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Chapter 11 with a Happy Ending: The Six Flags Bankruptcy

BY

JOHN CAPPS AND LAUREN SHERRELL

TABLE OF CONTENTS

<i>(Abstract)</i>	3
I. A HISTORY OF THE COMPANY AND BACKGROUND OF THE CASE _____	3
<i>A. History of Six Flags</i> _____	3
<i>B. An Era of Expansions and Acquisitions</i> _____	7
II. A PROXY TAKEOVER _____	9
<i>A. Key Players</i> _____	10
<i>B. Convincing the Shareholders</i> _____	14
III. PRE-BANKRUPTCY _____	22
<i>A. Old Tactics and A New Venture</i> _____	22
<i>B. Customer Perception and Shareholder Response</i> _____	24
IV. CHAPTER ELEVEN _____	28
<i>A. Prepetition Indebtedness</i> _____	28
<i>B. Key Events Leading to Chapter 11</i> _____	32
<i>C. Filing the Petition</i> _____	36
<i>D. First Day Motions</i> _____	37
<i>E. Creditors' Committee</i> _____	43
<i>F. The First Proposed Plan</i> _____	44
<i>G. Objections and Amendments to the Proposed Plan</i> _____	50
<i>H. Voting and Confirmation</i> _____	52
V. POST BANKRUPTCY _____	53
<i>A. After-affects</i> _____	53

This paper discusses the bankruptcy and restructuring that Premier Parks (“Six Flags”) recently underwent in order to return the company to profitability. The discussion begins with a summary of the company’s history and an introduction to the key players in the restructuring process, including the relevant circumstances and management figures responsible for the considerable financial problems that brought Six Flags to make a Chapter 11 filing. Contextually significant factors such as economic and industry conditions, stakeholder motivations, and media occurrences that were particularly relevant are examined as well. The paper provides an account of the bankruptcy proceedings from the company’s pre-petition plan to the court’s confirmation of the debtor’s re-organization strategy. The company’s subsequent negotiations with its lenders and creditors along with the proposed alternative methods to resolve Six Flags’ financial issues are also detailed. The paper concludes with a discussion of Six Flags’ economic position post-bankruptcy, and the company’s most current market share and forecast for the upcoming 2014 season.

I. A HISTORY OF THE COMPANY

A. History of Six Flags

You could say that Six Flags was an accidental success. The company was founded in 1961 by Angus G. Wynne, Jr., a Texas real estate developer who intended it to be no more than a temporary attraction to increase funds for other projects in Arlington.¹ When attendance significantly exceeded expectations, it became apparent that the park would be a permanent fixture.² The park had 8,374 visitors during its grand opening on August 1, 1961, and through the next ten years hosted 17.5 million visitors.³ The park’s founder was the son of a prominent attorney who was the first president of the state bar of Texas.⁴ Wynne did not follow in his father’s footsteps, and instead served in the Navy during World War II, eventually developing a

¹ *History*, GUIDE TO SIX FLAGS OVER TEXAS, <http://www.guidetosfot.com/parkinfor/history/> (last accessed Apr. 11, 2014).

² *Id.*

³ *Six Flags Over Texas*, CAREERBUILDER, <http://www.careerbuilder.com/Jobs/Company/C8G54Q6FSBSNPSYQM3M/Six-Flags-Over-Texas/> (last visited Apr. 14, 2014); *Texans Head for the Thrills at Six Flags*, HISTORY.COM, <http://www.history.com/this-day-in-history/texans-head-for-the-thrills-at-six-flags> (last visited Apr. 14, 2014).

⁴ Joan Jenkins Perez, Wynne, *Angus Gilchrist, Sr.*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fwy03> (last visited Apr. 14, 2014)

successful career in real estate.⁵ Most notably, he was the founder and developer of Wynnewood Village Shopping Center and Wynnewood neighborhood, both still in existence and located in Dallas.⁶

Wynne had modeled Six Flags Over Texas after Disneyland which had opened in California a few years before. However, he tweaked the business model slightly in several ways, most notably by charging a single admission price as opposed to using the pay-as-you-go pricing scheme that Disneyland and other similar attractions used at the time.⁷ This new pricing model proved to be immensely successful and enhanced the overall popularity of the park, especially for families who wanted to know at the outset how much they would be spending for a day at the park. Wynne's wife, Joanne, is credited with the park's name when after hearing Wynne's original plan to call it "Texas Under Six Flags" she remarked that "Texas wasn't *under* anything."⁸ Thus, Six Flags Over Texas was born, and through several ownership changes along with significant expansion and acquisitions has multiple locations within North America.

A discussion of Six Flags is not complete without mentioning the industry behemoth that started it all, the Disney theme parks. Despite being often and incorrectly credited as America's "first" theme park, Disneyland maintains the distinction of being the first theme park to experience massive commercial success.⁹ Amusement parks in Coney Island and Atlantic City had previously become considerably popular, and although not technically "theme" parks in the

⁵ *Id.*

⁶ Michelle Stanard, *Wynnewood North*, PRESERVATION DALLAS, <http://www.preservationdallas.org/neighborhood-resources/discover-dallas/wynnewood-north/> (last visited Apr. 14, 2014).

⁷ *History*, GUIDE TO SIX FLAGS OVER TEXAS, <http://www.guidetosfot.com/parkinfo/history/> (last accessed Apr. 11, 2014).

⁸ *Id.*

⁹ *Amusement & Theme Parks*, GOODMAGIC.COM, <http://www.goodmagic.com/websales/midway/amuse.htm> (last visited Apr. 14, 2014).

sense of being built around a particular story or “theme,” these parks shared many similarities to Disneyland.¹⁰ One of the biggest differences that Disneyland offered when it opened in 1955 was a particularly clean and family-friendly atmosphere.¹¹ The massive success that Walt Disney had achieved in the Disneyland theme park was a result of years of planning. Disney had first conceived of the idea after visiting several amusement parks with his daughters in the 1930s and 1940s. Amusement parks of the era were typically crude and dirty and often rife with adult themes and otherwise inappropriate atmospheres for children.¹² Disney envisioned a “little family park” that both adults and children could enjoy for a day.¹³ When Disneyland opened in Anaheim, California, it was massively publicized and hosted by Art Linkletter, Bob Cummings, and then television personality, Ronald Reagan.¹⁴ The park quickly became an enormous commercial success. In a short time, the park achieved a tenfold return on its original investment and was hosting guests from all over the world.¹⁵

Although Six Flags was clearly an attempt to replicate the theme park template that Disneyland had become, it had a few key differences. Unlike Disneyland, which targets local and out of state customers and is labeled as a “destination theme park,” Six Flags Over Texas was specifically tailored to draw primarily local consumers.¹⁶ Because the park’s target market

¹⁰ *Id.*

¹¹ *Id.*

¹² Brian Bennett, *A Brief History of the Disney Parks*, MOUSE PLANET, <http://www.mouseplanet.com/dtp/archive/other/history.htm> (last accessed Apr. 11, 2014).

¹³ *Id.*

¹⁴ *The Grand Opening of Disneyland*, DESIGNING DISNEY, <http://www.designingdisney.com/content/grand-opening-disneyland> (last accessed Apr. 11, 2014).

¹⁵ *About Walt Disney*, Walt Disney Archives, <https://d23.com/walt-disney-archives/about-waltdisney/> (last accessed Apr. 11, 2014).

¹⁶ *Six Flags Timeline*, SACRAMENTO STATE, http://www.csus.edu/indiv/s/shawg/articles/facilities/six_flags_timeline.html (last accessed Apr. 11, 2014) (discussing Angus Wynne “perhaps because he was clever or perhaps because he was

was significantly smaller, there was a significant difference in cost between the two parks as well. Disneyland cost nearly five times the amount of Six Flags at over \$17 million, whereas Six Flags Over Texas opened to the public at a cost of around \$3 million.¹⁷ Furthermore, unlike Disneyland's year round operations, Six Flags operates seasonally and is considered a "regional theme park" that uses its off season during the winter to add new attractions each year.¹⁸ Pricing between the two parks was different as well. While Disneyland used a pay-as-you-go pricing model, Six Flags went with a pay-one-price model to appeal to many families who liked knowing in advance how much a day at the park would cost.¹⁹

The surprising economic success of Six Flags Over Texas prompted the company to expand by opening another park in the southern United States. Six Flags Over Georgia opened in Atlanta in 1967, making the company the first chain operator of theme parks. When Six Flags Over Georgia proved to be another economic success, the company then opened Six Flags St. Louis in Missouri. Through the next two decades and under multiple ownership changes, the company pursued an impressive expansion program across the rest of the nation, eventually opening or acquiring locations in the top ten designated market areas that serve approximately 100 million people and 160 million people within a radius of 50 miles and 100 miles, respectively.²⁰ From the company's original single location in Texas, Six Flags has become the

Texas-arrogant, wanted his park to be for the people of Texas, not the entire country. He wouldn't need nation-wide attendance to support his park, and he created the budget to match. The concept also wasn't a universal one, but one that was very much Texas-bred.").

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *History*, GUIDE TO SIX FLAGS OVER TEXAS, <http://www.guidetosfot.com/parkinfo/history/> (last accessed Apr. 11, 2014).

