**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Chapter 11 |
| Tehum Care Services, Inc., | ) | |
| | ) | Case No. 23-90086 (CML) |
| Debtor. | ) | |

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' MOTION FOR STRUCTURED DISMISSAL OF CHAPTER 11 CASE**

The American Civil Liberties Union, Center for Constitutional Rights, Public Justice, Rights Behind Bars, The Human Rights Defense Center, and The UC Berkeley Center for Consumer Law & Economic Justice (together, the "proposed *amici*"), by and through undersigned counsel, hereby move the Court for leave to file an amicus brief in this case. In support of this Motion, proposed *amici* state as follows:

**ARGUMENT**

"The decision whether to permit a person to appear as amicus curiae is committed to the Court's discretion." *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 550 B.R. 241, 256 (Bankr. S.D.N.Y. 2016); *see also In re Ginaldi*, 463 B.R. 314, 316 (Bankr. E.D. Pa. 2011) (recognizing bankruptcy court has "broad Case 23-90086 Document 576 Filed in TXSB on 05/17/23 Page 1 of 10 discretion to



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permit an amicus curiae to participate in a pending action"); *In re Edison Mission Energy*, 610 B.R. 871, 878 (Bankr. N.D. Ill. 2020) (same); United States v. Alkaabi, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (same).

This Court has inherent authority to appoint amicus curiae to assist in its proceedings. *See Liberty Res., Inc. v. Phila. Hous. Auth.*, 395 F.Supp. 2d 206, 209 (E.D.Pa. 2005). The decision to permit submissions from amicus curiae is within the broad discretion of this Court. *See United States v. Alkaabi*, 223 F.Supp. 2d 583, 592 (D.N.J. 2002).

Although there is no rule in the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules of this Court governing the appearance of amicus curiae in these proceedings, Federal Rule of Appellate Procedure 29 provides that a motion for leave to appear as amicus curiae "must be accompanied by the proposed brief and (A) state the movant's interest and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." F.R.A.P. 29(a)(3). The Fifth Circuit, in the context of a bankruptcy case, has explained: An *amicus* brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the *amicus* has unique information or perspective that can

help the court beyond the help that the lawyers for the parties are able to provide. *In re Halo Wireless, Inc.,* 684 F.3d 581, 596 (5th Cir. 2012) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)). The Fifth Circuit has also explained that courts would be "well advised to grant motions for leave to file *amicus* briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted" because "if a good brief is rejected," the court "will be deprived of a resource that might have been of assistance." *Lefebure v. D'Aquilla*, 15 F.4th 670, 676 (5th Cir. 2021). Here, the proposed *amicus curiae* brief satisfies the conditions set forth in Federal Rule of Appellate Procedure 29 because it helps represent the interests of pro se incarcerated litigants, and also offers a unique perspective regarding the barriers incarcerated people face in accessing the courts that raise unique due process concerns in the bankruptcy context.

**i. Interests of *Amici***

Proposed *amici* are non-profit advocacy and research organizations with decades of experience advocating for the rights of incarcerated people and vulnerable populations, including involvement in litigation relating to Corizon's failures to provide adequate care. As a result of that advocacy, proposed *amici* are familiar with the barriers that incarcerated people face in accessing the legal system. Proposed *amici* believe that those barriers will prevent incarcerated creditors from asserting their rights in these bankruptcy proceedings.

1. The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit, nonpartisan organization of more than 1.7 million members dedicated to protecting the fundamental rights guaranteed by the Constitution and the laws of the United States. Consistent with that mission, the ACLU established the National Prison Project ("NPP") in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has decades of experience in complex prisoners' rights class action suits, including multiple cases regarding minimal standards for correctional health care in jurisdictions where debtor Corizon has operated or continues to operate.

2. The **Center for Constitutional Rights** ("CCR") is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the U.S. Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases. CCR has represented numerous incarcerated people in state and federal custody across the country challenging their conditions of confinement. As such, CCR is deeply familiar with the barriers to participation in court proceedings—bankruptcy or otherwise—faced by incarcerated people and is committed to dismantling those barriers.

3. **Public Justice** is a national public interest legal organization that specializes in precedent-setting, socially significant civil litigation, with a focus on

fighting corporate and governmental misconduct. The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of consumers, workers, and people whose civil rights have been violated to seek redress in the civil court system. Public Justice has engaged in significant advocacy efforts to prevent abuse of the bankruptcy system to evade the civil justice system, which hinders and delays justice for survivors of corporate wrongdoing. For example, Public Justice filed an amicus brief opposing Johnson & Johnson's use of the Texas Two Step; the Third Circuit recently dismissed that bankruptcy. *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

4. **Rights Behind Bars** (RBB) legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. RBB seeks to create a world in which people in prison do not face large structural obstacles to effectively advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively and through such advocacy push towards a world in which people in prison are treated humanely.

5. **The Human Rights Defense Center (HRDC)** is a nonprofit charitable organization conceived and incorporated in Washington, now headquartered in Florida, that advocates on behalf of the human rights of people held in state and

federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons. HRDC engages in state and federal court litigation on prisoner rights issues, including public records, class actions, and Section 1983 civil rights litigation concerning the First Amendment rights of prisoners and their correspondents. HRDC's advocacy efforts include publishing two monthly publications, *Prison Legal News*, which covers national and international news and litigation concerning prisons and jails, as well as *Criminal Legal News*, which is focused on criminal law and procedure and policing issues. HRDC also publishes and distributes self-help and legal reference books for prisoners.

6. **The UC Berkeley Center for Consumer Law & Economic Justice** is the leading law school research and advocacy center dedicated to ensuring safe, equal, and fair access to the marketplace. Through regular participation as an amicus before the United States Supreme Court, the federal courts of appeals, and state appellate courts, the Center seeks to develop and enhance economic protections for all consumers, especially those who compose particularly vulnerable segments of the population. The Center appears in this proceeding to underscore the importance of the bankruptcy process being both fair and accessible to all creditors.

**ii. Desirability and Relevance**

The proposed *amici curiae* brief is also desirable and relevant, in accordance with how that standard has been interpreted by the Fifth Circuit. The Fifth Circuit has recognized that amicus curiae briefs are particularly desirable, relevant, and proper when they support parties that are not adequately represented in these proceedings and then they present unique information or a unique perspective that can aid the court. *See In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). This brief does both.

First, the primary purpose of the brief is to further advance the arguments of incarcerated pro se litigants regarding the unique barriers they have face in accessing and participating in this bankruptcy proceeding. The brief also makes arguments regarding notice and due process on behalf of both known and unknown incarcerated creditors that are not aware that these proceedings are happening or do not understand how their rights will be impacted by these proceedings. The nonprofit advocacy organizations submitting this brief are well-positioned to represent those interests that may not otherwise be adequately represented in the bankruptcy proceeding.

Second, proposed *amici* present a unique perspective that will aid the court in effectively safeguarding the rights of incarcerated creditors. These bankruptcy proceedings present a unique situation where many of the creditors are unrepresented and currently incarcerated. The perspective of proposed *amici* will be

useful because they have decades of experience advocating for the rights of incarcerated people and are familiar with the barriers that incarcerated people face in accessing the legal system. Proposed *amici* have a unique perspective regarding how those barriers may pose a threat to the due process rights of incarcerated people in these bankruptcy proceedings.

