

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	
INTROGEN THERAPEUTICS, INC.,	§	CASE NO. 08-12442-FRM
INTROGEN TECHNICAL SERVICES, INC.,	§	CASE NO. 08-12443-FRM
TMX REALTY CORPORATION,	§	CASE NO. 08-12444-FRM
	§	CHAPTER 11
DEBTORS	§	
	§	<i>JOINTLY ADMINISTERED UNDER</i>
301 CONGRESS AVENUE, SUITE 1850	§	CASE NO. 08-12442-FRM
AUSTIN, TEXAS 78701	§	
	§	
TAXPAYER IDENTIFICATION NOS.:	§	
74-2704230, 35-2340711, 74-2896565	§	

**DEBTORS' MOTION TO LIMIT NOTICE AND
ESTABLISH NOTICE PROCEDURES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COME NOW Debtors, Introgen Therapeutics, Inc., Introgen Technical Services, Inc., and TMX Realty Corporation (“Debtors”), and hereby move the Court to enter an order: (a) limiting notice in the chapter 11 cases; (b) designating the parties upon whom certain notices must be served; (c) establishing the manner of service with respect to all matters for which the Bankruptcy Code and the Bankruptcy Rules authorize the Court to designate or limit the parties entitled to notice and the manner of service, including matters subject to FED. R. BANKR. P. 2002(i), 4001, 6004, 6006, or 6007. In support of the Motion, the Debtors state as follows:

**I.
JURISDICTION**

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

II. **Background Facts**

A. General Background

2. On December 4, 2008, (the “Petition Date”), the Debtors filed with the Clerk of this Court their petitions for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). The Debtors are now operating their businesses and managing their property as a Debtors-in-Possession pursuant to 11 U.S.C. §§ 1107 and 1108. No official committee has yet been established in these cases.

B. Proposed Notice Procedures For General Creditors

3. As permitted by FED. R. BANKR. P. 2002(i) and (m), the Debtors propose that the Court enter an order, to the extent allowed, that limits the parties upon which the Debtors must serve notices in this case. This order also should designate the manner of service regarding all matters for which the Bankruptcy Code and the Bankruptcy Rules authorize the Court to designate the manner of service, including matters subject to Bankruptcy Rules 2002(i), 4001, 6004, 6006, or 6007.

4. Specifically, the Debtors propose that notice regarding all matters or proceedings other than the matters or proceedings referred to in FED. R. BANKR. P. 2002(a)(1), (4), (5), (6) and (7) and (b), (d), and (f), need be served only upon the following parties:

(a) The Office of the United States Trustee at the following address:

Office of the United States Trustee
903 San Jacinto Blvd., Room 230
Austin, TX 78701

(b) Counsel for any committee appointed under Bankruptcy Code section 1102 or, before the appointment of any such committee, each of the creditors that the Debtors, in compliance with FED. R. BANKR. P 1007(d), included on the filed lists of 20 largest unsecured creditors (to the extent the applicable Debtors could identify such creditors), as those lists may subsequently be amended;

- (c) Parties who have filed UCC-1 financing statements against the Debtors;
- (d) The Debtors and their counsel at the following addresses:

Debtors

Introgen Therapeutics, Inc.
301 Congress Avenue, Suite 1850
Austin, TX 78701

Introgen Technical Services, Inc.
301 Congress Avenue, Suite 1850
Austin, TX 78701

TMX Realty Corporation
301 Congress Avenue, Suite 1850
Austin, TX 78701

Counsel for the Debtors

Brown McCarroll, L.L.P.
Attn: Patricia B. Tomasco
111 Congress Avenue, Suite 1400
Austin, TX 78701-4043
(512) 479-1141 (phone)
(512) 226-7320 (fax)

- (e) The Internal Revenue Service at the following address:

Internal Revenue Service
P. O. Box 21126
Philadelphia, PA 19114

- (f) United States Department of Justice

United States Attorney
816 Congress Avenue, Suite 1000
Austin, TX 78701

United States Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

- (g) Texas Comptroller of Public Accounts
Revenue Accounting Division – Bankruptcy Section
P.O. Box 13528
Austin, TX 78711
- (h) Texas Workforce Commission
TEC Building – Bankruptcy
101 East 15th Street
Austin, TX 78778
- (i) Entities who hold claims¹ or interests and who both file a written request for special notice with the Court and serve that request on counsel for the Debtors; and
- (j) Any entity against whom direct relief is sought, such as the nondebtor party to an executory contract or unexpired lease that is being assumed or rejected or entities asserting interests in property being sold.

