IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
GENESIS CARE PTY LIMITED, *et al.*,[1]	)	Case No. 23-90614 (DRJ)
Debtors.	)	(Jointly Administered)
	)	Related Dkt. No. 707

STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING THE DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) CONDITIONALLY APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' PROPOSED JOINT PLAN OF REORGANIZATION, (III) APPROVING THE FORM OF BALLOT AND NOTICES IN CONNECTION THEREWITH, AND (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO
[Relates to Docket No. 707]

TO THE HONORABLE DAVID R. JONES,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "**Committee**")[2] appointed in the above-captioned proceedings (the "**Chapter 11 Cases**") of Genesis Care Pty Limited, *et al.*, the debtors and debtors in possession (the "**Debtors**"), hereby submits this statement (the "**Statement**")[3] regarding the *Debtors' Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures*

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://restructuring.ra.kroll.com/GenesisCare. The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is: 1419 SE 8th Terrace, Suite 200, Cape Coral, Florida 33990.

[2] On June 15, 2023, the United States Trustee for the Southern District of Texas, pursuant to sections 1102(a) and (b) of the Bankruptcy Code, appointed the Committee [Dkt. No. 174]. The members of the Committee are: (i), Accuray Incorporated, (ii) ASD Specialty Healthcare, LLC, (iii) Block Imaging Parts & Service, LLC, (iv) Elekta, (v) Cardinal Health 414, LLC, (vi) Centrex Revenue Solutions, and (vii) Boston Scientific Corporation.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Conditional Disclosure Statement Motion, the Plan or the Disclosure Statement, as applicable.

with Respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization, (III) Approving the Form of Ballot and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto [Dkt. No. 707] (the "**Conditional Disclosure Statement Motion**"). In support of this Statement, the Committee respectfully submits as follows:

INTRODUCTION

1. These bankruptcy cases are at an important turning point. After a lengthy marketing process, the Debtors are continuing their efforts to sell their U.S. business, which is weathering its second stay in bankruptcy – a process which remains ongoing, the outcome of which may have its own impact on the terms of any chapter 11 plan. At the same time, the Debtors are addressing numerous issues with their rest-of-world businesses, and are simultaneously investigating potential estate claims on a number of topics. Concurrently, the Committee itself is conducting an investigation into the claims and liens of the prepetition secured parties, as well as its own investigation of potentially valuable claims against directors, officers, and other third-parties relating to prepetition conduct and other prepetition transactions. Neither the sale nor the investigation process has concluded (indeed the *first* batch of emails relating to the investigation was produced this week), and the outcome of each has the ability to markedly influence the Plan and Disclosure Statement. Despite that, the Debtors are seeking conditional approval of the Disclosure Statement now, and originally sought a confirmation hearing in early November 2023.

2. The Committee had a number of concerns with the proposed confirmation schedule as set forth in the Conditional Disclosure Statement Motion, particularly given that material information related to the Plan and Disclosure has either just been filed (with the amended Plan and Disclosure Statement) or remains subject to ongoing processes or investigations. To be clear, the Committee did not and does not oppose the Debtors' efforts to move these cases forward towards confirmation. Since its appointment, the Committee has been steadfast about ensuring

that these cases remain administratively solvent, that rest-of-world trade remains unimpaired, and that these cases – for both the international *and* U.S. Debtors – are ultimately resolved through a chapter 11 plan. But the Committee believes it is important to balance those goals against ensuring that a chapter 11 plan is not unilaterally imposed on unsecured creditors that does not provide for fair treatment, particularly when that same plan currently purports to provide releases for current and former directors, officers, equity holders, lenders, and a plethora of other parties. And it does so while affirmatively *preserving* claims against the very creditors it seeks to deprive of *any* recovery: general unsecured creditors of the U.S. Debtors.

3. To that end, the Committee has been engaged in discussions with the Debtors on a modified confirmation timeline that will ensure that the Committee (and unsecured creditors) has additional time and information to evaluate the Plan and Disclosure Statement, and make better informed decisions regarding their positions on the relief requested. Based on these negotiations, the Debtors have agreed to a modified confirmation timeline that sets a confirmation hearing of November 21, 2023 (subject to the Court's schedule), and revises the interim dates and deadlines to provide creditors and the Committee additional time to evaluate the Plan in advance of an objection deadline of November 15. As agreed, the revised schedule (which the Committee understands will be set forth in a revised proposed order approving the Conditional Disclosure Statement Motion) is as follows: [4]

- October 27: Initial Plan Supplement Deadline
- November 3: Voting Deadline
- No later than 9 days in advance of Plan Objection Deadline: Technical Modification version of Plan to be filed; Initial Confirmation Brief and Declarations in Support Filed

[4] With respect to the adequacy of the disclosures, the Committee will provide the Debtors with an insert and other comments for the Disclosure Statement regarding the Committee's position and recommendations at this time.

- November 15: Plan Objection Deadline
- November 19 at 12pm CT: Confirmation Reply filed
- November 21: Combined Plan and Disclosure Statement Hearing[5]

While these modifications resolved the Committee's immediate process objections to the Conditional Disclosure Statement Motion, the Committee reserves all rights with respect to the ultimate approval of the Disclosure Statement and confirmation of the Plan. Hopefully, this revised schedule also affords the parties the ability to discuss whether a more comprehensive resolution and holistic settlement can be achieved in advance of the Confirmation Hearing. At minimum, it will allow the Committee to have better informed negotiations, based upon an assessment of critical information not yet known (including auction results and investigation analyses), with the Debtors and the DIP Lenders to seek such a global resolution in advance of confirmation.