## CONCLUSION

For the reasons stated above, proposed *amici* request that this Court grant this motion.

Dated: February 23, 2024 Signed:

/s/ Jaqueline Aranda Osorno
Counsel for Proposed *Amici Curiae*

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing motion and related attachmenta were served on February 23, 2024, via this Court's electronic case filing (ECF) system on all parties receiving ECF notices in this case.

*/s/ Jaqueline Aranda Osorno*
Jaqueline Aranda Osorno

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | |
|---|---|
| In re:<br><br>TEHUM CARE SERVICES, INC.<br><br>Debtor. | Chapter 11<br><br>Case No. 23-90086 (CML) |

# BRIEF OF *AMICI CURIAE* SUPPORTING THE TORT CLAIMANTS COMMITTEE'S MOTION TO DISMISS (DOC. 1260)

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## CORPORATE DISCLOSURE STATEMENT

Amici American Civil Liberties Union, Center for Constitutional Rights, Human Rights Defense Center, Public Justice, Rights Behind Bars, and the UC Berkeley Center for Consumer Law & Economic Justice are all nonprofit organizations. None have a parent company, and thus no publicly held company has 10% or greater ownership interest in any.

## INTRODUCTION[1]

The American Civil Liberties Union, Center for Constitutional Rights, Human Rights Defense Center, Public Justice, Rights Behind Bars, and the UC Berkeley Center for Consumer Law & Economic Justice submit this brief as *amici curiae* to express their support of the Tort Claimants Committee's (TCC) Motion to Dismiss (the "Motion to Dismiss") (Doc. 1260). As discussed in that Motion and in this brief, dismissing this case is consistent with both the most basic notions of fairness and public policy favoring the resolution of tort claims through the civil justice system. This bankruptcy must be dismissed.

## INTEREST OF *AMICI*

*Amici* are non-profit advocacy and research organizations with decades of experience advocating for the rights of incarcerated people and vulnerable populations, including involvement in litigation relating to Corizon's failures to provide adequate care. As a result of that advocacy, *amici* are familiar with the barriers that incarcerated people face in accessing the legal system.

The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit, nonpartisan organization of more than 1.7 million members dedicated to protecting the fundamental rights guaranteed by the Constitution and the laws of the United

[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *amici*, their members, and their counsel contributed money to fund this brief.

States. Consistent with that mission, the ACLU established the National Prison Project ("NPP") in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has decades of experience in complex prisoners' rights class action suits, including multiple cases regarding minimal standards for correctional health care in jurisdictions where debtor Corizon has operated or continues to operate.

The **Center for Constitutional Rights** ("CCR") is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the U.S. Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases. CCR has represented numerous incarcerated people in state and federal custody across the country challenging their conditions of confinement. As such, CCR is deeply familiar with the barriers to participation in court proceedings—bankruptcy or otherwise—faced by incarcerated people and is committed to dismantling those barriers.

**The Human Rights Defense Center (HRDC)** is a nonprofit charitable organization conceived and incorporated in Washington, now headquartered in Florida, that advocates on behalf of the human rights of people held in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons.

HRDC engages in state and federal court litigation on prisoner rights issues, including public records, class actions, and Section 1983 civil rights litigation concerning the First Amendment rights of prisoners and their correspondents. HRDC's advocacy efforts include publishing two monthly publications, *Prison Legal News*, which covers national and international news and litigation concerning prisons and jails, as well as *Criminal Legal News*, which is focused on criminal law and procedure and policing issues. HRDC also publishes and distributes self-help and legal reference books for prisoners.

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**Rights Behind Bars** (RBB) legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. RBB seeks to create a world in which people in prison do not face large structural obstacles to effectively advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively and through such advocacy push towards a world in which people in prison are treated humanely.

**The UC Berkeley Center for Consumer Law & Economic Justice** is the leading law school research and advocacy center dedicated to ensuring safe, equal, and fair access to the marketplace. Through regular participation as an amicus before the United States Supreme Court, the federal courts of appeals, and state appellate courts, the Center seeks to develop and enhance economic protections for all consumers, especially those who compose particularly vulnerable segments of the population. The Center appears in this proceeding to underscore the importance of the bankruptcy process being both fair and accessible to all creditors.

## PRELIMINARY STATEMENT

Two weeks ago, Donald Rolle, a *pro se* incarcerated creditor, implored this court to "ask the question. If we don't hold these corporations and individuals accountable now, what is going to stop these states from contracting even lower budget [correctional health] contractors now that they are shown a way out of

providing constitutionally adequate medical care?" Doc. 1337. This is what is at stake in this case. This court's decision will not only affect the ability of incarcerated creditors to obtain redress for serious harms suffered at the hands of Corizon (the Debtor's corporate predecessor), but also will absolve Corizon of its long history of constitutional and statutory violations and inoculate Corizon's successor YesCare. And now armed with the knowledge that it can simply repeat the maneuver the Debtor seeks to pull off here, YesCare will have no incentive to provide adequate care to thousands of incarcerated people nationwide.[2] Thus, the Court's decision in this case will have far-reaching effects, potentially creating a roadmap for both YesCare and other companies to exploit some of the most vulnerable populations in this country without consequence.

*Amici* are non-profit, civil rights organizations with decades of experience advocating for the rights of incarcerated people, including involvement in litigation relating to Corizon's failures to provide constitutionally adequate medical and mental health care. As *amici* previously discussed in a brief filed almost nine months ago, this case implicates the rights of hundreds—if not thousands—of incarcerated

[2] Already, allegations that YesCare is failing to provide adequate medical care have surfaced. Allegations of "wide-scale medical neglect" in Alabama prisons, where YesCare provides care, were recently reported. Alex Gladden, *Families, Advocates Describe Wide-Scale Medical Neglect In Alabama Prisons*, Montgomery Advertiser (Nov. 20, 2023), http://tinyurl.com/2nwv9shv.

people across the country who have been harmed by the Debtor's systemic failures to provide adequate health care to incarcerated people.[3] Doc. 576-1.

On January 16, 2024, the newly appointed TCC's filed a Motion to Dismiss that confirmed what amici had suspected after months of seeing incarcerated creditors' mounting pleas for information and assistance and the presentation of a Chapter 11 Plan that plainly discriminated against tort claimants and secured expansive non-consensual third-party releases of the entities that have benefited from Corizon's Two-Step: this case is an unconscionable abuse of the bankruptcy system. *See* Doc. 1260 at 2-4, 19-23; *see also* Doc. 1022 (Objection of the United States Trustee to Emergency Motion for Conditional Approval of Disclosure Statement) at 1-2. *Amici* write separately to express their support of the TCC's Motion. Section I of this brief tells an abbreviated history of this case to highlight the general lack of transparency and false sense of urgency[4] that left incarcerated creditors with little meaningful opportunity to advocate for their interests, giving rise to the need to appoint a second committee for tort claimants. Section II supplements

[3] *Amici* understand that the Debtor is technically not the same corporate entity as the corporate entity that systematically and severely harmed thousands of incarcerated people. However, this difference is "legal fiction created to perpetrate an obvious fraud." *See* Doc. 1260 at 2.