5. In order to ensure all parties identified above receive notice, the Debtors shall file the initial Master Service list within 3 days after entry of this order. A revised list shall be filed 10 days after the initial Master Service list is filed, if new parties need to be added. The Debtors shall update the Master Service List, and shall file a copy of the updated Master Service List (i) at least every 7 days during the first 30 days of the case, if new parties need to be added; (ii) at least every 15 days during the next 60 days of the case, if new parties need to be added; and (iii) at least every 30 days thereafter throughout the case, if new parties need to be added.

6. Any of the entities listed above may request that notices be sent to a different address by filing *both* a written request for change of address with the Court *and* serving that request on counsel for the Debtors. Similarly, counsel for any of the entities listed above, if other counsel is substituted in their place, may report this substitution and request that notices be sent to the new counsel by filing *both* a written request for address change with the Court *and* serving that request on counsel for the Debtors. Unless otherwise required either by FED. R. BANKR. P 7004(h) or by an order of this Court, all

¹ Nothing in this Motion constitutes an admission by the Debtors with respect to the allowance, secured status or other status of any claim. The Debtors reserve all rights to contest any asserted claims.

notices in these cases may be provided by first-class mail. In addition, as authorized by the Order Adopting Administrative Procedures for Electronic Filing dated December 1, 2004, any creditor or party in interest that appears through counsel with an CM/ECF account with this Court may be served via that account and such service will constitute notice. In their discretion, unless otherwise ordered by the Court, the Debtors also should be authorized to use Federal Express and similar carriers for purposes of serving papers in these cases.

7. Unless otherwise ordered by the Court, the limitation on notice proposed by this Motion does not apply to the matters or proceedings referred to in FED. R. BANKR. P. 2002(a)(1), (4), (5), (6) and (7), and (b), (d), and (f). These matters or proceedings must be noticed in accordance with the Bankruptcy Rules.

C. Service of This Motion

8. This Motion will be served by facsimile on each of the entities listed in Section B above. The Debtors submit that the foregoing notice is appropriate under the circumstances. Additionally, if this Motion is granted, the Debtors shall provide Notice of the order in substantially the same form as attached hereto as Exhibit "A."

III. **Argument**

9. The form and manner of notice set forth above are within the Court's authority to order. FED. R. BANKR. P. 2002(m), which also gives the Court discretion to enter orders regulating notice, provides that the Court may designate the scope, form, and manner of notices except as otherwise provided under the Bankruptcy Rules: "[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." FED. R. BANKR. P. 2002(m).

10. In addition, the notice procedures outlined in this Motion comport with the applicable Bankruptcy Rules. FED. R. BANKR. P. 2002(i), which specifically provides in part that notices of all matters should be provided to any official committees.

11. Furthermore, the Debtors believe that, for several reasons, it is necessary and appropriate to adopt the procedures proposed herein. First, providing notice of all matters in this case to hundreds of persons would actually delay the provision of notices in this case and would be unjustifiably burdensome and uneconomical. It also would place an enormous administrative burden on the Debtors' estates and would impede the consummation of transactions, negotiation of settlements, and the granting of other relief that may be advantageous to the estates and their creditors. Furthermore, providing notice of all matters to hundreds or thousands of entities would unnecessarily increase the costs of administering these cases and, in many instances, delay service to these entities.

12. Second, the requested relief will reduce the burden, complication, delay, and cost to the Debtors' estates associated with administering these cases and providing notice of proceedings in these cases. The Debtors believe that the proposed notice procedure will mitigate the administrative burden that would otherwise be imposed upon the estates without diminishing creditor participation.

