

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CAPSTONE PEDIATRICS, PLLC)	Case No. 3:15-bk-09031
)	Chapter 11
Debtor.)	Judge Mashburn

**OBJECTION BY DR. EDDIE HAMILTON TO THE DEBTOR’S DISCLOSURE
STATEMENT TO ACCOMPANY DEBTOR’S PLAN OF REORGANIZATION**

Response Deadline: March 30, 2017

Hearing Date: April 18, 2017 at 9:00 a.m., in Courtroom One, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee 37203.

Comes now Dr. Eddie Hamilton (Dr. Hamilton”), a creditor herein, by and through counsel, and files this objection (the “Objection”) to the Debtor’s Disclosure Statement to Accompany Debtor’s Plan of Reorganization (Doc. No. 366) (the “Disclosure Statement”). The Disclosure Statement is woefully insufficient, as it fails to include adequate information as defined in 11 U.S.C. § 1125(a)(1). In support of his Objection, Dr. Hamilton states as follows:

INTRODUCTION

1. On December 18, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).
2. The Debtor remains in possession of its assets and is operating its business as a debtor-in-possession.
3. Dr. Hamilton is a creditor of the Debtor. On April 19, 2016, Dr. Hamilton timely filed a proof of claim against the Debtor for \$3,707,139.33, which proof of claim was docketed as claim number 43 (the “Claim”). The Claim has not been disallowed.

4. The basis for the Claim is a debt owed to Dr. Hamilton by the Debtor pursuant to a Subordinated Promissory Note in the original amount of \$3,450,000 dated October 31, 2013 (the “Note”), and later amended to reflect accrued interest on the unpaid principal. The Note was given Dr. Hamilton by the Debtor in furtherance of the purchase of substantially all of the assets of a company owned by Dr. Hamilton, known as Centennial Pediatrics.

5. On February 20, 2017, the Debtor filed its Plan of Reorganization (the “Plan”) and the Disclosure Statement.

6. The Disclosure Statement lacks “adequate information” required by 11 U.S.C. § 1125 in order to obtain approval. As will be discussed herein, the Disclosure Statement is woefully inadequate and should not be approved by this Court.

LEGAL STANDARD

7. The purpose of a disclosure statement is to provide adequate information for those voting on a plan. *See In re Four Wells Ltd.*, 2016 WL 1445393 *8 (6th Cir. B.A.P. 2016); *In re A&F Elec. Co., Inc.*, 2007 WL 5582063, *8 (Bankr. M.D. Tenn. 2007).

8. As defined in Section 1125 of the Bankruptcy Code, “adequate information” includes “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor.” 11 U.S.C. § 1125(a)(1).

9. Courts determine whether a disclosure statement contains “adequate information” on a case-by-case basis, based on the facts and circumstances presented. *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988).

10. The Bankruptcy Court for the Southern District of Ohio compiled a 19-factor test, which is generally accepted and widely applied throughout the Sixth Circuit, to determine whether a disclosure statement contains “adequate information.” *Id.* at 170-71. The *Scioto*

Valley court acknowledged that not every factor must be present in every case, and that the 19 factors do not include every piece of information that should be included in every disclosure statement; however, it noted that this list is a good starting point for a court to review the adequacy of the disclosure statement. *Id.* at 171.

OBJECTIONS BASED ON THE 19 FACTOR *SCIOTA VALLEY* TEST

11. Of the 19 factors included in the *Sciota Valley* test, the Debtor's Disclosure Statement clearly satisfies only five factors, clearly fails ten factors, arguably fails three additional factors, and one factor is inapplicable. The following is an analysis of how the Disclosure Statement matches up to each *Sciota Valley* required disclosure:

Factor 1: "The circumstances that gave rise to the filing of the bankruptcy petition."

Dr. Hamilton believes that the Disclosure Statement fails this factor, but admits that this is a close call. Section 1.02 of the Disclosure Statement describes, in vague detail, "events leading to Chapter 11 filings." In it, it explains that the Debtor allegedly overvalued and overpaid for the assets of Centennial Pediatrics (formerly owned by Dr. Hamilton). It also describes some of the operational challenges that the Debtor faced in the years leading up to the bankruptcy. What this section does not adequately explain, however, is why the Debtor overvalued the assets of Centennial Pediatrics, despite a thorough due diligence review by Butler Snow LLP. The Disclosure Statement also fails to describe the cause of the payment default with its IT vendor, Athenahealth.

Factor 2: "A complete description of the available assets and their value." While the Debtor does not describe the valuation methodology ascribed to the assets, Dr. Hamilton admits that this factor is met by the Disclosure Statement.

