

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

In re:

AFH AIR PROS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

**DEBTORS' REPLY TO THE UNITED STATES TRUSTEE'S OBJECTION TO
DEBTORS' DISCLOSURE STATEMENT AND FORM OF BALLOTS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), submit this reply (the “Reply”) to the *United States Trustee’s Objection to Debtors’ Disclosure Statement and Form of Ballots* [Docket No. 451] (the “Objection”). In support of this Reply and in further support of the *Motion of the Debtors for Entry of an Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing Voting Record Date, (E) Fixing the Date, Time, and Place for the Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan and the Deadline for Filing Objections Thereto, and (F) Approving Related Notice Procedures and Deadlines* [Docket No. 433] (the “Solicitation Procedures Motion”),² the Debtors respectfully state as follows:

¹ The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Solicitation Procedures Motion.



PRELIMINARY STATEMENT

1. On May 19, 2025, the Court approved the sales of substantially all of the Debtors' operating assets pursuant to six stalking horse asset purchase agreements. As of the filing of this Reply, five of the six sales have closed, and the Debtors anticipate the final sale closing the first week of July.

2. The Debtors have worked diligently with the Prepetition Lenders, DIP Lenders, and Creditors' Committee to formulate a liquidating chapter 11 plan to effectuate the orderly wind down of the Debtors' estates and bring these Chapter 11 Cases to conclusion. As a result of those discussions, the Debtors, the Prepetition Lenders, the DIP Lenders, and the Creditors' Committee reached a global settlement as described in Article VI.J of the Disclosure Statement and the Committee Settlement Term sheet attached as Exhibit C to the Disclosure Statement.² Among other things, the Plan provides for:

- Litigation Trust. The Plan establishes a Litigation Trust for the benefit of Holders of Allowed General Unsecured Claims, including the Prepetition Lender Deficiency Claim. The Litigation Trustee will be selected by the Creditors' Committee.
- Litigation Trust Claims. The primary Litigation Trust Assets will be the Litigation Trust Claims, which include certain Causes of Action of the Debtors' or their Estates against former officers and directors (other than specified Released Debtor D&Os),³ as well as additional Assigned Causes of Action, including, but not limited to, certain Avoidance Actions and commercial tort claims of the Debtors' or their Estates. The scope and detail of the additional Assigned Causes of Action will be set forth in the Plan Supplement.

² Contemporaneously with the filing of this Reply, the Debtors are filing a *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* and *Second Amended Disclosure Statement for the Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates*. All references herein to the "Plan" and "Disclosure Statement" refer to the Plan and Disclosure Statement as amended.

³ The Released Debtor D&Os, as defined in the Plan, are limited to Lawrence Hirsh (the independent manager of the Debtors), Andrew D.J. Hede (the Debtors' Chief Restructuring Officer), and Brian Smith (the Debtors' Chief Operating Officer), each of whom has been integral to the Debtors' restructuring efforts prior to the Petition Date and during these Chapter 11 Cases.

- Litigation Trust Funding. The Litigation Trust will be funded with \$1,000,000 in cash plus any unused amount of the \$850,000 in the Approved Budget with respect to Creditors' Committee Professionals.
- Plan Administrator. A Plan Administrator will be appointed to liquidate and administer all Remaining Assets (i.e., Assets of the Estates not transferred to the Litigation Trust).
- Wind Down Cash Amount. The Wind Down Cash Amount will be held back from the sale proceeds that are remitted to the Prepetition Lenders and DIP Lenders in order to fund the Wind Down Expenses, including the payment of all administrative and priority claims. The Claims Bar Date has not yet passed, and the parties are continuing to discuss the amount necessary to effectuate the Wind Down as contemplated by the Plan. The Wind Down Cash Amount will therefore be set forth in the Plan Supplement.

3. The Plan contemplates and is predicated upon the deemed substantive consolidation of the Estates for voting, confirmation, and distribution purposes as more fully described in Article VII.C.10 of the Disclosure Statement. The Plan provides the only means for potential recovery for General Unsecured Creditors and is supported by the Debtors' material stakeholders – the Prepetition Lenders, the DIP Lenders, and the Creditors' Committee.

