

**IN THE UNITED STATES BANKRUPTCY COURT
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 TORT CLAIMANTS**

You are receiving this letter because You are, or may be, a holder of a Personal Injury or Wrongful Death Claim or a PI/WD 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 Tort Claimants or the "**TCC**" was appointed in the above-captioned chapter 11 case to represent the interests of tort claimants. As a threshold matter, the TCC acknowledges that no form of monetary compensation can adequately compensate someone for the loss of a father, a mother, a son, or a daughter. Many of the tort claimants in this case suffered serious and devastating injuries while incarcerated.

As You may know, after the TCC was appointed, the TCC fought for the dismissal of this Chapter 11 Case. *See* Docket Nos. 1260 & 1404. Many *pro se* claimants joined the TCC's motion, 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* Docket No. 1393). The TCC's advocacy was recognized by United States Senator Elizabeth Warren. *See* Docket No. 1386-15. The TCC also opposed the Rule 9019 settlement proposed by the Debtor and the UCC. *See* Docket No. 1386.

The Bankruptcy Court, after hearing testimony from various parties, denied the motion to approve the Rule 9019 settlement (*see* Docket No. 1505), and the Bankruptcy Court also denied the TCC's motion to dismiss this case (*see* Docket No. 1506). After the Bankruptcy Court ruled,

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 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.

Given the Bankruptcy Court's and the District Court's rulings, the TCC reached the conclusion that dismissal does not appear to be an option. The TCC, therefore, had to find a path forward in this case that does not involve dismissal. The TCC agreed to participate in a mediation with the Debtor and the UCC, but the TCC had several requirements for any settlement.

First, the TCC would not and does not support a chapter 11 plan or settlement conditioned on the approval of non-consensual third-party releases or their equivalent. Such releases are unlawful. Thus, any settlement conditioned upon the approval of such releases would be illusory and would only accomplish delay. For the TCC to support any plan, it would have to avoid the delay that would result from years of appeals so that plan payments can begin in 2025. The TCC places a premium on time and, therefore, prefers a plan structure that is designed to deliver compensation claimants in the near term. The proposed Plan that You are being asked to consider does not include nonconsensual third-party releases or their equivalent and is intended to expedite payments to Holders of allowed claims.

Second, the TCC would not and does not support a chapter 11 plan or settlement predicated on a "bankruptcy discount." The Debtor in this case was created through a divisional merger and has no operating assets. But Corizon Health Services, Inc., the Debtor's predecessor in interest, did have operating assets and meaningful operations prior to the divisional merger. While Corizon Health Services, Inc. was not a Fortune 50 company—*i.e.*, a company that by all accounts can easily pay all its debts in full as they arise in the ordinary course of business—the TCC was unwilling to give any credit to the use of the so-called "Texas Two-Step." The settlement proposed here must be considered "fair and reasonable" on its own terms and based on the willingness of claimants to support it and not because the settlement is taking place in a bankruptcy case.

The plan architecture created by the TCC facilitates a consensual resolution of this case consistent with the foregoing objectives. Under the Plan, Holders of personal injury or wrongful death claims (referred to herein as "**PI/WD 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 PI/WD Claims or "**PI/WD Claimants**" may elect to participate in the plan settlement negotiated by the TCC. The Plan provides for the creation of a settlement trust for PI/WD Claimants (the "**PI/WD Trust**"). The PI/WD Trust will assume the Debtor's obligation to pay the PI/WD Claims asserted by PI/WD 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 PI/WD Trust on account of their PI/WD Claims.

The PI/WD 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 "**PI/WD Trust Assets**"). The TCC calculates that this represents roughly a **300%** increase in funding to pay PI/WD Claims relative to prior iterations of

the chapter 11 plan and settlement proposed in this case that the TCC did not support. The cash payments will be contributed to the PI/WD Trust over thirty (30) months following the Effective Date.

