UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:	§	**CASE NO. 17-50799**
	§	
ACADIANA MANAGEMENT GROUP, L.L.C. *ET AL*[1],	§	**CHAPTER 11**
	§	
DEBTORS.	§	**(Jointly Administered)**

OBJECTION TO DISCLOSURE STATEMENT RELATING TO CHAPTER 11 PLAN OF ORDERLY LIQUIDATION FOR ACADIANA MANAGEMENT GROUP, LLC, ET AL

NOW INTO COURT, through undersigned counsel, comes the Official Committee of Unsecured Creditors (the "Committee") of the above captioned debtors and debtors-in-possession (the "Debtors"), which hereby files this Objection (the "Objection") to the Debtors' *Disclosure Statement Relating to Chapter 11 Plan of Orderly Liquidation for Acadiana Management Group, LLC, et al.* [Dkt. No. 478] (the "Disclosure Statement"), and respectfully states as follows:

Preliminary Statement

1. The Committee objects to the approval of the Disclosure Statement as it fails to provide adequate information as required by Bankruptcy Code Section 1125(a) in order for creditors to make an informed decision regarding acceptance or rejection of the Plan. The Disclosure Statement is deficient in many respects which are set forth in detail herein.

[1] AMG Hospital Company, L.L.C., Case No. 17-50800; AMG Hospital Company II, L.L.C., Case No. 17-50801; Albuquerque - AMG Specialty Hospital, L.L.C., Case No. 17-50802; Central Indiana - AMG Specialty Hospital, L.L.C., Case No. 17-50803; Tulsa - AMG Specialty Hospital, L.L.C., Case No. 17-50804; LTAC Hospital of Louisiana - Denham Springs, L.L.C., Case No. 17-50805; Las Vegas - AMG Specialty Hospital, L.L.C., Case No. 17-50806; LTAC Hospital of Greenwood, L.L.C., Case No. 17-50807; LTAC of Louisiana, L.L.C., Case No. 17-50808; Houma - AMG Specialty Hospital, L.L.C., Case No. 17-50809; LTAC Hospital of Edmond, L.L.C., Case No. 17-50810; LTAC Hospital of Wichita, L.L.C., Case No. 17-50811; AMG Realty I, L.L.C., Case No. 17-50812; CHFG Albuquerque, L.L.C., Case No. 17-50813; and AMG Realty Youngsville, L.L.C., Case No. 17-50814.

2. The Plan is also not confirmable as it impermissibly provides for substantive consolidation of the Debtor entities for voting and distributions only. *See* Disclosure Statement at p. 6. The Debtors have not presented any justifiable basis which would support such an extraordinary remedy or any suggestion of the benefits the creditors would receive upon such consolidation.

3. Finally, the Disclosure Statement cannot be confirmed because it provides for impermissible third-party releases in derogation of the law of the Fifth Circuit Court.

Background

4. On June 23, 2017, the Debtors filed for bankruptcy relief under Chapter 11 of Title 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On July 28, 2017, the United States Trustee appointed the Committee consisting of the following members: (a) Medline Industries, Inc. (b) Accountable Healthcare Staffing; (c) CHCT Louisiana, LLC ("CHCT"); (d) Rehabilitation Hospital of Acadiana, LLC; and (e) Stability Biologics, LLC. [Dkt. No. 180]. No trustee or examiner has been appointed.

6. On November 17, 2017, the Debtors filed the *Chapter 11 Plan of Reorganization for Acadiana Management Group, LLC, et al. November 17, 2017* [Dkt. No. 477] (the "Plan")[2] and the Disclosure Statement. The Court scheduled the hearing on the adequacy of the Disclosure Statement on an expedited basis for November 28, 2017. The Committee and CHCT did not object to the expedited setting hoping that the Debtors would put forth an adequate disclosure statement and a confirmable plan. Unfortunately, that is not the case. It is anticipated

[2] Capitalized terms not defined herein are as defined in the Plan.

that the Debtors are going to request that this Court set the confirmation hearing on the Plan on an expedited basis. If the Court somehow approves the Disclosure Statement, the Committee objects to the setting of the confirmation of this Plan on an expedited basis. The Debtors have not set forth any "cause" why the twenty-eight (28) day objection period under Federal Rule of Bankruptcy Procedure 2002(b) should be shortened.

