UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re: HOSPITAL FOR SPECIAL SURGERY, LLC, Debtor.	Case No. 24-12862 JDL Chapter 11

OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTOR'S DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF REORGANIZATION OF HOSPITAL FOR SPECIAL SURGERY, LLC *dba* ONECORE HEALTH

Ilene J. Lashinsky, United States Trustee for Region 20 (the "**UST**"), objects to Debtor's Disclosure Statement for *Chapter 11 Plan of Reorganization of Hospital For Special Surgery, LLC* dba *OneCore Health* [Dkt. No. 221] (the "**Disclosure Statement**") filed March 27, 2025.

FACTUAL AND PROCEDURAL BACKGROUND

1. Debtor filed this Chapter 11 case on October 7, 2024 (the "**Petition Date**").

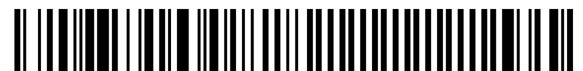
2. Since the Petition Date, Debtor has remained a debtor in possession.

3. There is no committee of unsecured creditors in this case.

4. Debtor's *Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* (the "**Plan**") is Disclosure Statement Exhibit 1. [Dkt. 221, pp. 78-139].

LEGAL FRAMEWORK

Acceptance or rejection of a plan may only be solicited after a disclosure statement is approved as containing adequate information. 11 U.S.C. § 1125(b). "Adequate information" is "information of a kind, an in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records…that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan." To determine Whether adequate information exists, the court must "consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a)(1).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OBJECTIONS TO DISCLOSURE STATEMENT

The UST objects to approval of the Disclosure Statement for two reasons. First, it describes an unconfirmable Plan. Second, it does not provide adequate information.

I. The Court Should Not Approve the Disclosure Statement Because it Describes an Unconfirmable Plan

It is "well accepted that a court may disapprove of a disclosure statement ... if the plan could not possibly be confirmed." *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (internal quotation omitted); *In re Ament,* 2020 WL 354888 at * 1 (Bankr. D.N.M. 2020) ("[a]pproval of a disclosure statement may be denied if the plan to which it relates is facially unconfirmable.").

A. The Plan Contains Impermissible Nonconsensual Third-Party Releases

The Supreme Court definitively held that non-consensual third-party releases are not authorized under the Bankruptcy Code. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 144 S. Ct. 2071, 2082-88 (2024). The Supreme Court in *Purdue* did not address whether consensual non-debtor releases can be included in a chapter 11 plan.

The Plan contains two main third-party release and injunctions.[1] The first of these, in Article 10.5(b), seeks to enjoin all holders of claims, interests, and all present and former employees, agents, officers, directors, principals and affiliates from pursuing any claims against a wide variety of "Released Parties," including the "(c) the DIP Lender, (d) the Prepetition

[1] The Plan also includes exculpation of Debtor, its post-petition management, professionals, and a lengthy list of persons related to them, for any acts between the Petition Date and effective date of the Plan. [Dkt. 221, pp. 88, 123]. The Plan also seeks to deem the Debtor and others to have acted in good faith with respect to the Plan, rather than seeking such a finding in a confirmation. The USTP is reviewing these provisions and reserves her rights to object to these provisions at confirmation.

Secured Parties, (e) the Patient Care Ombudsman, (f) the Exit Facility Lenders, and (g) with respect to each of the foregoing, all Related Parties. [Dkt. 221, pp. 120-121]. It appears that the Debtor has simply added all the Released Parties into the Debtor's discharge injunction under section 524, but only a debtor may be discharged in chapter 11. [*Compare* Dkt. 221, p. 122 *with* Dkt. 221, pp. 120-121, 123-124]. There is no evidence that the Debtor has sought consent for this third-party injunction, and it is clearly violative of *Purdue*. This provision must be trimmed to apply solely to the Debtor, as section 524 requires.

The other provision, Article 10.6(b), provides for third-party releases by "Releasing Parties," which include Debtor's lenders, patient care ombudsman, and any claim or interest holders that "vote to accept the Plan and do not opt-out of granting the releases set forth herein." [Dkt. 221, p. 11 (defining "Releasing Parties"), 122 (setting forth the third-party releases)]. Debtor may argue that the availability of an opt-out provision transforms these non-consensual third-party releases into consensual ones. [*See* Dkt. 221, p. 68]. That is incorrect. "Opt-out" mechanisms do not demonstrate the affirmative, voluntary, and knowing consent required under state law. Moreover, the releases in Section 10.06(b) of the Plan may also extend to related parties such as agents and independent contractors of creditors or interest holders, who have no opportunity to opt out. [Dkt. 221, p. 93].