[4] For example, the Debtor and the UCC requested an emergency hearing for the Court to grant conditional approval of the Disclosure Statement, but as the U.S. Trustee noted in an objection, that motion was "devoid of any statements articulating an emergency." Doc. 1022 at 4. The same can be said for countless motions, many of which implicated issues of significant concern, like entry of the DIP order. *See* Docs. 5; *see also* Doc 576-1 (discussing amici's objections to entry of the DIP order given the due process concerns at play).

the narrative in Section I, highlighting additional evidence relating to incarcerated creditors' lack of access to these proceedings.

## ARGUMENT

### I. TORT CLAIMANTS' VOICES WENT UNHEARD AND THEIR CONCERNS HAVE BEEN IGNORED FOR THE MAJORITY OF THESE PROCEEDINGS

Although the Unsecured Creditors Committee that was appointed at the outset of this case included two formerly incarcerated claimants, *see* Doc. 145, the record quickly showed that incarcerated creditors had no idea what was happening, how their rights would be impacted, and whether they would be able to meaningfully participate in this case. *See generally* Doc. 576-1. Based on that evidence, *amici*[5] filed a brief raising serious concerns about the ability of incarcerated people to meaningfully advocate for their interests. *See* Doc. 576-1 at 14-19. Specifically, *amici* explained that 1) incarcerated people face unique obstacles that could impinge on their right to appear and be heard in these proceedings, (2) the Court's Bar Date Order (Doc. 499) failed to establish a sufficiently robust notice plan that would adequately protect the due process rights of all incarcerated creditors, (3) the Court should establish procedures for considering *pro se* motions that afforded *pro se*

[5] *Amici* Human Rights Defense Center and the UC Berkeley Center for Consumer Law & Economic Justice were not signatories to the initial brief.

litigants sufficient due process, and (4) the Court should not enter a final DIP order given Debtor's clear abuse of the bankruptcy system to avoid tort liability.

Since the filing of *amici*'s initial brief, additional evidence indicating that the interests of incarcerated people were not being zealously represented continued to mount. That evidence includes a significant number of *pro se* filings requesting additional information or the court's assistance, a number of represented tort creditors' filings presenting evidence of bad faith and possible fraud, and media coverage shining a light on who would ultimately benefit from this Chapter 11 plan being confirmed (and at whose expense). A short comparison of the procedural developments in this case in the larger context of what information was made available to incarcerated creditors and the general public powerfully illustrates the extent to which incarcerated creditors were kept in the dark for months.

The Debtor filed its Chapter 11 petition on February 13, 2023. Doc. 1. *Amici* filed their brief on May 17, 2023**,** detailing their concerns. Doc. 576-1**.** On May 22, 2023, the Debtor and the UCC filed a stipulation to appoint Judge David R. Jones as mediator in efforts to reach a global settlement. Doc. 602. At a hearing on August 25, 2023, the Debtor and the UCC announced at a status conference that they have reached a preliminary settlement that would "resolve all disputes among the debtor and the mediation parties," but did not provide any additional details. Doc. 900. It took over a month for those details to be made public; on September 29, 2023, the

Debtor filed its Disclosure Statement and the Debtor and the UCC filed a Joint Chapter 11 Plan. Docs. 984-85. In the three months between the announcement that the parties intended to reach a settlement through mediation and the announcement that a settlement had been reached, there was little to no activity on the docket that would signal to incarcerated creditors what was happening in the case. This is clear from numerous *pro se* filings filed at that time:

- On June 28, 2023 incarcerated creditor Edward Stenberg wrote, "I am constantly receiving court orders regarding issues that I have never even received a motion for. Also, still to this day I have never even received a copy of the original bankruptcy filing." Doc. 752 (docketed on July 3, 2023).
- On June 27, 2023, incarcerated creditor Christopher D. Harrell wrote, "I am an inmate involved with this bankruptcy case because of my lawsuit against Corizon. I have missed court hearings because I was not notified in time because of the processes within our prison system… I cannot make a proper decision in this case without having read everything that is filed in this case as I will not know how to proceed with only bits and pieces of information." Doc. 755 (docketed on July 3, 2023).
- On July 10, 2023, incarcerated creditor Gordon S. Dittmer wrote that "because I have not been receiving any of the filings in this case and because I do not know what I will want to join or object to, I am requesting that I be provided with a copy of everything that has been filed in this case thus far." Doc. 805 (docketed on July 17, 2023).
- On August 17, 2023, incarcerated creditor Marcus Middlebrook wrote to the court asking "whether or not I can receive information dealing with this case ...in which I received paperwork months ago… In which it gave me a deadline to file proof of claim by August 14, 2023. I was without counsel and was unable to effectively utilize the general provisions of access to the courts to assist myself, does not have a

GED or high school diploma." Doc. 892 (docketed on August 22, 2023).

- On August 9, 2023, incarcerated creditor Aaron Fodge wrote to request help from a local attorney because "I know nothing about chapter 11… I would really like for someone to tell me if I'm getting something out of this." Doc. 886 (docketed on August 15, 2023).

Several days before the Debtor and the UCC announced that they'd reached a settlement, a media outlet published a comprehensive investigative piece explaining how Corizon was deploying the Texas Two-Step to escape liability for over a decade of mounting tort liability.[6] At the August 24, 2023 hearing, the Debtor referenced this coverage, previewing for the Court that they anticipated comments "to the effect of that there's a secret settlement or that there's been a lack of transparency." Doc. 900. The Debtor argued that "there's been a whole lot of transparency in this process," and that even though the terms of the settlement had not yet been made public "it doesn't mean the settlement itself is secretive. We think it just means that …we don't want to have our process derailed by premature comments to the press or other creditors before a plan has even been public." *Id.* The Debtor specifically highlighted that certain attorneys who represented tort claimants had spoken to the reporters, presumably to suggest some sort of impropriety, before concluding, "the point is we have some reluctance to publish the terms of the settlement until the plan

[6] Nicole Einbinder and Dakin Campbell, *Hidden Investors Took Over Corizon Health, a Leading Prison Healthcare Company. Then They Deployed the Texas Two-Step*, Business Insider (Aug. 21, 2023), https://tinyurl.com/2n8fahat.

is filed. Only because we don't want our process derailed by misstatements about what the terms are or how they impact creditors or we don't want creditors pre-judging the plan before it's even filed." *Id.*

The Disclosure Statement and Joint Chapter 11 Plan were finally filed in late September 2023, and then twice amended. Docs. 984, 985, 1042, 1042, 1071, 2072. Incarcerated creditors who were not on the Master Service List only received notice of the filing of these critical documents on October 31, when the Debtor filed its Notice of Filing of Disclosure Statement, Hearing Thereon, and Objection Deadline (Doc. 1077) served that notice on the entire creditor matrix, not just the Master Service List. *See* 1120. Notably, copies of the Disclosure Statement and Chapter 11 Plan were not provided, though the Notice explained that copies were accessible online or by call or written request—a useless offer for most incarcerated people. Doc. 1077.