Objection

I. The Disclosure Statement Cannot Be Approved Because It Does Not Contain Adequate Information as Required by Section 1125 of the Bankruptcy Code

7. The Disclosure Statement must provide adequate information in order to be approved. 11 U.S.C. § 1125(a); *In re Woerner*, 783 F.3d 266, 271 (5th Cir. 2015). The Bankruptcy Code defines adequate information as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a).

8. Courts consider the following non-exhaustive list of factors when determining whether a disclosure statement contains adequate information:

a) The circumstances that led to the filing of the bankruptcy petition;

b) a complete description of the available assets and their value;

c) the anticipated future of the debtor;

d) the source of the information provided in the disclosure statement;

e) a disclaimer, which typically indicates that no statement or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;

f) the condition and performance of the debtor while in chapter 11;

g) the claims against the estate;

h) a liquidation analysis setting forth the estimated return that the creditors would receive under chapter 7;

i) the accounting and calculation methods used to produce the financial information and the name of the accountants responsible for such information;

j) the future management of the debtor;

k) a summary of the chapter 11 reorganization;

l) an estimate of all administrative expenses, including attorneys' fees and accountants' fees;

m) the collectability of any accounts receivables;

n) any financial information, valuations, or projections relevant to the creditor's decision to accept or reject the plan;

o) information relevant to the risks posed to the creditors under the plan;

p) the actual or projected value from the recovery of preferential or otherwise voidable transfers;

q) the existence, likelihood, and possible success of non-bankruptcy litigation;

r) the plan's tax consequences; and

s) the relationship of the debtor with affiliates.

In re U.S. Brass Corp., 194 B.R. 420, 425 (Bankr. E.D. Tex. 1996) citing *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bkrtcy.N.D.Ga.1984).

9. Whether a disclosure statement contains adequate information is generally determined on a case by case basis with great discretion left to the bankruptcy court. *In re*

Applegate Prop., Ltd., 133 B.R. 827, 829 (Bankr. W.D. Tex. 1991); *In re Tex. Extrusion Corp.,* 844 F.2d 1142, 1157 (5th Cir.1988). The Disclosure Statement is inadequate, and the Debtors have failed to satisfy many of the factors above.

(i) Impossible for General Unsecured Creditors to Determine Recoveries.

10. First, and foremost, it is impossible to determine how much Class 6 – General Unsecured Claims are recovering under the Plan. *See* Disclosure Statement at p. 24. The Debtors provide that the General Unsecured creditors are going to receive a combination of: (i) payments from the Liquidating Trust after payments to Bank of Oklahoma ("BOKF"); (ii) 1.5% of the Equity Interest in the NewCo, and (iii) some type of warrants in the NewCo with a strike price of $25 million. *Id*.

11. However, there are no estimates of recovery or value associated with any of these components. The Committee's professionals have been unable to determine what the recoveries will be for the General Unsecured creditors; therefore, how are creditors going to figure out their recoveries? Apparently, it is the Debtors' position that is better than nothing, so the Committee should be satisfied. Unfortunately, the Committee is not satisfied and would like to understand the expected recoveries under each component and how the creditors may realize value. For example, how is the 1.5% of Equity Interest in NewCo going to be distributed among hundreds of creditors? The Debtors should be compelled to provide the estimated recoveries for the General Unsecured creditors so that they can make an informed decision on the Plan.