²⁰ *Financial Reports*, SIXFLAGS.COM, <http://investors.sixflags.com/phoenix.zhtml?c=61629&p=irol-reportsOther> (last accessed Apr. 11, 2014).

largest regional theme park operator in the world.²¹ The company now operates a total of 18 parks, with 16 parks within the domestic United States, one park in Mexico City, and one park in Montreal.²² In the aggregate, the parks cover about 4,500 acres of real estate, with approximately 800 rides, including over 120 roller coasters, making the park the leading provider of “thrill rides” in the industry.²³ The parks hosts nearly 50 million customers every year, and employs nearly 35,000 people.²⁴ The majority of people in North America live within an eight-hour drive of at least one of the parks.²⁵

B. An Era of Expansions and Acquisitions

Although Angus Wynne was at the company’s helm during the park’s initial expansion into Atlanta and St. Louis, he sold the park to a limited partnership after just a few years. By 1971, the park was sold to a railroad company, Penn Central Corporation, which had itself filed bankruptcy the year before, and had bought the park in an attempt to diversify its income streams.²⁶ After several more ownership changes, the company was eventually acquired by Time Warner in 1993.²⁷ The Time Warner management team brought considerable changes to the park including the use of Warner Bros. character themes and attractions throughout the park

²¹ Six Flags, Annual Report (Form 10-K), at 3 (Dec. 31, 2012).

²² *Overview*, SIXFLAGS.COM, <http://investors.sixflags.com/phoenix.zhtml?c=61629&p=irol-IRHome> (last accessed Apr. 24, 2014).

²³ Six Flags, Annual Report (Form 10-K), at 3 (Dec. 31, 2012).

²⁴ *About Six Flags*, SIXFLAGSJOBS.COM, <http://www.sixflagsjobs.com/dynamicparkpage.php> (last accessed, Apr. 11, 2014).

²⁵ *Id.*

²⁶ Brian Trumbore, *The Collapse of Penn Central*, BUYANDSELL.COM, http://www.buyandhold.com/bh/en/education/history/2001/the_collapse_of_penn_central.html (last accessed Apr. 11, 2014); *Penn Central Transportation Company*, HARVARD BUSINESS SCHOOL, http://www.library.hbs.edu/hc/lehman/company.html?company=penn_central_transportation_company (last accessed Apr. 11, 2014).

²⁷ *History*, GUIDE TO SIX FLAGS OVER TEXAS, <http://www.guidetosfot.com/parkinfo/history/> (last accessed Apr. 11, 2014)

such as the Looney Tunes section for kids, and more recently the Gotham City section of the park.²⁸ In 1998, the park's current owner, Premier Parks bought the company for \$1.86 billion, but maintained the use of the Warner Bros. themes and characters through licensing agreements.²⁹ Kieran Burke became the CEO in 1994 when the company changed its name from Tierco to Premier Parks.³⁰ The name change was made in part to brand the company as a "premier" regional theme park operator.³¹ Under Burke's leadership, the company began a new era in its operations as it aggressively expanded with the acquisition of multiple park properties, including international locations as well.³²

Before Premier Parks acquired the company, it had successfully undertaken a strategic plan to purchase amusement parks across the United States and upon purchase of Six Flags Theme Parks quickly began to transform several of the previously acquired parks into Six Flags sites.³³ Through the 1990's and early 2000's the Oklahoma-based real estate company acquired over twenty parks including locations in Mexico, Germany, Holland, Canada, and Belgium.³⁴ Kieran E. Burke had been hired as president and CEO of Premier Parks in 1989, and was responsible for the company's shift from real estate to theme parks.³⁵ By the mid 2000's Six Flags had built up a serious amount of debt as a result of the previous expansion, and began to sell off some of their parks in an attempt to offset this debt.³⁶ In 2005, it was reported that the

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Premier Parks, Inc. History*, FUNDING UNIVERSE, <http://www.fundinguniverse.com/companyhistories/premier-parks-inc-history/> (last accessed Apr. 11, 2014).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* (Premier Parks was originally Tierco Group, Inc.)

³⁵ *Id.*

³⁶ *The Roots of Six Flags Entertainment Corp.*, WORDPRESS.COM (Feb. 10, 2011), <http://thekidleahey.wordpress.com/2011/02/10/the-roots-of-six-flags-entertainment-corp/>.

company was in over \$2 billion of debt, and was facing criticism by many including the former president of Six Flags, Ned DeWitt.³⁷ DeWitt stated that the string of acquisitions didn't make sense, characterizing the purchases as "mania" and part of "crazed acquisition process" making the company owners of multiple properties "they just couldn't bring value to."³⁸

When Daniel Snyder became interested in purchasing Six Flags, he was well known as the young billionaire owner of the Washington Redskins. Often disparagingly portrayed in the media, he has been called "prickly" and "imperious" due to his demanding personality.³⁹ Snyder's interest in the company was in part due to Six Flag's highly leveraged status; the company had continued to plunge more deeply into debt and the current owners were looking for a purchaser. Along with over a decade of overambitious acquisitions the company was also suffering from the after-effects of the September 11 terrorist attacks, which had effected a significant downturn in the theme park industry.⁴⁰ Analysts also attributed the declines in Six Flags attendance to sloppy operational management at some parks, opining that previous overexpansion resulted in less attention to detail at some locations as well as acquisitions of several generally weak amusement park properties.⁴¹ CEO Kieran Burke fielded such comments by pointing to the overall strong performance of the parks during the first half of 2005 and attributing such performance to new attractions, improved services, and an advertising campaign featuring "Mr. Six" a geriatric character who danced to the late-90's dance song "We Like to

³⁷ *Six Flags Faces Buying Spree Hangover*, NEWS12 (Sep. 19, 2005), <http://www.kxii.com/home/headlines/1724681.html> (reporting that DeWitt was Six Flags president from 1973 to 1982).

³⁸ *Id.*

³⁹ Anthony, Brown, *Redeeming Daniel Snyder's Rep*, REDSKINSHOGHEAVEN.COM (Sep. 25, 2010).

⁴⁰ *Six Flags Faces Buying Spree Hangover*, NEWS12 (Sep. 19, 2005), <http://www.kxii.com/home/headlines/1724681.html> (reporting that the downturn began to show signs of reversing in late 2005).

⁴¹ *Id.*

Party” and who had become a popular advertising character.⁴²

II. A Proxy Takeover

A. Key Players

At the time Daniel Snyder began positioning himself to take control of Six Flags he was not only well known as the owner of the Washington Redskins, he was also becoming a considerably polarizing figure to many of the team’s fans. Snyder had purchased the Redskins in 1999 when the franchise had gross revenues of \$162 million. By 2005, media reported that this number had nearly doubled under Snyder’s leadership, and the company’s SEC filings reported \$300 million in gross revenues. Portrayed by many as brash, cocky, and arrogant, Snyder was the owner of a marketing firm and worth an estimated \$500 million at the time he made his bid to purchase the Redskins.⁴³ He had no experience managing a sports team. However, despite the fact that the Redskins floundered on the field during Snyder’s tenure as owner, the franchise had continued to rapidly increase in value.⁴⁴ In fact, the franchise’s most recent SEC filing showed revenues have grown to \$381 million, with a team value of \$1.7 billion.⁴⁵ One commentator noted the Redskins’ increase in value might lead one to believe that “if not a football genius, [Snyder was] at least a capable businessman.”⁴⁶ Snyder certainly seemed to

⁴² *Id.* (paraphrasing Burke, “the better recent performance reflects an investment program that has added new attractions in many parks, initiatives to improve services to guests and an advertising campaign featuring ‘Mr. Six,’ a dancing elderly man in a tuxedo.”).

⁴³ Harry Jaffe, *The Dan Snyder You Don’t Know*, WASHINGTONIAN (Sept. 1, 2006), <http://www.washingtonian.com/articles/people/sports/the-dan-snyder-you-dont-know/>.

⁴⁴ Mike Jones, *Redskins Rank Third On Forbes’ List of Most Valuable NFL Franchises*, THE WASHINGTON POST (Aug. 14, 2013), <http://www.washingtonpost.com/blogs/football-insider/wp/2013/08/14/redskins-rank-third-on-forbes-list-of-most-valuable-nfl-franchises/>.

⁴⁵ Jeff Clabaugh, *Redskins Team Value Rises to \$1.7 Billion*, WASHINGTON BUSINESS JOURNAL (Aug. 14, 2013), <http://www.bizjournals.com/washington/news/2013/08/14/redskins-team-value-rises-to-17.html>.