In the meantime, outside scrutiny over these proceedings intensified. On October 6, 2023, news broke of the undisclosed relationship between the mediator, Judge David Jones, and YesCare's attorney, Elizabeth Freeman.[7] A week later, the U.S. Trustee filed an objection to the Debtor's and the UCC's motion seeking

[7] *See* Nicole Einbinder, Dakin Campbell, and Esther Kaplan, *Prominent Bankruptcy Judge David Jones Recused From Cases, Under Investigation After Exposure Of Undisclosed Romantic Relationship*, Business Insider (Oct. 2023), http://tinyurl.com/59f8vpfu.

conditional approval of the disclosure statement, noting that "recent admissions by the judicial mediator may raise issues about the propriety of the mediation that serves as the basis for the global settlement—and thus about the very propriety of the settlement and plan itself." Doc. 1022 at 2. Then, on October 24, 2023, nine United States Senators, including Judiciary Committee Chair Dick Durbin, wrote to the Debtor and YesCare, objecting to Corizon's misuse of the bankruptcy system. As the Senators explained, "[t]he bankruptcy system has many aims, but it was not designed to provide an avenue for companies to evade accountability for wrongdoing. Your company, however, is attempting to do just that, utilizing the 'Texas Two-Step' to position yourselves to pay pennies on the dollar to claimants that deserve recompense for poor health outcomes and unpaid debts accrued under your watch." Doc. 1365-1. Still, the Debtor and the UCC maintained that the best path forward was to approve the settlement.

On November 20, 2023—nine months after the original petition was filed—the U.S. Trustee appointed a second committee solely for tort claimants. Doc. 1127. The newly appointed TCC has aggressively litigated this case since, culminating in the filing of its Motion to Dismiss on January 16, 2024. Doc. 1260. That motion has garnered the support of numerous creditors (including *pro se* incarcerated creditors

and non-tort claimants), Senator Elizabeth Warren,[8] and the U.S. Trustee. *See, e.g.*, Docs. 1345, 1348, 1363, 1365, 1367, 1381. Based on this evidence and amici's experience advocating for the rights of incarcerated people and vulnerable populations, *amici* now also express their support for the TCC's Motion to Dismiss on behalf of the hundreds of incarcerated creditors who may not otherwise have the ability to protect their own interests.

## II. THE RECORD IS REPLETE WITH INDICATIONS THAT INCARCERATED CREDITORS DESIRE TO, BUT CANNOT, MEANINGFULLY ACCESS AND PARTICIPATE IN THESE PROCEEDINGS

*Amici* begin by reiterating their concern that hundreds of incarcerated people should have been given actual notice but were not, and constructive notice was next to useless. Doc. 576-1 at 14-28. It is thus unsurprising that only a smaller than anticipated number of incarcerated people filed proofs of claim.[9] It is also unsurprisingly, given the complexity and inaccessibility of these proceedings, that only ten incarcerated people have been added to the Master Service List, the only reasonably accessible means through which an incarcerated creditor could follow the

[8] On January 31, 2024, Senator Elizabeth Warren wrote to the U.S. Trustee urging the Trustee to consider supporting the Motion to Dismiss, noting that the settlement agreement and bankruptcy plan "if confirmed, will deny Corizon's creditors, including incarcerated individuals, adequate restitution for the company's serious harm." The letter highlighted the relative lack of access to information about the corporate ownership structures of the Debtor and non-Debtor affiliates and the Debtor's and YesCare's "fail[ure] to answer key questions about the bankruptcy." Exhibit A.

[9] *See* Claims Register *available at* https://www.kccllc.net/tehum/register.

case. Notably, at least forty-eight incarcerated creditors have filed documents with the Court but many were not added despite some making statements that could reasonably be construed as a request to receive service of filings in this case. *See, e.g.*, Doc. 751.

Being added to the Master Service List is just the first hurdle incarcerated creditors faced in their attempts to gain access and adequate notice to these bankruptcy proceedings. As previously explained, limited access to technology, lack of counsel or adequate legal resources, reliance on inefficient and often inoperable prison mail systems, inexperience with the complex procedures of bankruptcy court, and disabilities are all major barriers that have prevented incarcerated creditors from achieving fair access to these proceedings. Without access, *pro se* incarcerated creditors—who naturally make up a significant portion of those harmed by a prison health care provider—have not been able to represent their rights and interests fully and fairly in these proceedings. The evidence of these barriers is summarized below.

***Lack of access to technology and legal resources***

Most incarcerated creditors seeking to represent their interests in these bankruptcy proceedings lack the basic technology and legal resources necessary to do so. They do not have unrestricted access to internet services and rely almost entirely on mail communications from the court to find out about hearings or major events that will affect their interests. *See* Docs. 886, 635, and 316. Many incarcerated

creditors also lack access to basic legal resources and are thus woefully ill-equipped to represent themselves in a bankruptcy proceeding. Several creditors have written to the Court to request guidance on proper bankruptcy proceedings, while others have complained that their facilities do not provide reasonable legal resources. *See* Docs. 635, 996, 1032 and 951. Internet access and standard legal resources are the bare minimum for any modern-day litigant to represent their interests in a complex bankruptcy proceeding. Deprived of these necessities, incarcerated creditors have been left to go up against Goliath without so much as a slingshot.

- Tyrone-Anthony Bell wrote a letter urging the court to address the circumstances under which "the state has created and is enforcing a state of poverty by forcing select prisoner[s] to litigate using an antiquated form of litigation." Doc. 635. According to Mr. Bell he has been restricted in his "ability to use a laptop, handheld scanner, thumb drive and e-file, which in modern day litigation is not an 'adequate and meaningful' form of litigation." *Id.*

- Daniel Lee Wilmer is "still currently in prison at the Tucson Complex Whetstone … and needs… to set up hybrid hearing audio video connection communication" to attend the hearings. Doc. 996.

- Aaron Fodge wrote to the court, "I don't have the internet here in prison, so I can't look nothing up." Doc. 886.

- Shaidon Blake also wrote to the court to request he be sent a claim form because "we lack access to internet services. Therefore, I cannot use [kcclc website], [U.S. Court's website], or [Pacer] services in order to obtain a proof of claim form." Doc. 316.

- Wayne Merkley wrote to the court on behalf of himself and another creditor, Steven Ullrich, to express that "the difficulty … is that [we] reside in a State of Idaho prison penal system that provides no legal assistance, has no reasonable law library or resources." Doc. 1032.

- Alfred Green wrote several letters stating that he "ha[s] no ability to investigate the facts of the case. The legal materials in the library are grossly deficient … these facts, along with the legal merit of my claims, support the appointment of counsel to represent the claimant." Doc. 951.

- Similarly, Neil Willey complained that he "do[es] not have access to the rules governing bankruptcy for complex cases in the Southern District of Texas." Doc. 571. Mr. Willey also notes that he "ha[s] no access to the bankruptcy court[']s website in order to obtain my necessary forms or documents." *Id.*

- William Teddy Walker asked the Court to send him the U.S. Bankruptcy rules "because the deadline to object to final approval of the disclosure statement is November 30, 2023 ('the objection deadline') and because any objections to the disclosure statement must A) be in writing, B) conform to the bankruptcy rules, the bankruptcy local rules and any orders of the Court." Doc. 1131.

