568 SynCardia TAH-t's (including predecessors) had

been implanted across 120 medical centers globally.<sup>3</sup> It should be noted that the Debtor is the world's only supplier of the TAH-t and drivers which leaves patients and hospitals with no backup provider and death can occur in minutes in the event of a material malfunction.

6. Under its current approvals, the SynCardia TAH-t is intended primarily as a Bridge-to-Transplant for patients suffering from irreversible biventricular heart failure, which is the condition in which both sides of the heart are affected by heart failure. In contrast to biventricular assist devices that provide support for the patient's failing heart, which is left intact, the SynCardia TAH-t provides biventricular replacement, allowing the failing heart to be removed. Similar to a heart transplant, the SynCardia TAH-t replaces both failing heart ventricles and the four native heart valves. By replacing the failing heart, the SynCardia TAH-t also eliminates certain native heart complications.

7. In its pivotal clinical study for the SynCardia 70cc TAH-t, the results of which were published in an article, co-authored by one of its directors, in *The New England Journal of Medicine* in August 2004, 81 patients suffering from irreversible biventricular heart failure were implanted with the SynCardia TAH-t. The rate at which study patients implanted with the SynCardia TAH-t survived long enough to receive a heart transplant, referred to as the Bridge-to-Transplant rate, was 79%, representing the highest Bridge-to-Transplant rate publicly reported for any mechanical circulatory support device. The one-year survival rate of patients who received the SynCardia TAH-t was 70%.

8. Since 2012, SynCardia has averaged approximately 141 implants annually. As discussed in further detail below, in the months leading to the Petition Date, SynCardia attempted an Initial Public Offering (the "IPO") that it subsequently withdrew in October 2015 due to adverse market conditions.

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<sup>3</sup> For an example of SynCardia's product, a copy of a recent article is attached as Exhibit B hereto.

9. Regrettably, the failure of the IPO launch resulted in a liquidity shortfall for SynCardia. The Debtor has struggled to meet all of its debt obligations. In December 2015, the Debtor missed an interest payment and has entered into formal and informal forbearance agreements with the predecessor in interest to its current senior secured agent, Sindex SSI Lending, LLC (“Sindex”). It has also fallen behind on certain of its trade obligations. Long term performance of the Debtor’s business is achievable, but it is dependent on restructuring its balance sheet and raising capital to continue to improve its operations.

10. Following an extensive marketing process, in consultation with its professionals and after careful examination by the Debtor’s board of directors, the Debtor determined that chapter 11 would provide the necessary tools to maximize asset value recovery to the Company’s creditors. While chapter 11 provides a framework to recapitalize the Debtor or to sell substantially all of their assets, the Debtor’s limited liquidity mandates an expedited sale process in this chapter 11 case. The Debtor simply lacks the access to capital to sustain operations beyond the middle of August, 2016. The sale process is structured such that it would not foreclose the possibility that other going concern bids could be made. To that end, the Debtor entered into a stalking horse asset purchase agreement with its senior lender in contemplation of a section 363 sale of the Debtor’s business, filed concurrently herewith, which effect will maximize the value of its assets for the benefit of its creditors and estate including the hospitals and patients that use the TAH-t.

**I. General Background.**

**A. Debtor’s Business and Overview.**

11. SynCardia is a Delaware corporation, headquartered in Tucson, Arizona, and is the nearly universal supplier of total artificial hearts. The Debtor has approximately 67 full time employees, 6 of whom are currently furloughed, working 50% to 75% of regular hours. The

Debtor also has three employees it considers part time. Its business is the development, supply, servicing, and installation certification of total artificial hearts.

12. The 70cc TAH-t, first approved by the FDA in 2004, is the only total artificial heart that is commercially available in the United States, European Union and Canada for use as a Bridge-to-Transplant. The SynCardia 70cc TAH-t is currently reimbursed by Medicare and more than 100 private insurers in the United States. In addition to providing an average of over 141 TAH-t's annually, the Debtor services the drivers that operate the TAH-t, participates in a number of ongoing studies, runs a transplant center certification program and is in the development stage of a superior product. In December 2014, the Debtor introduced the smaller 50cc TAH-t, which was CE mark approved in Europe in December 2014 and is currently in use in clinical trials in the United States. The 50cc TAH-t is designed to fit patients whose chest cavities are too small to accept the 70cc TAH-t – primarily women of small build and children.

13. SynCardia's customers are hospitals or "centers." Centers pay a fee to become certified and receive products to keep on hand for usage. Once a patient receives a TAH-t, SynCardia receives payment from the center. As noted below, the TAH-t system includes certain external components, most notably pneumatic drivers. SynCardia will continue to service the components throughout their useful life.

(i) The Total Artificial Heart and Therapy Programs

14. The TAH-t is implanted very similarly to a human heart transplant. Blood is driven pneumatically, using air pressure and vacuum, by an external pneumatic power source (a "Driver"). The Driver is connected through tubes that enter through the abdomen and power the TAH-t through pulsating air, mimicking the action of a beating heart.

15. The TAH-t is used for Bridge-to-Transplant therapy. Bridge-to-Transplant recipients of TAH-t's are patients that are expected at the time of installment to eventually

qualify for and receive a human heart transplant, but require the Debtor's product for life support until they receive the transplant. In addition, the Debtor is in the process of beginning clinical trials for destination therapy ("Destination Therapy"). Destination Therapy recipients of TAH-t's would be generally ineligible for human heart transplants and rely upon the TAH-t as a permanent solution.

