

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

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

**OBJECTION OF MEMPHIS INDEPENDENT SCHOOL DISTRICT TO  
TEXAS ASSOCIATION OF PUBLIC SCHOOLS PROPERTY AND LIABILITY FUND'S  
DISCLOSURE STATEMENT FOR FIRST AMENDED PLAN OF ADJUSTMENT  
PURSUANT TO §901 AND §1125 OF THE BANKRUPTCY CODE**

TO THE HONORABLE COURT:

Memphis Independent School District (“Memphis”), an unsecured creditor in this case hereby objects (the “Objection”) to Texas Association of Public Schools Property and Liability Fund’s Disclosure Statement for First Amended Plan of Adjustment Pursuant to Sections 901 and 1125 of the Bankruptcy Code (Dkt. 102) (the “Disclosure Statement”). In support of the Objection, Memphis would respectfully show the Court as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over this contested matter under 28 U.S.C. § 1334 and §157. This matter is a core proceeding under 28 U.S.C. §157(b).
2. Venue in this Court is proper under 28 U.S.C. §1409(a).

**II. BACKGROUND AND HISTORY**

**A. Factual Background**

3. On October 18, 2017 (the “Petition Date”), Texas Association of Public Schools Property and Liability Fund, the debtor in the above-captioned case (“Debtor”), filed in the United

States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “Court”), a Voluntary Petition for relief under Chapter 9 of the United States Code, Title 11 (Dkt. 1).

4. On September 18, 2018, the Debtor filed its Disclosure Statement, also providing a First Amended Plan of Adjustment for the Debtor (the “Plan”) (Dkt. 103). The Plan is a liquidating plan, with Litigation Trustee named as William B. Kingman. According to 5.06(e) of the Plan, and upon approval from the Trust Committee, the Trustee “will have sole and exclusive standing to prosecute, settle, and otherwise administer all Litigation Trust Assets” and will not need “Bankruptcy Court approval or any other notice of approval, except as set forth in the Trust Agreement.” The Plan also makes mention of the Trust Agreement, which is a 27-page agreement attached as Exhibit A to the Plan. The Trust Agreement and the Plan make mention of the “Trust Committee,” but do not define or elaborate who serves on the Trust Committee.

5. The Debtor is an inter-governmental risk pool formed to provide property and liability services to Texas school districts, public college districts, or education service centers that elect to participate in the fund. “Risk pool” members receive coverage documents and declarations evidencing the coverage terms of services. Similar to insurance policies, the documents contain declarations and list coverage terms applicable to individual members of the “risk pool.” Memphis was one such member of the “risk pool,” and the Debtor and Memphis were parties to various insurance policy and coverage documents whereby the Debtor provided Memphis with coverage for damage to real property (the “Policy Agreement”). The Debtor additionally invests in reinsurance policies with independent insurance providers for excess coverage and to mitigate risk to its members. On information and belief, the cost of the investment in reinsurance policies is paid through funds collected from the risk pool members.

6. Under the Policy Agreement, working in concert with reinsurance obtained by Debtor, it is believed that Debtor's financial responsibility for property damage due to hail may be limited to a retained loss amount of \$500,000 per occurrence, with the excess responsibility falling to one or more of the Debtor's reinsurance providers for any one loss. Among other things that are unclear about the manner in which the reinsurance coverage operates, it is unclear whether the excess responsibility is directly owed to a claimant or owed by way of reimbursement through Debtor.

7. Memphis filed a Proof of Claim on February 16, 2018 ("Claim") stating the basis of its Claim as:

A) Rimkus estimated cost to repair damages covered by policy issued by TAPS; B) \$24,700 for assessment and consulting fees; C) tabulation of bids; D) email regarding estimated cost of \$296,000 (Claim 53).

The damages were caused by a wind and hail incident. Memphis's total claim is estimated at \$320,700, and the supporting documents were attached to the Claim.