Factor 3: “The anticipated future of the debtor.” Again, Dr. Hamilton believes that it is highly questionable whether this factor is met. While Sections 1.03 and 5.03 contain some vague recitations regarding the future of the debtor, and Exhibit D contains a pro forma budget for the future, very little detail is given the creditors to support these statements. For example, the Disclosure Statement states: “Capstone is continuing to assess the viability and sustainability of each of its locations as well as its operational practices. Although the Plan contemplates that Capstone will retain operations in all nine current locations, Capstone will continue to evaluate the economic viability of its number of offices.” Disclosure Statement, p. 6. This type of vague information is insufficient to allow a creditor to assess the likely viability of the Debtor going forward. For example, were the Debtor to close two additional locations, the loss of revenue combined with the increase in administrative claims (for breach of leases) might cause the Debtor to be immediately insolvent. Further, the Debtor’s future viability seems to hinge on “reduced monthly minimum payments to Athenahealth,” (Disclosure Statement, p. 19) but nowhere in the Disclosure Statement does the Debtor state the amount of those reductions, the likelihood of such reductions, or the basis for the belief that reductions are even possible.

Factor 4: “The source of the information provided in the disclosure statement.” The Debtor’s Disclosure Statement clearly fails this factor. The only information concerning the source of information can be found in Section 5.01, “Disclaimer,” which reads in part: “The financial information described below was compiled by Debtor and has not been subjected to an audit.” Disclosure Statement, p. 18. The Disclosure Statement reveals that the Debtor compiled the information but does not indicate from what source it was compiled, whether professional valuations, financial advisors, or pure speculation. Without more information regarding the source of the information, the Disclosure Statement’s reliability cannot be verified.

Factor 5: “A disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement.” Dr. Hamilton admits that the Disclosure Statement contains this language.

Factor 6: “The condition and performance of the debtor while in Chapter 11.” The Disclosure Statement fails this factor, as it contains little more than broad statements concerning the Debtor’s condition and references to other documents previously filed with the Court. The Debtor discusses at some length, in Section 1.03, some of the operational adjustments made during the Chapter 11. However, nowhere in the Disclosure Statement is the Debtor’s financial condition or profitability during the Chapter 11 discussed. For example, the Disclosure Statement offers no explanation to creditors why the Debtor’s assets have plummeted from \$10,169,159.32 as of January 2016 to \$6,092,125 in January 2017, nor why its debt has risen from \$11,084,183.35 to \$13,543,385.00 during that same year’s time. *See* Disclosure Statement, p. 18. Without an explanation as to why the Debtor’s financial condition has deteriorated by approximately \$6.5 million in one year while subject to the protections of bankruptcy, creditors cannot possibly assess the viability of the Plan.

Factor 7: “Information regarding claims against the estate.” Again, the Disclosure Statement fails this factor. While it contains some limited information about the basis of the larger claims, it contains virtually no information concerning the numerous objections to claims raised in the Plan, nor any information to gauge the likelihood of success on those objections. In Section 4.05 of the Disclosure Statement, the Debtor lists a number of claims for which “[t]he Plan constitutes Debtor’s objection. . . .” Disclosure Statement, p. 18. The Disclosure Statement minimally describes the basis for the Debtor’s objections to a claim by HCA Health Services and

one by United Healthcare. However, it contains no information whatsoever on the objections to claims filed by Nancy Lara or Equinox Communications. More troubling still is the lack of information provided regarding the objections to claims filed by Dr. Eddie Hamilton, Hamilton-Young Building, GP and EDH Gateway (which is mentioned as an objectionable claim on page 5 but not included in the “Disputed Claims”). The Disclosure Statement reveals that the Debtor objects to Dr. Hamilton’s claim because it alleges that he was overpaid for the assets of Centennial Pediatrics; however, the Disclosure Statement does not sufficiently explain what actions or inactions of Dr. Hamilton would cause his claim to be disallowed. Moreover, there is no explanation as to why the rent claims of Hamilton-Young Building, GP (of which Dr. Hamilton is merely a 50% partner with an unrelated individual) or EDH Gateway (whose lease was assumed by the Debtor and in which the Debtor continues to operate) are objectionable, even if Dr. Hamilton were alleged to have committed some malfeasance. Most troubling is that the Debtor’s entire Plan is premised upon the complete disallowance of all three claims; if any of these claims are allowed in even the amount of \$1.00, then payments to all creditors is delayed by one year pursuant to the terms of the Plan. *See* Disclosure Statement pp. 25-26. Without more adequate information concerning the likelihood of success on these claim objections, the creditors have no idea whether they are to expect payments beginning April 2018 or April 2019.

Factor 8: “A liquidation analysis setting forth the estimated return that creditors would receive under Chapter 7.” The Disclosure Statement is deficient in this regard. While the Disclosure Statement includes an article entitled “Liquidation Analysis” (see pp. 33-35), in essence it contains only this conclusory statement regarding a creditor’s treatment in a hypothetical Chapter 7: “If Debtor’s assets were liquidated by a Chapter 7 Trustee, the costs of liquidation and the lesser proceeds that might be obtained in a liquidation sale will result in

Secured creditors having Unsecured deficiency Claims, increasing and diluting the Unsecured Claim pool and reducing, if not eliminating, the amounts that Unsecured creditors would receive.” Disclosure Statement, p. 34. This analysis does not explain why, in the Debtor’s opinion, the \$6 million in current assets would be insufficient to satisfy the \$4 million of secured debt, which the Plan alleges is fully secured.

