UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	
	§	
TEXAS ASSOCIATION OF PUBLIC SCHOOLS PROPERTY AND LIABILITY FUND	§ § §	CASE NO. 17-52437-rbk CHAPTER 9
	§	
DEBTOR	§	

OBJECTION OF NORTHSIDE INDEPENDENT SCHOOL DISTRICT TO ENTRY OF AN ORDER APPROVING DISCLOSURE STATEMENT FOR DEBTOR'S FIRST AMENDED PLAN OF ADJUSTMENT

TO THE HONORABLE RONALD B. KING, CHIEF U.S. BANKRUPTCY JUDGE:

NOW COMES NORTHSIDE INDEPENDENT SCHOOL DISTRICT ("Northside ISD"), and hereby files this its Objection to Entry of An Order Approving Disclosure Statement for Debtor's First Amended Plan of Adjustment, and for good cause would respectfully show the court as follows:

I.

PERTINENT PROCEDURAL HISTORY

1. On October 18, 2017, the Texas Association of Public Schools Property and Liability Fund ("TAPS" or "Debtor") commenced a voluntary bankruptcy proceeding under Chapter 9 of the Bankruptcy Code.

2. On September 18, 2018, the Debtor filed its Disclosure Statement for First Amended Plan of Adjustment ("Disclosure Statement") [docket 102].

3. Northside ISD as an unsecured creditor under Class 3 of the Plan of Adjustment.

II.

NORTHSIDE ISD's OBJECTIONS TO THE DISCLOSURE STATEMENT

4. As discussed below, Northside ISD objects to the Disclosure Statement because it does not contain adequate information as that term is defined in Section 1125 (a)(1) of the Bankruptcy Code: "… information of a kind, and in sufficient detail, as far as 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 such a hypothetical investor of the relevant class to make an informed judgment about the plan…" The purpose of the Disclosure Statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan" *Duff v. United States Trustee, et. al (In re California Fidelity, Inc.)* 198 B.R. 567, 571 (9^{th} Cir. BAP 1996).

A. *The Debtor Fails to Provide Information Relevant to Make an Informed Judgment About the Plan*

5. On page 7, Section III (A) of the Disclosure Statement, "Financial History and Background of the Debtor", the Debtor states: "During recent years the Debtor has received a high number of high-dollar claims from its members, particularly in connection with damage caused by hail storms which affected the State in 2016 and 2017." Debtor omits from its discussion as to why over its 16-year history, in a state where hail storms are common, there were insufficient funds available to meet its obligation.

6. On page 7, Section III B of the Disclosure Statement, "Financial History and Background of the Debtor", the Debtor states since the bankruptcy filing … "TAPS has continued to liquidate and settle claims. In addition, it has collected some receivables for

the benefit of the creditors." Then, in the following paragraph, Section III (C): "The Debtor intends to continue to collect receivables and will assess its districts and to liquidate claims." In this regard, the Debtor fails to provide the following information: (1) Since the bankruptcy filing, who has been collecting the receivables; (2) Since the bankruptcy filing, what has been collected; (3) What constitutes receivables; (4) Is the Loss Fund Charge that was issued to all members that participated in TAPS during the 2015-2016 year in order to pay future obligations, included in the receivables, and if yes, what amount has been collected and remains to be collected; (5) What is Debtor's projection on collection of receivables; (6) Since the bankruptcy filing, what claims have been liquidated and settled; and what are their amounts; (7) Since the bankruptcy filing, who has been liquidating and settling the claims; (8) What is TAPS relationship to Crawford & Company and the mechanism for handling reinsurance claims; and (8) What is Debtor's projection for liquidating and settling of claims.

7. On page 8, Section III D, of the Disclosure Statement, "Future Management of Debtor's Business", TAPS provides that "…Mr. Jan Skovbjerg (on behalf of the Revested Debtor) and the Litigation Trustee will supervise the liquidation of the claims, the distribution of the claims to creditor under the Plan and the dissolution of the debtor." In connection therewith, the Debtor has failed to provide the following information: (1) The definition of "Revested Debtor" as it pertains to this Chapter 9 proceeding; (2) The authority by which Mr. Jan Skovbjerg is employed for the future management of debtor's business; (3) Whether Mr. Jan Skovbjerg is presently collecting receivables and liquidating claims; (4) Whether Mr. Jan Skovbjerg is the same person referred to in the last paragraph on page 10, Section V of the Disclosure Statement, as: "TAPS' former

executive director is willing to accept the TAPS' personal property valued by Debtor at $750.00 "…to compensate him for time he incurs after confirmation of and in administering the plan"; and (5) Is the TAPS' personal property valued by Debtor at $750.00 included or the same personal property of Debtor valued as $2,000.00, listed on Debtor's Schedules #86.