(ii) The Driver Systems

16. The Driver is what powers and pumps the heart. SynCardia patients currently use one of three Driver types: Circulatory Support System (CSS) Console, also known as Big Blue, Companion 2 or Freedom. Big Blue was the original Driver and is still in use by some Centers. The Big Blue Driver is about the size of a filing cabinet. The Companion 2 was released in July 2011, and is situated on a cart. Although patients using the Companion 2 are hospital bound, the Companion 2 can be wheeled to allow patients to walk through the hospital. Almost all implants in the past few years have been supported by the Companion 2.

17. In March 2010, the Debtor introduced the portable Freedom Driver. At any given time, approximately 50 patients use the Freedom Driver. The Freedom Driver weighs only 13 pounds and fits into a backpack. The Freedom Driver allows patients to be mobile outside of the hospital. Nonetheless, the Freedom Driver is far more costly for the Debtor to maintain than the Companion 2 Driver. The Freedom Driver has proved to require more regular and expensive service, which has helped lead to greater expenses than anticipated.

18. The Debtor has design plans for the development of the Freedom 2 Driver. The Freedom 2 Driver will provide a better user experience and with lower servicing costs. The Freedom 2 Driver would weigh approximately 8 pounds and provide:

- Noiseless design that improves the patient user experience,

- Improved battery life that reduces charge frequency,
- 40% decrease in weight, making it easier for small women and children utilizing the 50cc TAH-t, and
- Changes to design to enable the Driver to operate for an extended time between mandatory servicing.

19. The Debtor believes the Freedom 2 Driver is the key to its long-term success. However, the Debtor estimates that completion of the design and FDA approval could cost approximately \$4 to \$6 million, and completing the design and obtaining the requisite approval could take up to 24 months. Moreover, the Debtor estimates that production of Freedom 2 Drivers is projected to commence in late-2018, with all Freedom patients switching to the Freedom 2 Driver by late-2020.

(iii) Performance

20. For the year ending December 2015, the Debtor generated revenues of approximately \$16.8 million and adjusted EBITDA loss of approximately \$12.7 million. Through May 31, 2016 the Debtor had revenues of \$7.1 million, which represented a 6% overall decrease over the comparable period in the prior year.

B. The Debtor's Prepetition Organizational Structure.

21. The Debtor is a privately held Delaware corporation. It has one subsidiary, a non-debtor, SynCardia Systems Europe GmbH ("GmbH"), incorporated in Germany. The Debtor sells its equipment to GmbH, who in turn sells to centers located in Europe. The Debtor also pays a portion of GmbH's staff compensation. The chart attached hereto as **Exhibit A** depicts the Debtor's prepetition organizational structure.

C. The Debtor's Prepetition Capital Structure.

22. As of the Petition Date, the Debtor has outstanding debt obligations in the aggregate of approximately \$48 million, consisting primarily of approximately (a) \$22 million in secured debt under a its Amended and Restated First Lien Credit Agreement, as defined below, (b) \$14.5 million under its prepetition subordinated notes, and (c) approximately \$11.5 million of accrued and unpaid interest and amounts owed on account to vendors and other unsecured creditors. The Debtor also has outstanding: Series F convertible preferred stock, common stock and certain warrants. Previously issued Series A-E preferred stock has since converted to common stock.

(i) Prepetition Senior Obligations

23. On March 5, 2013, the Debtor entered into a senior credit agreement (the "First Lien Credit Agreement") with Athyrium Opportunities Fund (A) LP and Athyrium Opportunities Fund (B) LP (collectively, "Athyrium"), which substantially increased its total debt. The First Lien Credit Agreement was amended and restated on December 13, 2013; adding Cantor Fitzgerald Securities ("Cantor Fitzgerald"), as agent and SWK Holdings Corp. ("SWK") as an additional lender. It was subsequently amended on September 15, 2014, December 23, 2014, February 13, 2015, June 19, 2015, and September 15, 2015 (as amended, modified and supplemented from time to time, the "Amended and Restated First Lien Credit Agreement" and together with all related documents, guaranties and agreements, the "First Lien Credit Documents"). As more fully set forth in the First Lien Credit Documents, the loans under the First Lien Credit Agreement have been accruing and continue to accrue interest at a rate of 13.5% per annum with interest-only payments due quarterly through March 2018, at which time the outstanding principal and all accrued and unpaid interest is due in full. In the event of a default under the First Lien Credit Agreement, interest becomes payable at a rate of 15.5% per



annum. The loans under the First Lien Credit Agreement are subject to mandatory prepayment in certain circumstances, including upon an event of default.

24. On June 19, 2015, the Debtor entered into an Add-On Term Loan Joinder Agreement (the “Add-On Term Loan” and, collectively with all related documents, guaranties and agreements and the First Lien Credit Documents, the “Prepetition Senior Credit Documents”), with Cantor Fitzgerald, as agent, and certain of its lenders, which increased its indebtedness under the First Lien Credit Agreement by \$6 million. As of the Petition Date, the aggregate amount outstanding owed by the Debtor under the Prepetition Senior Credit Documents was approximately \$22 million.

