

BY BEN RUZOW

Liquidating Trusts: A Call for Greater Transparency

Post-confirmation liquidating trustees encountered a potential hurdle this summer when a Texas bankruptcy court voided an undisclosed litigation funding agreement. The trustee in *In re Fresh Acquisitions*¹ had entered into a post-confirmation litigation funding agreement without notice to creditors or court approval. Two years later, the judge learned of the agreement and voided it, stressing in part the lack of disclosure: “[T]he trustee obtained litigation funding *without adequate disclosure to creditors and the court.*”²

It is up for debate whether the order voiding the undisclosed litigation funding arrangement in *Fresh Acquisitions* was correct,³ and an appeal is currently pending on that very question as of late 2025.⁴ Regardless, going forward, both liquidating trustees and litigation funders should consider requiring disclosure and court approval of litigation funding arrangements in the post-confirmation context to avoid later rulings voiding such transactions.

While these possibilities are real and much has been written post-*Fresh Acquisitions* about litigation funding disclosure in bankruptcy, they are just one piece of the puzzle. We lose sight of the bigger picture when we focus exclusively on the litigation funding angle of disclosure. Instead, attention should be paid to the fundamental lack of disclosure obligations in the post-confirmation context. *Fresh Acquisitions* is just one example of the many cases wherein, years after a liquidating trust is created, the beneficiaries of that trust are still waiting, without sufficient knowledge to make informed choices (from the limited options they have).

The details of that case are instructive. *Fresh Acquisitions* and numerous related entities filed for chapter 11 in April 2021. In December 2021, a liquidating trust was created and a trustee was appointed. By the time of the August 2025 decision addressing the litigation funding agreement, there had been no distributions to unsecured creditors. While the trustee had filed quarterly post-confirmation reports (PCRs) as required under the Bankruptcy Code,⁵ the trustee had filed just one status report in

August 2024, which represented the sole substantive update by the trustee describing his activities post-confirmation.⁶ Among other concerns, Hon. **Stacey G. C. Jernigan** was clearly troubled by the limited disclosures of the trustee’s activities, including the litigation funding deal, throughout the life of the liquidating trust.

The current post-confirmation disclosure regime is troubling and does need reform. This article explores ways to expand and improve liquidating trustee disclosure requirements, leading to a framework that would serve all post-confirmation stakeholders.

The Current Post-Confirmation Disclosure Regime and BAPCPA

The Bankruptcy Code mandates continuous transparency through the pre-confirmation process, from the initial petition through plan confirmation. Its disclosure and reporting requirements include first-day motions, monthly operating reports, debtor-in-possession disclosures and milestones, monthly fee applications, sales and bidding procedures, and more.

Before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) became effective in October 2005, trustees’ disclosure and reporting obligations were not uniform across bankruptcy jurisdictions. Under § 602 of BAPCPA, Congress required the U.S. Department of Justice (DOJ) to issue rules implementing uniform periodic reporting by debtors-in-possession and trustees in chapter 11 cases.⁷ The DOJ’s notice of proposed rulemaking is helpful in understanding the current disclosure regime. According to the notice, BAPCPA required the rule to

strike the best achievable practical balance [among]: (1) The reasonable needs of the public for information about the operational results of the Federal bankruptcy system; (2) economy, simplicity, and lack of undue burden on persons with a duty to file these reports; and (3) appropriate privacy concerns and safeguards.⁸



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1 *Gonzales v. Jones (In re Fresh Acquisitions LLC)*, No. 22-ap-3087, 2025 WL 2231870 (Bankr. N.D. Tex. Aug. 5, 2025).

2 *Id.* at *10 (emphasis in original).

3 For example, the terms of the court-approved confirmation plan and liquidating trust agreement were silent with respect to both the trustee’s authority to secure litigation funding and disclosure of the same. *Id.* at *9. The court’s interpretation that this silence acted as a bar to the funding transaction is one of the many issues on appeal.

4 See generally *Litchfield Ventures LLC v. Jones*, No. 25-cv-0203 (N.D. Tex.).

5 See *infra*.

6 *Fresh Acquisitions* at *1.

7 See 28 U.S.C. § 589b.

8 “Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11,” 79 Fed. Reg. 66659, 2014 WL 5795466 (Nov. 14, 2014).