4. The only timely objection to the Disclosure Statement and proposed Solicitation and Voting Procedures is the Objection filed by the U.S. Trustee. The Debtors have had discussions with the U.S. Trustee regarding the Objection. Based on these discussions, the Debtors are filing additional disclosures and revisions to the Plan, the Disclosure Statement, the form of Proposed Order, and Ballots and notices. The Debtors believe that these additional disclosures and revisions adequately address the U.S. Trustee's objections to the Disclosure Statement and Solicitation and Voting Procedures. Any remaining objections not otherwise resolved through the amendments and revisions to the Plan, Disclosure Statement, and Proposed Order should be overruled. Accordingly, the Debtors respectfully request that the Court enter the Proposed Order (as revised) approving the Disclosure Statement on an interim basis as containing adequate information and approving the Solicitation and Voting Procedures.

REPLY

5. The Objection filed by the U.S. Trustee objects to the Disclosure Statement and asserts that (i) the Disclosure Statement fails to adequately explain the rationale for, and effect of, substantive consolidation; (ii) the Debtors fail to provide adequate information regarding the Plan Administration Agreement; (iii) the Debtors fail to provide adequate information regarding the Litigation Trust Agreement; (iv) the Debtors fail to provide adequate information regarding the Schedule of Assigned Causes of Action; (v) the Disclosure Statement, in conjunction with the Plan, improperly imposes third-party releases on creditors without their affirmative consent; and (vi) the Ballots should be both convenient to navigate and decipherable by the creditor body. As set forth in the following table, each of the objections of the U.S. Trustee to the Disclosure Statement have been either addressed by the amendments and revisions to the Plan, Disclosure Statement, and Solicitation and Voting Procedures, or should be overruled.

Objection	Response/Information Needed
<p><u>Substantive Consolidation.</u> The Disclosure Statement fails to adequately explain the rationale for, and effect of, substantive consolidation. (Objection ¶¶ 13–16.)</p>	<p>Article VII.C.10 of the Disclosure Statement has been amended to provide additional analysis and disclosure regarding (i) the bases for substantively consolidation, (ii) the effect of consolidation, and (iii) the consequence if the court determines consolidation is not appropriate. Among other things, the amendments to the Disclosure Statement include an analysis of the factors to be considered in connection with substantively consolidating debtor estates, including the Debtors’ historical use of consolidated financial statements, regular intercompany transfers and maintenance of an integrated cash management system, the Debtors’ joint and several liability under the Prepetition Loan Documents and DIP Loan Documents, and the difficulty in segregating and ascertaining individual assets and liabilities. <i>See, e.g., Reider v. FDIC (In re Reider)</i>, 31 F.3d 1102, 1107–08 (11th Cir. 1994).</p> <p>The Debtors believe these revisions adequately address the U.S. Trustee’s concerns and do not believe any additional disclosure is necessary.</p>

Objection	Response/Information Needed
<p><u>Plan Administration</u>. The Debtors fail to provide adequate information regarding the Plan Administration Agreement, the Plan Supplement deadline is just seven days prior to the Voting Deadline, and creditors should have access to the Plan Administration Agreement prior to approval of the Disclosure Statement. (Objection ¶¶ 17–20.)</p>	<p>The terms of the Plan Administration Agreement are subject to ongoing negotiation among the Debtors and the Prepetition Lenders, and therefore the form of Plan Administration Agreement will be filed as part of the Plan Supplement. The Plan is supported by the Prepetition Lenders, the only voting class with an interest in the terms of the Plan Administration Agreement. Claims of General Unsecured Creditors are receiving interests in the Litigation Trust and will not be materially impacted by the terms of the Plan Administration Agreement.</p> <p>The Plan clearly identifies what documents will be included in the Plan Supplement (Plan, Art. I.120). The Plan and Proposed Order state clearly when the Plan Supplement will be filed (Plan, Art. I.120; Proposed Order ¶ 24). The Combined Hearing Notice informs parties in interest how to access the Plan Supplement and all other Plan documents and how to request them from the Claims and Noticing Agent (Combined Hearing Notice at p. 3).</p> <p>Additionally, the Debtors have revised the Plan, Proposed Order, and Combined Hearing Notice as follows:</p> <ul style="list-style-type: none"> • The Plan has been revised to provide that the Plan Supplement will be filed at least ten days (rather than seven days) prior to the Voting Deadline. • Paragraph 24 of the Proposed Order has also been revised to provide that (i) the deadline to file the Plan Supplement is July 18, 2025, which is 10 days prior to the Voting Deadline, and (ii) the Debtors shall file a notice of filing of the Plan Supplement, which shall include instructions for parties in interest to access the Plan Documents on the Debtors’ case website. • The form of Combined Hearing Notice (Exhibit 3 to the Proposed Order) has been revised to include specific disclosure and notice of when the Plan Supplement will be filed and the documents and disclosures that will be included in the Plan Supplement. <p>Based on the foregoing, the Debtors do not believe that any additional disclosure regarding the Plan Administration Agreement is necessary prior to commencing solicitation.</p>