(ii) Prepetition Subordinated Notes

25. On December 13, 2013, the Debtor entered into a junior credit agreement (the “Second Lien Credit Agreement”) with Cantor Fitzgerald, as agent, and SWK. The Second Lien Credit Agreement was amended and restated on February 13, 2015 (the “Amended and Restated Second Lien Credit Agreement”). This amendment added Delta Electronics Capital Company (“DECC”) as a co-lender and exchanged the obligations previously stated with Convertible Notes. Under the Amended and Restated Second Lien Credit Agreement, in exchange for the obligations then outstanding under the Second Lien Credit Agreement, the Debtor issued to Athyrium and SWK \$11.5 million aggregate principal amount of Convertible Notes and 1,798,563 shares of its Series F Preferred, at \$1.39 per share for proceeds totaling \$2.5 million, and the Debtor paid Athyrium and SWK \$3.0 million in cash. The Debtor also sold and issued an additional \$3.0 million Convertible Note under the Amended and Restated Secured Subordinated Convertible Promissory Note, dated February 13, 2015, to DECC, and concurrently issued 3,776,979 shares of the Debtor’s Series F Preferred at \$1.39 per share to DECC and Athyrium for proceeds totaling \$5.3 million. On September 15, 2015, SWK acquired

all outstanding debt held by Athyrium. The Debtor owes not less than \$14.5 million in the aggregate on account of the Second Lien Credit Agreement and the Subordinated Convertible Promissory Note.

26. In addition, the Debtor sold and issued a Promissory Note to Trinity Capital Investment, LLC ("Trinity") and several affiliates of Trinity SynCardia Bridge LLC in the amount of \$500,000 between December 2012 and April 2013. The Debtor entered into an agreement with Trinity SynCardia Bridge LLC to extend the maturity to December 2015. The Debtor also entered into a non-interest note with University Medical Center Corporation ("UMC"), now named Banner University Medical Center, in March of 2002. The outstanding balance as of the Petition Date was \$312,470. The Debtor also entered into a series of term notes with Trinity and Agility Lease Fund II, LLC ("Agility"). The Debtor has not made the scheduled monthly payments on these term notes beginning in October 2015. Agility and Trinity assert security interests in certain of the Debtor's equipment on account of these term notes..

27. In February 2016, Cantor Fitzgerald resigned as agent for the lenders, appointing SWK as successor agent for both the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement, assigning to SWK all liens and security interests under the respective credit agreements, security agreements and other loan documents. On June 24, 2016, SWK sold and assigned its interests under these agreements to Sindex.

(iii) The Forbearance Agreements

28. In the fall of 2015, it became apparent that the Debtor would have difficulty performing certain obligations to its creditors under its First Lien Credit Agreement. Specifically, the Debtor was unable to make scheduled payments on December 15, 2015 and March 15, 2016. The Debtor also anticipated that it would be unable to make certain other

payments and obligations in accordance with the Credit Agreement, including maintaining minimum cash balance requirements. These events, each an “Event of Default” under the Credit Agreement, resulted in a forbearance agreement dated February 9, 2016 (the “Forbearance Agreement”), pursuant to which the Lender agreed to forbear until February 29, 2016.

29. Key to obtaining the Forbearance Agreement, however, was the understanding that the Debtor abide by certain covenants and agreements, including: (i) providing SWK with certain regular updates on financial performance and material events and changes; (ii) continued engagement with its restructuring professionals; and (iii) maintaining an aggregate cash balance in all deposit accounts of no less than \$750,000.

30. The Forbearance Agreement also required the Debtor to undergo a sale and recapitalization process. The Debtor was to make good faith efforts to enter into and close, by February 29, 2016, the sale/recapitalization process for either the sale of substantially all of the Debtor’s assets or recapitalization of the Debtor’s balance sheet. This date and the forbearance termination date were later extended to March 31, 2016 by and through a second and substantially similar forbearance agreement dated March 7, 2016. Since March 31, 2016, the Debtor has been operating outside of a formal forbearance agreement, while actively seeking the best solution for all parties in interest.

(iv) Medtronic & the Failed IPO

31. Substantially all of the TAH-t’s sold prior to December 31, 2014 incorporate valves known as Med-Hall Valves, which were previously manufactured and supplied to the Debtor by Medtronic, Inc. In 2009, Medtronic notified the Debtor that it would cease manufacturing the Med-Hall Valve. At that time, the Debtor purchased a large quantity of valves and began developing a replacement valve. In June 2013, Medtronic determined that it would not continue the development and commercialization of an alternative valve for use by

SynCardia. The Debtor then began a year long process to develop a new valve and obtain FDA approval. During this process, the constraint on inventory substantially and adversely impacted the Debtor's revenue and results of operations. The new SynHall Valve was approved by the FDA in July 2014. In early 2015, the Debtor began producing SynHall Valves in quantities that are sufficient to meet existing demand levels for TAH-t's.

32. In June 2015, the FDA released a public communication to Transplant Surgeons and Cardiologists, stating that preliminary information suggested a higher mortality rate for the subgroup of patients using the Companion 2 Driver System as compared to the Circulatory Support System Console, also known as Big Blue. The FDA recommended that surgeons and cardiologists consider the data regarding higher mortality rates for one subgroup of patients when making their treatment decisions and device selections. The Company issued a letter to surgeons and cardiologists outlining the inaccuracy of the data the FDA used to come to this conclusion, but the letter had negative effects on centers as well as potential investors in the Company. This FDA notice was released just prior to the road show for the IPO and was not resolved by the FDA in time to salvage its effects on the IPO.