8. On May 10, 2017, a hail storm damaged real property at Memphis High, Austin Elementary, and Travis Elementary Schools including the buildings, roofs, heating and air conditioning and mechanical units, requiring replacement as outlined in the Exhibit A to the Claim. Exhibit B of the Claim outlines the charges to Memphis for assessment and consultation services, with Exhibits C and D in further support of Memphis' Claim.

### **III. RELIEF REQUESTED**

9. Memphis objects to the Disclosure Statement because it fails to provide adequate information as required by Chapter 9 of the United States Code, Title 11 (the "Bankruptcy Code"), and pursuant to this failure, the Disclosure Statement cannot be approved in its current form. Section 1125 of the Bankruptcy Code, which applies in a Chapter 9 case, requires a disclosure

statement contain adequate information in sufficient detail to enable an informed judgment for a hypothetical investor of a relevant class.

10. Memphis requests an amended Disclosure Statement with further details regarding each of the following objections, as well as other objections made by other creditors.

#### **IV. ARGUMENT AND OBJECTIONS**

11. Section 1125 of the Bankruptcy Code, and relevant to this Chapter 9 bankruptcy, 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 condition of the debtor’s books and record, ... that would enable... a hypothetical investor of the relevant class to make an informed judgment about the plan...” Creditors and the Court rely on the disclosure statement to assist them in making an informed judgment about a plan of reorganization and, accordingly, the disclosure statement must provide enough information to enable interested persons to make an informed choice between two alternatives. 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.” *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988); *In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996); *In re Mickey’s Enters., Inc.*, 165 B.R. 188, 193 (Bankr. W.D. Tex. 1994); *Duff v. United States Trustee, et al. (In re California Fidelity, Inc.)*, 198 B.R. 567, 571 (9th Cir. BAP 1996). See also *In re Monroe Well Serv.*, 80 B.R. 324 (Bankr. E.D. Pa 1987, citing *In re Nw. Recreational Activities, Inc.*, 8 B.R. 10, 11 [Bankr. N.D. Ga. 1980]). It has been held that the “importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance, we cannot overemphasize the debtor’s obligation to provide sufficient data to satisfy the Code standard of ‘adequate information.’” *In re Little*, 126 B.R. 861, 867 (Bankr. N.D. Miss. 1991).

12. The Debtor's Disclosure Statement fails to provide adequate information as defined and required by the Bankruptcy Code. "Inconsistent," "vague," and "confusing" are words used to describe the Disclosure Statement by other creditors in their similar objections, and Memphis is in agreement.

13. The Plan proposes an unspecified potential liability to school district members in the form of "assessments" that should be described in detail. Exhibit 2 to Schedule A/B of Debtor's Voluntary Petition (Dkt. 1) is simply a listing with numbers, giving no indication of what the assessments are for and lists the assessment based on a calculation for the prior year's contribution per member multiplied by 17.77%. The references throughout the Disclosure Statement lead to the assumption by Memphis that the Debtor will assess each of its former members 18% of last year's premium/contribution, but the Debtor has provided no legal, equitable, or contractual basis for its decision to assess its former members and provides no statement or basis for the different percentage as listed from the initial bankruptcy filing and Disclosure Statement. There is no reference to a provision of the risk pool documents that permits this assessment or the legal implications of the assessment from the Debtor's bankruptcy filing. *See* Disclosure Statement at pages 7, 8, and 11. To comply with 11 U.S.C. §365, the Debtor must comply with the "cure and assure" provisions before collecting assessments based on executory contracts. If such assessments are based on prepetition non-executory contracts, Debtor's material breach may have barred the ability to enforce the agreements.

14. The Disclosure Statement, in Section III, states that "TAPS has continued to liquidate and settle claims. In addition, it has collected some receivables for the benefit of the creditors." The Debtor should provide in its Disclosure Statement:

A. What the Debtor defines as a receivable;

- B. Who has been collecting the receivables since the bankruptcy filing;
- C. Details regarding the “receivable collected for the benefit of creditors;”
- D. What the Debtor’s projection is for collection of receivables;
- E. What claims have been liquidated and/or settled, and include details as to the amounts;
- F. What the Debtor’s projection is for liquidating and settling claims.

