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

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| In re: | ) | Chapter 11 |
| TEHUM CARE SERVICES, INC.,[1] | ) | Case No. 23-90086 (CML) |
| Debtor. | ) | |

**KOHCHISE JACKSON'S REPLY IN SUPPORT OF HIS EMERGENCY MOTION TO ENFORCE THE INJUNCTION AGAINST INTERFERENCE WITH OPT-OUT RIGHTS**

1. This is not a dispute about whether Mr. Jackson can bring a claim against CHS TX, Inc. under the Texas Uniform Fraudulent Transfer Act, the Michigan Uniform Voidable Transactions Act, or under any alter-ego or veil-piercing theory. This is a dispute about whether Mr. Jackson can argue to a jury, in a pending successor-liability claim against CHS TX that is on the eve of trial, that the divisional merger transaction was in any way morally wrong, unfair, or carried out with an improper motive.

2. Such evidence or argument may or may not be admissible at trial. CHS TX, Inc. is certainly free to argue that it is more prejudicial than probative under Fed. R. Evid. 403, or that it does not meet the relevance test of Fed. R. Evid. 401. But those arguments should be directed to the district court in Michigan. And they should not include any reference to the "Confirmation Order, the Plan, or the Estate Release" in this bankruptcy case. Plan, Art. IX.K.

3. CHS TX argues that Mr. Jackson lacks standing to assert during trial that Corizon's corporate restructuring was in any way improper, because making such an assertion would somehow transform his successor-liability claim into an alter-ego, fraudulent transfer, or veil-piercing claim. (Docket 2337, pg. 1). Per CHS TX, this is so because the only "claims or theories of recovery or remedies" that were

1 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.



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distributed from the Debtor to Mr. Jackson under Article III.F.7(a) of the Plan were *Texas law* successor-liability claims, (Docket 2337, pp. 7-8), not the *Michigan law* successor-liability claims that Mr. Jackson had actually asserted against CHS TX and YesCare prior to the petition date. (*See Jackson*, Docket 77, pg. 19).

4. This is an absurd reading of the plan. There is essentially no such thing as a Texas-law successor-liability claim. *See McKee v. American Transfer & Storage*, 946 F. Supp. 485, 487 (N.D. Tex. 1996) ("Texas law does not generally recognize successor liability for subsequent purchases of corporate assets. The Texas Business & Corporations Act eliminates the doctrine of implied successor liability.") (internal citation omitted). As CHS TX points out in its briefing, Texas only recognizes successor liability where the successor has <u>expressly agreed</u> to assume the predecessor's liabilities, (Docket 2337, pg. 8), which CHS TX and YesCare have not done.

5. Because a "Texas-law successor-liability claim" amounts to no claim at all, CHS TX' interpretation of the Plan would render the Opt-Out mechanism, the key feature of the deal struck in this case, nothing more than a trap for the unwary. In order for the Opt-Out creditors in Classes 5 and 7 to receive anything of value in exchange for giving up their rights to distributions from the GUC Trust or PI/WD Trust, they must at least retain the right to argue that their successor-liability claims arise under the law of a jurisdiction other than Texas.

6. Bankruptcy plans "should be construed to effect the intent of the parties." *Spicer v. Laguna Madre Oil & Gas, LLC (In re Tex. Wyo. Drilling, Inc.)*, 422 B.R. 612, 629 (Bankr. N.D. Tex. 2010). In ascertaining the parties' intent, it bears mentioning that when the Plan in this case was negotiated, proposed, and confirmed, Michigan law successor-liability claims like this one loomed large. Much of the testimony and argument during the joint trial of the UCC and Debtor's 9019 Motion to Approve Settlement and the TCC's Motion for Structured Dismissal revolved around *Kelly v. Corizon Health Inc.*, 2022 U.S. Dist. LEXIS 198725 (E.D. Mich. Nov. 1, 2022), an opinion holding that CHS TX, Inc.

was a successor to the Debtor under Michigan law. *See, e.g.*, Docket 1450, Trial Tr., pp. 171-209. The *Kelly* opinion and an opinion entered in Mr. Jackson's case, *Jackson v. Corizon Health Inc.*, 2022 U.S. Dist. LEXIS 198717 (E.D. Mich. Nov. 1, 2022), are almost verbatim identical. They were issued by the same federal magistrate judge on the same day. The Disclosure Statement's discussion of successor liability even quotes from the *Kelly* opinion. *See* Docket 1815-2, pg. 28, D.S. pg. 13 of 44.