Objection	Response/Information Needed
<p><u>Litigation Trust</u>. The Debtors fail to provide adequate information regarding the Litigation Trust Agreement, the Plan Supplement deadline is just seven days prior to the Voting Deadline, and creditors should have access to the Litigation Trust Agreement prior to approval of the Disclosure Statement. (Objection ¶¶ 21–24.)</p>	<p>Article V.C.1 of the Plan and Article VII.D.3.i of the Disclosure Statement provide a general overview of what the Litigation Trust Agreement will provide, including (a) the automatic and irrevocable transfer of the Litigation Trust Assets to the Litigation Trust, free and clear of any Claims, Liens, Interests, charges, or other encumbrances, (b) the payment of the expenses of the Litigation Trust from the Litigation Trust Funding Amount, including, without limitation, the cost of pursuing the Litigation Trust Claims; (c) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; (d) the investment of Cash by the Litigation Trustee within certain limitations, including those specified in the Plan; (e) the orderly liquidation of the Litigation Trust Assets; and (f) liquidation of any Litigation Trust Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Litigation Trust Claims, in the Litigation Trustee’s discretion subject to the terms and conditions of the Litigation Trust Agreement.</p> <p>The specific details of the Litigation Trust Agreement remain subject to ongoing discussion and negotiation among the Debtors, the Prepetition Lenders, and the Committee, and therefore the form of Litigation Trust Agreement will be filed as part of the Plan Supplement.</p> <p>Additionally, as noted above, the Plan, Voting and Solicitation Procedures, and Combined Hearing Notice have been revised to provide that the Plan Supplement will be filed at least 10 days prior to the Voting Deadline and to provide additional disclosure and direction to parties in interest to obtain copies of the Plan Supplement, including the Litigation Trust Agreement, when filed. The Debtors submit that 10 days is sufficient time for parties to review the Litigation Trust Agreement prior to voting on the Plan.</p> <p>Based on the foregoing, the Debtors do not believe that any additional disclosure regarding the Litigation Trust Agreement is necessary prior to commencing solicitation.</p>

Objection	Response/Information Needed
<p><u>Assigned Causes of Action.</u> The Debtors fail to provide adequate information regarding the schedule of Assigned Causes of Action. The Assigned Causes of Action describe the source of recovery for General Unsecured Creditors, and creditors should have access to the Schedule of Assigned Causes of Action prior to approval of the Disclosure Statement. (Objection ¶¶ 25–28.)</p>	<p>Assigned Causes of Action are one source, but not the sole source, of recovery for General Unsecured Creditors. The Litigation Trust Claims include (i) certain “Designated Causes of Action” (e.g., breach of fiduciary duty, gross mismanagement, willful misconduct, etc.) against Non-Release Debtor D&Os and other Persons that are not Released Parties, and (ii) the Assigned Causes of Action. The Debtors have amended the Plan to clarify that the Assigned Causes of Action “shall include, and are not limited to, certain Avoidance Actions and commercial tort claims of the Debtors or their Estates.” (Plan, Art. I.13.)</p> <p>The scope and additional description of the Assigned Causes of Action will be set forth in the Plan Supplement. As noted above, the Plan, Voting and Solicitation Procedures, and Combined Hearing Notice have been revised to provide that the Plan Supplement will be filed at least 10 days prior to the Voting Deadline and to provide additional disclosure and direction to parties in interest to obtain copies of the Plan Supplement, including the Schedule of Assigned Causes of Action, when filed. The Debtors submit that 10 days is sufficient time for parties to review the Schedule of Assigned Causes of Action prior to voting on the Plan.</p> <p>Based on the foregoing, the Debtors do not believe that any additional disclosure regarding the Assigned Causes of Action is necessary prior to commencing solicitation</p>
<p><u>Third-Party Releases.</u> The Disclosure Statement, in conjunction with the Plan, improperly imposes third-party releases on creditors without their affirmative consent. (Objection ¶¶ 29–51.)</p>	<p>The U.S. Trustee’s objection to the Third-Party Releases are a confirmation objection and should be overruled without prejudice to the U.S. Trustee’s right to raise these issues in the context of confirmation and the Debtors’ right to further respond at that time.</p> <p>The Debtors submit that the Third-Party Releases are narrowly tailored, consensual, and comply with applicable law of this jurisdiction. <i>See, e.g., In re LaVie Care Ctrs.</i>, Case No. 24-55507-PMB, 2024 Bankr. LEXIS 2900 (Bankr. N.D. Ga. Dec. 5, 2024) (approving third-party release as consensual where, among other reasons, the opt out mechanism was clear and conspicuous in the Plan and associated notices and ballots, and creditors retained the right to rebut the presumption that their failure to opt out should be considered consent).</p>

