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 THE 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 D *Chapter 11 Plan of Reorganization of Hospital For Special Surgery, LLC* dba *OneCore Health* [Doc. No. 254] (the "**Plan**") filed April 16, 2025.

JURISDICTION

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1334(a) and (b); 28 U.S.C. §§ 157(a) and (b); and 28 U.S.C. § 151

2. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (B).

3. Under 28 U.S.C. § 586, the UST is generally charged with monitoring the federal bankruptcy system. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498, 500 (6th Cir. 1990) (describing the United States Trustee as a "watchdog").* 28 U.S.C. § 586(a)(3) and 11 U.S.C. § 307 grant the UST standing to be heard on this Objection.

FACTUAL AND PROCEDURAL BACKGROUND

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

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

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

7. On April 16, 2025, the Court entered the *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 [Dkt. 252] (the "Confirmation Order")

8. Debtor filed the Plan on April 16, 2025.

OBJECTIONS TO THE PLAN

The UST renews her objection that the Plan contains impermissible nonconsensual third-party releases and incorporates her previous pleading and arguments on the matter [Doc. 238] and raises additional arguments and concerns regarding why certain parties are being released.

II. The Plan Contains Impermissible Nonconsensual Third-Party Releases and, Even if the Court Approves the Opt-Out Mechanism, Debtor Has Not Adequately Justified the Inclusion of Certain Parties in the Releases

The Plan contains two main third-party releases and injunctions. 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 Secured Parties, (e) the Patient Care Ombudsman ("**PCO**"), (f) the Exit Facility Lenders, and (g) with respect to each of the foregoing, all Related Parties. [Doc. 254, pp. 38-39]. 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* Doc. 254, p. 45 *with* Doc. 254, pp. 43-44, 46-47]. 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, the PCO, and any claim or interest holders that "vote to accept the Plan and do not opt-out of granting the releases set forth herein." [Doc. 254, p. 16 (defining "Releasing Parties"), 45 (setting forth the third-party releases)].

A. The Definition of "Released Parties" is too Broad.

To begin, it appears that the Plan provides both releases and exculpations to the PCO, Debtor's members, managers, officers, directors, and Professionals, which will confuse parties as to the possible claims that may be pursued against these parties and the release may give such parties what they cannot obtain through exculpation. They should be removed from the Released Parties.

Further, the UST fails to see any justification for including the extremely broad category of "Related Parties" under the definition of "Released Parties." Related Parties reaches a huge number of people and entities, including "an Entity's predecessors, successors and assigns, parents, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former members, managers, officers (other than the Debtor's former members, managers, and officers employed prior to, but not on or after, the Petition Date), directors, principals, shareholders (and any fund managers, fiduciaries or other agents of shareholders with any involvement related to the Debtor), partners, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, actuaries, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and such persons' respective heirs, executors, estates, servants and nominees." The number of these potential parties cannot be quantified, their identities cannot be specified, and Debtor has given no justification why these parties should receive third party claim releases.

Moreover, the release appears that it could include malpractice claims against Debtor's owners, directors, employees, and others affiliated with Debtor. Plan Section 10.6(b) states in part:

> …For the avoidance of doubt, nothing in Section 10.6(b) of the Plan shall be construed to release (i) the Released Parties from intentional fraud, willful misconduct, or gross negligence, in each case as determined by a Final Order or (ii) any current or former patient of the Debtor from pursuing any Claim against any non-Debtor party **that is not a Released Party**, including any non-Debtor provider **that is not a Released Party**, for any acts or omissions arising out of or relating to any Claims for medical malpractice.. [Doc. 254, p. 45] (emphasis added)

Debtor is owned in part by physicians owned health care business. Such physicians are to receive releases. Further, the expansive definition of "Related Parties" that is grafted onto "Released Parties" could include other physicians associated with Debtor. Such claims should not be extinguished by third party releases.

B. The Definition of "Releasing Parties" is too Broad.

The UST objects to defining the PCO as a Releasing Party. First, the UST is not aware that the PCO received any opportunity to opt-out of the Releases. Secondly, the PCO is a requirement of statute, as such, this position should not be compelled to release any claims against non-debtor third parties simply because she fulfilled a bankruptcy code requirement for the case.

Further, the UST objects to any attempt to deem parties that reject the Plan as Releasing Parties, whether they check the Opt-Out box or not. Under the Plan, for a creditor or interest holder to qualify as a "Releasing Party" it must do two things:

1.) vote to accept the Plan, ***and***

2.) not opt out of the Plan releases.

(Plan, Doc. 254, p. 16, ¶ 1.106(g))

Creditors who reject the Plan fall outside the Plan definition of Releasing Party and should not be required to complete the opt-out mechanism based on the clear terms of the Plan.

Finally, the UST objects to defining any of the Related Parties as Releasing Parties. The UST is unaware that any of these people have been given notice and the opportunity to opt-out of releases. Moreover, as set forth above, the list of persons who are "Related Parties" is far too broad and most, if not all, have no connection with this case. Judge Hall removed a similar laundry list of related parties in *In re Epworth Villa*, Case No. 23-12607-SAH (Dec. 21, 2023), Doc. 216, p. 10. There is no justification to potentially deprive these persons of claims against non-debtors under the circumstances presented.

CONCLUSION

In light of the above, the U.S. Trustee requests that the confirmation of the Plan not be approved, and that this Court grant such other and further relief as it deems just and proper.

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

s/Jeffrey E. Tate

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