The PI/WD Trust Assets will be allocated among the Holders of allowed PI/WD Claims using trust distribution procedures (the “**PI/WD Trust Distribution Procedures**” or “**TDPs**”). The TDPs, which are set forth in the Disclosure Statement and are attached to the Plan, include a claims matrix and scaling factors that will be used to assign claim values to each eligible PI/WD Claim. For example, a PI/WD Claim based on wrongful death will be assigned a dollar value between \$1.2 million and \$1.597 million.

The PI/WD Trust Assets will be allocated on a *pro rata* basis to the Holders of allowed claims. For example, if the total amount of all allowed claims is \$90 million, and the PI/WD 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 ($\$30 \text{ million} / \$90 \text{ million} = 33.3\%$). The trust assets are the numerator and the total amount of allowed claims is the denominator. In this scenario (*i.e.*, assuming a payment percentage of 33.3%), the Holder of an allowed PI/WD Claim for wrongful death valued at \$1.2 million would receive payments totaling \$400,000.

Only claimants who have timely filed individual proofs of claim in the Chapter 11 Case will be eligible to participate in the PI/WD Trust. No additional trust funding is contemplated—*i.e.*, the PI/WD 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 PI/WD Trust guardrails and eligibility criteria are intended to avoid such an outcome and ensure that expectations are consistent with actual outcomes.

The Disclosure Statement includes a range of possible payment percentages so that claimants will understand what their likely recoveries will be from the PI/WD Trust. Until all claims are allowed, and all trust assets are liquidated, the TCC cannot offer an amount certain for any individual claim. However, since at least \$25 million of the PI/WD Trust Assets are cash contributions, the TCC can offer a “high” and a “low” with some degree of certainty given the current claimant population. One of the reasons why the TCC insisted on cash funding for the PI/WD Trust was so that the TCC could offer PI/WD Claimants a fair sense of their likely recoveries from the PI/WD Trust prior to plan voting and, more importantly, before PI/WD Claimants agree to the Consensual Claimant Release.

PI/WD Claimants who elect to participate in the PI/WD Trust can pursue recoveries from other co-liable parties, including governmental claimants. Participating in the PI/WD Trust does not cut off or limit a PI/WD Claimant’s ability to pursue such recoveries. Participating in the PI/WD 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, PI/WD Claimants **cannot** “Opt Out” of the Consensual Claimant Release under the Plan and participate in the PI/WD Trust. Participating in the PI/WD Trust is akin to entering into a voluntary settlement with the Settling Parties and their insiders and affiliates. The Settling Parties and their non-debtor insiders and affiliates will **not** fund the settlement payments unless they 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 TCC anticipates that most PI/WD Claimants will elect to participate in the PI/WD 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. PI/WD 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 Insurance Opt Out Option

Second, Holders of PI/WD Claims may elect to pursue insurance recoveries in the tort system. This is referred to herein as the “**Insurance Opt Out**” and is further describe in Article IV.C of the Plan. Claimants who make this election may be entitled to seek a recovery on account of their PI/WD Claims from available insurance coverage in the tort system and may name the PI/WD Trust as a defendant in that litigation, *provided, however*, that these claimants may not name a Released Party as a defendant and these claimants will not receive a distribution from the PI/WD Trust so long as they remain “Insurance Opt Outs.”

Claimants who make this election will still be deemed to provide the Consensual Claimant Release and are not *true* “Opt Outs” in this respect. Rather, their recoveries will be limited to available insurance coverage, if any, unless they elect to return or are deemed to return to the PI/WD Trust in accordance with the TDPs. By providing the Consensual Claimant Release, these claimants will have the ability to test the waters in the civil justice system to pursue insurance recoveries while, at the same time, retaining an ability to return to the PI/WD Trust under certain circumstances.