***Delays and disturbances with service by mail.***

The schedule for the bankruptcy proceedings has not accounted for or made any effort to address the delayed and unreliable nature of the prison mail system. Given the restrictions on access to the internet and telecommunications in prison, incarcerated creditors often rely exclusively on the mail to receive updates on the bankruptcy proceedings and learn about opportunities to represent their interests. Many creditors have written to the Court to report significant delays and complete failures in mail communications. *See* Docs. 1287, 1221, 751 and 571. Some of these

delays and failures have resulted in missed deadlines, denying these creditors important advocacy opportunities. *See* Docs. 1046 and 751.

- Robert D. Blaurock alerted the court that "[d]espite affording Tehum Care Services, Inc., the County Clerk, and 11 attorneys involved in the above-mentioned case matter regarding my recent change of address, I have not received any legal mail since the date of December 08, 2023." Doc. 1287.

- Tyrone-Anthony Bell has filed more than twenty letters with the court, and he has yet to receive proper notice and access to the bankruptcy proceedings. *See* Docs. 169, 175, 266, 286, 386, 387, 388, 389, 390, 391, 439, 440, 441, 633, 634, 781, 820, 877, 1224, 1126, 1239. He has yet to be added to the Master Mailing List (Doc. 1126), and he has also formally complained that he has been "receiving late notices due to legal documents going to the wrong address." Doc. 1124.

- Marcus Jones reported that his mail was incomplete and appeared to have been tampered with. "The letter was already opened, and a copy of the envelope was attached. It looks to be a page was missing. I also have other mail from your court missing." Doc. 1221.

- Lee Ridgely wrote to the court to document that he has "received nothing in the above case of the pending bankruptcy... I need additional case documents in order to properly prepare responses." Doc. 751.

- Earl D. Christine wrote to the court to "intervene at this late date because such existence of this litigation was not earlier disclosed." Doc. 1046.

- Neil Willey wrote that he "ha[s] only received an order by the court notifying me the cases have been stayed … I NEVER received a copy of this notice by the debtor … and I have never received any response from the debtors counsel to my complaints whatsoever." (Doc. 571)

The mail delays impact *all* incarcerated creditors, not just those left off the Master Service List. Even incarcerated creditors who have been included on the Master Service List have missed hearings and fallen behind on information because of mail delays or lack of information. *See* Docs. 755, 805, 752 and 1348. Thus, it is not enough to simply add these individuals to a mailing list that is meant to serve notice to incarcerated and non-incarcerated creditors equally. To ensure that incarcerated creditors are guaranteed a meaningful opportunity to receive notice and participate in these proceedings, the process must be responsive to the delays and lapses in mail communication inherent to the prison mail system.

- Frank Patterson wrote, "I received these notices very late because they first were sent to Wyoming and then re-routed to me here in MS … I request the court send a notice of any impending hearings like the one on February 12 at 1:00pm to: Mrs. Walker/grievance manager at this facility. So that I may attend via conference call." Doc. 1348.

***Many creditors requested legal assistance or guidance because of the complexity of the case.***

Incarcerated creditors—even those who have prior experience representing themselves *pro se* in civil proceedings— often do not have the knowledge or expertise to understand how to represent themselves in a complex bankruptcy proceeding. Many creditors, therefore, have written to the court requesting legal representation or some specialized guidance to help them understand how to represent their interests before the court. *See* Docs. 886, 1148 and 392. Having

endured medical neglect and often permanent injury at the hands of Corizon, many of these creditors have already overcome significant hurdles to assert their rights in civil proceedings. *See* Docs. 892 and 502. It is a tall order now to require that these creditors jump through additional hoops without adequate expertise or representation to ensure they do not lose their ability to achieve proper redress.

- Edward Smith wrote "inform the court that I don't have attorney at this time and that I'm in need of an extension of time…this notice was fast and I'm asking the courts to allow me the extension of time that is needed for me to have a lawyer so that I'm able to fight my case the right way." Doc. 1148.

- Partick Lynn "has received written communications and informations [sic] pertaining to Tehum Care Services, Inc. Bankruptcy proceedings from two U.S.D. Courts, both in Houston, Texas, each with a different mailing address, and is unsure to which of the two courts that he may enter his proof of claim against the debtor." Doc. 502.

- Mr. Chapman, an indigent incarcerated person, requested the appointment of counsel because while he "is somewhat familiar with Alabama state law and Federal Criminal Law, he is completely in the dark and knows nothing about Texas State or Federal Bankruptcy/Corporate Law." Doc. 329.

***Disability or Educational challenges***

The bankruptcy proceedings have not provided legal assistance or guidance for incarcerated creditors with disabilities who face additional challenges in representing themselves in these proceedings. Several creditors have written to the Court to request assistance due to disability. *See* Docs. 1341, 1222 and 953. Both physical and cognitive disabilities have made it exceedingly difficult for these

creditors to adhere to formal bankruptcy procedures and represent their interests in these proceedings. Because of the nature of Corizon's abuses—medical neglect and physical harm that has had permanent effects on incarcerated creditors—it is vital that this Court make accommodations that ensure the fair notice and proper representation of incarcerated creditors with disabilities.

- Mr. Ervin has written to the court asking for assistance because he has severe vision impairment: "I would like to be heard. I lose my sight in one eye & losing it in the right eye as I write I file two emergency requests under federal [sic] what about inmate like me? Who is usually depending on friends of the court to receive information or the Master Service List." Doc. 1341.

- Charlie Stevens petitioned the court to appoint him an attorney to assist with these proceedings. He "has a 9th grade education and is not able to comprehend the language that the court has set before him." Doc. 1222.

- Alfred Green, wrote on behalf of another incarcerated creditor, Steve Nolte, asking the court to provide Mr. Nolte with additional assistance. Mr. Nolte has difficulty writing and Mr. Green has been his sole resource, writing on his behalf and providing legal resources. Mr. Green let the court know in September that he was being transferred to a minimum-security facility and would no longer be able to help Mr. Nolte. Doc. 953.

## CONCLUSION

In the words of incarcerated creditor Gordon S. Dittmer, the "incarcerated and formerly incarcerated class of creditors [] who have suffered, not economical [sic] distress, but rather, actual physical injury, and even death, at the hands of the Debtor, have not been given any consideration as to their interests thus far in the proceedings." Doc. 804. That lack of consideration has been partially (but

significantly) corrected through appointment of a tort committee that has valiantly tried to make up for lost time. Accordingly, *amici* support the TCC's efforts and urge the Court to dismiss this case.