Objection	Response/Information Needed
<p><u>Ballot Disclosures Regarding Releases.</u> The ballots should be both convenient to navigate, decipherable by the creditor body, and should be amended to:</p> <ul style="list-style-type: none"> • (1) include plain language regarding the effects and ramifications of the Third-Party Releases in the Plan; and • (2) position any applicable denotation for the Third-Party Releases at the beginning of the ballot, along with the other portion of the ballot a creditor may complete. <p>(Objection ¶¶ 52–55.)</p>	<p>The Ballots plainly describe the effects and ramifications of the Third-Party Release. Specifically, each Ballot includes a disclosure in bold and all caps in the first two pages that the Plan contains a Third-Party Release that limits or releases the liability of certain non-Debtors and may prevent Releasing Parties from suing the Released Parties. The disclosure further states that the Third-Party Release may only be granted consensually, but consent may be shown by failure to act.</p> <p>Additionally, the Ballots have been revised so that items 1, 2, and 3 (claim amount, vote, and opt out) immediately follow the initial notice provisions and disclosures, and all balloting instructions are moved to the end of the ballot.</p> <p>The Debtors submit that the Ballots, as revised, are convenient to navigate and decipherable by creditors. Accordingly, the Debtors request that the Court approve the revised forms of Ballots attached to the Proposed Order as Exhibits 1-A and 1-B.</p>

6. The Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code. Among other things, the Disclosure Statement contains descriptions and summaries of (a) the corporate history, structure, and business overview of the Debtors (Disclosure Statement, Art. IV); (b) events leading up to the Chapter 11 Cases and significant events that have occurred therein, including the sales of the Debtors' assets (Disclosure Statement, Arts. V and VI); (c) estimates of the projected amount of Allowed Claims in each Class and the projected recoveries to be received by Holders of Allowed Claims (Disclosure Statement, Art. III.C); (d) treatment of administrative, priority, and non-priority claims (Disclosure Statement, Art. VII.A and B); (e) the terms of the Plan, including a chart describing the treatment of each Class (Disclosure Statement, Arts. III.C and VII); (f) the injunctions, releases, and exculpations provided by the Plan (Disclosure Statement, Art. IX.D); (g) the feasibility of the Plan and a liquidation analysis under a hypothetical chapter 7 case (Disclosure Statement, Ex. D); and (h) risk factors that may affect the Plan (Disclosure Statement, Art. VIII); and (i) appropriate disclaimers

regarding the Court's approval of information only as contained in the Disclosure Statement and Plan.

7. Accordingly, the Debtors submit that the Disclosure Statement satisfies the requirements of section 1125 of the Bankruptcy Code and request that the Court (i) approve the Disclosure Statement on an interim basis, (ii) approve the proposed Solicitation and Voting Procedures, and (iii) approve the form of Ballots, notices, and solicitation materials.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court overrule the Objection and enter the Proposed Order granting the relief requested in the Solicitation Procedures Motion and such other and further relief as is just and proper.

Dated: June 18, 2025

Respectfully submitted,

GREENBERG TRAURIG, LLP

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