

TENTATIVE RULING
ISSUED BY JUDGE LAURA S. TAYLOR

Bankruptcy Case Name: BORREGO COMMUNITY HEALTH FOUNDATION,
Bankruptcy Number: 22-02384-LT11
Hearing: 12/06/2023 9:30 AM
Motion: JOINT NOTICE OF MOTION AND MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER (I) GRANTING INTERIM APPROVAL OF THE ADEQUACY OF DISCLOSURES IN THE COMBINED JOINT DISCLOSURE STATEMENT AND PLAN; (II) APPROVING SOLICITATION PACKAGES AND PROCEDURES; (III) APPROVING THE FORMS OF BALLOTS; (IV) SETTING RELATED DEADLINES AND (V) GRANTING RELATED RELIEF FILED ON BEHALF OF BORREGO COMMUNITY HEALTH FOUNDATION

HEAR.

UST Objection. The Office of the United States Trustee filed an objection to this motion asking for clarification and additional information. (Dkt. No. 1152). It also noted a typographical error. The Court assumes that any typos will be fixed.

As to clarification as to payment of certain quarterly fees and the filing of certain quarterly reports, the Court assumes that this can and will be resolved by minor amendments or otherwise. This should not derail granting of the motion.

As to the request for filing of the Liquidating Trust Agreement and the identification of the Liquidating Trustee and others involved in this process, the Court is not convinced that additional disclosure is required in the disclosure statement itself and **at this date**. Having said this, the Court is also surprised that nothing capable of disclosure is known at this time as to some or all of the persons to be involved.

As support for the suggested need for a copy of the Agreement, the UST cites only an unreported decision from 2016. And given that the Official Committee is a co-proponent of the plan and has input into the provisions of the Agreement, the Court is far from convinced that this request merits denial of the motion or disclosure statement amendment. This is particularly true as the plan involved in the cited case was proposed by a single secured creditor, favored that cre



case here, and drew objections from many parties. Here the Official Committee has input before the document is finalized. Obviously, anyone can object to the plan if the Agreement contains inappropriate provisions, but the Court assumes a generic document that is consistent with the plan terms. The Court supposes that a provision stating that the Liquidating Trust Agreement will not vary from established norms for such a document, could be required. But isn't that obvious?

And certainly, the individuals involved as a trustee or otherwise in connection with the Liquidating Trust must be identified, but the Code does not specify that this must be at the point of disclosure. Here, the Official Committee must consent to the selection of the Liquidating Trustee (see, Combined Plan at § 15.7). So aside from requiring disclosure that the Debtor will select someone with experience and without conflict, something the Court assumes as a given, the Court is unlikely to require more as to disclosure today. Obviously, the UST and anyone else must be able to object if the proposed party is unacceptable. But the Court would allow such an opposition to follow designation. And if the UST or any party needs additional time for investigation after disclosure, this may delay the confirmation hearing. So, the Debtor should consider an earlier designation date to ward off delay.

Creditor Objection. Creditors DRP Holdings, et. al. also filed a response and reservation of rights. (Dkt. No. 1154). They reserve rights to object to disclosure adequacy and to the plan itself. That's fine. They also object to the proposed deadlines at page 5-6 of the Motion. They do not request the information related to the trust before the interim disclosure statement is approved, but they make a case for requiring it earlier than proposed by the Debtor and Official Committee. The Court again notes that this makes sense. Even if it approves the motion as proposed, it will not hesitate to continue the confirmation hearing if the disclosure timeline leaves any party with insufficient time to take responsive action required by last minute disclosure. The Court will hear argument but assumes that reasonable people can find a solution.