Dated: February 23, 2024

Submitted,

/s/ Jaqueline Aranda Osorno
Counsel for *Amici Curiae*

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# Exhibit A

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ARMED SERVICES
FINANCE
SPECIAL COMMITTEE ON AGING

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January 31, 2024

Tara Twomey
Director, Executive Office for United States Trustees
U.S. Department of Justice
441 G Street, NW, Suite 6150
Washington, D.C. 20530

Kevin M. Epstein
U.S. Trustee for the Southern and Western Districts of Texas
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002

Dear Director Twomey and Mr. Epstein:

I am writing regarding the Chapter 11 bankruptcy proceedings of Tehum Care Services (Tehum), a company that was formerly part of the prison health care servicer Corizon Health (Corizon). Corizon has used the Texas Two-Step maneuver explicitly to evade its liabilities owed to its many creditors. On January 16, 2024, Corizon announced an agreement on a new bankruptcy plan that, if confirmed, will deny Corizon's creditors, including incarcerated individuals, adequate restitution for the company's serious harms.[1]

I was encouraged to see the U.S. Trustee for the Southern District of Texas file an objection to the debtor's prior disclosure statement and bankruptcy plan.[2] The objection rightly challenged many troubling elements of the plan put forward, including:

- the expedited nature of the plan,[3]
- the improper relationship between the mediator of bankruptcy plan negotiations and the attorney representing YesCare Corporation (YesCare),[4]
- the lack of adequate justification for the plan (e.g., inadequate legal justification for third-party releases, reduction of claims),[5]
- the coercive third-party releases,[6] and
- the gate-keeper and injunction provisions included in the plan, which shift jurisdiction of potential criminal complaints against YesCare and Tehum to bankruptcy court.[7]

[1] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 19-21, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[2] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, https://www.kccllc.net/tehum/document/23900862310130000000000001.
[3] *Id.*, pp. 4-5.
[4] *Id.*, p. 5.
[5] *Id.*, pp. 7-8.
[6] *Id.*, pp. 10-11, 13-16.
[7] *Id.*, pp. 10-13.

I thank you for your efforts thus far, and encourage you to continue to fulfill the mission of the U.S. Trustee's Office to promote the integrity of the bankruptcy system. To do so, I ask that you (1) promptly assess the merits of joining the motion for structured dismissal filed by the Tort Claimants' Committee (TCC);[8] (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases (among other issues); and (3) continue to ensure victims are adequately represented and provided proper notice.

The U.S. Trustee Should Assess the Merits of Joining the TCC's Motion for Structured Dismissal of the Bankruptcy

On January 16, 2024, the TCC filed a motion to dismiss Corizon's bankruptcy as a bad-faith attempt to defraud creditors, many of whom faced serious injury or death due to Corizon's services.[9] I encourage you to promptly review the motion and join it if you find the motion meritorious. The TCC's motion argues persuasively that bankruptcy is not the appropriate venue for dealing with Corizon's harms, and that the purpose of the bankruptcy is not to fairly compensate all creditors but to transfer value from victims to investors.[10]

Corizon has expressly used this bankruptcy to evade liability. On October 25, 2023, Senator Durbin and I, along with a number of our colleagues, wrote to YesCare and Tehum seeking information on the financial actions taken by Corizon leadership before filing for bankruptcy and expressing concern that Corizon knowingly has used the "Texas Two-Step" maneuver to attempt to evade the countless wrongful death, medical malpractice, and other tort claims against it — principally to the detriment of incarcerated creditors harmed by Corizon.[11] Indeed, evading liability appears to have been Corizon's goal from the moment it came under new ownership in December 2021.[12] Isaac Lefkowitz was an owner of the private equity firm that took over Corizon,[13] and is reported to have mentioned the Texas Two-Step to Corizon's lawyers as a way to "force plaintiffs into accepting lower settlements."[14]

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[8] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, https://www.kccllc.net/tehum/document/23900862401160000000000005.

[9] *Id.*, pp. 2-3.

[10] *Id.*, p. 2.

[11] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.

[12] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, August 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.

[13] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[14] Wall Street Journal, "Prison Health Contractor Expands Texas Two-Step Bankruptcy Tactic," Andrew Scurria and Akiko Matsuda, September 19, 2023, https://www.wsj.com/articles/prison-health-contractor-expands-texas-two-step-bankruptcy-tactic-acac4928.

Facing mounting debts and liabilities stemming from inadequate provisions of health care services and mismanagement, Corizon reincorporated the company from Delaware to Texas on April 28, 2022 and executed a divisional merger just five days later, splitting assets and liabilities between two new companies: (1) CHX TX, with the assets and revenue of Corizon, existing today under the name "YesCare"; and (2) Corizon, a shell company holding most of the original company's liabilities, later becoming "Tehum."[15] Unsurprisingly, the limited assets transferred to Tehum "proved insufficient for [the company] to satisfy its liabilities," and Tehum filed for bankruptcy less than one year later, on February 13, 2023.[16]

Between Lefkowitz's takeover of Corizon and the bankruptcy filing, Corizon ensured Tehum kept all of Corizon's lawsuits, claims, liabilities, costs, expenses, and losses arising prior to, at, or after the date of the two-step — including liabilities related to any lawsuits in connection to the two-step or any settlement, as well as debts owed to any vendor or service provider.[17] Meanwhile, YesCare received the company's assets, including: almost all of the cash in Corizon's bank accounts; all of Corizon's real estate assets, leases, equipment, and inventory; all of Corizon's insurance policies under which Corizon may be entitled to rights or benefits; all assets from employee benefit plans and $17.5 million in cash collateral for worker compensation programs; and all of Corizon's trademarks and other intellectual property (among other assets).[18] In sum, more than $170 million went to YesCare,[19] and at least $30 million went to entities affiliated with Lefkowitz's private equity firm (including M2 LoanCo and Geneva Consulting).[20] All in all, Corizon transferred at least $200 million to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.[21]

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[15] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, August 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.

[16] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 5-6, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[17] *Id*., pp. 12-13.

[18] Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 6-7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[19] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/.

[20] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p.13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[21] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

Federal bankruptcy law states that a bankruptcy trustee may avoid any transfer of an interest of the debtor in property that was made within two years before the date of the filing of the bankruptcy petition if the debtor (a) made such transfer with intent to hinder, delay, or defraud potential creditors, or (b) "received less than a reasonably equivalent value in exchange for such transfer or obligation" and met one or more other characteristics.[22] State law additionally provides a mechanism to challenge fraudulent transfers made within four years of the bankruptcy filing.[23] The transfers from Corizon to YesCare and other entities, which Corizon appears to have used to shield assets from victims' reach, warrant serious examination under 11 U.S.C. 548 and other fraudulent transfer provisions.