The foundation of a consensual release is an agreement between the parties. Whether non-debtor parties have reached an agreement—including an agreement to release one's claims against another (*i.e.*, not to sue)—is governed by state law.[2] *See, e.g.*, *Patterson v. Mahwah*

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[2] The only exception is if there is federal law that preempts applicable state contract law in some specific context. *See, e.g., Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 416 (2010) (plurality) ("For where neither the Constitution, a treaty, nor a statute provides the

Bergen Retail Grp., Inc., 636 B.R. 641, 684-85 (E.D. Va. 2022); *In re SunEdison, Inc.,* 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017); *In re Arrowmill Dev. Corp*., 211 B.R. 497, 506, 507 (Bankr. D.N.J. 1997); *In re Tonawanda Coke Corp*., 662 B.R. 220, 222 (Bankr. W.D.N.Y. 2024) (quoting *Purdue*, 144 S. Ct. at 2086).

The "general rule of contracts is that silence cannot manifest consent." *Patterson*, 636 B.R. at 686; *see also, e.g.*, *McGurn v. Bell Microproducts, Inc.*, 284 F.3d 86, 90 (1st Cir. 2002) (recognizing "general rule" that "silence in response to an offer . . . does not constitute acceptance of the offer"). Moreover, "[o]rdinarily[,] an offeror does not have power to cause the silence of the offeree to operate as acceptance." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981); *accord* 1 Corbin on Contracts § 3.19 (2018); 4 Williston on Contracts § 6:67 (4th ed.); *Reichert v. Rapid Investments, Inc.*, 56 F.4th 1220, 1227 (9th Cir. 2022) ("[T]he offeror cannot prescribe conditions so as to turn silence into acceptance."). Instead, under state law, an agreement to release claims—like any other contract—generally requires a manifestation of assent to that agreement. *See, e.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 17(1) ("[T]he

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rule of decision or authorizes a federal court to supply one, 'state law must govern because there can be no other law.'") (quoting *Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965)). No such exception applies here. The Bankruptcy Code does not define a "consensual release." It contains no provision that addresses how to determine whether one non-debtor has agreed to extinguish its direct claims against another non-debtor. And no Code provision authorizes courts, as part of an order confirming a chapter 11 plan or otherwise, to "deem" a non-debtor to have consented to an agreement to release claims against other non-debtors where such consent would not otherwise be found to exist as a matter of state law. Nor does 11 U.S.C. § 105(a) itself confer any power to override state law. Rather, section 105(a) "serves only to carry out authorities expressly conferred elsewhere in the code." *Purdue*, 144 S. Ct. at 2082 n.2 (quotation marks omitted). Bankruptcy courts cannot "create substantive rights that are otherwise unavailable under applicable law," nor do they possess a "roving commission to do equity." *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003) (quotation omitted). Accordingly, any authority to include third-party releases in a plan must derive from some other source of law.

formation of a contract requires a bargain in which there is manifestation of mutual assent to the exchange and a consideration."). Consent cannot be imputed or "deemed" based on a party's failure to object—rather, consent must be affirmatively shown to exist. *See, e.g.*, *id.*; RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a.

There are only very limited exceptions to that principle. "[T]he exceptional cases where silence is acceptance fall into two main classes: those where the offeree silently takes offered benefits, and those where one party relies on the other party's manifestation of intention that silence may operate as acceptance. Even in those cases the contract may be unenforceable under the Statute of Frauds." RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981).

But absent such extraordinary circumstances, "[t]he mere receipt of an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak." *Id.* And "[t]he mere fact that an offeror states that silence will constitute acceptance does not deprive the offeree of his privilege to remain silent without accepting." *Id.* § 69, cmt. c; *see also Patterson*, 636 B.R. at 686 (explaining how contract law does not support deeming consent based upon a failure to opt out). Oklahoma statutes underscore that acceptance of an offer requires an act or omission "of the party contracting, by which he ***intends*** to communicate" his acceptance. Okla. Stat. tit. 15, § 67 (emphasis added). Failure or refusal to communicate an unwillingness to contract cannot be artfully defined by the offeror as valid "acceptance."