12. Moreover, the Disclosure Statement fails to provide the expected universe of General Unsecured creditors. The Debtors provide no estimate for the amount of the General Unsecured claims or the amount of expected rejection damage claims for the contracts that are being rejected by the Debtors. The Debtors fail to provide this information on a consolidated

basis or on a case by case basis. In *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984), the Court found that a debtor failed to provide adequate information in its disclosure statement where the debtor did not provide any discussion of unsecured claims, their approximate value, or the approximate amount by which the claims may be subject to setoff. The court held that this information must be disclosed even where the debtor could not determine the exact amounts of the unsecured claims. *Id.* at 570. Similarly, the court in *In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012), found a disclosure statement to be inadequate where it failed to provide information regarding the total amount owed to unsecured creditors. *See also In re Newkirk*, 2012 WL 830552, at *4 (Bankr. E.D.N.C. Mar. 9, 2012).

(ii) No Valuations.

13. The Disclosure Statement does not contain ***any valuations***. The Debtors do not provide values for any of the following:

- **The non-Debtor affiliates that the insiders are contributing.** *See* Disclosure Statement at p. 7. One of the principal contributions by the insiders is the two (2) non-debtor owned affiliate hospitals. *Id*. Despite this fact, the Debtors provide no information regarding these non-debtor owned affiliate hospitals. No valuation or financial statements are included with the Disclosure Statement to provide the parties in interest with any information. It is unknown how much these assets are worth, if anything at all.

- **No disclosure on the amount of Accounts Receivable by hospital.** One of the principal avenues BOKF is being paid its $10,000,000 is out of "Discharged Accounts Receivable existing on the Effective Date." The Debtors do not disclose this amount or the value of such Discharged Accounts Receivable on a Debtor by Debtor basis. This is important to the unsecured creditors because they share in recoveries after $10 million to BOKF. How can the unsecured creditors make any informed decision without this information?

- **No disclosure on the value of the "InterCompany Claims, including Non-Debtor Affiliate Claims."** *See* Disclosure Statement at p. 24. Pursuant to the Plan, on the Effective Date, all InterCompany Claims, including the ***claims of Non-Debtor Affiliates against the Debtors***, will be extinguished, and no holder of any such InterCompany Claim will receive or retain any property or rights under the Plan on account of such claim." *Id*. (Emphasis added.) Again, there is no

disclosure of any material information on the Non-Debtor Affiliates, and it is unknown whether the Debtors are extinguishing valuable claims against the Non-Debtor Affiliates. There is also no disclosure as to which Debtors have the claims against Non-Debtor Affiliates.

- **The BOKF Secured Claim.** While the Disclosure Statement discloses the amount of the BOKF claim, the Disclosure Statement provides no information on how the Debtors valued the BOKF secured portion of its claim. What was the value of BOKF's collateral on the Petition Date? Are the Debtors inflating BOKF's claim for its cooperation in the Plan?

- **Value of the Avoidance Actions.** The Avoidance Actions will be discussed below, but the Debtors provide no valuation of the Avoidance Actions against insiders and non-insiders.

- **Value of Diminution Claim.** While the Debtors disclose they believe BOKF's diminution claim is $1.5 million, the Debtors fail to disclose how they arrived at such figure. *See* Disclosure Statement at p. 8.

14. Section 1125(b) of the Bankruptcy Code provides that "The Court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets." 11 U.S.C. § 1125(b). However, the disclosure statement must still provide sufficient information to permit a creditor to make an informed decision regarding whether to accept or reject the plan. *See In re U.S. Brass Corp.*, 194 B.R. 420, 423 (E.D. Tex. 1996). Thus, the Disclosure Statement must include a valuation where the circumstances of the case clearly require its inclusion. See *In re Reilly*, 71 B.R. 132, 135 (Bankr. D. Mon. 1987); *See also In re Cardinal Congregate I*, 121 B.R. 760, 767 (Bankr. S.D. Ohio 1990) (debtor's amended disclosure statement lacked information regarding "valuation methods used in preparation" of the disclosure statement); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988) (rejecting disclosure statement for not including valuation); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988) (circumstances "appear to mandate, at a minimum," the debtor's inclusion of a valuation in the disclosure statement).