Without adequate information relating to the liquidation and settling of claims, this Creditor cannot make an informed judgment whether to approve the Plan.

15. Further, the Disclosure Statement deprives its audience of substantive details and discussion of the reinsurance and excess coverage policies between the Debtor and its various reinsurers. Upon information and belief, the Debtor is a party to a number of reinsurance and excess policies that minimize the Debtor’s exposure to covered losses to its retention amount, with anything in excess of that amount being the responsibility of the applicable reinsurer. These policies provide coverage to affected members that sustain significant losses. Further, there has also been some suggestion that the reinsurance coverage pays 100% of a covered loss when the loss, on the date of loss for a claimant, exceeds the retention amount. There has been further suggestion that the total claims for a given date of loss across the entire membership of the risk pool is what determines whether the reinsurance is activated and the reinsurers are liable to pay claimants. The Disclosure Statement lacks any helpful or informative explanation as to how the reinsurance component applies and is triggered, the extent of its coverage, and other pertinent details that would be helpful to creditors in making an informed voting decision and in potentially providing some economic benefit to creditors and the bankruptcy estate. The Debtor must adequately disclose what consequences and effects confirmation of a plan will have on Debtor’s

obligation to act under the reinsurance policies along with the reinsurers' obligations to remain liable for any applicable losses sustained during the applicable coverage period. An estimate of creditor claims that may be paid by reinsurance, should be provided by the Debtor, and making clear remaining pool of creditors to share in estate assets. Adequate disclosure regarding the reinsurance providers and their obligations is necessary for creditors to have enough data to make an informed decision regarding the Plan.

16. The Plan references a "Trust Committee" but does not describe the committee's duties or members. This Trust Committee approves the Litigation Trustee, William B. Kingman, to act without the need for approval by the Bankruptcy Court or any approval, with "sole and exclusive standing to prosecute, settle and otherwise administer all Litigation Trust Assets transferred to the Litigation Trust," thus appearing as no oversight will occur. This Creditor is, at this time not supportive, of unilateral decisions affecting the outcome of its Claim.

17. Other terms in the Plan that have no definition or language clarifying their involvement are "Effective Date," "Reinvested Debtor," "Trust Board," and "Litigation Trust Committee." Without explanation and descriptions of these items, this Creditor cannot make an informed judgment regarding the Plan.

18. The Disclosure Statement incorrectly identifies the Bar Date for filing of claims as February 20, 2018, when in fact, on Debtor's Ex Parte Motion to Extend the Deadline to File Proof of Claims, the Court extended the Bar Date until March 2, 2018. This Bar Date definitions needs to be corrected.

## **V. JOINDER**

19. Memphis joins other creditors in their objections to the Disclosure Statement and Plan, specifically Port Arthur Independent School District and Shelbyville Independent School

District (Dkt. 108), Northside Independent School District (Dkt. 109), Rio Grande City Consolidated Independent School District (Dkt. 110), El Paso Independent School District (Dkt. 114), Highland Park Independent School District and Sierra Blanca Independent School District (Dkt. 115), and incorporates those objections in their entirety, as well as objections to be filed contemporaneously by Reagan County Independent School District and White Deer Independent School District.

## VI. PRAYER

20. WHEREFORE, PREMISES CONSIDERED, Memphis Independent School District prays that the Court denies approval of the Disclosure Statement on the grounds that it does not cause sufficient information as required by the Bankruptcy Code and grant such other and further relieve as the Court deems just and proper.

Dated this 16th day of October, 2018.

Respectfully submitted,

*/s/ Mike Smiley*

MIKE SMILEY, State Bar No. 18526550

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served via ECF or by U.S. Mail, postage prepaid, to each of the parties listed in the bankruptcy proceeding and to any parties who have entered an appearance in this proceeding, including the following listed parties, on October 16, 2018:

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Texas Association of Public Schools  
Property and Liability Fund  
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/s/ Mike Smiley  
Mike Smiley