8. On page 8, Section IV of the Disclosure Statement, "Analysis and Valuation of Property" under paragraph "Schedule of Assets, Value Listed in Debtor's Schedules and Current Market Value", Debtor lists "Proposed Receivables From Future Assessments" assessed at $3,100,000.00 ("Future Assessment Amount"). Further, on Page 11 of Section V (C)(5) of the Disclosure Statement, "Operational and Means for Implementation of the Plan", the Debtor "estimates that it will assess each of its former member 18% of its 2016-2017 contribution to the TAPS pool." In connection therewith, the Debtor has failed to provide the following information: (1) How was the Future Assessment Amount calculated; (2) Who calculated the Future Assessment Amount; (3) For what coverage year or years does the Future Assessment Amount cover; (4) Will terminated members be included as accountable for the Future Assessment Amount; (5) Will the Future Assessment Amount be issued as to former members of TAPS who did not have property damage coverage with TAPS; (6) By what authority comes the ability to assess the Future Assessment Amount; and (7) What procedures will be utilized to enforce payments from its former members.

9. On page 9 Section V(A)(1)(a) of the Disclosure Statement, "Summary of Classes and Estimation of Administrative Claims and Scheduled Claims" Debtor states "Employee Compensation (to be paid pursuant to employment agreement that TAPS shall

has or shall assume pursuant to Section 365 of the Bankruptcy Code-$151,000.00…)" In this regard, there is insufficient information pertaining to the employment agreement including the following: (1) Who is the employee being compensated, (2) What is the job that the employee is being compensated for; and (3) What are the terms of the employment agreement.

10. On page 9 Section V(A)(1)(d) of the Disclosure Statement, "Summary of Classes and Estimation of Administrative Claims and Scheduled Claims", the Debtor lists that TAPS claim administrators and experts (including engineers, etc.) will receive $400,000.00. In this regard, (1) Who are the experts that have been retained and/or will be retained ; (2) In referring to administrators, does this include Mr. Jan Skovbjerg, and if so, what part of the $400,000.00 is designated for Mr. Jan Skovbjerg; and (3) Whether Crawford & Company is included as a class within TAPS claim administrators and experts.

11. On page 15, of Section V (C)(12), "Debtor's Retention of Interest, Revesting of Property in Debtor, and Default Provision", the Debtor states, "Such assets include…causes of action held by the Debtor and all other causes of actions and claims described in Exhibit A attached hereto". Exhibit A is not attached to the Disclosure Statement.

B. Alternative to the Plan is not a conversion to Chapter 7

12. On page 16, Section VI of the Disclosure Statement, "Alternatives to the Plan", the Debtor proffers that the Plan is in the best interest of creditors rather than the alternatives to the Plan, including a conversion to Chapter 7. In support thereof, Debtor does not believe that the unsecured creditors would receive any distribution in a Chapter

7 proceeding. The Debtor has improperly applied 11 USC § 1129(a)(7)(A)(ii) which provides that:

> With respect to each impaired class of claims
>
> …
>
> (A) each holder of a claim…of such class- …
>
> (ii) will receive …under the plan on account of such claim…property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive…*if the debtor were liquidated under chapter 7 of this title on such date.*

Under 11 U.S.C. § 901, 11 USC §1129 (a)(7) does not apply to chapter 9 cases. "By their terms, the "best interests" tests found in chapter 9 and 11 are different, and only in chapter 11 is particular consideration of the best interests of individual creditors specified…the "best interests" test in chapter 9 is collective rather than individualized…" *Franklin High Yield Tax-Free Income Fund v. City of Stockton (In re City of Stockton)* 542 B.R. 261, 283 (9th Cir. BAP 2015). For Chapter 9 creditors, the "best interests" test is found in 11 USC §943(b)(7) whereby: "The Court shall confirm the plan if …(7) the plan is in the best interests of creditors and is feasible." Accordingly, the Debtor has not provided the correct standard in comparing the Plan to the Alternatives for which to judge whether the Plan should be accepted or rejected.

WHEREFORE, PREMISES CONSIDERED, Northside ISD prays:

1. That the Court denies approval of the Disclosure Statement.
2. And for such other and further relief to which Northside ISD may be justly entitled.

Dated this 9th day of October 2018.

Respectfully submitted,

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ATTORNEYS FOR NORTHSIDE ISD

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, a true and correct copy of the foregoing Objection to Entry of An Order Approving Disclosure Statement for Debtor's First Amended Plan of Adjustment was served via electronic means as listed on the Court's ECF noticing system or by regular first- class mail to the parties below.

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