

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

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

**JOINDER TO MOTION OF THE OFFICIAL COMMITTEE
OF TORT CLAIMANTS AND CERTAIN TORT
CLAIMANTS FOR STRUCTURED DISMISSAL OF
CHAPTER 11 CASE**

Creditor Mack Mandrell Loyde (hereinafter “Movant”), by and through counsel and in support of this Joinder to Motion for Structured Dismissal of Chapter 11 Case states as follows:

1. Movant has an action pending against the Debtor in the Middle District of Tennessee entitled *Mack Mandrell Loyde vs. Tehum Care Services, Inc., d/b/a Corizon Health, Inc., et al.*, Case No. 3:20-cv-00710.

2. The filing and prosecution of Movant’s lawsuit is stayed by 11 U.S.C. §362(a).

3. Movant supports the Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case and additionally adds that the Chapter 11 Plan fails the best interests of the creditors test, the unfair discrimination test, and the fair and equitable test.

4. The terms of the proposed Chapter 11 Plan fail the best interests of the creditors test under 11 U.S.C. §1129(a)(7) because the Plan would pay Movant’s claim less than what Claimant would receive in a Chapter 7 liquidation due to:

- a. The liability release sought by the Debtors affiliated entities which would prohibit collection against assets of the Debtor, including any available insurance assets, which could be and should be clawed back into the bankruptcy estate for liquidation purposes; and



b. The fraudulent conveyances of substantially all the Debtors assets to such affiliated entities as preferential insider transfers under 11 U.S.C. §547(b)(4)(B) and 11 U.S.C. §547(b)(5).

i. In completing a liquidation analysis, the Court may consider Chapter 5 causes of action and other litigation pending against the Debtor.

5. The terms of the proposed Chapter 11 Plan fail the unfair discrimination test and the fair and equitable test under 11 U.S.C. §1129(b)(1) and 11 U.S.C. §1129(b)(2)(B) because the Debtor has not offered creditors in the tort claimants' class the right to receive or retain property of a value equal to the allowed amount of their claims.

6. The funding of the tort claimants' trust must provide (i) new value; (ii) substantial value; (iii) be necessary for the success of the plan; (iv) be reasonably equivalent to the value retained; and (v) in the form of money or money's worth. *See, e.g., In re Crowe*, 2021 WL 2212005 (Bankr. D. Ariz. June 1, 2021). While the funding provided is new value and is necessary for the success of the plan, the funding is not substantial. It would pay 1% of the currently allowed tort claims, which is not anywhere near reasonably equivalent value.

7. Courts have long held that the purpose of the unfair discrimination test is to "ensure that a dissenting class will receive relative value equal to the value given to all other similarly situated classes." *In re LightSquared Inc.*, 513 B.R. 56, 99 (Bankr. S.D.N.Y. 2014); *accord In re SunEdison, Inc.*, 575 B.R. 220 (Bankr. S.D.N.Y. 2017); *In re 20 Bayard Views, LLC*, 445 B.R. 83 (Bankr. E.D.N.Y. 2011); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 (2d Cir. 1988). The terms of the Chapter 11 Plan do not provide the tort claimants equivalent value to the other classes of creditors.

8. Based on the foregoing, Debtor's Chapter 11 Plan is not confirmable. It violates 11 U.S.C. §1129(a)(7), 11 U.S.C. §1129(b)(1) and the Court has authority to dismiss this case under 11 U.S.C. §1112(b)(1) in the best interest of the creditors involved in this bankruptcy case.

WHEREFORE, for the foregoing reasons, Creditor respectfully joins the Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case and requests that this Court enter an *Order* dismissing Debtors case under 11 U.S.C. §1112(b)(1), and for such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

MOSELEY & MOSELEY
ATTORNEYS AT LAW

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2024, a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ James Bryan Moseley
James Bryan Moseley

Copy to: Client