Further, "[a]fter *Purdue Pharma*, a third-party release is no longer an ordinary plan provision that can properly be entered by 'default' in the absence of an objection." *In re Smallhold, Inc.*, 665 B.R. 704, 708 (Bankr. D. Del. 2024). Rather, absent an affirmative showing

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Thus, the Bankruptcy Code does not change the state-law definition of consent as applicable to

of consent, a court lacks any power to approve the non-debtor release. And besides the now-discredited default theory, there is "no other justification for treating the failure to 'opt-out' as 'consent' to the release [that] can withstand analytic scrutiny." *Id.* Since a chapter 11 plan cannot permissibly impose non-debtor releases without the affirmative consent of the releasing parties, a release cannot be imposed based on their mere failure to respond regarding the non-debtor release. Rather, an "affirmative expression of consent that would be sufficient as a matter of contract law" is required. *Id.* at *11 (emphasis added).

The Debtor here would impose the third-party release on all parties who vote for a plan and do not opt out of the release (and their "Related Parties"). As an initial matter, simply voting for a plan containing third-party releases does not reflect the unambiguous assent necessary to find consent to a release of claims against other parties. *See, e.g., In re Congoleum Corp*., 362 B.R. 167, 194 (Bankr. D.N.J. 2007) ("[A] consensual release cannot be based solely on a vote in favor of a plan."); *In re Arrowmill Dev. Corp*., 211 B.R. 497, 507 (Bankr. D.N.J. 1997) (concluding that, because consensual releases are premised on the party's agreement to the release, "it is not enough for a creditor to abstain from voting for a plan, or even to simply vote 'yes' as to a plan"). As explained in *Arrowmill,* a voluntary release arises only "because the *creditor agrees*" to it. *Arrowmill,* 211 B.R. at 507 (emphasis in original). Because "a creditor's approval of the plan cannot be deemed an act of assent having significance beyond the confines of the bankruptcy proceedings," "it is not enough for a creditor . . . to simply vote 'yes' as to a plan." *Id.* (quotation marks omitted); accord *Congoleum Corp.*, 362 B.R. at 194; *Digital Impact,*

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claims among non-debtor parties.

Inc., 223 B.R. at 14. Rather, a creditor must "unambiguously manifest[] assent to the release of the nondebtor from liability on its debt." *Arrowmill,* 211 B.R. at 507.

Because merely voting to approve a plan does not manifest consent to a non-debtor release, such a vote plus a failure to opt out is still nothing more than silence with respect to the offer to release claims against non-debtors. Voting to accept a plan but remaining silent about a non-debtor release by failing to check an opt-out box does not fit within any of the exceptions to the rule that silence is not acceptance of an offer.

Creditors who vote for a plan without opting out of a non-debtor release are not "silently tak[ing] offered benefits" from the released non-debtors, such that consent may be inferred. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a (1981). The only benefits received by the creditors are distributions from the debtor's chapter 11 plan. Thus, "[e]ssentially, creditors are being asked to give releases to third parties for no consideration." *Tonawanda Coke Corp.*, 662 B.R. at 222. Nor does voting to approve a chapter 11 plan while remaining silent about a non-debtor release "manifest [an] intention that silence may operate as acceptance" of an offer to release claims against non-debtors. RESTATEMENT (SECOND) OF CONTRACTS § 69 cmt. a. Because impaired creditors have a federal right under the Bankruptcy Code to vote on a chapter 11 plan, 11 U.S.C. § 1126(a), merely exercising that right does not manifest consent to release claims against non-debtors. Rather, voting on a chapter 11 plan is governed by the Bankruptcy Code, and a favorable vote reflects only approval of the plan's treatment of the voters' claims *against the debtor*. A claimant's vote in favor of a plan while remaining silent regarding a non-debtor release thus does not fit within the exception to the general rule that consent cannot be inferred from silence. Because opt outs do not unambiguously manifest assent to a third-party release under state law contract principles, the releases are nonconsensual and prohibited under

Purdue, and the Plan cannot be confirmed.[3] Thus, the Disclosure Statement cannot be approved because it contains non-consensual third-party releases in both Articles 10.5(b) and 10.6(b),

B. The Plan Appears Unconfirmable Because it is Not Feasible

Based on Debtor's Liquidation Analysis, estimates of claims, and proposed claim treatment, it needs $9,695,133.99 to fund the Plan as of the Effective Date:

