

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

<p>In re:</p> <p>TEHUM CARE SERVICES, INC.,<sup>1</sup></p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 11</p> <p>Case No. 23-90086 (CML)</p> <p>Re Dkt. No. 1637</p>
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**OBJECTION OF THE OFFICIAL COMMITTEE  
OF TORT CLAIMANTS TO HARRINGTON MOTION**

The Official Committee of Tort Claimants, the estate fiduciary for tort claimants (the “TCC”), hereby objects (the “Objection”) to the *Harrington Motion* (Dkt. No. 1637) (the “Motion”) filed by Mr. Anant Kumar Tripathi. In support of this Objection, the TCC respectfully states as follows.

**OBJECTION**

1. Mr. Tripathi is a tort claimant. The TCC has reviewed his pleadings. And the TCC is sympathetic to the frustrations that he has expressed. While the TCC is objecting to Mr. Tripathi’s Motion, it is doing so with respect for him and every other *pro se* tort claimant in this case.

2. As Mr. Tripathi knows well, the TCC fought for the dismissal of this chapter 11 case. *See* Dkt. Nos. 1260 & 1404. Mr. Tripathi joined the TCC’s motion (*see* Dkt. No. 1305), as did the American Civil Liberties Union, the Center for Constitutional Rights, Public Justice, Rights Behind Bars, The Human Rights Defense Center, and the UC Berkeley Center for Consumer Law & Economic Justice (*see* Dkt. No. 1393). The TCC’s advocacy was recognized by United States

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.



Senator Elizabeth Warren. *See* Dkt. No. 1386-15. The TCC also opposed the Rule 9019 settlement proposed by the Debtor and the UCC. *See* Dkt. No. 1386.

3. The Bankruptcy Court, after hearing testimony from various parties, denied the motion to approve the Rule 9019 settlement (*see* Dkt. No. 1505), and the Bankruptcy Court also denied the TCC's motion to dismiss this case (*see* Dkt. No. 1506). After the Bankruptcy Court ruled, the TCC asked the United States District Court for the Southern District of Texas to intervene and hear its appeal, but that request was denied on June 21, 2024.

4. From the TCC's perspective, the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.*, 144 S.Ct. 2071 (2024) did not change the landscape. Fifth Circuit case law dating back over 30 years has strongly disapproved of nonconsensual third-party releases in bankruptcy. *See Bank of N.Y. Tr. Co. v. 9 Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009); *In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Feld v. Zale Corp.*, 62 F.3d 746 (5th Cir. 1995); *Matter of Edgeworth*, 993 F.2d 51, 53–54 (5th Cir. 1993). The Supreme Court's ruling in *Purdue* did not change the law in the Fifth Circuit.

5. Given the Bankruptcy Court's and the District Court's rulings, the TCC reached the conclusion that dismissal is simply not an option. The TCC, therefore, had to find a path forward in this case that does not involve dismissal. After months of work, the TCC is now able to offer a new path forward in this case.

6. The TCC believes that a large number of claimants in this case are interested in settling their claims and, if given the option of participating in a settlement trust that offers them fair compensation, they would do so willingly and grant releases consistent with the type of releases plaintiffs are routinely asked to sign as a condition to settlement outside of bankruptcy.

7. The TCC also determined that it could not and would not support a plan that attempted to deprive tort victims of their right to choose for themselves whether to participate in a settlement trust. That is to say that the TCC does not support a plan that contains *Purdue* releases or their equivalent. Any plan should include a true “opt out” that enables victims to reject the plan settlement and return to the tort system. Tort claimants like Mr. Kelly in Michigan should be permitted to continue their litigation against CHS TX based on the doctrine of successor liability if they choose to do so. *Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich. Nov. 1, 2022). Or the tort claimants can participate in the settlement trust.

8. The TCC is now developing a plan of reorganization built on consent. The new settlement and the new chapter 11 plan will be different than the prior settlement and chapter 11 plan that was negotiated without the TCC.

9. The funds available to pay tort claims have increased by **over 300%**. The settlement payment—\$50 million *plus* interest, the net ERC Credits, and the proceeds of estate causes of action will be split 50/50 between the “Personal Injury Trust” and the “Non-Personal Injury Trust.” *See* Proposed Fifth Interim DIP Order. *See* Dkt. No. 1651 at ¶ 6(e). The settlement payment and the net ERC Credits will be treated as “sacred funds” that cannot be reduced for any reason, including the payment of professional fees and expenses. *Id.* Professional fees and expenses will be paid separately, as detailed in the proposed Fifth Interim DIP Order. *Id.* at ¶¶ 18-22.