⁴⁶ Dave McKenna, *Downward Spiral*, SLATE MAGAZINE (May 3, 2010), http://www.slate.com/articles/sports/sports_nut/2010/05/downward_spiral.html.

believe his tenure as owner of the football franchise made him well-equipped to manage a theme park, characterizing his team ownership as proving his “track record of success in venue-based entertainment.”⁴⁷ During Snyder’s takeover campaign, he referred to himself as a “proven creator of value” who was qualified to lead the management team of Six Flags due to his ability to increase revenues and facilitate stock price appreciation.⁴⁸

Along with installing himself as the new chairman of Six Flags’ board of directors, Snyder also wanted to make his good friend, Mark Shapiro, CEO of the company.⁴⁹ Shapiro, who had left a prestigious job as an executive at ESPN, was immediately lauded as a “former ESPN programming whiz,” who would help reinvigorate the struggling theme park.⁵⁰ Shapiro threw his not insignificant support behind Snyder’s takeover efforts in late 2005.⁵¹ The duo then began a sizeable campaign to gain the support of Six Flags investors to market their plan to take control of the company, and chartered a jet to fly them across the country to sell their idea to company investors who held large percentages of stock.⁵² Their efforts were rewarded when New York investor, Simon Glick, who owned nearly ten percent of the company, stated his intentions to vote in favor of Snyder’s proposal.⁵³ They were eventually able to attract the

⁴⁷ Six Flags, Consent Solicitation (Schedule 14A), at 15 (Oct. 2005).

⁴⁸ Six Flags, Consent Solicitation (Schedule 14A), at 17 (Oct. 2005).

⁴⁹ Jaffe, *supra* note 43 (reporting that Snyder first took notice of Shapiro in 2003, who was a rising star at ESPN at the time. The two were friends first and took family vacations together before Snyder actually asked Shapiro whether he would ever be interested in running Six Flags).

⁵⁰ Mark Hyman, *The Batman and Robin of Six Flags*, BUSINESSWEEK, (May 7, 2006), <http://www.businessweek.com/stories/2006-05-07/the-batman-and-robin-of-six-flags>.

⁵¹ Anny Shin, *Major Six Flags Holder Backs Snyder Takeover*, THE WASHINGTON POST (Nov. 3, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/02/AR2005110202774.html>.

⁵² *Id.*

⁵³ *Id.* (reporting Snyder’s takeover bid “For his gambit to succeed, Snyder, Six Flags’ largest shareholder, with a stake of about 11.7 percent, needs owners of a majority of company shares to support him. More than 70 percent of Six Flags’ shares are controlled by seven investors. In addition to Snyder and Glick, other major investors include Omaha fund manager Wallace

support of other heavyweight investors, most notably Bill Gate’s Cascade Investment. They received an additional boost from a report by the nation’s largest shareholder-advisory firm, Institutional Shareholder Services (“ISS”), which recommended that shareholders vote to replace the current directors with Snyder and his proposed team.⁵⁴

Shapiro had been with ESPN for 12 years when he joined Snyder’s efforts to take over Six Flags.⁵⁵ He was vocal about both his passion for the Six Flags venture as well as his personal high regard for Snyder and his confidence in Snyder’s capacity as a strategic businessman.⁵⁶ In response to speculation that Snyder had offered him a financial windfall to leave ESPN, with as much as \$10 million in guaranteed salary and bonuses, Shapiro answered that he felt that Six Flags was an ideal job opportunity, stating “I would never, ever leave what I view as one of the best jobs in America, unless . . . [t]he subject matter . . . [is] something I’m passionate about.”⁵⁷ On his opinion of Snyder, who was tactfully referred to as an “independent thinker, and not easy to work for,” Shapiro stated that Snyder was a family man who was also loyal, honest, and a winner who “has made people a lot of money.”⁵⁸

Weitz, who controls about 10.6 percent of the shares, and Microsoft founder Bill Gates, who owns about 11.5 percent.”).

⁵⁴ *Id.*; Dean Starkman, *Investor Adviser Backs Snyder on Six Flags*, THE WASHINGTON POST (Nov. 16, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/15/AR2005111501592.html>.

⁵⁵ *Online Extra: Why Mark Shapiro Left ESPN*, BLOOMBERG BUSINESS (Oct. 16, 2005) <http://www.businessweek.com/stories/2005-10-16/online-extra-why-mark-shapiro-left-espn>.

⁵⁶ *Id.*

⁵⁷ *Id.* (Quoting Shapiro “If somebody said to me tomorrow: ‘You can run a bottled-water company, and we’ll give you \$20 million up front,’ I wouldn’t do it. I’ve got to love what I’m doing. I’m not leaving from ESPN. I’m leaving to go somewhere. There’s a big difference.”).

⁵⁸ *Id.* (Quoting Shapiro on Snyder “There’s what you read and what you get. I’m not going to say everything you read, there’s no truth to it. I’ve been with him. Our wives know each other. He’s a family man, which I love. Great children. I have met his mom. She is salt of the earth. And his best friend in life is his dad. . . . Anyone who puts so much stock in his family can’t be half-bad. Beyond that, he is extremely loyal to anyone he works with or who works for him. He has

Snyder wanted to give a director seat to another longtime personal friend, Dwight Schar. Schar was the founder of NVR, Inc., a fortune 500 company that is reported as being the sixth leading home builder in the United States, and third in terms of revenue.⁵⁹ Schar was also well known for his significant philanthropic endeavors and heavy participation in Republican politics, an interest that he shared with Snyder.⁶⁰ Originally a high school teacher, Schar's first experience in the home building industry was selling homes on the weekends.⁶¹ He eventually founded NVHomes in 1980, which he later renamed NVR after acquiring his former employer, Ryan Homes in 1987.⁶² Like Shapiro, Schar was intensely loyal to Snyder despite criticism of his management style and had had a business relationship with him since Snyder had approached him about becoming part owner of the Redskins.⁶³ Snyder didn't need cash at that time, but he wanted to pay down the team's debt burden.⁶⁴ Schar took advantage of the opportunity and bought a 15-percent interest in the team for \$200 million in 2003.⁶⁵ Tapping the talents of Mark Shapiro and Dwight Schar, and touting them as his handpicked management team, Snyder was

made people a lot of money. He's a winner. And he wears his emotions on his sleeve. If you don't like everything he says, at least he's not lying to you. I admire that.”).

⁵⁹ *Dick Clark Productions Acquired by Redzone Capital*, BUSINESSWIRE.COM (Jun. 19, 2007), <http://www.businesswire.com/news/home/20070619005639/en/dick-clark-productions-acquired-redzone-capital#.Uy8-eShq5UQ>; Gretchen Morgenson, *Who Benefits From This Buyback*, THE NEW YORK TIMES (Jun. 3, 2007), http://www.nytimes.com/2007/06/03/business/yourmoney/03gret.html?ref=nvrinc&_r=0. (NVR is the 10th largest seller of residential housing in the United States).

⁶⁰ *Billionaire Profile: Dwight Schar*, MONEYEDUP (Oct. 14, 2011), <http://www.moneyedup.com/2011/10/billionaire-profile-dwight-schar/> (discussing Schar who was one of President Bush's largest fundraisers during his re-election campaign, and also held a position on the Bush inaugural committee).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Jaffe, *supra* note 43, (Discussing Snyder's relationship with Schar “In the spring of 2003, Dan Snyder invited Dwight Schar to lunch at the Capital Grill on Pennsylvania Avenue. ‘I have a list of 100 people I would consider selling part of the Redskins to,’ he said. ‘You are in the top three.’”).

⁶⁴ *Id.*

⁶⁵ *Id.*

able to successfully sell his idea to many of the company's shareholders. In addition to ISS's overwhelmingly positive report on Snyder's takeover intentions, another positive review came from Glen Reid, a Bear Stearns analyst, who stated that Snyder's shareholder activism was "one potential bright light for Six Flags."⁶⁶ While other analysts blamed debt as the reason for the company's problems, Reid credited slowed spending such as the company's halted purchases of normally lucrative investments like new rides as the reason for the problems, "[i]n order to maintain high attendance rates, you have to spend money."⁶⁷ Spending money to make money was something Snyder had proven himself to be immensely good at while managing the Redskins. That he understood the particular importance of spending money on marketing was well known to people familiar with the industry. According to Robert Johnson, owner of the Charlotte Bobcats basketball team, "If there is an asset that is under-marketed and [Snyder] thinks he can do it better, there is gold in them there hills for him."⁶⁸

B. Convincing the Shareholders

When Snyder began to aggressively pursue control of the company he filed a proposal with the SEC under his limited liability company, Red Zone, that detailed his strategy. "It's time for a change" was the central theme of the filing.⁶⁹ He argued that the company needed to conduct a purge of properties that weren't critical to the management plan and also overhaul the company's advertising and marketing strategies to establish a "clean, safe and fun" image for the

⁶⁶ Bill Burbaker, *For Snyder, The Six Flags Thrill Is Gone*, THE WASHINGTON POST (Feb. 25, 2005), http://www.washingtonpost.com/wp-dyn/articles/A51931-2005Feb24_3.html.

⁶⁷ Michael Barbaro, *Gates, Snyder Interested in Change at Six Flags*, THE WASHINGTON POST (Sept. 1, 2014), http://www.washingtonpost.com/wp-dyn/articles/A50718-2004Aug31_2.html.