Factor 9: “The accounting and valuation methods used to produce the financial information in the disclosure statement.” The Disclosure Statement is completely void of this disclosure; therefore, it does not meet the ninth factor of the *Scioto Valley* test.

Factor 10: “Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor.” This factor is not met by the Disclosure Statement. As noted in the discussion concerning factor 3, the Debtor gives only vague descriptions of its future operations to go alongside a pro forma (about which no information is given concerning the methodology of determining future earnings or expenses). Noticeably absent from any recitation in the Disclosure Statement or any line item in Exhibit D thereto is what compensation is being paid to the insiders, directors and officers of the Debtor. Without this information, the Disclosure Statement is inadequate.

Factor 11: “A summary of the plan of reorganization.” The Disclosure Statement meets this requirement.

Factor 12: “An estimate of all administrative expenses, including attorneys’ fees and accountants’ fee.” The Disclosure Statement fails this requirement. Very little information is provided concerning the amount of current administrative expenses, and no information is given concerning estimated administrative expenses to be incurred following confirmation. This is particularly troubling in this case, where the Disclosure Statement anticipates at least a year of

protracted litigation with Dr. Hamilton, but does not budget for or disclose the expenses for such litigation. *See* Disclosure Statement, p. 19 (“Capstone’s Plan contemplates using the remainder of 2017 to litigate Debtor’s Claims against Dr. Hamilton and his related entities. . .”).

Factor 13: “The collectability of any accounts receivable.” While the Disclosure Statement lists the total amount of accounts receivable, the aging of the accounts receivable, and the amount written off as bad debt, it fails to disclose the probability of collecting the remaining accounts receivable. With the Debtor being in the health care industry, it is critical to know, for example, what portion of the accounts receivable is to be paid by a government entity, what portion is to be paid by private insurance, and what portion is the patient’s responsibility. Each of these categories has a vastly different likelihood of collection. Thus, the Disclosure Statement does not meet factor 13.

Factor 14: “Any financial information, valuations or pro forma projections that would be relevant to creditors’ determinations of whether to accept or reject the plan.” While the Disclosure Statement fails to disclose the source of such financial information, financial information and projections are included.

Factor 15: “Information relevant to the risks being taken by the creditors and interest holders.” For all of the reasons previously stated herein, the Disclosure Statement is woefully deficient in this regard. It does not contain information concerning the massive losses experienced by the Debtor during the last year. It does not contain information concerning the amount of savings that can be expected from renegotiating the Athenahealth contract, nor what the likelihood of success in that regard. It does not estimate future administrative expenses or disclose insider compensation. Finally, and most importantly, the Disclosure Statement contains no information regarding the factual basis for the alleged cause of action against Dr. Eddie

Hamilton, Hamilton-Young Building, GP or EDH Gateway, nor does it contain any information to allow creditors to gauge the likelihood of success of these matters; yet, the successful resolution of these matters is so critical to the viability of the Plan that the timing of payment is wholly determined by the outcome of these causes of action.

Factor 16: “The actual or projected value that can be obtained from avoidable transfers.” This factor is met as to most avoidance actions, as the Debtor admits that it has no preference action with any value to the estate. *See* Disclosure Statement p. 15. However as to the largest cause of action, an alleged fraudulent transfer action against Dr. Hamilton, no projected value is given. Therefore, this factor is met in part but not completely.

Factor 17: “The existence, likelihood and possible success of non-bankruptcy litigation.” As discussed multiple times herein, the complete lack of information concerning alleged causes of action against Dr. Hamilton and related entities causes the Disclosure Statement to badly fail this requirement.

Factor 18: “The tax consequences of the plan.” The Disclosure Statement satisfies this factor, as it plainly discloses that there are no expected tax ramifications to the Debtor as a result of the Plan.

Factor 19: “The relationship of the debtor with affiliates.” To the best of Dr. Hamilton’s knowledge, this factor is inapplicable. The Debtor has no known affiliates.

12. In conclusion, applying the test established by the *Scioto Valley* court to the Disclosure Statement, it is clear that the Disclosure Statement does not contain “adequate information” as required by 11 U.S.C. § 1125.

RESERVATION OF RIGHTS REGARDING CONFIRMATION

13. Dr. Hamilton has many more objections as to the feasibility of the Plan and other requirements for confirmation. He hereby reserves, and does not waive, any and all such objections to confirmation of the Debtor's Plan. This Objection is limited to the adequacy of information included in the Disclosure Statement.

WHEREFORE, Dr. Eddie Hamilton respectfully requests that the Court sustain his Objection to the Disclosure Statement, deny approval of the Disclosure Statement, and grant such other relief as the Court deems just.

Dated: March 27, 2017

Respectfully Submitted,

/s/Phillip G. Young, Jr.

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