D. Marketing Process of SynCardia

33. In September 2015, SynCardia realized that it had to consider potential transactions that would allow the Company to deleverage its capital structure and maximize value. Shortly thereafter, SynCardia began discussions with certain key stakeholders. Through extensive negotiation over the past several months, SynCardia, working with its Advisors (as defined below), built a consensus with various key stakeholders on the terms of a financial restructuring that as proposed would reduce SynCardia's debt of more than \$50 million and allow the business to stay afloat.

34. In October 2015, the Debtor engaged Canaccord Genuity Inc. (“Canaccord”) to evaluate strategic alternatives, including the potential sale of the business. It also engaged Olshan Frome Wolosky, LLP and Ankura Consulting Group, LLC (formerly known as MGBD, LLC) (referred in the aggregate with Canaccord as the “Advisors”). The Debtor and its Advisors explored all third-party going concern options up until this filing, focusing on three scenarios: the sale of the business, an orderly wind-down, or a Chapter 11 filing. These efforts are continuing postpetition.

35. Canaccord conducted a broad marketing process targeting potential strategic buyers and financial sponsors in the healthcare and special situations space. In connection with these efforts, Canaccord contacted over 120 potential parties, resulting in the execution of 17 non-disclosure agreements. Canaccord proceeded to grant these parties access to additional diligence materials as requested. These interested parties completed various levels of due diligence, but none decided to move forward with the transaction.

36. Despite Canaccord’s broad marketing efforts, none of these discussions produced a viable buyer/investor. SynCardia operates in a niche market with a unique business model, making it difficult to match with a potential buyer. Interested parties had communicated to the Debtor and its Advisors a number of reasons as to their decline to participate in a transaction, including their view on the limited overall market opportunity for the TAH-t, the Debtor’s lack of historical profitability, the TAH-t’s incompatibility with existing product portfolios, challenges in undergoing the in-house FDA clearance submission process, and inability to gain comfort with the highly-complex technology and processes involved with the development, manufacturing and servicing of the TAH-t’s and related drivers.

37. SynCardia reviewed multiple alternatives with its Advisors in an effort to maximize value to all stakeholders. The Debtor's objectives included: ensuring adequate liquidity to be able to maintain operations to sustain over 50 patients whose lives currently depend on the TAH-t, reducing outstanding debt principal and extending maturities. In light of, among other things, SynCardia's business plan and financial forecast, available liquidity, available collateral and asset configuration, SynCardia decided to pursue a transaction that would lead to a recapitalization and reduction of its debt level.

38. As the potential purchasers diminished and the Debtor could not come to terms with a buyer/investor, the Debtor redirected its efforts. During much of the Spring, 2016, the Debtor was focused on possible transaction with SWK, DECC (who held the majority of the Company's second lien debt) and certain affiliates, pursuant to which, inter alia, DECC was to invest new value into the Company in connection with a chapter 11 plan of reorganization. After over a month of negotiations, DECC and its affiliates ultimately declined to commit to a transaction.

39. With DECC declining, it became clear that nearly all paths were exhausted – at the same time, the Debtor was operating at a historically low cash balance. However, Sindex had been in consultation with Canaccord, and in turn the Company and SWK, for some time and had indicated a preparedness to go through with the transactions proposed herein. Ultimately, Sindex purchased SWK's debt and the Debtor, after further negotiations with Sindex and consultation with its Advisors, agreed to the proposed transaction with Sindex.

40. Recently, on or about July 1, 2016, SynCardia entered into a stalking horse asset purchase agreement (the "APA") and a debtor in possession financing agreement (the "DIP Agreement") with Sindex.

41. Both the APA and the DIP Agreement are contingent on milestones that, inter alia, include having a bid procedures hearing scheduled within 26 days of the Petition Date and having this Court consider the sale of the Debtor's business within 51 days of the Petition Date. Concurrently herewith, the Debtor has filed motions seeking authority to enter into the DIP Agreement and to schedule bid procedures and sale hearings in connection with the APA. The Debtor will seek interim and final orders approving debtor in possession financing and the consensual use of cash collateral. The Debtor believes the transactions afforded by the APA, subject to higher and better offers, offers the best value for the Debtor's assets and has the greatest chance of continuing to service existing and future patients that rely on the Debtor's artificial hearts.

42. The nature of Debtor's business relationships with vendors is fragile. It is therefore crucial for the business to emerge from chapter 11 as quickly as possible. A sale of the Debtor's assets will enable the Debtor's business to continue to operate as a going concern, retain its customer base and the subsequent services to individuals whose lives depend on the Debtor's continued business, and avoid an erosion of customer and vendor confidence that could result from a protracted chapter 11 process. The Debtor does not have the financial resources for a protracted stay in chapter 11.

