



J. Craig Whitley
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United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:)
)
Kaiser Gypsum Company, Inc., et al.,¹) Chapter 11
) Case No. 16-31602
)
Debtors.)
_____)

ORDER (1) DENYING FIFTH AMENDED DISCLOSURE STATEMENT FOR FIFTH AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC., PROPOSED BY TRUCK INSURANCE EXCHANGE AND (2) DENYING DISCLOSURE STATEMENT FOR THIRD AMENDED JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.

THIS MATTER is before the Court on (1) the Fifth Amended Disclosure Statement for Fifth Amended Chapter 11 Plan of Reorganization for Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., Proposed by Truck Insurance Company (Docket no. 1666) (the “Truck Disclosure Statement”) and (2) the Disclosure Statement for Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc (Docket no. 1773) (the “Debtors’ Disclosure Statement”) (collectively, the “Disclosure Statements”). Accompanying the Disclosure Statements were a multitude of objections and joinders, as recited in the printed agenda for the September 4, 2019 hearing. *See* Amended

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313).

Notice of Proposed Agenda of Matters Scheduled for Hearing on Wednesday, September 4, 2019, at 9:30 a.m., Docket no. 1775.

This matter was originally heard on June 13, 2019, at which time it was taken under advisement and continued to July 18, 2019. Due to reasons beyond the Court's control—specifically, courthouse annex construction—the matter had to be continued to September 4, 2019. At the September 4, 2019 hearing, and in accordance with FRBP 7052 and 9014(c), extensive verbal findings and conclusions were announced on the record. That having been done, these matters were continued once more to September 26, 2019, to afford the parties an opportunity to consider next steps in the case and whether these rulings were interlocutory in nature or either final.

For the reasons stated on the record, both the Truck Disclosure Statement and the Debtors' Disclosure Statement are **DENIED WITHOUT PREJUDICE**. Both Disclosure Statements have disclosure deficiencies, but these are potentially remediable. While the Debtors' Third Amended Joint Plan (Docket no. 1772) appears to have issues that may ultimately present obstacles to confirmation, it cannot be said to be "patently unconfirmable." On the other hand, Truck Insurance Exchange's Fifth Amended Plan (Docket no. 1665), as described, is "patently unconfirmable" in its present iteration and cannot proceed to solicitation and confirmation.²

At the September 26, 2019 continued hearing, the parties agreed that the September 4, 2019 verbal rulings are interlocutory, and that a present appeal is not contemplated by any party. However, prior to the September 26, 2019 hearing, the Debtors amended their plan (Docket no. 1814) and filed a new Chapter 11 Disclosure Statement (Docket no. 1815). Further hearings will

² See *In re CHL, LLC*, No. 18-00630-5-DMW, 2018 WL 3025310, at *4 (Bankr. E.D.N.C. June 14, 2018) (noting that it is "incumbent upon the Court" to decline approval of a disclosure statement when a plan is patently unconfirmable) (citing *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986)).

be held on **OCTOBER 17, 2019 AT 9:30 A.M.** Parties are **DIRECTED** to file objections to the Amended Disclosure Statement for Third Amended Joint Plan on or before **OCTOBER 7, 2019**, and any responses shall be filed on or before **OCTOBER 14, 2019**.

SO ORDERED.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of the Order.

United States Bankruptcy Court