15. In *In re Ferguson*, 474 B.R. 466, 475 (Bankr. D.S.C. 2012), the bankruptcy court found that the debtor's disclosure statement contained inadequate information where it failed to explain the valuation of the debtor's assets, stating that, "It is the responsibility of the Debtor to provide such information," and requiring the Debtor provide an explanation as to the value and the basis therefore. See also In re Cardinal Congregate I, 121 B.R. at 767 ("Information regarding the accounting and valuation methods used in preparation of the Disclosure Statement's financial exhibits must also be included."); In re Reilly, 71 B.R. at 135 (Disclosure statement contained inadequate factual basis for valuation).

16. In In re Adana Mortg. Bankers, Inc., 14 B.R. 29, 30 (Bankr. N.D. Ga. 1981), the bankruptcy court explained that a disclosure statement which provided no financial information, data, valuations, or projections relevant to the creditors' decision to accept or reject the plan was "clearly inadequate" under Section 1125. Even though the creditors were sophisticated parties who might be able to glean the information from other sources, the court held that even such sophisticated creditors are "entitled to a disclosure statement prepared by Debtor to which the Debtor is accountable. The creditors are not expected to be mind readers or clairvoyant. The basic financial information must be supplied in the statement." *Id.* at 30-31. *See also In re Forest Grove, LLC*, 448 B.R. 729, 738 (Bankr. D.S.C. 2011) (Creditors should not be required to go on a treasure hunt throughout multiple filings in order to ascertain that information").

17. Here, these cases require the valuation listed in paragraph 13 and the Debtors should be compelled to provide such disclosures.

(iii) Disclosure of Avoidance Actions Against Insiders is Inadequate.

18. The Disclosure Statement fails to fully disclose the value of the Avoidance Actions against the insiders. While the Debtors focus three (3) pages of the Disclosure Statement

on the $7 million buyout that occurred on or about December 31, 2015, there are numerous other transactions involving the insiders that require additional disclosure.

19. The Debtors fail to disclose that in addition to the $7 million paid to the insiders in late 2015/early 2016, the Debtors paid the insiders (or entities controlled by them) several million dollars. The Debtors fail to disclose any investigation into these claims, and the results of such investigation.

20. The Debtors fail to make any disclosures regarding the yacht and airplane that were maintained by the Debtors for the benefit of the insiders. The costs related to these "toys" was significant, and it is unclear if they provided any benefit to the Debtors' estates. What investigation did the Debtors conduct as to these transactions, if any?

21. The Debtors fail to disclose the American Express credit cards and use of the American Express credit cards by the insiders. Upon information and belief, significant dollars were incurred on American Express cards by the insiders that do not appear to be business related. What investigation did the Debtors conduct as to these transactions, if any?

22. In regard to the $7 million transaction, the Debtors' three page disclosure is one-sided at best. The Debtors fail to disclose that in the *Northlake Foods* case cited to support the payments to Tim Howard and Gus Rantz, IV, the debtor's operating agreement required payment of taxes and that was a significant basis for the ruling. Here, upon information and belief, there is no such requirement in the AMG Management Group operating agreement, or any of the other Debtors' operating agreements. There simply was no obligation by the Debtors to pay those taxes.

23. The Debtors also argue solvency, and state the "challenged transfers occurred before the regulatory changes were passed which led to the bankruptcy filing…" *See* Disclosure

Statement at p. 20. This statement is misleading. While the rate changes did not go into effect until October 1, 2016, upon information and belief, the rule changes were passed well in advance of the $7 million transaction, and the insiders were aware of this change. Moreover, the Debtors do not state whether this loan may have made the Debtors who incurred or guaranteed the loan insolvent.

24. Finally, in regard to the safe harbor defense under section 546(c), the Debtors fail to disclose that this issue is before the United States Supreme Court in *Merit Management Group, LP v. FTI Consulting, Inc.*, 27 Nov. 2017, www.oyez.org/cases/2017/16-784, and was argued earlier this month. It is widely believed that this case will be reversed and the safe harbor provision will not be applicable to leveraged buyouts.