## **II. Evidentiary Support for First Day Motions.<sup>4</sup>**

43. Concurrently with the filing of its chapter 11 petition, the Debtor has also filed a number of First Day Motions seeking relief that the Debtor believes is necessary to enable it to operate with minimal disruption and loss of productivity. The Debtor requests that the relief requested in each of the First Day Motions be granted as critical elements in ensuring a smooth

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<sup>4</sup> Capitalized terms used in this section and not otherwise defined shall have the meanings ascribed to them in the applicable motion.

transition into, and stabilizing and facilitating the Debtor's operations during the pendency of this chapter 11 case. I have reviewed each of the First Day Motions discussed below, and the facts set forth in each First Day Motion are true and correct to the best of my knowledge, information and belief with appropriate reliance on other members of the Debtor's management and the Debtor's professional advisors.

44. Accordingly, on behalf of the Debtor, I respectfully submit that each Motion should be approved.

- A. Debtor's Application for an Order Authorizing and Approving the Appointment of Rust Consulting/Omni Bankruptcy as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. § 156(c), Section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2002(f) and Local Rule 2002-1(f) (the "Omni Retention Application").

45. The Debtor requests entry of an order, pursuant to section 156(c) of title 28 of the United States Code, section 503(b) of the Bankruptcy Code, and Local Rule 2002-1(f), authorizing the retention and appointment of the Omni Retention Application as claims and noticing agent in connection with this chapter 11 case, in accordance with the Retention Agreement. I believe that the relief requested in the Omni Retention Application is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will ease the administrative burden on the Clerk in connection with this chapter 11 case. In addition, I have been advised by counsel that Omni's retention is required by the Local Rules in light of the anticipated number of creditors in this chapter 11 case. Accordingly, on behalf of the Debtor, I respectfully submit that the Omni Retention Application should be approved.



- B. Debtor's Motion For An Order (I) Authorizing And Approving Debtor's Post-Petition Financing; (II) Granting Liens And Security Interests And Providing Superpriority Administrative Expense Status; (III) Authorizing Use Of Cash Collateral And Affording Adequate Protection; (IV) Modifying Automatic Stay; And (V) Scheduling Final Hearing (the "DIP Motion").

46. The Debtor has secured debtor-in-possession financing from Sindex in connection with its filing. Without the financing, the Debtor's operations could not be assured of continuing. With the additional financing in place, and the use of cash collateral, the Debtor believes that it can be current on all its post filing obligations through the sale process. The financing and consensual use of cash collateral are subject to milestones contemplating the transactions set forth in the Asset Purchase Agreement such as:

- (a) No later than twenty-six (26) days after the Petition Date, obtain an order of the Bankruptcy Court, in form and substance acceptable to the Administrative Agent, approving the Bid Procedures;
- (b) No later than twenty-one (21) days after the Filing Date, file schedules of assets and liabilities and statements of financial affairs for the Borrower;
- (c) No later than twenty-six (26) days after entry of the Interim Order, obtain entry of the Final DIP Order in form and substance acceptable to the Administrative Agent;
- (d) No later than forty-nine (49) days after the Petition Date, commence and conclude the auction of the Debtor's business pursuant to the Bid Procedures;
- (e) No later than fifty-one (51) days after the Petition Date, obtain entry of an order of the Bankruptcy Court approving the sale contemplated in the asset purchase agreement; and
- (k) No later than fifty-four (54) days after the Petition Date, close the Sale of the business.

C. Debtor's Motion Pursuant to 11 U.S.C. §§ 105(a) and 366 for Interim and Final Orders (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment (the "Utilities Motion").

47. The Debtor requests the entry of interim and final orders, among other things: (a) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (b) approving the Debtor's proposed offer of adequate assurance and procedures governing any Utility Providers' requests for additional adequate assurance; and (c) prohibiting the Utility Providers from altering, refusing, or discontinuing services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Debtor's proposed adequate assurance pending entry of the Final Order. In the ordinary course of business, the Debtor regularly incurs expenses for water, electricity, gas, local and long-distance telephone service, phone maintenance, internet service, security alarm, and other similar utility services provided by several Utility Providers. Uninterrupted Utility Services are essential to the Debtor's ongoing operations and, therefore, to the success of its chapter 11 efforts. Indeed, any interruption of Utility Services, even for a brief period of time, would negatively affect the Debtor's operations, customer relationships, revenues, and profits, thereby seriously jeopardizing the Debtor's chapter 11 efforts and, ultimately, estate value and creditor recoveries. It is, therefore, critical that Utility Services continue uninterrupted during this chapter 11 case.

48. As of the Petition Date, the Debtor believes that it is current on its utility payments. I believe and am advised that the Proposed Adequate Assurance and Additional Adequate Assurance Procedures are necessary in this chapter 11 case, because if such procedures were not approved, the Debtor could be forced to address numerous requests by the Utility Providers in a disorganized manner during the critical first weeks of this chapter 11 case.

Moreover, a Utility Provider could blindside the Debtor by unilaterally deciding - on or after the 30th day following the Petition Date - that it is not adequately assured of future performance and discontinuing service or making an exorbitant demand for payment to continue service. Discontinuation of Utility Service could shut down operations, and any significant disruption of operations could jeopardize the success of this chapter 11 case.

49. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11 without disruption. Accordingly, on behalf of the Debtor, I respectfully submit that the Utilities Motion should be approved.

D. Debtor's Motion Pursuant to Sections 105(a), 363(c), and 503(b)(1) of the Bankruptcy Code for Authorization to Honor Prepetition Obligations to Customers and Otherwise Maintain and Refurbish Drivers in the Ordinary Course of Business (the "Customer Programs Motion").