10. The new plan, which will be principally drafted by the TCC’s and the UCC’s professionals, will include a claims matrix that tort claimants will be able to review and use to determine how their claims will be valued for settlement purposes. The TCC will be transparent with the victims about how much they are likely to be paid on account of their claims, as liquidated

under the plan settlement. The TCC will select the trustee of the Personal Injury Trust. And the UCC will select the trustee of the Non-Personal Injury Trust.

11. The new plan will also include a true “opt-out” that allows claimants the ability to “opt out” of the settlement and retain rights they had prior to this bankruptcy case to pursue causes of action that invoke the doctrine of successor liability against YesCare, CHS TX, and any other successor entity. *Id.* at ¶ 6(b). The new plan will **not** include nonconsensual third-party releases or any releases that are unlawful under *Purdue* and Fifth Circuit precedent. *Id.* at ¶ 6(a). Instead, the plan will include consensual third-party releases that are acceptable to the TCC, the UCC, and the settling parties. *Id.* A tort claimant may reject the settlement by opting out to pursue their claims under the doctrine of successor liability in the tort system. *Id.* at ¶ 6(b).

12. The new plan will **not** include a “gatekeeping mechanism.” *Id.* at ¶ 6(c). The settling parties will agree to release all claims against the Debtor’s estate, including all amounts due and owing under the DIP Loan. *Id.* at ¶ 6(d). And the settling parties will have no right to seek indemnification from or assert any claims against the plan trusts. *Id.* These and other safeguards that will be put in place will help ensure that settlement funds are used to pay the tort victims.

13. In adopting the TCC’s vision for how this case should now proceed, YesCare has elected to be part of the solution going forward. The TCC expects that given the funds that will be available for distribution, most tort claimants will elect to participate in the settlement.

14. In any settlement, the plaintiff must be willing to accept the amount offered as compensation for the injury suffered, and the defendant must be willing to pay that amount. The new plan is no different. It is through YesCare’s willingness to fund a plan settlement that tort victims will be paid under the new plan.

15. However, even if 100% of the tort victims elect to participate in the settlement and there are no “opt outs,” there is a difference between accepting a settlement freely and being denied the right to say “no.” Tort claimants who elect to “opt out” may forfeit significant awards and spend the next several years in litigation, the same as any plaintiff who turns down a settlement offer outside of bankruptcy. But they must be given that choice and that choice must be respected.

16. If the plan settlement garners sufficient support, and if the settling parties elect to go forward with the settlement, then the chapter 11 plan will hopefully be confirmed, and this bankruptcy case will come to an end.

17. This case is not what it once was. The Bankruptcy Court’s denial of the Rule 9019 motion changed everything. Tort victims like Mr. Tripati are represented by an official committee that includes former incarcerated individuals and the family members of incarcerated individuals who died in prison. And the TCC is represented by a group of highly skilled and passionate professionals who are deeply committed to doing what is right in this case.

18. The TCC’s goal is to file plan documents with the Court in September. No tort claimant needs to decide now whether he or she supports the new plan. The Bankruptcy Court must first approve a disclosure statement that contains adequate information about the plan.

19. After a disclosure statement is approved, the TCC will hold town hall events via Zoom to answer questions. All tort claimants will be asked to vote. Due to the notice issues in this case, the voting period will be at least 90 days to allow sufficient time for claimants who are currently incarcerated to receive their ballots and return them to the claims and noticing agent.

20. This case needed a TCC. Tort claimants are not voluntary creditors. Their interests in this case were always unique. The TCC understands that the injuries suffered by the victims cannot be undone. There is no amount of money that can fill the void left by the loss of a mother,

son, daughter, or father. Whether the new plan is confirmed or not will not depend on the views of any estate professionals. The decision will rightfully rest with the claimants themselves and the Bankruptcy Court, which must confirm the plan before it can go effective.

21. The TCC sincerely thanks Mr. Tripati for expressing his views and the TCC is thankful for the support offered by the public interest groups and other *pro se* claimants. The road traveled has not been easy. Confirming a plan will not be easy either.

22. While the TCC objects to the Motion, it does so only because the TCC has altered the course of this case. The TCC believes that the path forward in this case requires the confirmation of a consensual creditor plan. The TCC, therefore, objects to the Motion with the utmost respect for Mr. Tripati and those who have let their voices be heard.

### CONCLUSION

23. The Motion should be denied.

Dated: August 13, 2024  
New York, New York

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