7. William Kelly elected to opt-out of the consensual claimant release on February 6, 2025. (Docket 2014, pg. 57). He died about two months later, on April 11, 2025. (*Kelly* Doc. 61). Because the conduct at issue in Mr. Kelly's lawsuit resulted in his death, Mr. Kelly's family would have received between $377,988 and $779,073 from the PI/WD Trust had he not opted-out. (Docket 1815-2, pg. 82). If CHS TX is correct, and the Plan really only grants Opt-Out claimants like Mr. Kelly the right to assert *Texas law* successor-liability claims, then Mr. Kelly effectively paid the Estate around half a million dollars on his deathbed for nothing. No one with familiarity with this case could believe that the parties intended the opt-out provisions in the Plan to serve only as an illusory trap designed to trick people like Mr. Kelly out of their valuable claims.

8. CHS TX' reading of the Plan as only permitting Texas law successor-liability claims is also inconsistent with its language. CHS TX relies on selective quotation of the Plan's "Governing Law" provision and its definition of "Estate Causes of Action." The Plan's "Governing Law" paragraph provides that, "[f]or the avoidance of doubt, the substantive law governing any Claim shall be determined by applicable choice of law principles and without regard to the Chapter 11 Case."[2] Art. I.D. The Plan defines "Estate Causes of Action," in full, as follows:

> "Estate Causes of Action" means Causes of Action owned, held, or capable of being asserted by, under, through or on behalf of the Debtor or its Estate, whether known or unknown, in law, at equity or otherwise, **whenever and wherever arising under the laws of any jurisdiction**,

2 The Plan also contains a "Rules of Interpretation" paragraph, which provides, "the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law . . ." Plan, Art. I.B.

> including actions that arise out of or are based on breach of contract, fraudulent conveyances and transfers, breach of fiduciary duty, breach of duty of loyalty or obedience, legal malpractice, recovery of attorneys' fees, turnover of property and avoidance or recovery actions of the Debtor or its Estate, and all other actions that constitute property of the Estate under section 541 of the Bankruptcy Code that are or may be pursued by a representative of the Estate, including pursuant to section 323 of the Bankruptcy Code, and actions, including Avoidance Actions under chapter 5 of the Bankruptcy Code, seeking relief in the form of damages (actual and punitive), imposition of a constructive trust, turnover of property, restitution, and declaratory relief with respect thereto or otherwise. Without limiting the foregoing, Estate Causes of Action shall include: (a) Causes of Action that prior to the Petition Date could have been asserted by the Debtor on its own behalf under applicable state law, including Causes of Action seeking to impose liability based on (i) the doctrine of successor liability, or (ii) the doctrines of alter ego or veil piercing; (b) Causes of Action that seek to impose liability for a Claim against the Debtor on any non-Debtor based on a theory of liability that is not specific to one or more particular creditors and is common to all creditors of the Debtor and can be asserted by the Debtor under applicable state law; and (c) all other Causes of Action that are property of the Estate under the Bankruptcy Code, including any other form of derivative or vicarious liability for liabilities of the Debtor.

Art. 1, ¶ 77 (emphasis added).

9. The Plan clearly contemplates that "Estate Causes of Action" include claims "arising under the laws of any jurisdiction," not just Texas-law claims. And there is nothing in Article III.F.7(a) to suggest that the Estate Causes of Action premised on the doctrine of successor liability that were distributed to Opt-Out PI/WD claimants on the Effective Date were limited to only Texas-law successor-liability claims.

