

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

NVN Liquidation, Inc., et al., f/k/a NOVAN,
INC.,¹

Debtors.

Chapter 11

Case No. 23-10937 (LSS)

(Jointly Administered)

Hearing Date: January 25, 2024 at 10:00 a.m.

Objection Deadline: January 19, 2024 (extended by
agreement)

Re Docket No. 459, 529

THE UNITED STATES TRUSTEE'S LIMITED OBJECTION TO
CONFIRMATION OF THE AMENDED COMBINED DISCLOSURE STATEMENT
AND CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS

Andrew R. Vara, the United States Trustee for Regions 3 and 9 ("U.S. Trustee"), files this objection ("Objection") to confirmation of the *Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (the "Plan") [D.I. 529], and in support of that Objection states:

JURISDICTION, VENUE, AND STANDING

1. This Court has jurisdiction over the above-captioned cases pursuant to 28 U.S.C. § 1334. Venue of the cases is proper in this District pursuant to 28 U.S.C. § 1408(1).

2. Pursuant to 28 U.S.C. § 586, the U. S. Trustee is charged with the administrative oversight of cases commenced pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). This duty is part of the U. S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United*

¹ The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.



States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that UST has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U. S. Trustee as a “watchdog”).

3. Pursuant to 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee has the duty to monitor plans and disclosure statements filed in Chapter 11 cases and to comment on such plans and disclosure statements.

4. Pursuant to 11 U.S.C. § 307, the U. S. Trustee has standing to be heard with regard to Plan confirmation and this Objection.

GROUND/BASES FOR RELIEF

The Plan Cannot Eliminate Parties’ Rights to Notice of a Motion that Affects Their Rights

5. The Plan provides for a “Claims Objection Deadline” defined as “180 days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; provided, however, that the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court.” Plan at 1.23.

6. The Plan further provides that “Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in these chapter 11 cases, or to such Entities as the Bankruptcy Court shall order.” Plan at 12.6.

7. Federal Rule of Bankruptcy Procedure 9014 requires that reasonable notice shall be “afforded the party against whom relief is sought.” Fed. R. Bank. P. 9014.

8. Local Rule 2002-1(b) provides that in chapter 11 cases, all motions, other than ones not applicable here, “shall be served only upon counsel for the debtor, counsel for the

foreign representative, the United States Trustee, counsel for all official committees, all parties who file a request for service of notices under Fed. R. Bankr. P. 2002(i) *and all parties whose rights are affected by the motion*, as applicable.” (Emphasis added).

9. Creditors whose claims have not been the subject of an objection but who have not received any distribution on their claims because they *may* be subject to an objection are the parties who are directly affected by a motion to extend the claims objection bar date. Both the Federal Rules of Bankruptcy Procedure and the Local Rules require that these parties be served with such a motion. The Plan should not eliminate this important procedural protection. Rather, the Plan should either (a) be silent as to how to serve such a motion, such that the applicable rules will apply; or (b) expressly require the same notice as is required by the applicable rules.

The Liquidating Trustee Should Not Have Sole and Exclusive Right to Object to Claims

10. The Plan provides that the Liquidating Trustee will have the “sole and exclusive” right to object to claims. Plan at 12.6 (“Unless otherwise provided in this Plan, after the Effective Date through the Claims Objection Deadline, the Liquidating Trustee shall have sole and exclusive standing to object to Claims in order to have the Bankruptcy Court determine the amount and treatment of any Claim.”).

11. The Bankruptcy Code, however, permits all parties in interest to object to claims. 11 U.S.C. § 502(a) (“A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.”).

12. The Plan cannot re-write the Code. In rejecting a plan which sought to re-write various provisions of the Bankruptcy Code, the court stated in the case of *In re Beyond.com*, 289 B.R. , 144 (Bankr. N.D. Cal. 2003): “In effect, the plan affords the reorganized debtor the

prerogative to comply selectively with the provisions of the Bankruptcy Code and Rules without judicial supervision.”

13. Congress elected to permit all parties in interest to object to claims. The Plan cannot override Congressional intent and limit the parties who can object to claims.

WHEREFORE, the U.S. Trustee requests that this Court deny confirmation of the Plan and grant such other relief as this Court deems appropriate, fair and just.

Dated: January 19, 2024
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I electronically filed *The United States Trustee's Limited Objection to Confirmation of the Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* with the Clerk of this Court using the CM/ECF system which will send notification of such filing to all ECF registrants in this case. I further certify that the foregoing was emailed to the following:

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/s/ Linda J. Casey

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