	Debtor's Stated Amount		**Cash Distribution**	
Administrative Claims	$	4,524,832.00	$	4,524,832.00
Secured Claims	$	147,000.00	$	147,000.00
Critical Vendors	$	1,120,049.00	$	728,031.85
Emma Base	$	15,265,541.00	$	4,000,000.00
Other General Unsecured	$	2,173,171.00	$	569,370.80
SUBTOTAL	**$**	**23,230,593.00**	**$**	**9,969,234.65**
Less Waiver of Solara Claim	$	(1,046,185.73)	$	(274,100.66)[4]
TOTAL	**$**	**22,184,407.27**	**$**	**9,695,133.99**

[Dkt. 221, pp. 97-99, 139]. Debtor's most recent monthly operating report shows $656,011.80 in cash on hand. [Dkt. 210, p. 2]. In addition to "up to $5 million" in exit financing, it proposes to fund the Plan with $2.5 million in cash from existing equity holders. [Dkt. 221, p. 91]. However, there appears to be a shortfall of $1,539,122.19 to satisfy Debtor's Plan commitments :

Cash on Hand	$ 656,011.80
Exit Financing	$ 5,000,000.00
Capital Contributions	$ 2,500,000.00
SUBTOTAL	**$ 8,156,011.80**
Plan Commitments	$ 9,395,133.99
SHORTFALL	**$ 1,539,122.19**

[Dkt. 210, p. 2; Dkt. 221, pp. 91, 97-99, 139].

[3] The USTP reserves all her rights to make further objections to the third-party release at confirmation.

[4] The Plan and Disclosure Statement incorrectly represent the value of this waiver at $300,000.00. [*Compare* Dkt. 221, pp. 12, 91 *with* Dkt. 221, p. 98 and Claim 17-1].

To confirm the Plan, this Court must find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(2). This requirement is commonly referred to as "feasibility." "Feasibility determinations must be 'firmly rooted in predictions based on objective fact.'" *In re Inv. Co. of the Sw., Inc.*, 341 B.R. 298 (B.A.P. 10th Cir. 2006) (quoting *In re Danny Thomas Props. II Ltd. P'ship*, 241 F.3d 964 (8th Cir. 2001)). Debtor's Plan is not feasible and the Disclosure Statement should not be approved.

II. Lacking Adequate Information, the Disclosure Statement Cannot be Approved

The Disclosure Statement lacks adequate information as follows:

- There is insufficient information regarding exit financing
- The disclosures regarding the Emma Base settlement are insufficient
- The disclosures regarding the reorganization transaction are insufficient
- There are no feasibility projections
- There are no commitments to pay from the proposed outside funding sources
- It is unclear which contracts will be assumed or rejected
- It is unclear which causes of action will be retained
- The disclosure regarding the necessity of the proposed injunctions, exculpations and releases is insufficient
- The liquidation analysis is incomplete
- Required information regarding post-confirmation management is not included

A. Insufficient Information Regarding Exit Financing

The Plan proposes "up to $5 million" in exit financing. [Dkt. 221, pp. 91]. The identity of the lender is not disclosed. [Dkt. 221, pp. 90]. The Exit Facility Credit Agreement is not attached, and Debtor does not propose to file it until April 29, 2025. [Dkt. 221, p. 13, 88]. The Plan:

- Requires unspecified "filings or recordings that may be required by…the Exit Facility Credit Agreement." [Dkt. 221, p. 102].
- Excludes from vesting in the reorganized Debtor any unspecified assets required by the Exit Facility Credit Agreement. [Dkt. 221, p. 119].
- Exempts "the grant of collateral under the Exit Facility Credit Agreement" from transfer tax. [Dkt. 221, p. 128].
- Authorizes Debtor to make unspecified payments under the Exit Facility Credit Agreement. [Dkt. 221, p. 27].

The Exit Facility Credit Agreement and the lender's identity must be disclosed so that the Court can determine whether the Disclosure Statement provides adequate information. As proposed, interested parties have six days, including a weekend, to review the Exit Facility Credit Agreement (and every other Plan Supplement document), before Debtor's requested May 5 voting deadline. However, "at least 28 days'" notice is required for review of a disclosure statement. FED. R. BANKR. P. 3017(a), 2002(b). Debtor's application to shorten notice and response time to its Disclosure Statement did not state its intent to withhold critical Plan documents until close to the shortened objection dates.