The TCC anticipates that PI/WD Claimants who make this election will promptly enter into mediation with potentially responsible insurers and other parties that may be co-liable for the applicable PI/WD Claims and that are also insureds under the policies. PI/WD 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 inclusion of the Insurance Opt Out was important to the TCC because it should provide PI/WD Claimants who have access to significant insurance recoveries with the ability to obtain those recoveries in a manner similar to what could happen if this Chapter 11 Case were converted to chapter 7 and no plan is confirmed. Thus, the Plan supported by the TCC and the UCC should satisfy the so-called “best interests” test under the Bankruptcy Code.

The True “Opt Out” to the Civil Justice System

Third, Holders of PI/WD 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 PI/WD Claims**” or *true* “Opt Outs.” Holders of Opt Out PI/WD Claims will *not* receive any portion of the PI/WD Trust Assets.

Holders of Opt Out PI/WD Claims will have the ability to assert claims against YesCare, Corp., CHS TX, Inc., and other alleged successor entities 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 PI/WD 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 PI/WD Claims will **not** have their recoveries capped by the TDPs. 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 may face years of litigation and appeals and will **not** have the ability to return to the PI/WD Trust under any circumstances. The inclusion of this option in the plan architecture ensures that like any settlement offer made outside of bankruptcy, claimants can reject the 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 TCC’s perspective, consensual. PI/WD 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.

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. For example, if all PI/WD Claimants elect to “Opt Out” and do not provide the Consensual Claimant Release, there would be no point to YesCare and its non-debtor insiders and affiliates funding the settlement. Only PI/WD Claimants who provide the Consensual Claimant Release can recover from the PI/WD Trust. The Settling Parties and their non-debtor insiders and affiliates could not reasonably be expected to fund a settlement trust if there are no beneficiaries.

Likewise, if the Settling Parties and their non-debtor insiders and affiliates were not willing to fund the settlement, there would be no reason for any claimants to provide the Consensual Claimant Release as the PI/WD Trust would lack sufficient funding to pay claims. If the PI/WD Trust had no funding and could not make any distributions, there would be no reason for any PI/WD Claimant to provide a release to be eligible to participate and become a beneficiary of the PI/WD Trust. The TCC and the UCC designed the Plan so that the trust funding determines the level of participation.

To be fair to the Settling Parties and their non-debtor insiders and affiliates, if the level of participation in the PI/WD Trust is too low, the Settling Parties 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 more than 5% in the number of current Holders of PI/WD Claims who are entitled to vote on the Plan elect to “Opt Out” of the Consensual Claimant Release.³

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

The election to “Opt Out” must be made *before* the voting deadline established by the Court. Thus, the Settling Parties will know the scope of the Consensual Claimant Release before the Confirmation Hearing and can make an informed decision based on the voting results. Claimants who do not “Opt Out” will be deemed to provide the Consensual Claimant Release. If the Settling Parties elect 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.

If the Plan is confirmed, “Opt Outs” will **not** face litigation over whether their claims against YesCare Corp., CHS TX, Inc. or any other alleged successor entity 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. Parties who want the PI/WD 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 PI/WD Trust.

At the TCC’s insistence, the Plan will be solicited using a 90-day solicitation period. This extended period is intended to ensure that claimants who are currently incarcerated have adequate time to receive and review the Disclosure Statement and TDPs and make an informed decision. The TCC can support the proposed settlement so long as the vast majority of the tort claimants in this case support it and do not fully “Opt Out” of the Consensual Claimant Release, and no one is having their rights taken from them on an involuntary basis.

The TCC has gone to considerable lengths to propose a Plan that is satisfactory to the tort claimants in this case. All claimants entitled to vote on the Plan should carefully review the Disclosure Statement and consult with their legal counsel before making any decisions.

This case is not what it once was. The Bankruptcy Court’s denial of the Rule 9019 motion was a significant event and forced other parties to meaningfully engage with the TCC. Tort victims 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. The TCC 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/ Paris Morgan and Nathan Alvarez

The Official Committee of Tort Claimants