

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

In re:	)	
	)	
VANGUARD HEALTHCARE, LLC, et al,	)	Case No. 16-03296
	)	
	)	Chapter 11
	)	
Debtors.	)	Judge Mashburn

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**The Deadline for Filing a Timely Response is January 6, 2017  
Date of Scheduled Hearing: January 10, 2017**

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**OBJECTION OF CCP MUSTANG HOLDINGS LLC TO DISCLOSURE STATEMENT**

CCP Mustang Holdings LLC (“Creditor”) objects to the adequacy of the Debtors’ Disclosure Statement as follows.

Creditor has filed a Proof of Claim for \$9.99 million against Debtor Vanguard Healthcare, LLC (“Parent Debtor”). The claim arises from a loan (the “GECC Loan”) between General Electric Capital Corporation (“GECC”), as lender, and Parent Debtor and several non-debtor direct and indirect subsidiaries of Parent Debtor, as borrowers. Ventas Realty, Limited Partnership (“Ventas”), the predecessor of Creditor and the landlord for the long-term care facilities operated by the Parent Debtor’s non-debtor subsidiaries, provided a limited guaranty of the GECC Loan. In late 2014 GECC made demand on Ventas for payment under the limited guaranty. Thereupon, Ventas and GECC entered into a Settlement Agreement under which

Ventas paid \$9.99 million to GECC to settle Ventas's obligations to GECC under the limited guaranty.

On account of the \$9.99 million payment Ventas made to GECC, to that extent Ventas is subrogated to the rights and claims of GECC against Parent Debtor under the GECC Loan. Although Ventas's subrogation rights are subordinate to any claims of GECC (or its assigns or successors) against Parent Debtor, those rights are not subordinated to any claims of unsecured creditors of Parent Debtor or to the interests of the owners of Parent Debtor.

In late 2015 Ventas assigned its claims against Parent Debtor to Creditor.<sup>1</sup> Parent Debtor has objected to Creditor's Proof of Claim on several grounds. Creditor responded to the objection. Parent Debtor has stated that it intends to seek partial summary judgment on its objection, for which a briefing schedule has been entered by the Court.

### **Objections**

**I. The Disclosure Statement assumes that Creditor will have no claim, and thus does not address the impact of the Creditor's claim, should it be allowed, on the Debtors' Plan of Reorganization (the "Plan").**

If allowed, the Creditor's claim will be by far the largest unsecured claim in this case. The projections to the Disclosure Statement appear to anticipate total unsecured claims of about \$11.5 million. From the Disclosure Statement, it appears that nearly the entire amount is comprised of trade claims spread across the various Debtor entities. For the Parent Debtor, unsecured claims of \$2.628 million are recognized, far less than the claim asserted by the Creditor. It is plain that the claim of Creditor is not included in the Debtors' estimates of their unsecured liabilities.

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<sup>1</sup> The assignment was made under that Assignment and Assumption Agreement dated August 7, 2015 which was attached as Exhibit A to Response of CCP Mustang Holdings LLC to Objection to Claim, docket no. 702.

The Plan provides for the full payment of unsecured claims with interest. This is apparently necessary for Plan confirmation, because the Plan also provides that the Parent Debtor's owners will retain their equity without making any new contribution to any of the Debtors, and without subjecting the equity to an auction. In order for the Debtors to skate around the absolute priority rule, they will have to pay all allowed claims in full, even those the Debtors presently dispute and those (like Creditor's) that are subordinated to the claim of another creditor.

If the Creditor's claim is allowed, the proposed Plan will not work because, from Debtors' projections (which are cryptic and skeletal, as addressed below), the Debtors will not have the free cash to pay an additional \$9.99 million in unsecured debt, plus the interest that will accrue on that debt. To provide its creditors with adequate information, the Disclosure Statement must disclose how the Debtors will deal with the Creditor's claim should it be allowed, or must at least disclose that the pendency of the claim and the possibility that it will be allowed pose a material risk to the success of the proposed Plan.

**II. The Projections included with the Disclosure Statement are too skeletal to be of any use.**

The projections included with the Disclosure Statement start, at top, with "Net Available Free Cash Flow for FCCR (NFCF) – All Debtors (less Poplar and Whitehall)." There is no connection between these "free cash flow" amounts and the actual revenues, expenses, and profits of the Debtors. Exhibit A to the Disclosure Statement, which contains financial statements for the first nine months of 2016, shows "EDITDAR" (which is close to a measure of cash flow) of \$3.948 million. If that amount is extrapolated to a full year, the full year EDITDAR for 2016 is \$5.264 million. But for 2017, the projections show free cash flow of

\$6.719 million. No creditor searching the Disclosure Statement or projections will find an explanation for the \$1.5 million difference. It is also not clear whether any of the numbers reflect the capital expenditures that will be needed over seven years to achieve projected revenue.

Feasibility is going to be a confirmation issue, particularly in this case because of the way the Plan is structured. The Plan allows current equity to retain its interest without any new contribution. Payments to unsecured creditors are to be stretched out over seven years. An assessment of whether the owners will be impermissibly allowed to stay in place while distributing only a pipe dream to the creditors requires complete projections. At a minimum, the projections should allow a creditor to trace current revenue and income to the projected revenue and income that will provide the funds needed for the distributions to creditors promised by the Plan. Such tracing is not possible with the projections included in the Disclosure Statement, and the Disclosure Statement should not be approved until a more complete set of projections have been included with it.

**III. There is a material discrepancy between how the Plan provides for the treatment of creditor classes and how the Disclosure Statement describes the treatment.**

The proposed Plan creates five classes of creditors. For classification purposes, it does not distinguish between creditors of the different Debtors. In other words, the Plan appears to effect, at least for distribution purposes, a form of substantive consolidation.

The Disclosure Statement appears to add a distinction in the treatment of claims not found in the Plan. On page 22 of the Disclosure Statement, under the heading “Treatment of Classes,” the treatment of claims appears limited to the claims of some, but not all, of the

Debtors. Nowhere in the Disclosure Statement is the treatment of the claims against the excluded Debtors, including the Parent Debtor, addressed.

Creditor suspects that the language in the Disclosure Statement is inadvertently mistaken or incomplete. But as it stands, the language, especially when read against the Plan, is confusing and ambiguous and a creditor of the Parent Debtor cannot determine the proposed treatment of its claim. If the Plan will in fact treat creditors differently based on the particular Debtor against whom a creditor has a claim, then that should be clearly spelled out.

### **Reservation of Confirmation Issues**

Creditor reserves all objections to confirmation of the proposed Plan. Specifically, but without limitation, Creditor reserves objection to the feasibility of the Plan and to the scope of the proposed release and injunction (at least as it concerns claims of Creditor against William D. Orand, and Jere Ervin, current or former owners of the Parent Debtor, pending in the United States District Court for the Northern District of Illinois, case no. 16-9081).

Dated: January 4, 2017.

Respectfully submitted,

/s/ Joseph P. Rusnak

Joseph P. Rusnak

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*Certificate of Service*

I certify that the foregoing “Objection of CCP Mustang Holdings LLC to Disclosure Statement” was filed and served upon the following counsel of record via the Court’s Electronic Case Filing System on January 4, 2017.

U.S. Trustee  
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Dated: January 4, 2017.

*/s/ Joseph P. Rusnak*  
Joseph P. Rusnak