B. Disclosures About Emma Base Settlement and Litigation Trust Not Sufficient

The Plan includes approval of a "global settlement" between Debtor and its principal creditor Emma Base (the "**Base Settlement**") under F. R. BANKR. P. 9019 ("**Rule 9019**"). [Dkt. 221, p. 84, 99]. Ms. Base holds a $15,265,541.00 judgment that Debtor appealed. [Dkt. 221, pp. 18, 139]. Debtor does not provide the agreement. The Plan states that the terms are "substantially incorporated" in the Plan and "reflected" in Section 1.B of the Discloure Statement. [Dkt. 221, p. 84]. Section 1.B of the Disclosure Statement is a brief term sheet which states that the settlement terms are "described more fully in the Plan." [Dkt. 221, p. 13].

The Base Settlement establishes a litigation trust (the "**Litigation Trust**"). [Dkt. 221, p. 98]. The Litigation Trustee's identity is withheld and the trust agreement (the "**Litigation Trust Agreement**") will not be filed until April 29, 2025. [Dkt. 221, pp. 13, 91, 92]. The Plan:

- Requires the execution of the Litigation Trust Agreement. [Dkt. 221, p. 102-103].
- Provides the right to litigate disputes regarding the Litigation Trust Agreement before this Court. [Dkt. 221, p. 105].
- Allows the Litigation Trust Agreement to provide for unspecified distributions under the Plan. [Dkt. 221, p. 108].
- Is not effective until the Litigation Trust Agreement is executed. [Dkt. 221, p. 118].
- Allows the Litigation Trust Agreement to provide for asset vesting provisions different than those under the Plan. [Dkt. 221, p. 119].

The Litigation Trust Agreement is a key document of the Plan. It, and the identity of the Litigation Trustee, must be fully disclosed to determine whether the Disclosure Statement provides adequate information regarding its contents.

Since the provisions incorporating the Base Settlement are spread throughout the Plan and unfiled Litigation Trust Agreement, the precise terms of the settlement are unclear. Debtor should disclose the fully executed settlement agreement as part of the Disclosure Statement.

Debtor states it will pay approximately "26% of the total amount of" the Base Claim. [Dkt. 221, p. 26]. The Plan proposes to pay other general unsecured claims 26.2%. [Dkt. 221, p. 25]. However, the estimate of 26% does not appear accurate. The Plan pays Ms. Base about 29.82% of her claim in cash, plus legal claims of unknown value in the Litigation Trust:

Emma Base Claim	$ 15,265,541.00	26% of Base Claim	$3,969,040.66
Cash Payment	$ 4,000,000.00		
Insurance Proceeds	$ 551,662.65		
Legal Claims	Unknown		
TOTAL	**$ 4,551,662.65**		
% of Claim Received	*29.82%*		

[Dkt. 221, pp. 12, 98, 178]. Debtor should revise its estimate of the payment received by Ms. Base or provide additional information showing how Ms. Base would receive the same value as other general unsecured creditors.

To approve a settlement under Rule 9019, the court must "determine whether the settlement is fair and equitable and in the best interests of the estate." *Roberts v. Sender et al. (In re Roberts),* 667 B.R. 147, 156 (B.A.P. 10th Cir. 2025) (citation and quotation omitted). In doing so, courts have "long considered" the four *Kopexa* factors. *Id.* Those factors are: "(1)"'the probable success of the underlying litigation on the merits' (2) 'the possible difficulty in collection of a judgment'; (3) the 'complexity and expense of the litigation"; and (4) 'the interests of creditors in deference to their reasonable views.'" *Id.* (quoting *In re Kopexa Realty Venture Co.,* 213 B.R. 1020, 1022 (10th Cir. BAP 1997). The Disclosure Statement does not contain the information needed to perform this analysis. For example, the Disclosure Statement does not explain the substance of its appeal is, how likely the appeal would be to succeed, how long it might take, or how much it might cost. [*See* Dkt. 221, p. 14]. Likewise, the Disclosure Statement does not explain the value of the legal claims assigned to the Litigation Trust. *Id.*

C. Disclosures About the Reorganization Transaction are Insufficient

The Plan provides that Debtor will be restructured "pursuant to a Reorganization Transaction, as set forth in the Description of Transaction Steps," which includes the issuance of "New Governance Documents" binding on all Class 5 creditors receiving equity under the Plan. [Dkt. 221, pp. 99-100]. Debtor does not propose to release the Description of Transaction Steps or New Governance Documents until April 29, 2025. [Dkt. 221, pp. 13, 92]. This is inadequate time to review these documents.