(iv) Disclosure of Other Avoidance Actions is Inadequate.

25. The Debtors fail to disclose any information regarding Avoidance Actions against non-debtor affiliates and non-insiders. Again, significant dollars were transferred to non-Debtor affiliates and the Debtors provide no disclosure regarding these transactions or the possible recovery of same by the Debtors.

26. Significantly, while the Debtors propose to pay the General Unsecured Creditors an undeterminable amount, the Debtors fail to disclose that they are likely going to be the target of Avoidance Actions by the Liquidating Trustee. According to the Debtors' statement of financial affairs, during the ninety days prior to the Petition Date, the Debtors transferred more than $15 million to mostly trade creditors. The Debtors provide no analysis of these transfers or potential value to these transfers to the Debtors' estates. The Debtors fail to make this disclosure even though the Debtors know that the BOK values theses potential recoveries in satisfaction of their alleged "diminution" claim.

(v) Liquidation Analyses Are Incomplete.

27. The liquidation analyses attached to the Disclosure Statement are incomplete. They provide no recovery for Avoidance Actions against insiders and non-insiders. While the Committee recognizes the defenses set forth by the Debtors (on behalf of the insiders), the Committee (and apparently BOKF) recognizes that there is significant value to the Avoidance Actions.[3]

28. It is doubtful that a Chapter 7 Trustee will have the same view of the Avoidance Actions against insiders as the Debtors (controlled by the insiders) do. Moreover, a Chapter 7 Trustee is likely to pursue the non-Debtors affiliates and trade creditors. The Debtors have to provide some type of recovery for the Avoidance Actions in a Chapter 7 context and should be required to do that by individual Debtor in the various liquidation analyses attached to the Disclosure Statement.

(vi) No Disclosure of Marketing Process by Stout.

29. As this Court is aware, Stout Risus Ross Advisors, LLC and Stout Risus Ross, LLC ("Stout") was engaged and authorized by this Court to represent the Debtors in two capacities: (i) financial advisory services, and (ii) investment banking services.

30. There is no disclosure regarding either. The Debtors have failed to disclose any of the efforts by Stout to market and sell the Debtors' assets. Instead, it appears that this was a process run only for the benefit of the insiders.

[3] The Court may recall that BOKF required a supplemental lien on Avoidance Actions before they would consent to the use of cash collateral.

(vii) Other Disclosure Statement Inadequacies.

31. The Disclosure Statement should provide additional disclosures. The Disclosure Statement should further disclose the following:

a) No disclosure regarding the DIP financing provided by the insiders, the status of the DIP funds, and how much the Debtors anticipate incurring by the Effective Date. The Debtors that incurred the DIP financing and the present balances of each Debtor.

b) Lack of disclosure of the Debtors that were subject to cash collateral order. Not all Debtors are parties to that cash collateral order and the effect of that should be disclosed.

c) No disclosure regarding the condition and operation of the Debtors while in chapter 11.

d) No disclosure regarding the future management and anticipated future of NewCo.

e) No discussion on executory contracts already rejected and to be rejected. The Debtors have rejected and now moved to reject several executory contracts. It is unknown how many claims this may result in.

f) No discussion on the LTAC hospitals closed and the anticipated costs related to same.

g) No disclosure of the breakdown of administrative expenses to be paid under the Plan.

h) Lack of disclosure on the mergers. There is no disclosure on the effect of the mergers on unsecured creditors or who the merged entities may have owed. The Debtors should be required to make this disclosure.

i) The Disclosure Statement refers to a "Debtor Representative," yet the term is not defined. *See* Section 1.1.18 of the Plan.

j) Acadiana Management Group is not referred as a Debtor. *See* Section 1.1.28 of the Plan.

k) In Section 1.1.51 of the Plan, Debtors state that the Liquidating Trustee must be named within 15 days of the disclosure statement being approved. This is incongruous with Section 1.4 which says that the Plan Documents need to be filed 5 days prior to the voting deadline. How can you name the Liquidating Trustee when the Liquidating Trust Agreement may not be finalized? The disclosure shall be made at least fourteen (14) days prior to the voting deadline.

l) "[T]he Plan Proponents reserve the right to modify the Plan to exclude certain assets from transfer to the Liquidation Trust." *See* Section 7.3.1 of the Plan. What does this mean? There should be some deadline associated with this.

m) In Section 7.5.2(f) of the Plan, the debtors provide the "Tort Claims which shall revest in the Debtors." What does this mean? Tort Claims is also not defined.