The driving force behind the rule was uniformity in data-collection reporting (previously lacking without federal guidelines).⁹ The collection of uniform data would allow for an “evaluation of the efficiency and practicality of the bankruptcy system, and ... assist Congress when making policy decisions, without imposing significant additional burdens on trustees.”¹⁰

However, the DOJ stated additional goals for the disclosures, including to “assist the court and parties in interest in ascertaining ... [w]hether a debtor is able to effect substantial consummation of a confirmed plan [and] whether the debtor is or is not in material default under a confirmed plan.”¹¹ The current disclosure requirements’ inadequacy in meeting those goals will be discussed herein.

Following the rulemaking process, the DOJ adopted UST Form 11-PCR to effectuate disclosures. In use since June 2021, UST Form 11-PCR requires minimal reporting. It is a single-page PDF to be populated by inputting dollar amounts approved, paid and/or anticipated to be paid. The form does not require, nor provide space for, an explanation of the amounts listed or a summary of activities that would inform creditors about potential distributions. The form’s instructions specifically state that any additional information (with minor technical exceptions) may not be included.¹²

Current Disclosure Requirements Are Insufficient

As an initial matter, the existing regime’s limited disclosure requirements might be necessary for uniformity but they are not sufficient to achieve the DOJ’s goals. They do not offer adequate details to determine whether a debtor will be able to substantially consummate a plan¹³ or whether the debtor is in material default. In the event that questions arise about these two concerns, beneficiaries, bankruptcy judges and other stakeholders do not have sufficient information to address them; knowledge is limited to the numbers listed on the single-page form.

Similarly, creditors and beneficiaries are left unaware of prospects for recovery or durational expectations. Currently, trust beneficiaries, like those in *Fresh Acquisitions*, might face open questions for years after the creation of post-confirmation trusts, left without substantive information. They simply “need to know” about potential recovery and presumed timeframes. While that information might not enable them to expedite or increase recoveries, it could help them decide whether and when to monetize their claims, set budgets and manage expectations. Further details accompanying UST Form 11-PCR would offer them that opportunity.

Trustees and counsel would also benefit from providing additional information; with comprehensive disclosures,

they can establish more substantial justifications for their fees while providing documented records for future engagements. Moreover, courts would be better positioned to evaluate the performance of trustees and counsel, thereby encouraging accountability and ensuring compliance.

Federal Receivership Disclosure Requirements Offer a Framework to Follow

The minimal post-confirmation disclosure requirements stand in stark contrast to the obligations of federally appointed receivers, who bear many similar responsibilities and powers held by post-confirmation liquidating trustees. Federal receivers are typically appointed by federal courts pursuant to their equitable powers, often in the context of enforcement actions or private litigation.¹⁴ Similar to post-confirmation trustees, receivers maintain control over entities’ assets and generally have broad authority to manage and preserve those assets, including by investigating fraud or other wrongdoing, prosecuting affirmative litigation claims, selling assets and resolving claims against the entity. Because of the relative paucity of statutory authority concerning the powers and obligations of federal receivers,¹⁵ court orders appointing receivers serve as the basis for receivers’ authority and responsibilities.

Despite the lack of a binding statutory framework, these court orders provide for what has become a typical array of reporting and disclosure requirements. Federal receivers file periodic reports that reflect the existence, value and location of receivership property, and the extent of liabilities of the receivership estate. Unlike the single-page form that post-confirmation liquidating trustees file (since that is all that is required), federal receiver reports typically include the following:

- a summary of the operations of the receiver;
- any cash on hand, accrued administrative expenses and unencumbered funds in the estate;
- a schedule of receipts and disbursements showing both the current quarter and that for the duration of the receivership;
- a description of known receivership property, including valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- a description of liquidated and unliquidated claims of the estate, including the need for forensic and/or investigatory resources, valuation of those claims, and anticipated or proposed methods for enforcing the claims (including likelihood of success in collection);
- a list of all known creditors, addresses and amounts of their claims;
- the status of creditors’ claims proceedings; and
- the receiver’s recommendation for continuing or discontinuing the receivership.

These requirements are routine enough that identical elements (specifically those listed above) can be found in receiv-

⁹ *Id.* at 66660.

¹⁰ *Id.*

¹¹ *Id.*

¹² See “Instructions for UST Form 11-PCR: Post-Confirmation Report,” justice.gov/ust/file/1452391/dl?inline (stating that notes or explanations are not permitted to be included in form).