Further, the Reorganization Transaction and New Governance Documents likely have tax consequences to equity holders. 11 U.S.C. § 1125(a) requires the Disclosure Statement to include "a discussion of the potential material Federal tax consequences of the plan…" The Disclosure Statement omits a discussion of tax consequences to equity holders, The Disclosure Statement cannot be approved unless this information is included.

D. No Feasibility Projections

Debtor does not provide any feasibility projections or charts showing how much cash it will need to fund payments under the Plan. [*See* Dkt. 221]. As discussed above, the Disclosure Statement, shows an apparent shortfall of at least $1,539,122.19 to satisfy Debtor's commitments under the Plan. The Disclosure Statement should not be approved without feasibility projections.

E. No Commitments to Pay

Although the Plan relies on $2,500,000.00 in cash from existing equity, the Disclosure Statement does not include documents showing that any existing equity holder has committed to contribute capital. [*See* Dkt. 221, p. 91]. Likewise, the Plan requires Allied World Insurance Company to transfer $551,662.65[5] in insurance proceeds to the Litigation Trust, but includes no document indicating that it has agreed to do so. [*See* Dkt. 221, p. 90-91]. The Disclosure Statement should include documents indicating all third parties agree to do as Debtor represents.

F. The Disclosure Statement Does Not Identify Contracts to be Assumed or Rejected

The Plan provides for the assumption and rejection of leases, based on an Assumption Schedule and Rejection Schedule [Dkt. 221, pp. 40, 113, 117] that Debtor will not file until April

[5] The Plan and Disclosure Statement contain two different amounts for these proceeds, $527,000.00 and $551,662.65. [*Compare* Dkt. 221, pp. 12, 90 *with* Dkt. 221, p. 137]. It is unclear which amount is correct.

29, 2025. [Dkt. 221, pp. 13, 92]. Debtor proposes to treat its indemnification obligations, insurance policies, intellectual property contracts, licenses and employment agreements as executory contracts. [Dkt. 221, p. 39-42, 107]. The Plan also proposes Debtor be allowed to amend these Schedules any time until the conclusion of the confirmation hearing. [Dkt. 221, pp. 117]. Information about which contracts will be assumed or rejected is vital for creditors contracted with Debtor to understand their treatment under the Plan. Debtor should be required to disclose this information in the Disclosure Statement.

G. Retained Causes of Action Not Identified

The Plan retains causes of action [Dkt. 221, p. 103] that Debtor will not disclose until April 29, 2025. [Dkt. 221, pp. 13, 92]. "Creditors have the right to know of any potential causes of action that might enlarge the estate- and that could be used to increase payment to the creditors." *Mercury Companies, Inc. v. Comerica Bank*, 2014 WL 561993 at * 4 (Bankr. D. Colo. 2014) (quoting *Harstad v. First Am. Bank*, 39 F.3d 898, 903 (8th Cir. 1994)). The Disclosure Statement is inadequate without information regarding these claims.

H. Insufficient Disclosure of Proposed Injunctions, Releases and Exculpations

The Plan includes numerous releases, exculpations and injunctions. [Dkt. 221, pp. 120-124]. The Disclosure Statement provides minimal details regarding why these provisions are necessary. Although Debtor asserts that cooperation of its management has been "vital", the protected parties go far beyond current management, including Debtor's professionals, lenders, and a long list of persons related to them in any way. [Dkt. 221, p. 93]. Nonetheless, the Disclosure Statement puts off any demonstration of the reasonableness or necessity of these releases to the confirmation hearing. [Dkt. 221, p. 49]. If Debtor believes these provisions are necessary and appropriate, it should explain why in the Disclosure Statement.

I. Liquidation Analysis Lacks Key Details

The Plan retains certain legal claims, releases others, and assigns a third group to the Litigation Trust. [Dkt. 221, pp. 98, 106, 121-124]. Debtor's liquidation analysis is incomplete because it contains no information regarding any of these claims..

J. Insufficient Information On New Management and Litigating Trustee

The bankruptcy code requires disclosure of the identity and affiliations of any post-confirmation officers, directors, or voting trustees, insiders which will be retained post-confirmation and their compensation, including by Debtor's successors. 11 U.S.C. § 1129(a)(5). None of this information has been included in the Disclosure Statement or Plan.

CONCLUSION

In light of the above, the U.S. Trustee requests that the Disclosure Statement not be approved, and that this Court grant such other and further relief as it deems just and proper. The U.S. Trustee reserves the right to object to any provision in the Plan at confirmation.

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

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