

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 MOTION FOR AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT, (II) ESTABLISHING A VOTING RECORD DATE, (III) APPROVING SOLICITATION PACKAGES AND SOLICITATION PROCEDURES, (IV) APPROVING THE FORMS OF BALLOTS, (V) ESTABLISHING VOTING AND TABULATION PROCEDURES, AND (VI) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR THE CONFIRMATION OF THE PLAN, WITH BRIEF IN SUPPORT, AND NOTICE OF OPPORTUNITY FOR HEARING AND NOTICE OF HEARING

The United States Trustee (“UST”) submits this objection to Debtor’s motion seeking approval of plan solicitation forms and procedures [Doc. 222] (the “**Motion**”).

A. 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. On March 27, 2025, Debtor filed its *Disclosure Statement for Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Doc. 221] (the “**Disclosure Statement**”).
5. Debtor’s *Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* (the “**Plan**”) is Disclosure Statement Exhibit 1. [Doc. 221, pp. 78-139.]
6. On March 27, 2025, Debtor filed the Motion.
7. On April 9, 2025, the UST objected to the substantive portions of Debtor’s Disclosure Statement and Plan [Doc. 238] (the “**Disclosure Statement Objection**”).



B. The UST reserves the right to object to modifications.

8. The Motion:

...requests that the Court authorize it to modify the Disclosure Statement, the Plan and the Ballots (as defined below) and other related documents **approved pursuant to the Solicitation Procedures Order, without further order of the Court**, at any time before the Debtor distributes the Solicitation Package (as defined below); **provided that such modifications are not material as determined by the Debtor (in consultation with DIP Lender or the Exit Facility Lender**, as applicable, solely to the extent that the modification relates to the legal and/or economic rights of the DIP Lender or the Exit Facility Lender, as applicable) in good faith. The Debtor will file a notice of any such modification with the Court, together with a marked version reflecting such modification. (emphasis added.)

9. It is ultimately the Court's domain to make factual determinations such as what is a "material" fact if challenged.

10. The UST objects to this provision to the extent it seeks to eliminate the ability of interested parties to object as to what constitutes a "material" modification of the solicitation material, or to curtail the Court's ability decide any such challenges.

C. The proposed Cover Letter should be modified.

11. Paragraph 21 of the Motion notes that "[d]istribution of the Plan, the Disclosure Statement and the Solicitation Procedures Order by USB rather than printed form" to save Debtor money.

12. Paragraph 21 goes on to say that Debtor will provide paper copies of those documents (a) through the Debtor's restructuring website at www.veritaglobal.net/OneCore or (b) in writing to OneCore Ballot Processing, c/o KCC dba Verita Global.

13. Debtor's proposed Solicitation Package Cover Letter attached as Exhibit B to the Motion omits the fact that creditors have the right to request paper copies of the documents; the Cover Letter should be amended to include that information.

D. Debtor does not give adequate notice of its “Plan Supplement” and therefore does not give adequate notice of the Plan or adequate time to formulate objections.

14. The Motion requests a 5:00 p.m. May 5 voting deadline and a 5:00 p.m. May 5 confirmation objection deadline. [Doc. 222 p. 5; p. 14-15; 19.]

15. No reason is given for the deviation from the standard midnight filing deadline recognized in General Order 21-01 Section III(C.)

16. However, Debtor anticipates the possibility of filing a Plan Supplement on April 29, 2025. [Doc. 222, p. 5; 21 nt. 3; 28; 34.]

17. With voting and objection deadlines of 5:00 p.m. May 5, interested parties have at best only six days, including the weekend of May 3rd and 4th, to review the Plan Supplement and whatever attachments or Exhibits Debtor affixes to the Plan Supplement.

18. Realistically, Debtor will likely only be mailing out a Notice of its filing of the Plan Supplement [Doc. 222, p. 21 nt. 3; Motion Exhibit E], meaning interested parties will likely only receive two to three days’ notice of the Plan Supplement and attached material.

19. Further, there is no time deadline for Debtor’s April 29 notice date. If it waits until 9:39 p.m. to file the Plan Supplement, like it did the Motion, interested parties will effectively be deprived of one more day of notice.

20. FED. R. BANKR. P. 2002(b) mandates “not less than 28 days” notice for filing objections to a chapter 11 Plan.

21. Withholding critical supplemental information and documents until between three and six days to the voting and objection deadlines, deprives parties of their protections under FED. R. BANKR. P. 2002(b).

D. Debtor's request in the Motion to not mail the Plan Supplement violates FED. R. BANKR. P. 3017(d).

22. The Motion requests that Debtor only be required to mail a two-page "Notice of Filing of Plan Supplement" to interested parties, rather than the full Plan Supplement and attached documents. [Doc. 222 p. 21 nt. 3; Motion Exhibit E, Notice of Filing of Plan Supplement.]