¹³ Since “substantial consummation” is a fact-specific inquiry that depends on distributions under a plan, see 11 U.S.C. § 1101(2)(C), the mere recitation of dollar amounts does not inform parties-in-interest of whether a debtor will be able to effect substantial consummation of the plan in the absence of additional information, especially where no or minimal distributions have been made.

¹⁴ See generally Fed. R. Civ. P. 66.

¹⁵ See, e.g., 28 U.S.C. §§ 3103(d) (requiring debt collection-based receivers to file “reports at regular intervals as directed by the court”); 754 (authorizing receivers to act across jurisdictions when underlying litigation involves “property, real, personal or mixed, situated in different districts”).

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ership orders across the country.¹⁶ They are also instructive in exploring how and why liquidating trustees' disclosure obligations should be expanded. Similar to pre-confirmation Bankruptcy Code reporting requirements, federal receiver reports are a crucial mechanism for the equitable management and distribution of receivership estates, including the key element: information. This information, provided to the court, creditors and other interested parties, enables accountability and informed decision-making and ensures compliance with the entered receivership order.

The receiver is held accountable, while ongoing monitoring enables the detection of negligence, fraud or abuse. At the same time, the reports might be relied on to assess finances, evaluate plans and make informed judgments.

These very same attributes apply to post-confirmation liquidating trusts. With the same logic, the disclosures that are routinely demanded of federal receivers should be implemented in the post-confirmation arena.

Establishing More Comprehensive Disclosure Requirements

Bankruptcy courts are the most sensible places to reform disclosure requirements. As previously addressed, federal district courts have successfully established a transparent regime for federal receiverships. Bankruptcy courts can do the same — with the similarly lacking regulatory scheme — for post-confirmation liquidating trustees.

Bankruptcy judges are accustomed to evaluating disclosures and reporting throughout pre-confirmation bankruptcy stages and are suited to do the same for post-confirmation liquidating trusts. Moreover, bankruptcy courts are best situated to address concerns over the administrative costs associated with increased reporting, as administrative costs are a concern in any bankruptcy case regardless of its procedural posture.

At the same time, there is already a mechanism in place for delineating the disclosures: Post-confirmation reporting requirements should be a part of the plan, and by extension

the liquidating trust agreement (LTA) that will govern the post-confirmation trust. Bankruptcy judges may refuse to confirm a plan and LTA unless they provide for meaningful reporting obligations by liquidating trustees in addition to the mandated PCR requirement.

Creditors also have a role to play. Whether through creditors' committees or other pre-confirmation collective actions, they should advocate for the inclusion of disclosures in plan-related documents and LTAs, or they could find themselves waiting in the dark for years.

Once the liquidating trustee's obligations are clearly established, the question becomes how the actual reporting will take place. While the current form does not allow for information beyond its narrow requirements to be included, the DOJ's instructions for form completion offer an option: "Supporting documents are generally not required to be filed with the PCR.... Any explanations or notes must be filed as separate attachments to the PCR."¹⁷

These instructions contemplate additional notes or explanations. They can be filed, potentially as a schedule to the basic form, as narratives containing the additional information delineated in the liquidating trust agreements, or simply as standalone status reports or something similar, as happens (albeit seldomly) under the current regime. Like the federal receiver disclosures, standard disclosures may include such routine concerns as (1) updates on trust accounts; (2) descriptions of investigations into recovery sources; (3) litigation developments; (4) updates to anticipated distributions; and (5) details of completed transactions.

Conclusion

These suggested disclosure requirements reach beyond *Fresh Acquisitions* to one central concern: overall insufficient disclosures by liquidating trustees at the post-confirmation stage. As the *Fresh Acquisitions* case makes its way through the courts, it will continue to not only impact litigation funding agreements but also the overall reporting obligations of liquidating trustees. Whether it will lead courts to shift to a more comprehensive post-confirmation disclosure regime remains to be seen. If it does, all stakeholders will benefit. **abi**

¹⁶ See, e.g., *SEC v. Royal Bengal Logistics Inc.*, No. 23-61179, Dkt. 11 at 16 (S.D. Fla. June 21, 2023); *SEC v. Beasley*, No. 2:22-cv-00612, Dkt. 88 at 18 (D. Nev. June 3, 2022); *SEC v. SiliconSage Builders LLC*, No. 3:20-cv-09247, Dkt. 63 at 16 (N.D. Cal. Feb. 10, 2021).

¹⁷ Instructions for UST Form 11-PCR: Post-Confirmation Report.

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