50. The Debtor requests the authority to maintain and administer its Customer Programs, and honor prepetition obligations related thereto, in the ordinary course of business and in a manner consistent with past practice.

51. To ensure fully-functioning heart implant equipment, the FDA requires that Freedom Drivers be refurbished after 120 days of use. In addition, the Companion 2 Driver must be serviced after every 90 days of use and the Big Blue Driver must be serviced every two years. At any given time, the Debtor will have Drivers in use by its centers (and patients) which require refurbishment by the Debtor. It is essential to the Debtor's business that the Debtor be able to honor its servicing obligations to these centers. The failure to do so could immediately and irreconcilably harm the Debtor's business and its estate. Moreover, failure to refurbish the Drivers would place implant patients in grave peril, where their reliance on the TAH-t's depends entirely on properly-functioning Drivers. The Debtor believes that the relief requested will pay

dividends with respect to the success of this chapter 11 case, especially at this critical time following the filing of the chapter 11 case.

52. I believe that the relief requested in the Customer Programs Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11 without disruption. Accordingly, on behalf of the Debtor, I respectfully submit that the Customer Programs Motion should be approved.

E. Debtor's Motion Pursuant to 11 U.S.C. §§ 105(a) and 345(b), Fed. R. Bankr. P. 2015 and Del. Bankr. L.R. 2015-2 for an Order Authorizing (A) Continued Use of the Debtor's Existing Cash Management System, (B) Maintenance of Existing Bank Accounts and Business Forms, and (C) a Limited Waiver of Section 345(b) of the Bankruptcy Code (the "Cash Management Motion").

53. The Debtor requests the authority to: (a) continue to use, with the same account numbers, all of the Bank Accounts in its Cash Management System; (b) treat the Bank Accounts for all purposes as accounts of the Debtor as a debtor in possession; (c) open new debtor-in-possession accounts, if needed; and (d) use, in their present form, all correspondence and business forms (including check stock, letterhead, purchase orders, and invoices) and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtor's status as a debtor in possession.

54. In addition, the Debtor further requests that the Court authorize the Banks to: (a) continue to maintain, service, and administer the Bank Accounts; and (b) debit the Bank Accounts in the ordinary course of business on account of (i) checks drawn on the Bank Accounts that are presented for payment at the Banks or exchanged for cashier's checks prior to the Petition Date, provided that the underlying payment is of a type that the Court has authorized the Debtor to pay on a postpetition basis; (ii) checks or other items deposited in the Bank Accounts prior to the Petition Date that have been dishonored or returned unpaid for any reason

(including associated fees and costs), to the same extent the Debtor was responsible for such items prior to the Petition Date; and (iii) undisputed, outstanding service charges owed to the Banks as of the Petition Date on account of the maintenance of the Debtor's Cash Management System, if any.

55. In the ordinary course of business, the Debtor utilizes an integrated Cash Management System to collect, transfer, and disburse funds generated by its operations and maintain current and accurate accounting records of all daily cash transactions. If the Debtor were required to comply with the U.S. Trustee Guidelines, the burden of opening new accounts, revising cash management procedures, instructing customers to redirect payments, and the immediate ordering of new checks with a "Debtor in Possession" legend, would disrupt the Debtor's business at this critical time. The Debtor respectfully submits that parties in interest will not be harmed by its maintenance of the existing Cash Management System, including its Bank Accounts, because the Debtor has implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date.

56. The relief requested in the Cash Management Motion is vital to ensuring the Debtor's seamless transition into bankruptcy. Authorizing the Debtor to maintain its Cash Management System will avoid many of the possible disruptions and distractions that could divert its attention from more critical matters during the initial days of this chapter 11 case.

57. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11 without disruption. Accordingly, on

behalf of the Debtor, I respectfully submit that the Cash Management Motion should be approved.

F. Debtor's Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 507(a) for: (A) an Order Authorizing the Debtor to (I) Pay Wages, Salaries, and Other Compensation, (II) Maintain Benefits, and (III) Pay Reimbursable Employee Expenses and (B) an Order Authorizing and Directing Banks and Other Financial Institutions to Pay All Checks and Electronic Payment Requests Made by the Debtor Relating to the Foregoing (the "Wages and Benefits Motion").

58. The Debtor requests the authority, in its sole discretion, to pay prepetition claims, honor obligations, and to continue programs, in the ordinary course of business and consistent with past practices, relating to the Employees and the Benefits.

59. As of the Petition Date, the Debtor's workforce is comprised of approximately 70 Employees (the "Employees"), 67 of which are full time. Approximately 47 employees are paid on salary basis (the "Salaried Employees") and 23 are paid on an hourly basis (the "Hourly Employees"). The Salaried Employees and the Hourly Employees are employed through the Professional Employer Organization. Additionally, the Debtor employs 11 consultants individually (the "Independent Contractors," and collectively with the Employees as the "Workforce"). Although the Debtor has paid its wage, salary, and other obligations in accordance with their ordinary compensation schedule prior to the Petition Date, as of the date hereof, certain prepetition obligations for the Workforce may nevertheless be due and owing.