II. The Disclosure Statement Cannot Be Approved Because It Unjustifiably Proposes the Extraordinary Remedy Of Substantive Consolidation

32. Substantive consolidation is defined as "[t]he merger of two or more bankruptcy cases, usually pending against the same debtor or related debtors, into one estate for purposes of distributing the assets, usually resulting in the two estates sharing assets and liabilities, and in the extinguishment of duplicate claims and claims between the debtors." Black's Law Dictionary 351, 9th Ed.2009; *In re Introgen Therapeutics, Inc.*, 429 B.R. 570, 581 (Bankr. W.D. Tex. 2010).

33. Substantive consolidation results in the assets and liabilities of each entity being combined and treated as belonging to a single entity. *In re Introgen Therapeutics, Inc.*, 429 B.R. at 581 (citing *Clyde Bergemann, Inc. v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955, 959 (5th Cir. 2001).

34. While the bankruptcy courts do have discretion in determining whether to grant substantive consolidation, it is an extraordinary remedy to be used sparingly. *See Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.),* 584 F.3d 229, 249 (5th Cir. 2009).

35. The Fifth Circuit has not adopted a test for analyzing whether substantive consolidation should be granted, but it is determined on a case by case basis. *In re Introgen Therapeutics, Inc.*, 429 B.R. at 582. Two commonly used tests are the traditional factor based test and a balancing test. Id.

36. The traditional test considers factors such as (1) the degree of difficulty in segregating and ascertaining individual assets and liability; (2) the presence or absence of consolidated financial statements; (3) the profitability of consolidation at a single physical location; (4) the commingling of assets and business functions; (5) the unity of interests and ownership between the various corporate entities; (6) the existence of parent and inter-corporate

guarantees on loans; and (7) the transfer of assets without formal observance of corporate formalities. *Id. See also In re Permian Producers,* 263 B.R. at 518 (citing *In re Vecco Constr. Indus., Inc.,* 4 B.R. 407, 410 (Bankr.E.D.Va.1980)); *see also In re Drexel Burnham Lambert Group Inc.,* 138 B.R. 723, 764 (Bankr.S.D.N.Y.1992); *In re Owens Corning,* 419 F.3d 195, 211 (3d Cir.2005) (articulating principles courts should consider when engaging in substantive consolidation analysis).

37. The Second Circuit in *In re Augie/Restivo Baking Co.*, 860 F.2d 515 (2d Cir. 1988) condensed these factors down to two considerations: "(i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit… or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors." *Id.* at 519.

38. Similarly, the balancing test requires the debtor to show the identity of each entity proposed to be consolidated, and then that consolidation is necessary in order to "prevent harm or prejudice, or to effect a benefit generally." In re *Introgen Therapeutics, Inc.*, 429 B.R. at 584. This permits a creditor to object to substantive consolidation based on the harm it would suffer due to its reliance on the separateness of the debtor entities in extending credit. *Id.*

39. Here, the Debtors have provided no justification for requesting substantive consolidation, and have certainly not satisfied their burden of proving that such an extraordinary remedy is warranted. Particularly, there is no showing that the Debtors effectually operated as a single entity, much less that the Debtors' creditors treated them as such. *Augie/Restivo*, 860 F.2d at 518. The Debtors here each operated as separate entities, and the creditors here did not ignore their separateness. The single-serving statement that the individual Debtor entities have been "treated as against a single consolidated Estate without regard to the separate legal existence of

the Debtors" is not only inaccurate, but is wholly insufficient to satisfy the high burden required to show substantive consolidation should be granted. *See* Disclosure Statement at p. 6.