⁶⁸ *Id.*

⁶⁹ Six Flags, Consent Solicitation (Schedule 14A), at 5 (Oct. 2005).

company.⁷⁰ Snyder contended that under the then-current management team, the company was experiencing a loss of shareholder value in the billions of dollars.⁷¹ He stated that the company had recorded negative earnings from 2000 to 2005 and that management had responded poorly by citing weather as the source of the decreasing crowds.⁷² Throughout the proposal, Snyder compared Six Flags to the park's closest competitor, Cedar Fair, noting that Cedar Fair had consistently outperformed Six Flags for the past five years as reflected by a comparison of their indexed stock prices.⁷³

According to Snyder, Cedar Fair guests spent an average of \$5.50 more per visit than the typical Six Flags guest.⁷⁴ He speculated that if Six Flags could accomplish the same, the company would generate \$200 million in incremental revenue and approximately \$1 billion in shareholder revenue.⁷⁵ In support of his argument that the park was in serious need of an image overhaul to successfully appeal to families, particularly those with young children, Snyder then cited media reports of several fights that had recently broken out in two of the parks.⁷⁶ According to Snyder, the Six Flags brand was being seriously damaged as a result of such occurrences.⁷⁷ He also believed the company had been "burning cash" for years and was over-concerned about reducing its debt burden, while management had rewarded itself with over-

⁷⁰ *Six Flags Faces Buying Spree Hangover*, NEWS12 (Sep. 19, 2005), <http://www.kxii.com/home/headlines/1724681.html>.

⁷¹ Six Flags, Consent Solicitation (Schedule 14A), at 5 (Oct. 2005) (Snyder based this number on previous share counts of Six Flags' public filings).

⁷² *Id.* at 7.

⁷³ *Id.* at 6 (stating that from 2000 to 2005, Cedar Fair saw consistent gains in stock prices going from right around 100.0 to 164.0, while Six Flags went from over 100.0 to under 39.6).

⁷⁴ *Id.* at 8.

⁷⁵ *Id.* at 8 (predicting that if Six Flags could achieve the same per cap spending as Cedar Fair it would add approximately \$1 billion in shareholder value).

⁷⁶ Six Flags, Consent Solicitation (Schedule 14A), at 10 (Oct. 2005) (reporting that the fights cited in the presentation occurred in the summer of 2005 at Six Flags Astro World in Houston, TX, and Six Flags Magic Mountain in Valencia, CA.).

⁷⁷ *Id.*

generous compensation packages.⁷⁸ In particular, he noted that during the previous year, CEO Burke and CFO Dannhauser had received stock options not tied to company performance; grants that equaled 80 percent of the total stock options granted to the company.⁷⁹

The proposed management team included Snyder himself, Mark Shapiro, and Dwight Schar. These “new and passionate leaders” were committed to reinvigorating Six Flags, which was characterized as a company that “lacks any sense of passion, pride, and enthusiasm.”⁸⁰ Snyder’s new management team would undertake an operating plan and capital management strategy that would vastly improve the company’s ailing bottom line by increasing attendance and revenue, decreasing expenses, and ultimately maximizing shareholder value.⁸¹

The new team’s strategy began with seeking stockholder consent for the takeover, and the ousting of key members of the current board, including Kieran Burke, James Dannhauser, and Stanley Schuman, who were respectively the company’s CEO, CFO, and Director.⁸² As the managing partner of the largest shareholder of Six Flags, Snyder and his proposed management team owned 11.7% of the company’s stock.⁸³ The suggested strategy for the proxy takeover also contained a timeline of relevant events, including the initial Schedule 13D filed in August of 2004 when Red Zone purchased over 8 million shares of Six Flags, bringing the entity’s ownership to over 5%, which is the threshold amount required for the mandatory Schedule 13D

⁷⁸ *Id.* at 12 (stating that Burke and Dannhauser received stock and grants not tied to company performance and they received 80% of the stock options granted to the company).

⁷⁹ *Id.*

⁸⁰ *Id.* at 17.

⁸¹ *Id.* at 15.

⁸² *Id.* at 20 (proposing an amendment to the company’s bylaws to accomplish several things, including the following: limit the number of directors on the board to seven, require that the vacancies on the board be filled only by stockholder majority vote, and repeal every provision of the company’s bylaws or amendments adopted after September 13, 2004.).

⁸³ *Proxy Adviser Backs Six Flags Takeover*, DALLAS BUSINESS JOURNAL (Nov. 15, 2005), <http://www.bizjournals.com/dallas/stories/2005/11/14/daily16.html>

filing.⁸⁴ The timeline also reflected Six Flag's then-current management team's unsatisfactory response to Snyder's repeated efforts to engage in constructive talks for improving company operations.⁸⁵ In Snyder's Schedule 13D filing he attached a copy of a letter he had written to the Six Flags Board of Directors which described his rebuffed efforts to participate in decision-making with the company:

“Since current management of the Company apparently feels its time is better spent speaking with attorneys rather than exploring ways to improve shareholder value, I am writing to request a meeting with the non-officer outside directors of the Company's Board of Directors. I am very concerned about the consistently disappointing performance of the Company. This must be addressed immediately - shareholders should not have to suffer through one more period of poor financial performance or one more announcement that the Company will miss its expected numbers.”⁸⁶

Unsurprisingly Six Flags had strong criticism for Snyder's ideas, arguing that his plans would undermine the sales process and ultimately lessen shareholder value.⁸⁷ CEO Kieran Burke sent a letter to shareholders communicating his disapproval of Snyder's plans describing Snyder and his selected management team as “people with no experience in the theme-park industry [that] would be in a position to implement so-called ideas that we think are dangerous and potentially destructive of shareholder value.”⁸⁸

Undeterred, Snyder continued to pursue his takeover bid, arguing that specific changes were needed in order to maximize shareholder value. In proxy disclosures, he identified a

⁸⁴ Six Flags, Consent Statement (Schedule 13D), at 2 (Sep. 2, 2004). (Red Zone's purchase of 8,150,000 shares of Six Flags stock equaled 8.8% ownership of the company).

⁸⁵ Six Flags, Consent Solicitation (Schedule 14A), at 20 (Oct. 2005). (stating “the Company ignored our suggestions and failed to implement any alternative strategies that would deliver acceptable results for shareholders,” and “[t]he Independent Directors made it clear that they would not entertain any of Mr. Snyder's suggestions.”).

⁸⁶ Six Flags, Consent Statement (Schedule 13D), at 4 (Sep. 2, 2004).

⁸⁷ Paul Monies, *Large Shareholder Files Against Six Flags Sale NFL Redskins' Owner Backed By Major Investor*, NEWSOK (Nov. 3, 2005), <http://newsok.com/large-shareholder-files-againstsix-flags-salebrnfl-redskins-owner-backed-by-major-investor/article/2918261>.

⁸⁸ *Id.*

handful of areas that needed improvement, including advertising and marketing, concessions, sponsorships, and merchandise. Advertising and marketing could be better focused towards families with young children as well as teenagers.⁸⁹ This was opposed to the company's current advertising strategy which he characterized as targeted only at teenagers and Generation X.⁹⁰ Regarding improvements to concessions, Snyder argued that outsourcing was necessary and that selling rights to the park's key food items would allow name brand consumer foods companies to benefit from the strategic relationship.⁹¹ By engaging in sponsorship partnerships, Six Flags could collect fees from third parties in exchange for providing lucrative marketing opportunities within the parks.⁹² Similarly, park merchandise could benefit from co-branding as well. Snyder envisioned co-branding opportunities that would include partnerships in a broad array of areas such as action sports, video games, music, movies, and more.⁹³

Staying true to his reputation for boosting the bottom-line by aggressively raising prices on incremental revenue streams, Snyder planned to increase parking fees, and allow groups to rent the parks and parking lots for special events.⁹⁴ He also intended to create tiered pricing for package deals, develop a loyalty program, and eliminate any unnecessary discounts, which had

⁸⁹ Six Flags, Consent Solicitation (Schedule 14A), at 24 (Oct. 2005).

⁹⁰ *Id.* (Snyder argued that current Six Flags advertising had no clear message and used an overly expensive advertising campaign).

⁹¹ *Id.*

⁹² *Id.* (Characterizing the current sponsorship relationships as using “tired and dated brands that generate little recognition by children.”).

⁹³ Six Flags, Consent Statement (Schedule 14A), at 24 (Oct, 2005). (Arguing that the company's current merchandise offerings suffered from “tired and dated brands that generate little recognition among children.”).