10. CHS TX devotes much of its briefing to discussing what constitutes an estate cause of action under § 541. But to resolve this Motion, there is no need for the Court to decide what claims are ordinarily property of a debtor's estate. The parties disagreed on that issue in this case, with both the TCC and the UCC taking the position that successor-liability claims are not estate property. *See* Docket 360, pp. 16-17, ¶ 54 & n.6 (UCC); Docket 1260, pg. 17, n.12 (TCC). In order to avoid this unresolved legal question and provide certainty to parties, the Plan provided that each holder of an Opt-Out PI/WD Claim:

> "shall ***retain or receive***, in full and final satisfaction of such Claim, the claims or theories of recovery or remedies based on the doctrine of successor liability that such Holder held and could have asserted against YesCare Corp., CHS TX, Inc., or any other alleged successor entity immediately prior to the Petition Date as part of or in connection with its PI/WD Claim and that became, as of the Petition Date, part of the claims or theories of recovery or remedies that could have been asserted by the Debtor as an Estate Cause of Action."

Plan, Art. III.F.7(a) (emphasis added). In other words, for Opt-Out claimants, it does not matter whether a given successor-liability claim, theory of recovery, or remedy was estate property prior to the Effective Date. What matters is whether the Opt-Out Claimant "held and could have asserted" the successor-liability claim, theory of recovery, or remedy against CHS TX or YesCare "as part of or in connection with" his tort claim before the petition date. If he could have, he owns that successor-liability claim as of the Effective Date, regardless of whether it was ever an Estate Cause of Action.

11. Per Art. III.F.7(a), any "claims, theories of recovery, or remedies based on the doctrine of successor liability" under Michigan law are now clearly Mr. Jackson's property. Not only *could* Mr. Jackson have asserted that CHS TX, Inc. was liable as a successor to the Debtor under the various bases for imposition of successor liability under Michigan law prior to the Petition Date, he *actually did* assert those arguments against CHS TX before the bankruptcy. (*Jackson*, Docket 77, pg. 19).

12. CHS TX, Inc. also argues that what Michigan law considers to be "the doctrine of successor liability" is not *really* what successor-liability means for purposes of the Plan. According to CHS TX, a claim can only be a successor-liability claim if the plaintiff does not bad-mouth the divisional merger, or say the word "fraud" in front of the jury. (Docket 2337, pp. 7-8). While the Plan contains no express definition of "the doctrine of successor liability," it does advise creditors:

> "YOU ARE URGED TO READ THE DISCLOSURE STATEMENT AND THIS PLAN WITH CARE IN EVALUATING HOW THE PLAN WILL AFFECT YOUR CLAIM(S) BEFORE . . . MAKING ANY ELECTION ON YOUR BALLOT TO EXERCISE YOUR RIGHT TO PURSUE YOUR CLAIMS AGAINST ANY INSURER OR RELEASED PARTY."

(Docket 2014, pg. 63). Creditors who followed this advice when considering whether to opt-out saw the following description of the "Doctrine of Successor Liability" in the Disclosure Statement:

> "successor liability is an equitable doctrine or a theory of liability that transfers liability for a claim from a predecessor to a successor when certain factors are present. A successor may become liable for the debts of a predecessor when the transaction amounts to a consolidation or de facto merger, **the transaction is fraudulent or done with the intent to escape liability**, or the purchaser is a mere continuation of the seller. The TCC asserts that YesCare is a mere continuation of Corizon Health, Inc. and that its business operations are identical. **The TCC asserts that the divisional merger was fraudulent and was done with the intent to escape liability**, and that there was a continuity of shareholders, normal business operations continued without interruption, and the Debtor commenced a bankruptcy proceeding shortly after its creation."

Disclosure Statement, Docket 1815-2, pg. 28 (D.S. pg. 13 of 44) (emphasis added). The definition of "successor liability" that was provided to creditors considering an opt-out election thus expressly contemplates that opt-out claimants could, and should, seek to impose successor liability on YesCare *because* the divisional merger was fraudulent and was done with the intent to escape liability.

13. CHS TX asserts that reliance to the Michigan-law definition of "successor liability" to determine what is, and is not, a successor liability claim, "obviously puts nomenclature over substance." (Docket 2337, pg. 7). But Michigan's definition of successor liability is not much different from the way the doctrine was defined in the Disclosure Statement. "[I]n a bankruptcy case, a plan and disclosure statement may be considered together to determine the intent of the parties." *Spicer v. Laguna Madre Oil & Gas, LLC (in re Tex. Wyo. Drilling, Inc.)*, 422 B.R. 612, 629 (Bankr. N.D. Tex. 2010). "Indeed, the peculiar character of a disclosure statement--a document the court approval of which is a necessary prerequisite to dissemination of the plan--suggests it should have extra relevance to construction of the plan itself." *Id.* at 629 n.19; *see also, In re WorldCom, Inc.*, 352 B.R. 369, 377 (Bankr. S.D.N.Y. 2006); *Captain Blythers, Inc. v. Thompson (in re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (9th Cir. B.A.P. 2004) ("the Amended Disclosure Statement is helpful, as it is the single most relevant document, after the plan itself, for ascertaining the intent of the parties.").