In addition, key details about Corizon's assets and corporate ownership have never been disclosed. As noted above, in October 2023, Senator Durbin and I wrote to Tehum and YesCare seeking information about the bankruptcy and about the companies' structure and ownership.[24] The companies' responses failed to answer key questions about the bankruptcy.[25]

I encourage you to work to uncover the key facts needed to understand the bankruptcy filing. For example, the identity of other investors in the private equity firm that acquired Corizon in December 2021 is still not publicly known, as is whether they or their affiliated companies received assets prior to the bankruptcy filing.[26] Also unknown is the ownership structure of YesCare, which YesCare inexplicably claims is unknown even to the company itself.[27] This is concerning given YesCare's involvement in negotiating Tehum's bankruptcy plan, which includes generous releases of YesCare from liability.[28] If Tehum's owner, Mr. Lefkowitz, is also a partial or full owner of YesCare, his dual ownership of both Corizon's bankrupt and financially healthy

[22] 11 U.S.C. 548.
[23] Tex. Bus. & Comm. Code 24.005; Tex. Bus. & Comm. Code 24.010.
[24] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.
[25] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf; Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[26] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[27] Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 3, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[28] Audio Recording from Status Conference, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), December 18, 2023, https://www.kccllc.net/tehum/document/23900862312180000000000002; Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, https://www.kccllc.net/tehum/document/23900862401160000000000004.

halves bolster the case that the companies are not in fact distinct and that Tehum "is a legal fiction created to perpetrate an obvious fraud."[29]

The companies' ownership structures are significantly related to the question of whether Tehum fraudulently transferred assets to YesCare and whether the company should be in bankruptcy at all. Tehum has alleged the company is in financial distress, even while there are indications that YesCare and Tehum are under common ownership: the holding companies that own YesCare and Tehum share the same business address, and Mr. Lefkowitz and other individuals have held significant positions or otherwise been affiliated with both companies.[30] Further, YesCare has claimed Corizon's operating history to assert to prospective clients that YesCare, a company formed less than two years ago, has "40 years of experience as the leading provider of correctional healthcare."[31] As I wrote to Tehum and YesCare,[32] the assurances of "corporate separateness" between YesCare and Tehum[33] are a plainly unconvincing attempt to shelter assets and avoid adequately compensating victims. Even a federal judge in the Eastern District of Michigan has found that YesCare's subsidiary "CHS TX is a mere continuation of pre-division Corizon . . . . Evidently, CHS TX picked up right where Corizon left off. Indeed, CHS TX holds itself out to clients as Corizon's successor."[34]

Corizon's bankruptcy is premised on the fact that it does not have sufficient resources to pay victims and other creditors. The links between Corizon and YesCare accentuate questions about whether the company should even be in bankruptcy proceedings, and further highlight the insufficiency of the bankruptcy plan's proposed offer to victims.

From the time Corizon executed its division merger to today, this bankruptcy plan has served no legitimate reorganizational purpose. By design, Tehum will not return to being a prison health care provider and will not be able to give victims the restitution they deserve. As argued in the TCC's motion for structured dismissal, victims' most direct path to meaningful recovery is through the tort system, after dismissal of this bankruptcy case.[35] That way, victims would be able to "assert

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[29] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, https://www.kccllc.net/tehum/document/23900862401160000000000005.

[30] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.

[31] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8; YesCare Corp., "About YesCare," https://www.yescarecorp.com/about.

[32] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, p. 4, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.

[33] Response in Opposition to Plaintiff's Motion, Kelly v. Corizon Health, Inc., No. 2:22-cv-10589-MAG-DRG, 2022 WL 16575763 (E.D. Mich.), August 17, 2022, p. 24, https://s3.documentcloud.org/documents/23919673/yescare-corp-and-chs-tx-incs-response.pdf.

[34] Kelly v. Corizon Health Inc., No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich.), November 1, 2022, p. *13, https://1.next.westlaw.com/Document/I9ae768f05a9411edbf39cf32a4dcbebd/View/FullText.html.

[35] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 23-26, https://www.kccllc.net/tehum/document/23900862401160000000000005.

claims against governmental entities and other parties who are co-liable with [Tehum and YesCare]."[36] The U.S. Trustee should carefully consider the merits of the TCC's motion for structured dismissal and support it if it agrees with the conclusions presented. YesCare and Mr. Lefkowitz do not deserve to reap the benefits of bankruptcy — including the "litigation holiday," — without actually filing for bankruptcy.[37] They must "return[] to the tort system [and] face[] the reality of litigation."[38]

The U.S. Trustee Should Challenge Any Plan that Includes Insufficient Recovery for Victims and Nonconsensual Non-Debtor Releases

*The new plan provides plainly insufficient recovery for victims*

The initial bankruptcy plan, mediated by Texas-based bankruptcy judge David Jones, proposed that YesCare and its backers pay a paltry $37 million to individuals and entities with claims against Corizon.[39] After Judge Jones resigned from his position following the exposure of his secret relationship with an attorney for YesCare, the parties agreed to restart the mediation and renegotiate the plan.[40] According to a motion filed under Rule 9019, this mediation has resulted in a new plan that would provide $54 million to victims, state agencies, and other creditors.[41] This number remains plainly insufficient to satisfy the thousands of debts against the company. Tehum currently owes $82 million to more than 1,000 creditors, and hundreds of victims seek more than $775 million in claims for alleged personal injury and wrongful death claims.[42]

The plan ensures that no creditor — whether a state agency, private company, or family member of a loved one who died in Corizon's care — would receive the full amount it is owed. Further, $54 million is a small fraction of the at least $200 million that Corizon transferred to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.[43]

*The new plan contains unlawful nonconsensual non-debtor releases*

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[36] *Id*, p. 26.
[37] *Id.*, p. 23.
[38] *Id*., p. 9.
[39] Reuters, "Prison healthcare company restarts mediation after bankruptcy judge Jones quits," Dietrich Knauth, November 14, 2023, https://www.reuters.com/business/healthcare-pharmaceuticals/prison-healthcare-company-restarts-mediation-after-bankruptcy-judge-jones-quits-2023-11-15/.
[40] *Id*.
[41] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 3, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[42] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 20, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[43] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

The new plan retains a coercive provision that pushes victims — including families of individuals who died in Corizon's care — to release from liability not just Corizon/Tehum but also several individuals and entities not party to the bankruptcy, including YesCare and Mr. Lefkowitz, in exchange for a small fraction of what they are owed.[44] The plan states that, in exchange for the $54 million collective payout, creditors would have to release from liability not only Tehum but also YesCare, M2 LoanCo, Geneva Consulting, and "certain related entities, directors, and employees," including Mr. Lefkowitz.[45] This does not afford creditors the opportunity to provide the "unambiguous and freely-given consent" required for provisions releasing non-debtors of liability.[46] As you noted in your earlier objection, this option to accept limited funds in exchange for sacrificing claims that could lead to true recovery is "no real choice, particularly in the context of the vulnerable creditor body in this case."[47]

Further, the broad releases of YesCare, Mr. Lefkowitz, and other non-debtor third parties from future liability likely violate bankruptcy law and Fifth Circuit precedent as nonconsensual non-debtor releases. As noted in the U.S. Trustee's objections to the September 2023 plan, which appears to contain non-debtor releases that are substantially similar to those in the January 2024 plan, "a bankruptcy court may not confirm a plan that provides non-consensual non-debtor releases."[48] By depriving victims and other creditors of a meaningful choice, YesCare and Mr. Lefkowitz are attempting to unlawfully shield themselves from liability and keep victims from exercising their legal rights. As a result of this and other harmful provisions, the U.S. Trustee concluded that the September 2023 plan was "patently unconfirmable" and must be rejected.[49] This recognition by the U.S. Trustee is consistent with the Trustee Program's efforts to fight similar nonconsensual non-debtor provisions in the Purdue Pharma bankruptcy plan.[50] Based on the details of the plan shared in the Joint Motion filed on January 16, 2024,[51] the new plan remains patently unconfirmable.