⁹⁴ McKenna, *supra* note 46, (reporting “Snyder's run atop Six Flags was a debacle from the start. His shtick was much the same as he'd used with the Redskins, where he put a price tag on anything without one (charging admission to training camp) or added a bigger number to everything with one (quadrupling parking fees in a decade)... Just as he'd done at FedEx Field (which was called Jack Kent Cooke Stadium before Snyder sold the naming rights for \$7.6 million per year through 2025), Snyder inflated the parking rates at Six Flags lots all over the country.”).

been previously characterized as cheapening the whole experience.⁹⁵ Highlighting Dwight Schar's real estate expertise, the shareholder proposal stated that excess acreage owned by Six Flags could be re-zoned, revalued, and sold to third parties to help reduce the company's debt and save on property taxes.⁹⁶ Snyder closed the proposal by requesting shareholder support and stating that his team was unable to block a sale of the company since they were a minority on the board, but as majority owners they would vote in favor of any transaction that would offer the highest value to shareholders.⁹⁷

Snyder's plan attracted the support of many, including former Six Flags president, Ned DeWitt, who was quoted as responding to Snyder's SEC filing, "I haven't ever met Dan Snyder ... but it sounds like he's dead on." Dennis Speigel, president of International Theme Park Services, attributed the park's declines to "flawed business plans" such as overly discounted ticket prices, and management decisions made in desperation.⁹⁸ One analyst is quoted as stating that then-current CEO, Kieran Burke, was seen more as a politician than an operating CEO who was willing to get involved in the details of running the parks.⁹⁹ In a passionate letter entitled

⁹⁵ McKenna, *supra* note 46; *Six Flags Faces Buying Spree Hangover*, EAST VALLEY TRIBUNE (Oct. 7, 2011), http://www.eastvalleytribune.com/money/article_084b70a7-9e3d-5530-b255-85f88d8a34ad.html?mode=jqm (paraphrasing Six Flag's former president, Ned DeWitt, who stated that the company offered too many discount admission schemes that reduce revenue from entry fees forcing the company to attempt to recoup those losses through the sale of other in-park merchandise).

⁹⁶ Six Flags, Consent Statement (Schedule 14A), at 24 (Oct, 2005).

⁹⁷ *Id.* at 34 (stating that Six Flags' sale announcement was "merely a defensive tactic.").

⁹⁸ *Id.* at 13 (quoting Dennis Speigel "They've had flawed business plans. They prostituted the front gate, and put so many discounts out in the marketplace that that's only way the consumer is going to come. Why pay \$44 when you could bring in a Coke can or a McDonald's wrapper and get in for \$5? The more you discount, it's like a junkie shooting up heroin – the more you shoot it, the more you need it. They began doing things in desperation to build the business, but what they were really doing was strangling their business.").

⁹⁹ *Id.* at 13 (quoting David Miller, "The problem with Kieran Burke is that he's perceived as a politician, and that he's not perceived as an operating CEO. He's not seen on the Street as a rollup-your-sleeves-and-run-these-parks kind of guy.").

“What is Dan Snyder So Afraid Of and Why is He Trying to Rush You into Voting,” Burke urged shareholders to reject Snyder’s proposals, and described the takeover bid as an attempt to prevent shareholders from obtaining their fair share of value through a sale of the company:

In our view, the last thing [Snyder] wants to see is a successful sale of Six Flags. We believe he wants our sale process to fail so that he can take effective control of Six Flags without paying full value for all of your shares. We think that if Snyder wants control of Six Flags, he should pay stockholders for it! ... In our judgment, Snyder’s attempts to sling mud at our directors and management and denigrate the sale process are simply a tactic to divert stockholders from focusing on what’s important. Don’t be rushed by Snyder into giving your consent before you have the opportunity to evaluate all of your alternatives!¹⁰⁰

In response to Snyder’s shareholder proposal, Six Flags filed a counter-proposal that touted their undergoing attempts to sell the company as “maximizing value for all stockholders” that was “designed to attract the best possible transaction for ALL stockholders and provide full and fair value for ALL Six Flags shares.”¹⁰¹ The recommendation statement also attempted to reassure shareholders that the current strategic plan was working and the company was continuing to grow under current management, “[the company has] significantly outperformed our peers in 2005 and have set the stage for substantial future growth.”¹⁰² Directly responding to Snyder’s proposal, Six Flags pronounced the plans as “neither original nor creative” that would “put your investment at risk,” and “demonstrate a significant lack of understanding of and experience in the theme park business.”¹⁰³ In particular, the counter-proposal stated that Snyder’s plans to engage in strategic vendor relationships for concessions and

¹⁰⁰ *Six Flags Sends Letter to Stockholders; Urges Stockholders to Preserve Their Choices by Rejecting Red Zone's Consent*, SIX FLAGS FOR INVESTORS (Nov. 11, 2005), http://phx.corporateir.net/phoenix.zhtml?c=61629&p=irol-newsArticle_pf&ID=781873&highlight=.

¹⁰¹ Six Flags, Solicitation/Recommendation Statement, (Schedule 14D-9), at 3 (Nov. 2, 2005).

¹⁰² *Id.* at 7.

¹⁰³ *Id.* at 19.

merchandise was “[c]ontracting away highly profitable concession business,” and abandoning the “key teen demographic, which represents 30% of attendance (10 million).”¹⁰⁴ Wisely alluding to the difference in customers between industries, the filing noted that theme park guests would react less elastically to changing pricing and discount strategies than football fans of a monopoly NFL team.¹⁰⁵

In spite of Burke’s best attempts to characterize Snyder’s plans as “misguided” and “backwards,” Snyder’s proposal had successfully captured the support of many of the company’s shareholders.¹⁰⁶ Consequently, on November 22, 2005, Snyder released a press statement stating that 57 percent of Six Flags’ shareholders had voted to support his consent solicitation.¹⁰⁷ Revealing the highly contentious nature of the takeover, Six Flags quickly responded that the vote was subject to verification, and called for an independent audit of the vote.¹⁰⁸ After IVS Associates Inc., (a leading inspector of corporate elections), certified that more than 57 percent of votes cast were for Red Zone, Six Flags finally released a short statement conceding Snyder’s win, “[the] Board of Directors has unanimously appointed Mr. Daniel M. Snyder as non-executive Chairman of the Board of Directors.” All of the proposals contained in the consent solicitation were adopted, including the amendments to the company’s by-laws.¹⁰⁹ Red Zone

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 27, (stating “[p]ro sports franchise reflects monopoly in local market with die-hard fan base” that has “[s]old out every home game since 1966 regardless of weather, economy or team performance.”)

¹⁰⁶ *Six Flags Sends Letter to Stockholders; Urges Stockholders to Preserve Their Choices by Rejecting Red Zone's Consent*, SIX FLAGS FOR INVESTORS (Nov. 11, 2005), http://phx.corporate-ir.net/phoenix.zhtml?c=61629&p=irol-newsArticle_pf&ID=781873&highlight=

¹⁰⁷ *Redskins Owner Gains Six Flags Board Seats*, ATLANTA BUSINESS CHRONICLE (Nov. 29, 2005), <http://www.bizjournals.com/atlanta/stories/2005/11/28/daily10.html>. (highlighting the bitter nature of the proxy fight, Six Flags initially responded by saying that the vote was subject to verification).

¹⁰⁸ Six Flags, Consent Statement (Schedule 13D), at 3 (Sep. 2, 2004).

¹⁰⁹ *Id.*

released a separate statement proudly announcing “[t]he shareholders have spoken—and we would like to thank all of them for this vote of confidence.”¹¹⁰

III. PRE-BANKRUPTCY

A. Old Tactics and A New Venture

As expected, there were some parallels regarding Snyder’s management of the Redskins and his management of Six Flags. Throughout his management of the Redskins although Snyder was unable to facilitate actual wins on the football field, he had become adept at getting the team to deliver incredible profits.¹¹¹ According to some commentators, Snyder’s substantial profit-making ability was the result of “gouging fans at every opportunity and placing sponsored ads on anything that moves—even other ads.”¹¹² During his run as the Redskin’s owner, his penchant for aggressive price increasing coupled with the team’s lack of wins caused significant criticism from fans concerning what many considered a failure to produce a quality product—that of a winning football team.¹¹³ One of Redskin fans’ most disliked moves was Snyder’s decision to charge admission for training camp workouts.¹¹⁴ Snyder later conceded that this decision was a mistake, reflecting that it was a “dumb move.”¹¹⁵ But the damage had already been done; he’d alienated many Redskins fans, and solidified a public perception of himself as not much more

¹¹⁰ *Six Flags Admits Defeat In Takeover Fight*, UPI (Nov. 29, 2005), http://www.upi.com/Business_News/2005/11/29/Six-Flags-admits-defeat-in-takeover-fight/UPI-95811133282001/.

¹¹¹ McKenna, *supra* note 46.

¹¹² Dashiell Bennett, *The 14 Worst Business Practices of Redskins Owner Daniel Snyder*, BUSINESS INSIDER (Nov. 18, 2010), <http://www.businessinsider.com/the-14-worst-businesspractices-of-redskins-owner-daniel-snyder-2010-11?op=1>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Jaffe, *supra* note 43.

than a greedy businessman whose only concern was continually increasing profits.¹¹⁶

In many ways Snyder's management of Six Flags was similar to his management of the Redskins. He immediately raised prices on admission, concessions, and parking.¹¹⁷ The high parking prices stimulated nearby businesses to offer parking in their own lots allowing Six Flags customers to save money by walking to the park.¹¹⁸ Snyder then went to local authorities and through heavy lobbying accomplished a ban on off-site parking practices citing a concern for pedestrian safety.¹¹⁹ The parking ordinance was passed despite the fact that no injuries or accidents had been reported in the past two decades that the private lots had been in existence.¹²⁰ Snyder had previously used the exact same pedestrian safety argument when attempting to keep Redskins fans from taking advantage of off-site parking options in the vicinity of the FedExField.¹²¹

To his credit, Snyder did more than raise prices in attempts to increase the parks' profitability. True to plans revealed in his proxy disclosures, Snyder also increased character presence in the parks, using characters like Thomas the Tank Engine and Bugs Bunny to better appeal to families.¹²² The company also began strategic partnerships with recognizable food

¹¹⁶ *Id.* (reporting Snyder's decision to charge admission for training camp "In 2003 Snyder moved training camp from Carlisle, Pennsylvania, to Redskins Park in Loudoun County. [Snyder] opened it to fans. He charged admission. And a parking fee. 'That was another mistake,' he says. 'Charging fans to see training camp. Dumb move.'").