40. Additionally, the Debtors have not provided any basis showing that the Debtors' entities are so entangled that substantive consolidation would be beneficial to the Debtors' estates. This factor requires that the Debtor show that it is impossible to accurately identify and allocate each entities' assets, or show that the assets and business functions are so commingled and intertwined that the creditors would risk not receiving any assets of the estate by trying to untangle them. *Id*. "Comingling justifies consolidation only when separately accounting for the assets and liabilities of the distinct entities will reduce the recovery of every creditor." *In re Owens Corning*, 419 F.3d 195, 214 (3d Cir. 2005).

41. The Debtors here would not have this type of difficulty in distinguishing each entity's assets and liabilities, as they have already done so in filing their schedules and statements of financial affairs on an entity by entity basis. Moreover, pursuant to the Notice of Claims Bar Date [Dkt. No. 354], the Debtors required creditors to file proofs of claim in the individual cases versus the lead case - Acadiana Management Group, LLC.

42. Further, the Debtors do not propose to stay substantively consolidated once the Plan goes effective. Instead, Debtors only propose to consolidate for voting and distribution purposes, which the *Owens Corning* decision specifically found to be "the flaw most fatal to the Plan Proponents' proposal…". *Id.* at 216.

43. The Debtors have not provided an inkling of evidence which would support granting substantive consolidation here. They have thus failed to satisfy, and cannot satisfy, the high burden necessary to justify such relief. Therefore, the Disclosure Statement should not be approved as the Plan proposed is not confirmable.

III. The Disclosure Statement Cannot Be Approved Because The Plan Contains Impermissible Nonconsensual Releases To The Debtors' Insiders

44. The Fifth Circuit has held that nonconsensual, non-debtor releases and permanent injunctions violate section 524(e) of the Bankruptcy Code. *In re Zale Corp.*, 62 F.3d 746 (5th Cir. 1995). Section 524(e) provides that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of another entity for, such debt." 11 U.S.C. § 524(e). Section 524(e) thus only discharges the debtor's liability, not the liability of non-debtors. *See Citizens Bank & Trust v. Case (In re Case)*, 937 F.2d 1014 (5th Cir. 1991); *First Fidelity Bank v. McAteer,* 985 F.2d 114, 118 (3d Cir.1993).

45. Here, the Plan provides for improper non-consensual releases to the insiders for any and all pre-petition and post-petition "claims the Estates have against them, including claims under Chapter 5 of the Bankruptcy Code." *See* Plan at § 8.3. The Fifth Circuit regards these releases very restrictively. *In re Patriot Place, Ltd.*, 486 B.R. 773, 822 (Bankr. W.D. Tex. 2013). Indeed, such releases have been "explicitly prohibited and the Fifth Circuit has 'firmly pronounced its opposition to such releases.'" *In re Vitro S.A.B. de CV,* 701 F.3d 1031, 1051–53, 1054–55 (5th Cir. 2012). Because these releases are in stark violation of Fifth Circuit law, they are impermissible and render the Plan non-confirmable.

IV. Committee Reserves Any and All Objections to the Disclosure Statement and Confirmation of the Plan.

46. The Committee continues to review the Disclosure Statement and Plan, and reserves any and all rights in connection with the Disclosure Statement and Plan. The Committee recognizes this is a hearing on the adequacy of the Disclosure Statement and with this recognition, the Committee reserves any and all objections to the confirmation of the Plan, including, but not limited to the absolute priority rule and lack of good faith. The Committee

further reserves the right to amend or supplement this objection in advance of or in connection with the hearing on the Disclosure Statement.

Conclusion

WHEREFORE, for the reasons set forth herein, the Official Committee of Unsecured Creditors requests that the Court sustain its objection and not approve the Disclosure Statement. The Committee requests all other general and equitable relief to which it may be entitled.

Dated: November 27, 2017.

Respectfully submitted,

/s/Tristan Manthey

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