

**FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.,¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**COVER LETTER AND RECOMMENDATION
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

You are receiving this letter because You are, or may be, a holder of a General Unsecured Claim which is not a PI/WD Claim, an Administrative Claim, a Secured Claim, an Other Secured Claim, a Priority Tax Claim, or an Other Priority Claim. As such, You are entitled to vote to accept or reject the *Joint Chapter 11 Plan of the Tort Claimants' Committee, Official Committee of Unsecured Creditors, and Debtor* (as it may be amended, modified, or supplemented from time to time, the "**Plan**").² You should read this letter and the enclosed materials carefully and discuss them with Your legal, financial, and tax advisors. If You do not have an attorney, You may wish to consult with one.

The Official Committee of Unsecured Creditors or the "**UCC**" was appointed in the above-captioned chapter 11 case to represent the interests of all unsecured creditors in this case.

The UCC has been fighting on behalf of unsecured creditors since its appointment. The UCC's objections and arguments prevented insiders of the Debtor from receiving releases and other benefits in return for lending money to the Debtor during the pendency of this case. Most notably, the UCC was successful in convincing the Court that insiders of the Debtor should not receive an interest in the Debtor's potential claims against insiders, including potential claims against the very company that was seeking to make a loan to the Debtor.

Following that victory, the UCC gathered hundreds of thousands of documents in order to evaluate the Debtor's claims against its principals and affiliates. The investigation was a lengthy and arduous one, as the potential targets of the investigation fought the UCC's efforts throughout. However, the UCC was able to identify estate claims against these parties it believes have significant value for the Debtor.

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Plan.

The UCC believes the Plan represents the maximum value the estate can receive for those claims and the best opportunity to get money into the hands of unsecured creditors. We have reached this conclusion for multiple reasons.

First, the Plan is structured to address concerns of, and garner the full support of, the UCC, the Tort Claimant's Committee or the "**TCC**," and the Debtor. This means our committee, which has a fiduciary obligation to act in the best interest of all creditors, the TCC, which has a similar obligation specific to tort creditors, and the Debtor all are behind the Plan and will work together to support its confirmation. This alignment, which was reached after lengthy mediation, is significant because it not only shows the Plan is beneficial to creditors, it helps make confirmation more likely and less expensive to the estate.

Second, the UCC believes the terms of the settlement incorporated into the Plan represent a fair and reasonable value for the estate's causes of action. Based on the UCC's calculations, the creditors in this case will receive as much as \$80 million in settlement funds, retained assets, and forgiven loan obligations, in addition to the abandonment of millions in claims. The UCC believes these amounts are a significant value for the estate's claims, especially considering the complex legal theories, cost of litigation, and other risks of proceeding.

Third, the Plan structure created by the UCC and the TCC helps to avoid delays associated with appeal or other legal complications that could make it impossible to begin plan payments in 2025. Implementing the Plan in a timely manner was a priority for the committees, and the Plan structure, which does not include non-consensual third-party releases or otherwise implicate any concerns arising out of the Supreme Court's *Purdue* decision, will place the parties in the best position for those distributions to begin on the schedule the committees have fought to protect.

Under the Plan, Holders of General Unsecured Claims or "**GUC Claims**" will be afforded three options for liquidating their claims against the Debtor. If any one of these three options is acceptable to You, then You should vote to **ACCEPT** the Plan on Your Ballot.

The Settlement Trust Payment Option

First, Holders of GUC Claims or "**GUC Claimants**" may elect to participate in the plan settlement negotiated by the UCC. The Plan provides for the creation of a settlement trust for GUC Claimants (the "**GUC Trust**"). The GUC Trust will assume the Debtor's obligation to pay the GUC Claims asserted by GUC Claimants who consent to the Consensual Claimant Release under the Plan. Claimants who do **not** consent to this release will not be eligible to receive a distribution from the GUC Trust.

The GUC Trust will be funded with cash payments totaling \$25 million, plus interest, a 50/50 allocation of the Debtor's Employee Retention Credits, and a 50/50 allocation of the Debtor's remaining assets (collectively, the "**GUC Trust Assets**"). The cash payments will be contributed to the GUC Trust over thirty (30) months following the Effective Date.

The GUC Trust Assets will be allocated among the Holders of allowed GUC Claims using trust distribution procedures (the "**GUC Trust Distribution Procedures**" or "**GUC TDPs**"). The GUC TDPs outline how GUC Claims will be allowed and paid.

The GUC Trust Assets will be allocated on a *pro rata* basis, net of costs to administer the trust, to the Holders of allowed claims. For example, if the total amount of all allowed claims is \$90 million, and the net GUC Trust Assets available for distribution are worth \$30 million, then each claimant would receive distributions equal to 33.3% of the value of his or her claim (\$30 million / \$90 million = 33.3%). The trust assets are the numerator and the total amount of allowed claims is the denominator. In this hypothetical scenario (*i.e.*, assuming a payment percentage of 33.3%), the Holder of an allowed GUC Claim valued at \$1.2 million would receive payments totaling \$400,000.

Only claimants who have filed individual proofs of claim in the Chapter 11 Case will be eligible to participate in the GUC Trust. No additional trust funding is contemplated—*i.e.*, the GUC Trust is a limited fund. If the universe of eligible claims unexpectedly expands after the Disclosure Statement is approved, then claimants who timely filed proofs of claim would see their recoveries diluted. The GUC Trust guardrails and eligibility criteria are intended to avoid such an outcome and ensure that expectations are consistent with actual outcomes.