14. In addition to tracking the way that successor liability is defined in the Disclosure Statement, Michigan's definition of successor liability is similar to the definitions of successor liability employed

in most other American jurisdictions. "Both Delaware and New York," for example, recognize four bases for imposition of successor liability: "(1) where the buyer expressly assumed the debt at issue; (2) **where the transaction was undertaken to defraud creditors**; (3) where the transaction constitutes a *de facto* merger; or (4) where the successor is a mere continuation of the predecessor." *Tommy Lee Handbags Mfg. v. 1948 Corp.*, 971 F. Supp. 2d 368, 378 (S.D.N.Y. 2013) (emphasis added). The bases under which federal common law recognizes successor-liability are very similar: "(1) the successor expressly or impliedly agrees to assume the liabilities of the predecessor; (2) the transaction may be considered a de facto merger; (3) the successor may be considered a "mere continuation" of the predecessor; or (4) **the transaction is fraudulent.**" *United States ex. rel. Bunk v. Gov't Logistics N.V.*, 842 F.3d 261, 273 (4th Cir. 2016) (emphasis added).

15. Successor liability applies in similar circumstances under Missouri law, *see Med. Shoppe Int'l, Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 803 (8th Cir. 2003) (successor liability available "where the transaction is entered into fraudulently for the purpose of escaping liability for the debts and liabilities of the transferor"), New Mexico law, *see King v. Estate Gilbreath*, 215 F. Supp. 3d 1180, 1184 (D.N.M. 2016) (successor liability available "where the transfer is for the purpose of fraudulently avoiding liability"), Maryland law, *see Superior Bank v. Tandem Nat'l Mortg.*, 197 F. Supp. 2d 298, 313 (D. Md. 2000) (successor liability available if "the transaction was fraudulent, not made in good faith, or made without sufficient consideration"), Florida law, *see Sourcing Mgmt. v. Sinclair, Inc.*, 118 F. Supp. 3d 899, 918 (N.D. TX. 2015) ("the transaction is a fraudulent effort to avoid liabilities of the predecessor"), Alabama law, *see Carter v. City of Montgomery*, 473 F. Supp. 3d 1273, 1296 (M.D. Al. 2020) ("a fraudulent attempt to escape liability"), Kentucky law, *see Bank of Am., N.A. v. Corporex Cos., LLC*, 99 F. Supp. 3d 708, 716 ("where the transaction is entered into fraudulently to escape liability"), Pennsylvania law, *see Corp. Lodging Consultants, Inc. v. Deangelo Contr. Servs., LLC*, 2024 U.S. Dist. LEXIS 123623 at *7-*8 ("4. the transaction was fraudulently entered into to escape liability;

and 5. the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation"), Virginia law, *see Taylor v. Atlas Safety Equipment Co.*, 808 F. Supp. 1246, 1250 ("the transaction is fraudulent in fact"), Wyoming law, *see TEP Rocky Mountain LLC v. Record TJ Ranch Ltd. P'ship*, 2022 WY 105, ¶ 30 ("the transaction is entered into fraudulently in order to escape liability for such debts"), New Jersey law, *see Coleman v. Fisher-Price, Inc.*, 954 F. Supp. 835, 838 (D. N.J. 1996) ("the transaction is entered into fraudulently in order to escape responsibility for such debts and liabilities"), and Kansas law, *see Kansas Comm'n on Civil Rights v. Service Envelope Co.*, 233 Kan. 20, 25 (1983) ("where the transaction is entered into fraudulently in order to escape liability for such debts.").

16. At the time of the divisional merger, Corizon operated in correctional facilities in eleven states: Michigan, New York, Missouri, Maryland, Florida, Kentucky, Pennsylvania, Virginia, Wyoming, New Jersey, and Kansas. (Docket 59-10, pg. 35). Attacking the propriety of the divisional merger, including by calling it "fraudulent," is a means to prove successor liability under the laws of every state in which Corizon was providing medical services on the merger date.