¹¹⁷ Dave McKenna, *Six Months of SIX Flagging: Looking Back at a Half-Year of Snyder Theme-Park Disasters*, WASHINGTON CITY PAPER (May 16, 2008). <http://www.washingtoncitypaper.com/articles/35590/six-months-of-six-flagging>.

¹¹⁸ Andrew Beaujon and Erik Wemple, *Dan Snyder Lawsuit: A Complete Analysis*, TBD (Feb. 4, 2011), http://www.tbd.com/articles/2011/02/dan-snyder-lawsuit-a-complete-analysis-49871_page4.html.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Tom Hals, *Six Flags Emerges From Bankruptcy*, REUTERS (May 3, 2010), <http://www.reuters.com/article/2010/05/03/us-sixflags-idUSTRE6422RF20100503>.

vendors like Papa Johns, Johnny Rockets, Cold Stone Creamery, and Heinz.¹²³ Heinz, in particular, accomplished an impressive dual marketing campaign in return for being the “Official Ketchup of Six Flags Theme Parks.”¹²⁴ In attempts to facilitate a more family-friendly atmosphere the company barred bikini tops and restricted smoking to small, designated areas on the outskirts of park premises.¹²⁵ While competitors were investing in expensive rides to lure customers, Six Flags was doing the opposite and investing in more kiddie rides and modest roller coasters in order to cut costs and attract families.¹²⁶ The newly opened Dark Knight coaster at the Six Flags location in New Jersey was much smaller than many of its competitors and was encased in a dark building that effectively disguised its size; it was also comparatively low-cost compared to its competitors.¹²⁷

B. Customer Perception, and Shareholder Response

Despite the significant increase in average in-park spending per customer, park guests were less than impressed as reflected by attendance numbers that continued to decrease under Snyder’s management.¹²⁸ By early 2008, the company’s stock had lost three quarters of its value.¹²⁹ Stock prices fell even more when media reported that the company was attempting to obtain liquor licenses for Six Flags Over Texas and Hurricane Harbor, both located in

¹²³ William Spain, *Raft of New Licensing, Sponsor Deals For Six Flags*, MARKET WATCH (Dec. 12, 2006), <http://www.marketwatch.com/story/raft-of-new-licensing-sponsorship-deals-for-sixflags>.

¹²⁴ *Id.*

¹²⁵ Jeffrey McCracken, *No Fun For Six Flags As Parks Face Slump—As Debt Looms, Smaller Coasters Are In*, THE WALL STREET JOURNAL (Aug. 5, 2008).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Jeremiah McWilliams, *Six Flags Tries to Ride It Out*, ST. LOUIS POST-DISPATCH (May 23, 2008), <http://www.leisure-business.com/stl-post-dispatch1.html>. (reporting that “[a]verage guest spending grew 13 percent to about \$39 in the first quarter.”).

¹²⁹ Dave McKenna, *Six Months of SIX Flagging*, WASHINGTON CITY PAPER (May 16, 2008), <http://www.washingtoncitypaper.com/articles/35590/six-months-of-six-flagging>.

Arlington.¹³⁰ To many people, this decision appeared directly at odds with Snyder's initial pledge to stockholders that he would focus on mothers with young children as well as youth.¹³¹ Media also reported that Six Flags Discovery Kingdom located in California had been named the worst park for elephants in the entire country, and had been the subject of concern by an animal rights group who requested an investigation by the federal government.¹³² The company took another hit when an incident of a much more tragic nature occurred when a 14-year old girl's feet were severed on the Superman free-fall ride at the company's Kentucky park.¹³³ Further bad publicity occurred when a teenage boy was struck and killed by a roller coaster after he had climbed a protective fence.¹³⁴

Six Flags' shares first began to tumble in mid 2006, relatively shortly after the proxy takeover. During 2006, the company lost \$275 million, and the following year lost \$328 million.¹³⁵ One of the most significant decreases in share value occurred the day after Shapiro had made a particularly disconcerting announcement via conference call that the company no longer expected to meet its earnings projections and that revenue and attendance had decreased.¹³⁶ The company announced that its debt burden was becoming difficult to manage and that the leadership team was contemplating selling six of its theme parks, including one of its leading properties, the Magic Mountain park in California.¹³⁷

To their credit, the new management team had followed through with many of the

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ McCracken, *supra* note 125.

¹³⁵ *Id.*

¹³⁶ Vinnee Tong, *Six Flags Shares Tumble; Debt Agencies Lower Outlook*, CASPER STARTRIBUNE (Jun. 24, 2006), http://trib.com/business/six-flags-shares-tumble-debt-agencies-loweroutlook/article_f33fd01a-8ce9-5601-9d2b-6aa970dec520.html.

¹³⁷ *Id.*

strategic plans that Snyder had detailed in his consent solicitation the year before. As a result, the company had seen a positive increase in average spending per guest, but had experienced a decrease in sales of season passes.¹³⁸ The price of season passes had been raised in an attempt to attract higher-paying visitors and families as opposed to teenagers.¹³⁹ This decrease offset any gains that the company had hoped to see from higher spending per visitor. In addition, rumors that the company was considering selling their flagship park, Magic Mountain, was a shocking development for shareholders because it was one of the company's most valuable locations.¹⁴⁰ Shapiro validated these rumors when he made an announcement to this effect, and although sale proceedings were never initiated the statement probably served to further weaken investors' perceptions about the company's economic stability.

In an interview a few months before Six Flags' shares took a major hit in June of 2006, Shapiro communicated plans for the company to branch out with a more diverse entertainment package. He felt that the company had focused too narrowly on just thrill rides, which he acknowledged were important but in his opinion not enough.¹⁴¹ However, he wanted the park to have a more diverse entertainment options such as parades, fireworks, concerts, and celebrity appearances.¹⁴² Again, the management team was nearly single-mindedly focused on restoring a family atmosphere at the parks, a focus that produced a subtle but noticeable aversion for their previously popular demographic, teenagers. By raising prices on season passes, the company had hoped to attract more families than teenage customers, but the tactic did not work as

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* (reporting that the company's debt burden was at a troubling level and that management was contemplating selling six of its theme parks, including the Magic Mountain park in California).

¹⁴¹ Arthur Levine, *Flagging Down Mark Shapiro*, ABOUT.COM (Feb. 21, 2006), <http://themeparks.about.com/od/sixflagsarticles/a/shapiro2006.htm>

¹⁴² *Id.*

planned. There was some concern that by raising entrance and parking fees, the company had priced itself out of some markets.¹⁴³

Shapiro continued to insist that the company was making progress on its goal to de-leverage itself and pointed to the recession as a potential positive for the company.¹⁴⁴ Alluding to the fact that theme parks are historically recession-resistant due to their appeal to local blue-collar families who often choose theme parks over more expensive trips during a down economy, Shapiro vocalized his hope that the recession would increase revenues, “As parents elect to stay closer to home, we want to give them a family-friendly offering that’s a better value... When the economy tightens, I think we’re well-positioned.”¹⁴⁵ In another interview, Shapiro theorized that high gas prices might also help the company in the same way by enticing cash-strapped families to take day trips closer to home, “It’s a working premise... But no one knows for sure. We’ve never had \$4-a-gallon gas. It’s obviously not the economic environment I would have chosen.”¹⁴⁶ The company’s plans to trim about \$55 million in operational costs were worrying for some analysts who accurately predicted that the economic downturn in 2008 had the potential to hurt Six Flags more than previous downturns.¹⁴⁷ Kit Spring, a Stifel Nicolaus analyst, stated that if Six Flags cut its operations too deeply, customer satisfaction and revenue could drop.¹⁴⁸

Despite reports that the company had seen an increase in revenues and had achieved a sharp reduction in losses, Six Flags began contemplating ways to avoid a Chapter 11 filing by

¹⁴³ McCracken, *supra* note 125.

¹⁴⁴ *Id.*

¹⁴⁵ McWilliams, *supra* note 128.

¹⁴⁶ McCracken, *supra* note 125.

¹⁴⁷ McWilliams, *supra* note 128.