GUC Claimants who elect to participate in the GUC Trust can pursue recoveries from other co-liable parties, including governmental claimants, who are not released in the Consensual Claimant Release. Participating in the GUC Trust is akin to entering into a good faith settlement with one of several defendants in the tort system. The plaintiff can continue to pursue co-liable defendants that do not settle.

However, GUC Claimants **cannot** “Opt Out” of the Consensual Claimant Release under the Plan and participate in the GUC Trust. Participating in the GUC Trust is akin to entering into a voluntary settlement with YesCare and its insiders and affiliates. YesCare will **not** fund the settlement payments unless it and non-debtor insiders and affiliates receive a release similar in scope to the release that a claimant would be required to sign as a condition to entering into a voluntary settlement outside of bankruptcy. The Consensual Claimant Release mirrors this type of release.

The UCC anticipates that most GUC Claimants will elect to participate in the GUC Trust and will not “Opt Out.” This will afford such claimants with the ability to recover meaningful compensation from the Debtor in the near term and, if available, leave open the possibility of recovering additional amounts from other potentially liable parties. GUC Claimants that are considering this option should carefully review the Disclosure Statement and the TDPs and consult with their legal counsel before making any decisions.

The True “Opt Out” to the Civil Justice System

Second, Holders of GUC Claims may elect to “Opt Out” entirely of the settlement and pursue claims against the Released Parties in the tort system. These claims are referred to as “**Opt-Out GUC Claims**” or *true* “Opt Outs.” Holders of Opt Out GUC Claims will **not** receive any portion of the GUC Trust Assets.

Holders of Opt Out GUC Claims will have the ability to assert claims against YesCare, CHS TX, and other parties based on the doctrine of successor liability. This is set forth in Article III.D and Article IX.K of Plan and the Disclosure Statement so that there is no ambiguity on this

issue. Holders of Opt Out GUC Claims, however, will **not** have the ability to assert avoidance actions, including fraudulent transfer claims, against the Released Parties because those causes of action will be settled under the Estate Party Settlement.

Holders of Opt-Out GUC Claims will **not** have their recoveries determined by the terms of the Plan and GUC Trust Agreement. Instead, they will have to litigate their claims on the merits and prevail in the civil justice system and then seek to collect. Claimants who make this election will likely face years of litigation and appeals and will **not** have the ability to return to the GUC Trust under any circumstances. The intent of this option is to treat the settlement incorporated into the Plan similar to any settlement offer made outside of bankruptcy, and allow claimants who so desire to reject the Plan Proponents' proposed settlement and pursue their claims in the tort system.

Because the Plan contains a true "Opt Out," the Consensual Claimant Release is, from the UCC's perspective, consensual. GUC Claimants that are considering this option should carefully review the Disclosure Statement and the Plan and consult with their legal counsel before making any decisions.

Whether the Plan will be confirmed and whether the settlement negotiated by the TCC and the UCC will go into effect will depend on the level of participation in the settlement itself. YesCare could not reasonably be expected to fund a settlement trust if there are no beneficiaries, and if YesCare was not willing to fund the settlement, there would be no reason for any claimants to provide the Consensual Claimant Release as the GUC Trust would lack sufficient funding to pay claims.

To be fair to YesCare, if the level of participation is too low, YesCare may elect to terminate the settlement prior to the hearing on the confirmation of the Plan. This walk away right is set forth in Article IV.B.5 of the Plan and is triggered if more than 5% in the number of current Holders of PI/WD Claims elect to "Opt Out" of the Consensual Claimant Release.³ This 5% requirement does not apply to Opt-Out GUC Claims.

The election to "Opt Out" must be made *before* the voting deadline established by the Court. Thus, YesCare will know the scope of the Consensual Claimant Release before the Confirmation Hearing and can make an informed decision based on the voting data. Claimants who do not "Opt Out" will be deemed to provide the Consensual Claimant Release. If YesCare elects to terminate the settlement, then the Chapter 11 Case may be dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

Parties who want to "Opt Out" may still decide to vote in favor of and **ACCEPT** the Plan. Opting Out and voting in favor of the Plan are *two* separate things. Parties who elect to "Opt Out," which is their right, may support the confirmation of the Plan because it may present the fastest path to pursue claims in the tort system.

³ The Estate Party Settlement does **not** terminate automatically if more than this 5% "Opt Out." YesCare could waive and elect to go forward with the settlement. YesCare, like the creditors here, will get to make an informed decision.

If the Plan is confirmed, “Opt Outs” will **not** face litigation over whether their claims against YesCare, to the extent asserted under the doctrine of successor liability, are estate causes of action that can be settled by the Debtor’s estate. If the Plan is confirmed, “Opt Outs” will be free to pursue claims under the doctrine of successor liability. Likewise, parties who want the GUC Trust to be funded and go into effect may also want to vote in favor of and **ACCEPT** the Plan because if the Plan is not confirmed, then there will be no GUC Trust.

The UCC understands that this case has been a difficult and lengthy process for all creditors. The UCC and its professionals take their fiduciary obligations seriously, and have worked to achieve an outcome that provides a fair and reasonable settlement and a structure that best protects the interests of all claimants in this case. The UCC believes that the Plan presents the best possible outcome to this Chapter 11 Case and urges all claimants to vote to **ACCEPT** it.

Sincerely,

/s/ David Barton

The Official Committee of Unsecured Creditors