17. CHS TX' argument that under the Plan, "successor-liability" cannot involve attacking the propriety of the divisional merger hinges on a supposedly "critical" distinction between "the doctrine of successor liability" and "the doctrines of alter-ego or veil-piercing" contained in the Plan's definition of "Estate Causes of Action." (Docket 2337, pg. 6). The Plan itself does not contain definitions of "alter-ego" or "veil-piercing," but like the meaning of successor liability, the meaning of these terms was explained in the Disclosure Statement:

> "Alter ego and veil piercing theories do not create new causes of action. Rather, they impose liability on the company's owner when certain factors are present. These factors include: the parent and subsidiary have common stock ownership, common directors or officers, the parent and subsidiary have common business departments, the parent and subsidiary file consolidated financial statements, the parent finances the subsidiary, the parent caused the incorporation of the subsidiary, the subsidiary operated with grossly inadequate capital, the parent pays salaries and other expenses of subsidiary, the subsidiary receives no business except that given by the parent,

> the parent uses the subsidiary's property as its own, the daily operations of the two corporations are not kept separate, and the subsidiary does not observe corporate formalities. Here, the TCC asserts there is common beneficial and actual ownership, common directors and officers, the parent finances the subsidiary, the Debtor was grossly undercapitalized at its inception, and the Debtor has no business functions. The alter ego doctrine may impose all the Debtor's liabilities on the company's owner."

Disclosure Statement, Docket 1815-2, pg. 28 (D.S. pg. 13 of 44). CHS TX' argument that "successor liability" cannot involve attacking the propriety of the divisional merger because such an argument would effectively constitute an "alter ego or veil piercing" claim is backwards. The Disclosure Statement's definition of "alter ego or veil piercing" does not contain the word "fraud," any discussion of anyone's intent with respect to the divisional merger, or even any discussion of the divisional merger at all. Alter ego and veil-piercing theories are agnostic as to how the allocation of assets between the alter-ego entity and parent company came to be. These theories do not even require any transfer of assets to have ever occurred. So while an equitable remedy premised on attacking the propriety of the divisional merger is indeed a successor liability claim, it is *not* an "alter ego or veil piercing" claim, as those terms are defined in the Disclosure Statement.

18. By surrendering their rights to receive substantial distributions from the Trusts, the handful of Tehum opt-out creditors *paid the Estate* to purchase estate causes of action. Specifically, they bought all "the claims or theories of recovery or remedies based on the doctrine of successor liability" that they could have asserted before the petition date.[3] Plan, Art. III.F.7. And they paid a lot. Opt-out creditors with wrongful death injuries, like Antoinette Windhurst and William Kelly, paid hundreds of thousands of dollars for their successor liability claims. Mr. Jackson, whose injury likely would have placed him in Tier 3 of the claims matrix, paid the estate between $129,845 and $62,998. (Docket 1815-2, pg. 82).

19. So what did the Estate sell to these creditors? The Estate advertised its offer through the Disclosure Statement, the Plan referred creditors considering the offer to the Disclosure Statement, and

3 If, or to the extent that, these successor liability remedies were not actually property of the Estate, these payments constituted settlements to resolve the Estate's asserted claims of ownership.

the Disclosure Statement provides the best evidence of what was for sale. The Disclosure Statement indicates that the Estate's causes of action included two potentially viable bases for the imposition of successor liability: "YesCare is a mere continuation of Corizon Health, Inc. and that its business operations are identical", and, "the Divisional Merger was fraudulent and done with the intent to escape liability[.]" (Docket 1815-2, pg. 28, D.S. pg. 13 of 44). Both of these theories were "in the shopping cart" for those creditors who chose to make the purchase. Both of them are viable under the successor-liability laws of every jurisdiction where Corizon provided medical services. CHS TX should not be able to prevent opt-out creditors from asserting either theory. In fact, CHS TX was enjoined from even attempting to do so in the Confirmation Order. [Docket 2014, pg. 43, ¶ 98].

Respectfully submitted this 6th day of July, 2025.

*/s/ Ian T. Cross*
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