¹⁴⁸ *Id.*

late 2008.¹⁴⁹ In attempts to sidestep bankruptcy proceedings, Six Flags hired bankruptcy counsel and financial advisors to assist with creditor negotiations and to help navigate its enormous debt load.¹⁵⁰ The company's CFO, Jeff Speed, confirmed the hiring of Chicago law firm, Paul, Hastings, Janofsky, and Walker, along with investment bank, Houlihan, Lokey, Howard, and Zukin, stating "[o]ur creditors are very supportive, but obviously there are issues we need to address... We are trying to accomplish something on a consensual basis... That is always preferred, but I can't speculate on what the ultimate resolution will be."¹⁵¹

IV. CHAPTER ELEVEN

A. Prepetition Indebtedness

a. Prepetition Credit Agreement

In May 2007, the Debtors had entered into a Pre-Petition Credit Agreement which provided for a \$850 million term loan with a maturity date of April 2015, a revolving credit facility totaling \$275 million (as well as letters of credit with the approximate amount of \$30,132,885), and an uncommitted optional term loan tranche of up to \$300 million.¹⁵² As of the date of filing, approximately \$835,125,000 of the term loan was outstanding, and approximately \$270.6 million of the revolving debt was outstanding.¹⁵³ The Debtors was required to make quarterly principal payments on the term loan in the amount of \$2,125,000 until the date of maturity.¹⁵⁴ The

¹⁴⁹ Jeffrey McCracken, *Six Flags Braces for a Dive*, THE WALL STREET JOURNAL (Mar. 13, 2009) <http://online.wsj.com/news/articles/SB123690270788513649>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 34, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 240).

¹⁵³ *Id.* at 37. The Debtors had paid the revolving debt down to \$243,492,063, but in July 2009 Debtors received a notice to draw approximately \$27,000,000 in outstanding letters of credit, which increased the revolving debt to the stated figure.

¹⁵⁴ *Id.* at 38.

Debtors granted blanket security interests and mortgages on virtually all of their assets in order to secure the obligations under the Pre-Petition Credit Agreement.¹⁵⁵

b. Derivative Financial Instruments

In February 2008, the Debtors entered into two Interest Swap Agreements that converted \$600 million of the term loan in the Pre-Petition Credit Agreement into a fixed rate obligation.¹⁵⁶ Each Interest Swap agreement was for a \$300 million amount.¹⁵⁷ As of the date of filing, the counterparties to the Interest Swap Agreement had claims against the Debtors in the amount of \$18.7 million.¹⁵⁸

c. Unsecured Notes

As of the date of filing, the Debtors owed \$1.27 billion related to fixed-rate Senior Unsecured Notes with various maturity dates and interest rates.¹⁵⁹ There are five pools of Unsecured Notes issued or guaranteed by the Debtors, including 2010 Notes, 2013 Notes, 2014 Notes, 2015 Notes, and 2016 Notes.¹⁶⁰ Each of these Unsecured Notes was subordinate to the obligations under the Prepetition Credit Agreement.¹⁶¹

i. 2010 Notes

In February 2002, Six Flag, Inc. (“SFI”) issued \$480 million of 8 7/8% senior notes that would mature in 2010.¹⁶² SFI later repurchased approximately \$200 million of the 2010 Notes and exchanged approximately \$150 million of the notes for 2016 Notes.¹⁶³ The 2010 Notes

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 40.

¹⁶² *Id.* at 38.

¹⁶³ *Id.*

required annual interest payments of \$11,633,000.¹⁶⁴

ii. 2013 Notes

In April 2003, SFI issued \$430 million of 9 ¾% senior notes that would mature in 2013.¹⁶⁵ SFI subsequently repurchased \$56 million of the 2013 Notes and exchanged \$231,559,000 of the 2013 Notes for 2016 Notes.¹⁶⁶ These notes required annual interest payments of \$13,888,000.¹⁶⁷

iii. 2014 Notes

In December 2003, SFI issued \$325 million of 9 5/8% senior notes that would mature in 2014.¹⁶⁸ In January 2005 SFI would issue an additional \$195 million worth of 2014 Notes.¹⁶⁹ SFI would later repurchase \$55,350,000 of the 2014 Notes and exchange \$149,863,000 of the 2014 Notes for 2016 Notes.¹⁷⁰ These notes required annual interest payments of \$30,298,000.¹⁷¹

iv. 2015 Notes

In November 2004, SFI issued \$299 million of notes that would mature in 2015.¹⁷² The notes would be convertible to SFI common stock at a rate of 157.4803 shares for every \$1,000 of 2015 Notes.¹⁷³ In 2007, SFI repurchased \$19 million of the 2015 Notes.¹⁷⁴ These notes required an annual interest payment of \$12.6 million.¹⁷⁵

v. 2016 Notes

In June 2008, there was a private debt exchange in which the Debtors issued \$400 million

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 39.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

of 12 ¼% senior notes of Six Flags Operations Inc. due in 2016 which were exchanged for \$149,223,000 of the 2010 Notes, \$231,559,000 of the 2013 Notes, and \$149,263,000 of the 2014 Notes.¹⁷⁶ The goal of the exchange was to reduce debt, extend maturities, and annual interest expenses.¹⁷⁷ The 2016 Notes required annual interest payments of \$49 million.¹⁷⁸

d. Preferred Income Equity Redeemable Shares

In January 2001, the Debtors issued 11.5 million Preferred Income Equity Redeemable Shares (“PIERS”), for a \$277,834,000 amount.¹⁷⁹ Each PIERS represents one one-hundredth (1/100) interest in a share of Debtor’s 7.25% convertible preferred stock.¹⁸⁰ Under the terms of the PIERS, they were required to be redeemed on August 15, 2009 for cash at 100% of the liquidation preference.¹⁸¹ This would have been approximately \$287.5 million plus accrued unpaid dividends in the amount of \$31.3 million.¹⁸²

e. Time Warner and Guarantees of Partnership Parks Loan

When the Debtors acquired Six Flags from Time Warner in 1998, they guaranteed certain obligations related to Six Flags Over Georgia and Six Flags Over Texas (together the “Partnership Parks”).¹⁸³ The obligations related to Six Flags Over Georgia would continue until 2027 and those related to Six Flags Over Texas would continue until 2028.¹⁸⁴ These obligations included minimum annual distributions to partners in the Partnership Parks, minimum capital expenditures at each park during rolling 5-year periods based on 6% of each parks revenues, and

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 40

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 34.

¹⁸⁴ *Id.*

an annual offer to purchase a maximum number of 5% per year of the limited partnership units.¹⁸⁵

When the Debtors acquired Six Flags in 1998, they also entered into a Subordinated Indemnity Agreement with Time Warner, Inc. and certain Time Warner affiliates.¹⁸⁶ Time Warner guaranteed all the obligations that Debtors owe to the Partnership Parks, and under the Subordinated Indemnity Agreement, Time Warner would receive record title to any entity that had or would later purchase any limited partnership units of the Partnership Parks.¹⁸⁷ In addition, the Debtors were required to deposit a calculated sum into escrow as a potential source of capital in the event that Time Warner had to fulfill its guarantee of the obligations to Partnership Parks.¹⁸⁸ In the event of default of the Subordinated Indemnity Agreement, Time Warner would take control of the entities that own the limited partnership units and Debtors' licensing agreement would terminate.¹⁸⁹

B. Key Events Leading to Chapter 11

The Debtors faced challenges for years before filing Chapter 11. These challenges, most notably market conditions and an over-leveraged balance sheet, made it extremely difficult to achieve profitability. The Debtors sought deals and agreements to overcome these challenges. Ultimately, however, such deals would not be enough to provide viable financial restructuring.

a. Market Conditions

The Debtors pointed to challenging market conditions, including the H1N1 Swine Flu break out and the deterioration of the U.S. and world economy in 2008 and 2009 as factors that

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 35.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

exacerbated an over-leveraged balance sheet, which contributed to their need to file Chapter 11.

i. Swine Flu

The CDC estimated that 14 million to 34 million cases of H1N1 Swine Flu cases occurred between April and October 2009.¹⁹⁰ Furthermore, the CDC estimated that 63,000 to 153,000 cases of H1N1 Swine Flu cases resulted in hospitalization and 2,500 to 6,000 cases of H1N1 Swine Flu resulted in death.¹⁹¹ The severity of the H1N1 Swine Flu virus threat and the corresponding media coverage surrounding it helped to cause a decline in ticket sales and attendance at Six Flags theme parks, particularly at the Company's Texas and Mexico theme parks.¹⁹² In April 2009, the epidemic led to the closing of Six Flags Mexico for almost two weeks by order of the Mexican government.¹⁹³

ii. The Great Recession

Most economists agree that, though mid-2007 to 2009 was a far cry from a full scale Depression, it was the worst recession that the United States has experienced since the Great Depression of the 1930's.¹⁹⁴ In 2008 real GDP of the U.S. increased by a meager 0.4%, and it decreased by 2.4% in 2009.¹⁹⁵ The unemployment numbers were even bleaker. In 2008,

¹⁹⁰ *Updated CDC Estimates of 2009 H1N1 Influenza Cases, Hospitalizations and Deaths in the United States, April 2009 – April 10, 2010*, CENTER FOR DISEASE CONTROL AND PREVENTION, (May 4, 2010), http://www.cdc.gov/h1n1flu/estimates_2009_h1n1.htm.

¹⁹¹ *Id.*

¹⁹² DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 42, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 240).

¹⁹³ *Id.*

¹⁹⁴ Chris Isidore, *The Great Recession*, CNN MONEY, (May 25, 2009), http://money.cnn.com/2009/03/25/news/economy/depression_comparisons/.