23. FED. R. BANKR. P. 3017(d)(1) requires that all debtors, after approval of a disclosure statement, "mail to all creditors and equity security holders..." their Plan.

24. A Plan Supplement, by definition, augments and becomes part of the Debtor's Plan, as though originally integrated into the Plan.

25. Debtor does not state why its potential Plan Supplement should be treated any differently as its Plan for purposes of FED. R. BANKR. P. 3017(d)(1).

26. The UST does not believe that mailing the suggested Notice satisfies Debtor's duties under FED. R. BANKR. P. 3017(d)(1).

E. The Opt-Out in Debtor's proposed Class 2, 3 and 4 Ballots should be removed.

27. The UST's Disclosure Statement Objection discusses why Debtor's release provisions must be removed from the Plan and Disclosure Statement.

28. Without repeating those argument, the Opt-Out provisions in Debtor's Class 2, 3, and 4 Ballots must be removed.

F. Debtor's proposed Class 2, 3 and 4 Ballots should be amended to avoid confusion.

Mechanism for transmitting Ballots:

29. Page two of the Class 2, 3 and 4 Ballots state:

You may also submit your Ballot electronically through the eBallot Portal by visiting the Debtor’s case website at: <https://www.veritaglobal.net/OneCore>. Click on the “Submit Electronic Ballot (eBallot)” section of the Debtor’s website and follow the instructions to submit your eBallot.

30. Page three, inside a text box titled “Important,” also says “[b]allots will not be accepted by facsimile transmission, electronic mail or other electronic means of transmission.

31. The second provision above should be modified to acknowledge that eBallot electronic means of transmission is acceptable.

Binding nature of the Opt-Out in the event the Plan is confirmed:

32. The text box titled “Important” on page three of each Ballots states:

...

If the Plan is confirmed by the Court, it will be binding on you whether or not you vote.

33. If the Court approves the Plan’s releases and Opt-Outs, the Ballots should also include a statement that the party’s Opt-Out remains valid even if the Plan is Confirmed.

Statement that completing the Opt-Out is unnecessary for parties voting to reject the Plan:

34. Definition 1.106 of Debtor’s Plan defines “Releasing Parties” as:

1.106. ***Releasing Parties*** means, collectively, and in each case solely in their capacity as such: (a) the Debtor, (b) the Reorganized Debtor, (c) the DIP Lender, (d) the Prepetition Secured Parties, (e) the Patient Care Ombudsman, (f) the Exit Facility Lenders, and **(g) the Holders of Claims or Interests that vote to accept the Plan and do not opt out of granting the releases set forth herein; provided**, that, if a Person or Entity is not a “Releasing Party,” then its Related Parties (in their capacities as such) are not Releasing Parties.

[Doc. 221, p. 93](emphasis added)

35. For a creditor or interest holder to be a “Releasing Party,” it must do two things:

- 1.) vote to accept the Plan, ***and***
- 2.) not opt out of the Plan releases.

36. Requiring rejecting parties to complete an Opt-Out is confusing and unnecessary.

37. If the Court approves the Plan's releases and Opt-Outs, the Ballots should contain a clear and conspicuous statement that rejecting parties need not complete the Opt-Out portion of the Ballot and explain why.

G. The "Election Forms" for Class 1 and Class 5 Claims should be omitted from the Solicitation Package as confusing and moot.

38. As stated above, parties rejecting the Plan are excluded from the definition of "Releasing Party" under the Plan.

39. Paragraph 26 of the Motion acknowledges that (i) neither Class 1 nor Class 5 may vote on the Plan, and (ii) Debtor will not solicit votes from those Classes. [Doc. 222. pp. 12-13.]

40. These parties fall outside the definition of "Releasing Parties" and an "opt-out" is confusing and unnecessary for these persons.

41. If the Court approves the Plan's releases and Opt-Outs, the Election Forms should be omitted from the Solicitation Package.

H. The Motion's "Notice and Procedures" section does not give adequate notice.

42. The hearing on the Motion is set on April 16, 2025.

43. The Motion requests that a Confirmation Hearing be held May 13, 2025.

44. Even if an Order approving the Motion is entered April 16, parties are only given 27 days' notice of the May 13 confirmation hearing in violation of FED. R. BANKR. P. 2002(b).

I. Relief requested.

45. The UST requests that the Court deny the Motion and grant such further relief as the Court deems just and equitable.

Respectfully submitted,

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

s/ Jeffrey E. Tate

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