IV. Conclusion

WHEREFORE, Debtors respectfully request that this Court enter an order (a) limiting notice; (b) designating the parties upon whom notice must be served; (c) establishing the manner of service with respect to all matters for which the Bankruptcy Code and the Bankruptcy Rules authorize the Court to designate or limit the parties entitled to notice and the manner of service, including matters subject to FED. R. BANKR. P. 2002(i), 4001, 6004, 6006, or 6007; and (d) granting the Debtors such other and further relief that this Court deems appropriate and necessary and that is consistent with the foregoing.

Respectfully submitted,

BROWN MCCARROLL, L.L.P.
111 Congress Avenue, Suite 1400
Austin, Texas 78701
(512) 479-1141
(512) 226-7320 (fax)

By: /s/ Patricia B. Tomasco
Patricia B. Tomasco
State Bar No. 01797600
Kell C. Mercer
State Bar No. 24007668

ATTORNEYS FOR DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2008, a true and correct copy of the foregoing document was served via the Court's CM/ECF notification system, facsimile transmission, e-mail transmission, and/or regular first class mail, on all parties set forth on the attached Service List.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	
INTROGEN THERAPEUTICS, INC.,	§	CASE NO. 08-12442-FRM
INTROGEN TECHNICAL SERVICES, INC.,	§	CASE NO. 08-12443-FRM
TMX REALTY CORPORATION,	§	CASE NO. 08-12444-FRM
	§	CHAPTER 11
DEBTORS	§	
	§	<i>JOINTLY ADMINISTERED UNDER</i>
301 CONGRESS AVENUE, SUITE 1850	§	CASE NO. 08-12442-FRM
AUSTIN, TEXAS 78701	§	
	§	
TAXPAYER IDENTIFICATION NOS.:	§	
74-2704230, 35-2340711, 74-2896565	§	

NOTICE OF ORDER LIMITING NOTICE OF FUTURE PLEADINGS

PLEASE TAKE NOTICE that on December __, 2008, the United States Bankruptcy Court entered the Order Limiting Notice and Establishing Notice Procedures (the "Order"). Pursuant to the Order, the Court has limited notice and notice of all matters and proceedings in the above-captioned chapter 11 cases. Notice shall be given only to those on the Master Service List, which includes: (a) the United States Trustee; (b) Debtors; (c) Debtors' counsel; (d) parties who have filed UCC-1 financing statements against the Debtors; (e) counsel for parties who have filed UCC-1 financing statements against the Debtors; (f) Internal Revenue Service; (g) United States Attorney's office in Austin, Texas; (h) United States Department of Justice; (i) State Comptroller of Public Accounts; (i) Texas Workforce Commission; (j) counsel for any creditor's committees appointed under Section 1102 of the Bankruptcy Code or, until such counsel is appointed, the members of any such committee; (k) list of twenty (20) largest unsecured creditors in the Debtors' cases (if no committee is appointed); (l) any respondent with respect to

EXHIBIT A

a specific motion; and (m) any party-in-interest requesting notice pursuant to FED. R. BANKR. P. 2002(i).

Please take notice that if you are not included on the foregoing list and desire notice of all matters and proceedings in this case, you must file a formal appearance and request for notice in the United States Bankruptcy Court for the Western District of Texas, Bankruptcy Clerk's Office, United States Courthouse, 615 East Houston Street, Room 137, San Antonio, Texas 78205, and mail a copy of the request to Counsel for the Debtors at Brown McCarroll, L.L.P., Attn: Patricia Tomasco, 111 Congress Avenue, Suite 1400, Austin, Texas 78701.

Respectfully submitted,

BROWN MCCARROLL, L.L.P.
111 Congress Avenue, Suite 1400
Austin, Texas 78701
(512) 479-1141
(512) 226-7320 (fax)
Email: ptomasco@mailbmc.com

By: /s/ Patricia B. Tomasco

Patricia B. Tomasco
Texas Bar No. 01797600
Kell C. Mercer
Texas Bar No. 24007668

ATTORNEYS FOR DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of December, 2008, a true and correct copy of the foregoing document was served via the Court's CM/ECF notification system and regular first class mail, on all parties set forth on the attached Master Service List.

/s/ Patricia B. Tomasco
Patricia B. Tomasco