60. The majority of the Debtor's Workforce relies exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, the Workforce will be exposed to significant financial difficulties if the Debtor is not permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtor is unable to satisfy such obligations, Workforce morale and loyalty will be jeopardized at a time when Workforce support is critical to the Debtor. In the absence of such

payments, the Debtor believes its Workforce may seek alternative employment opportunities, thereby hindering the Debtor's ability to meet its customer obligations and likely diminishing creditors' confidence in the Debtor. Moreover, the loss of valuable members of the Workforce and the recruiting efforts that would be required to replace such members of the Workforce would be a substantial and costly distraction at a time when the Debtor should be focusing on stabilizing its operations.

61. With the exception of one employee, no Member of the Workforce is owed more than \$12,475 in Unpaid Wages, even when combined with Employee Benefits. The Debtor will not distribute any amounts over the § 507(a)(4) priority cap of \$12,475 directly to any individual Employee on account of aggregate pre-Petition Date Unpaid Wages or the section 507(a)(5) priority cap on account of the types of employee benefit programs listed therein. I believe that the relief requested in the Wages and Benefits Motion, is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11 without disruption. Accordingly, on behalf of the Debtor, I respectfully submit that the Wages and Benefits Motion should be approved.

G. Debtor's Motion Pursuant to 11 U.S.C. §§ 105(a) and 363 for an Order Authorizing the Debtor to Satisfy Prepetition Claims of Certain Freight Carriers Pursuant to Section 105(a) of the Bankruptcy Code (the "Common Carriers Motion").

62. The Debtor seeks entry of an order authorizing, but not directing, it to pay, in its sole discretion the valid prepetition claims of its Freight Carriers, a total amount not to exceed \$50,900 relating to the shipment and transport of goods to and by the Debtor in the ordinary course of business, pursuant to section 105 of the Bankruptcy Code that have accrued and been unpaid as of the Petition Date. The Debtor proposes to pay such claims when, in the Debtor's

sole discretion, the Freight Carriers' exercise of contractual or statutory self-help remedies would unduly disrupt the Debtor's business.

63. The Debtor primarily relies on warehousing and logistics services provided by Airways Freight Corporation ("Airway"). Airway handles shipments that are required to clear customs, both inbound and outbound. This includes delivery of newly purchased TAH-t's, in addition to the ongoing shipments of Drivers requiring regular refurbishment and maintenance. Airway has been granted a power of attorney that allows it to prepare and submit all customs paperwork on behalf of SynCardia. For imports, Airway prepares the customs clearance paper and passes on any third-party fees, such as airline terminal fees, though its invoice to SynCardia. Airway also submits the FDA paperwork that is required with respect to shipment of the SynCardia's goods. In addition, the Debtor relies upon FedEx Corporation for its domestic shipping needs, and World Wide Pharma Logistics GmbH, a German logistics provider, handles shipments, including customs and VAT taxes, from GmbH to SynCardia, namely the shipment of Drivers from customers outside of the United States for refurbishment.


64. I believe that the relief requested in the Common Carriers Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11 without disruption. Accordingly, on behalf of the Debtor, I respectfully submit that the Common Carriers Motion should be approved.

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

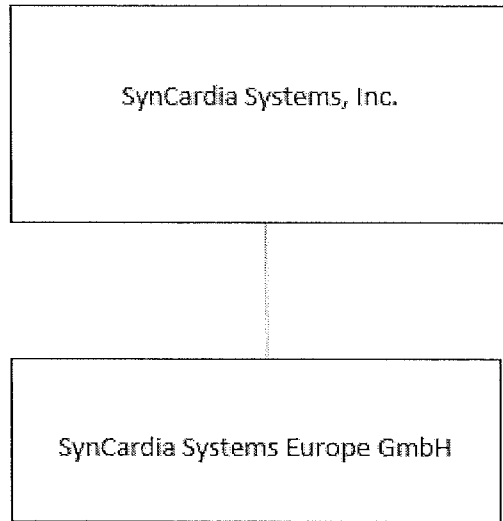
Dated: July 1, 2016  
Wilmington, Delaware



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Stephen Marotta  
Chief Restructuring Officer  
SynCardia Systems, Inc.

**EXHIBIT A**  
**Debtor's Prepetition Organizational Structure**



**EXHIBIT B**  
**CNN Article**

# Man lives 555 days without a heart

By **Jacqueline Howard, CNN**

🕒 Updated 4:48 PM ET, Fri June 10, 2016



Man lives 555 days without a heart 01:18

## Story highlights

A 25-year-old Michigan man lived more than a year with a portable artificial heart

He had a transplant in May and could go home as early as next week

**(CNN)** — While waiting for a human heart transplant, Stan Larkin lived 555 days without the organ at all.

To passers-by, the 25-year-old Ypsilanti, Michigan, resident appeared to be a typical young adult. He enjoyed taking his three toddlers to the park and hanging out with his younger brother, Dominique.

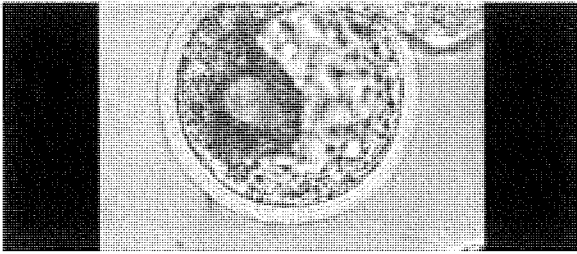
What wasn't obvious was that a gray backpack Larkin carried was what kept him alive. Inside that bag was the power source for an artificial heart pumping in his chest.