STATEMENT

4. Although the Committee has resolved its concerns with the Conditional Disclosure Statement Motion, the Committee remains concerned about what the Debtors' current chosen path forward means for unsecured creditors.

5. At the outset of the bankruptcy cases, the Debtors sought and received Court approval of an $800 million DIP facility, with a 3:1 roll-up of prepetition indebtedness (the order approving the DIP facility, the "**DIP Order**") [Dkt. No. 323]. The DIP Order originally set a September 15, 2023 deadline for the Committee to challenge the Debtors' stipulations that the

[5] The Committee reserves the right to seek, if necessary, a status conference with the Court at any time prior to the Combined Plan and Disclosure Statement Hearing, particularly if the parties are unable to reach a holistic resolution by which the Committee could support the Plan and, as a result, the hearing would be a contested one.

claims and liens of the prepetition secured parties were valid and enforceable (the "**Challenge Deadline**"). DIP Order ¶ 24(a).[6]

6. The Committee's investigation into both the claims and liens of the DIP Lenders, as well as potential claims against third parties, is well underway. With respect to the potential challenges under the DIP Order, to date, the Committee has identified a number of categories of unencumbered assets which will need to be pursued prior to the Challenge Deadline, unless resolved consensually by stipulation or the Challenge Deadline is further extended. With respect to third party claims under investigation, the Committee is actively investigating potential claims relating to, among other things (i) the Debtors' acquisition of 21st Century Oncology, (ii) the payment of $2.5 million in prepetition retention payments to two top executives immediately prior to the bankruptcy filing,[7] and (iii) other prepetition conduct and transactions undertaken by the Debtors and/or their former directors and officers in the period prior to the bankruptcy filing.

7. The Debtors, meanwhile, have been running a sale process with respect to the U.S. businesses, which process remains underway. As such, the outcome of the auction and sale process and their impact on ultimate recoveries for creditors of the U.S. Debtors remains uncertain.

8. In contrast to the creditors of the U.S. Debtors, whose fate hangs on the outcome of the pending sale process, the Debtors have consistently sought to reduce (if not ignore) the impact of the bankruptcy cases on the creditors of the foreign Debtors. The Debtors' bar date motion did not even seek to set a bar date for the foreign Debtors, only for the U.S. Debtors (which they defined as the so-called "Relevant Debtors"),[8] because, as the Debtors acknowledge on their

[6] The Challenge Deadline was extended to October 16, 2023 with the consent of the DIP Lenders, the DIP Agent, and the Debtors.

[7] *See* Statement of Financial Affairs of GenesisCare USA, Inc. [Dkt. No. 521] at 158, reflecting two retention payments made on May 31, 2023.

[8] *Debtors' Motion for Entry of an Order (I) Setting the Claims Bar Date, (II) Setting the Governmental Bar Date, (III) Setting the Rejection Damages Bar Date, (IV) Approving the Form of and Manner for Filing Proofs of Claim,*

website, they intended to leave their foreign creditors unimpaired by these bankruptcy proceedings.[9]

9. The Committee has been concerned about the disparate treatment of creditors to the U.S. Debtors and foreign Debtors – particularly one that allows the foreign Debtors to take advantage of the U.S. Bankruptcy Code and obtain relief that otherwise likely could not be obtained locally. Those concerns were realized when the Debtors filed the Plan, which provides for **no recovery** to the unsecured creditors of the U.S. Debtors, with creditors of the foreign Debtors riding through unimpaired. The holders of SFA Claims, who are by the plain terms of the Plan, completely undersecured, are receiving warrants for 10% of the reorganized equity. At the same time, creditors of the U.S. Debtors – whose very efforts have supported the Debtors and *provided for continuity of patient care* – are being deemed to grant releases of the Released Parties (unless they affirmatively opt out of doing so) but are not receiving any releases themselves. *See* Plan, Def. of "Releasing Parties." Simply, not only are the creditors of the U.S. Debtors being treated dramatically worse than creditors of the foreign Debtors (and worse than the deficiency claim of the SFA Claimants) *but they are at risk of being sued for their very efforts to support patient care and the Debtors' health care obligations.*

10. Notwithstanding these concerns, the Committee remains hopeful that the revised confirmation hearing schedule will afford the parties the ability to discuss whether a more comprehensive resolution and holistic settlement can be achieved in advance of the Confirmation

including Section 503(b)(9) Requests, and (V) Approving Notices of Bar Dates, Each of the Foregoing Solely as it Relates to the Relevant Debtors [Dkt. No. 349] at ¶ 1.

[9] GenesisCare Website, available at: https://www.genesiscare.com/us/news/genesiscare-files-for-voluntary-reorganisation-to-advance-business-transformation (accessed on September 29, 2023).

Hearing, and will allow the Committee to have informed negotiations with the Debtors and the DIP Lenders on how best to achieve any such global resolution prior to confirmation.

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Dated: September 30, 2023

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