I was encouraged by your acknowledgment that the September 2023 plan was "patently unconfirmable" due in part to its attempt to coerce victims into accepting a minor one-time payment in exchange for signing away their legal rights.[52] The new plan's non-debtor releases

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[44] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, https://www.kccllc.net/tehum/document/2390086240116000000000004.
[45] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 3, 8-10, and 21.
[46] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 13, https://www.kccllc.net/tehum/document/2390086231013000000000001.
[47] *Id*., p. 14.
[48] *Id*.
[49] *Id*., pp. 10-11.
[50] CBS News, "Purdue Pharma bankruptcy plan that shields Sackler family faces Supreme Court arguments," Melissa Quinn, December 4, 2023, https://www.cbsnews.com/news/purdue-pharma-bankruptcy-supreme-court/.
[51] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, https://www.kccllc.net/tehum/document/2390086240116000000000004.
[52] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 3, https://www.kccllc.net/tehum/document/2390086231013000000000001.

raise the same concerns.[53] I urge you to continue challenging these issues until they are completely resolved.

The U.S. Trustee Should Ensure Victims Are Adequately Represented & Given Sufficient Notice

The U.S. Trustee has been instrumental in this bankruptcy in protecting the rights of under-resourced victims and their families, including individuals currently incarcerated. In November 2023, you announced the formation of a six-member tort claimants' committee to ensure victims' interests are adequately represented.[54] This was a necessary step: the UCC's support for the deeply flawed initial bankruptcy plan has cast doubt on whether the UCC is adequately representing the interests of victims. The tort committee's motion requests the dismissal of Corizon's bankruptcy on the grounds that the bankruptcy was "a fraud from its inception,"[55] noting that victims "will recover substantially more in the tort system than YesCare . . . would ever contribute to this case."[56] It appears, therefore, that the tort committee is off to a promising start powerfully representing the victims of Corizon's alleged wrongdoing. I am optimistic about the tort committee's formation, but urge that you to remain vigilant to make sure victims' interests are properly represented. As the U.S. Trustee has observed,[57] incarcerated individuals without legal representation are inordinately vulnerable in these proceedings already — they lack access to up-to-date information on the bankruptcy and face unique barriers in participating in the proceedings. Should a settlement eventually be reached, I hope you continue to advocate that information disseminated to creditors be in language that is easy to understand.[58]

Relatedly, I encourage you to join the TCC in pushing for adequate notice to be provided to creditors, particularly vulnerable incarcerated creditors. The lack of sufficient notice (whether actual or constructive) exacerbates the existing issues with the proposed bankruptcy plan.

The U.S. Trustee is in a Unique Position to Safeguard the Bankruptcy System from Abuse

Americans rely on the U.S. Trustee Program to "promote the integrity and efficiency of the bankruptcy system for the benefit of *all* stakeholders."[59] The Trustee Program has the responsibility and power to view the bankruptcy system as a whole, assess systemic trends, and take forceful action in the interest of justice. Rarely is such action more important than when

[53] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 5-6, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[54] Bloomberg Law, "Prisoner Plaintiffs Get Committee in Medical Provider Bankruptcy," Alex Wolf, November 21, 2023, https://news.bloomberglaw.com/bankruptcy-law/prisoner-plaintiffs-get-committee-in-medical-provider-bankruptcy.
[55] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 35, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[56] *Id.*, p. 47.
[57] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), Sept. 29, 2023, pp. 2 and 5, https://www.kccllc.net/tehum/document/23900862310130000000000001.
[58] *Id.*, p. 10.
[59] U.S. Department of Justice, "Executive Office for United States Trustees," https://www.justice.gov/doj/executive-office-united-states-trustees (emphasis added).

powerful corporations with well-resourced backers try to corrupt the bankruptcy process to deprive thousands of victims of the ability to achieve justice.

As the tort committee noted, "[t]his case gives bankruptcy a bad name."[60] I have no doubt that other corporations are watching to see whether Corizon and its allies will be able to successfully deploy the Texas Two-Step to shield their assets from the myriad legitimate claims they face. The U.S. Trustee's actions, together with those of the bankruptcy judge, are of crucial importance not just for this case but also for the future of the bankruptcy system. For these reasons, and as detailed above, I urge you to (1) promptly assess the merits of joining the motion for structured dismissal filed by the TCC; (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases; and (3) continue to ensure victims are adequately represented and provided proper notice.

In addition, to assist my office's oversight of Tehum's Chapter 11 bankruptcy, please answer the following questions by February 14, 2024:

1. How does the U.S. Trustee plan to monitor whether the UCC or tort committee is adequately representing the interests of incarcerated victims?
    a. Given Tehum's looming administrative insolvency and restrictions on the debtor-in-possession loan,[61] are there sufficient funds to pay the fees of TCC professionals?
2. Does the U.S. Trustee plan to challenge the new bankruptcy plan, consistent with its position against nonconsensual non-debtor releases?[62]
    a. If the U.S. Trustee does challenge the plan and the plan is nevertheless approved, does the U.S. Trustee plan to appeal that decision?
3. What actions will the U.S. Trustee take to determine the full ownership of Tehum and YesCare?
    a. What actions will the U.S. Trustee take to ascertain the role of Isaac Lefkowitz in the ownership of Tehum and YesCare?
4. If information about Tehum and YesCare's ownership continues to cast doubts upon claims of corporate separateness between Tehum and YesCare, under what circumstances would the U.S. Trustee move to:
    a. Dismiss Tehum's bankruptcy filing?
    b. Challenge the pre-bankruptcy transfers of funds from Tehum/Corizon to YesCare and other entities as fraudulent?
5. What actions will the U.S. Trustee take to determine Corizon's value at the time of the divisional merger?

[60] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[61] *Id.*, pp. 17 ("Without the DIP loan, there is no funding for this case and no funding to pay professional fees"), 18 ("The DIP loan denies funding for any committee or estate party that challenges any of the prepetition transfers"), and 33 ("The Debtor has no means to generate positive cash flow and is now facing administrative insolvency").
[62] *See, e.g.*, Brief for the Petitioner, Harrington v. Purdue Pharma L.P., No. 23-124 (U.S.), September 20, 2023, pp. 19-48, https://www.supremecourt.gov/DocketPDF/23/23-124/280102/20230920205320537_23-124tsUnitedStates.pdf.

Thank you for your ongoing oversight of Corizon's bankruptcy on behalf of the public. I urge you to continue to closely scrutinize the developments in this case.

Sincerely,

Elizabeth Warren
United States Senator

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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|---|---|
| In re:<br><br>TEHUM CARE SERVICES, INC.<br><br>Debtor. | Chapter 11<br><br>Case No. 23-90086 (CML) |

**ORDER**

Having considered the Motion for Leave to File *Amicus Curiae* Brief, it is hereby ORDERED that the Motion is granted.

Signed: _____, 2024

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Christopher M. Lopez
United States Bankruptcy Judge