Larkin's real heart was removed from his body in November 2014. It was replaced with a device that allowed Larkin to stay home instead of in a hospital while waiting to receive a transplant.

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early as next week.

"Most people would be scared to go so long with [an artificial heart], but I just want to tell them that you have to go through the fear, because it helps you," Larkin said. "I'm going home so fast after the transplant because it helped me stay healthy before the transplant."

**Related Article:** Human organs grown in pigs may help transplant patients

At any given time, there are about 4,000 patients nationwide waiting for human heart transplants, according to the U.S. Organ Procurement and Transplantation Network.

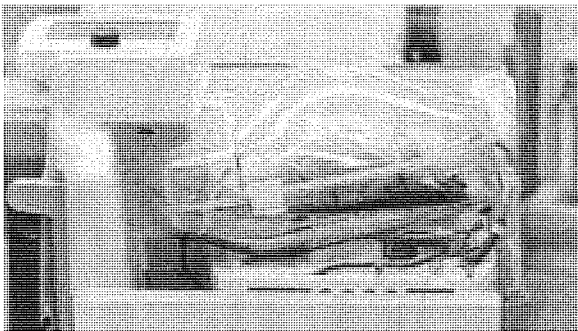
Some patients with end-stage heart failure may wait months or even years before a suitable donor heart becomes available, said Dr. Billy Cohn, a cardiovascular surgeon and director of the Center for Technology and Innovation at the Texas Heart Institute.

"Many of these patients have hearts that are so weak, the kidneys, liver and other critical organs will fail while they are waiting," said Cohn, who was not involved in Larkin's care. "Many of these patients would die without some form of support," such as an artificial heart.

## 'A machine was going to be my heart'

Larkin didn't realize that his heart was suffering until nine years ago, when he collapsed without warning while playing in a basketball game. It turned out that Larkin had a genetic form of heart disease called familial cardiomyopathy. His brother, Dominique, 24, was soon found to have it, too.

The condition occurs when heart muscle stretches and enlarges the open area of at least one heart chamber, inhibiting the organ from pumping blood efficiently.



The type of cardiomyopathy seen in Stan and Dominique, called arrhythmogenic dysplasia, causes arrhythmias and failure on both sides of the heart, said Dr. Jonathan Haft, a cardiac surgeon at the University of Michigan who operated on the brothers.

"It's an awful condition to have," Haft said. "But the technology available and the technology that is evolving in the field of heart failure is very exciting. ... The total artificial heart falls into that category."

Both brothers eventually progressed to heart failure and cardioaenic shock. and they were equipped with artificial

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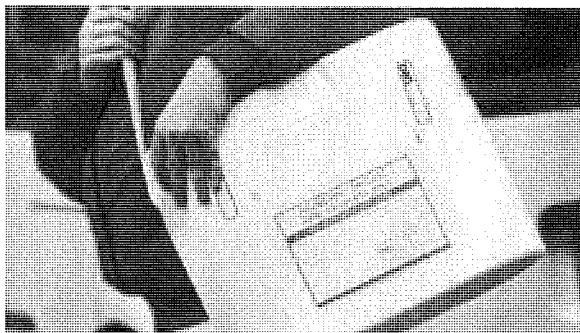
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Haft said.

# 'It feels like a real heart'

It's not the first time a patient has lived for a long time with an artificial heart, but Larkin became the first patient in Michigan to go home with the portable device.

The SynCardia temporary artificial heart in Larkin's chest replaced his failing heart, including its chambers and four valves. Two tubes, exiting the left side of Stan's body beneath the ribcage, connected the artificial heart to a 13-pound machine called the Freedom Driver.



The driver, which was carried in a backpack, not only powered the artificial heart, it delivered pumps of compressed air into the heart's ventricles, allowing blood to be pumped through the body.

"Stan was very active and did an immaculate job taking care of himself and taking care of the equipment used to keep him alive," Haft said.

With his life-saving backpack in tow, Larkin played pick-up games of basketball, enjoyed time with his children and rode in the car with his friends.

"It's just like a real heart," Larkin said. "It's just in a bag with tubes coming out of you, but other than that, it feels like a real heart. ... It felt just like a backpack with books in it, like if you were going to school."

**Related Article:** Organ transplant program may favor wealthy over needy

Voncile McCrae, Larkin's mother, often helped him change the bandages covering the holes in his body where the tubes emerged.

"We had to be careful so that he wouldn't get an infection," McCrae said, chuckling about how she had been scared to touch the tubes and handle the Freedom Driver machine. "Now, I'm a pro."

# 'An amazing brother'

The technology that, temporarily, was a part of Larkin's body shows just how advanced artificial heart devices have become since the world's first self-contained artificial heart was implanted in a patient in 2001, said Dr. Laman Gray, Jewish Hospital chair in cardiovascular surgery at the University of Louisville.

Gray follow

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There's definitely a place for total artificial hearts and a need for them."

Dominique said he and his brother are grateful that their needs were met -- and that they survived.

"I have an amazing brother," Dominique said. "He has been here with me since the beginning and has never let me down. ... I'm blessed to have him in my life."



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