¹⁹⁵ *Gross Domestic Product: Fourth Quarter 2009 (Third Estimate) and Corporate Profits, 4th Quarter 2009*, BUREAU OF ECONOMIC ANALYSIS, (March 26, 2010), https://www.bea.gov/newsreleases/national/gdp/2010/gdp4q09_3rd.htm.

unemployment increased from 5.0% to 7.8% by the end of the year.¹⁹⁶ In 2009, that number increased to 10.0% by October.¹⁹⁷ The rising unemployment and general deterioration of the U.S. and international economies resulted in the decline of attendance, ticket sales, and consumer spending within the park.

b. Exchange Offers

Debtors were unable to meet the approximately \$318.8 million PIERS obligation due on August 15, 2009, so the Debtor sought to refinance or restructure the mandatory redemption date.¹⁹⁸ This was particularly important because any default of the PIERS obligations would also have resulted in a default of the Pre-Petition Credit Agreement and a potential acceleration of the obligations thereunder.¹⁹⁹ Likewise, if the Lenders were to accelerate the obligations under the Pre-Petition Credit Agreement, there could be a default under all of the Unsecured Notes.²⁰⁰ This would result in potentially all of the Debtor's long-term debt becoming due and payable immediately.²⁰¹ Therefore, Debtors proposed to exchange the Unsecured Notes for Debtor's common stock.²⁰² The proposed exchange was conditioned on participation of at least 95% of the aggregate principal amount of each issue of Unsecured Notes.²⁰³ The Debtors also considered a similar agreement that would have converted the PIERS into shares of common stock, but when it became clear that 95% of the aggregate principal amount of each issue of

¹⁹⁶ *Databases, Tables & Calculators by Subject*, BUREAU OF LABOR STATISTICS, (April 8, 2014), <http://data.bls.gov/timeseries/LNS14000000>.

¹⁹⁷ *Id.*

¹⁹⁸ DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 42, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 240).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 42-43.

²⁰³ *Id.* at 43

Unsecured Notes would not participate in the exchange, the Debtors decided against any PIERS amendment.²⁰⁴ The Debtors believed that, due to the adverse market conditions previously discussed, the offers of exchange and amendment would not have been adequate to resolve their financial issues.²⁰⁵

c. Negotiations with Avenue Capital Management

In an alternative attempt to resolve their financial issues, the Debtors entered into negotiations with Avenue Capital Management (“Avenue”), as they were the largest holders of 2016 Notes, a significant holder of the other Unsecured Notes, and lender under the Pre-Petition Credit Agreement.²⁰⁶ The hope was that the negotiations could result in a pre-negotiated chapter 11 bankruptcy filing.²⁰⁷ The goals of the negotiation were to convert the 2016 Notes into the majority of the equity of any reorganized entity and a reinstatement of the Prepetition Credit Agreement.²⁰⁸

During negotiations, the Debtors realized that, even with the proposed de-leveraging, an injection of an additional \$200 million of capital would be required to ensure that the Debtor’s had sufficient liquidity for seasonal business.²⁰⁹ Even with an additional \$200 million, the Debtor’s would be exposed to a potential liquidity shortfall if the Partnership Park “puts” occurred at maximum permitted levels.²¹⁰ In response to the request of the additional capital, Avenue proposed debt funding of \$175 million on a delayed-draw basis, with high interest and

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

significant fees that were inconsistent with market terms.²¹¹ Avenue proposed two more alternatives, each of which were not consistent with market terms and did not meet the \$200 million minimum capitalization, before the negotiations were abandoned.²¹²

d. Prepetition Restructuring Agreement

In of 2009 the Debtors began negotiations with the other lenders under the Prepetition Credit Agreement (“Prepetition Lenders”) while they were negotiating with Avenue and with Avenue’s knowledge.²¹³ By early June 2009, the Debtors and the other Prepetition Lenders had agreed on basic restructuring terms that would convert the obligations under the Prepetition Credit Agreement into the majority of the equity of the reorganized Debtors.²¹⁴ In addition, under this agreement the Prepetition Lenders would permit the Debtors to obtain a new \$150 million revolving or multi-draw term credit facility to meet the Debtors liquidity needs for its seasonal business.²¹⁵ The Debtors believed that this proposal was feasible and had a high likelihood of being approved. The Prepetition Lenders agreed to support the proposal so long as the (i) the financial restructuring would occur through a pre-negotiated chapter 11, (ii) the Debtors would adhere to the negotiated timeline for the restructuring, and (iii) the Debtors would adhere to the general terms that will be described infra.²¹⁶

C. Filing the Petition

Finally, after months of negotiating with lenders in order to find alternative methods to resolve the Debtors’ financial issues, Premier International Holdings, Inc. (“Premier”) filed a

²¹¹ *Id.* at 44.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 44-45.

²¹⁵ *Id.* at 45.

²¹⁶ *Id.*

voluntary petition for chapter 11 bankruptcy on June 13, 2009 in the District of Delaware.²¹⁷

Premier retained the services of Richards, Layton & Finger, P.A., specifically Daniel J.

Defranceschi, to file the petition.²¹⁸ The Chief Financial Officer of Six Flags, Inc., Mr. Jeffrey

R. Speed, signed the petition on behalf of the Debtor.²¹⁹

Premier listed itself as a corporation with between 1 and 49 creditors, assets in an amount between \$10,000,001 and \$50 million, and liabilities in an amount between \$1,000,001 and \$10 million.²²⁰ Premier further stated that its debts were business debts and that it estimated that funds were available for distribution to unsecured creditors.²²¹ With the petition, Premier also filed a list of affiliates that had pending bankruptcy cases filed in the District of Delaware, a written consent from Premier's Board of Directors, a list of Premier's 20 largest creditors, and a list of equity holders.²²²

D. First Day Motions

On June 13, 2009, the date of the filing, the Debtors filed a series of "first day motions". These motions sought various forms of relief in order to minimize any disruption of the Debtors' business operations and to facilitate the reorganization process.²²³ Listed below are some of the more notable first day motions filed.

²¹⁷ *Id.*

²¹⁸ DEBTORS' VOLUNTARY PETITION, *In re Premier International Holdings, Inc., et al.*, Case 09-12019, (Bankr. Del. 2009), (No. 1).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* The list of affiliates filing for bankruptcy would make up those debtors for purposes of joint administration. Also, the list of equity holders only included Six Flags Theme Park, Inc. They own 100% of Premier International Holdings, Inc.'s stock.

²²³ DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 46, *In re Premier International Holdings, Inc., et al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 240).

a. *Case Administration*

i. *Motion for Joint Administration*

There were 37 Debtors seeking joint administration.²²⁴ The Debtors' stated reasons for submitting a motion for joint administration were (i) to avoid duplicative notices, motions, and pleadings, thereby saving time and expense, (ii) significantly reducing the volume of pleadings, (iii) minimize unnecessary delays, and (iv) protect creditors of each individual Debtor from potential conflicts of interest.²²⁵

b. *Critical Obligations*

ii. *Motion to Pay Pre-Petition Wages, Benefits, Business Expenses, and Related Items*

At the time the Debtors filed their voluntary petition, they employed 1,636 full time employees and approximately 28,400 seasonal employees.²²⁶ The Debtors' owed the employees wages, salaries, overtime pay, commissions, incentive pay and bonuses, contractual compensation, severance, vacation pay, sick pay, holiday pay, and other accrued compensation.²²⁷ The Debtors estimate that unpaid employee compensation amounts to approximately \$3,827,945, unpaid employee business expenses to \$3,360,000, unpaid employee benefits to \$140,646, and other related obligations to employees to \$1,834,023.²²⁸ Debtors asserted that the obligations owed to employees were not so great as to deplete the assets for

²²⁴ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER DIRECTING THE JOINT ADMINISTRATION OF THEIR BANKRUPTCY CASES, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 3).

²²⁵ *Id.*

²²⁶ MOTION TO PAY PREPETITION EMPLOYEE WAGES, BENEFITS, BUSINESS EXPENSES, AND RELATED ITEMS, at 8, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 13).

²²⁷ *Id.* at 1.

²²⁸ *Id.* At 10-11, 14.

distribution to unsecured creditors.²²⁹

iii. Motion to Pay Certain Pre-Petition Taxes

The Debtor's requested to pay certain prepetition taxes, including all sales and use taxes, franchise and real estate taxes, and any other taxes for which the Debtors' officers and directors may be personally liable.²³⁰ Most of the sales taxes were paid on a monthly basis, and those taxes were approximately \$5.8 million per month during peak season.²³¹ As of the petition date, Debtors owed approximately \$670,000 in use taxes, \$75,000 in franchise taxes, and \$5.4 million in property taxes.²³² The Debtors stated that their reasons for requesting to pay pre-petition debt were: 1) the prepetition taxes did not constitute a part of the Debtors' estate, 2) almost all of the prepetition taxes would constitute a priority claim that would be paid in full under any plan of reorganization, 3) if certain of the prepetition taxes were not paid it would affect the Debtors' ability to conduct business in certain jurisdictions, and 4) the Debtors' officers might have faced personal liability if some of the prepetition taxes were not paid.²³³

iv. Motion to Pay Certain Critical Vendors

There were several providers of services and goods that were so critical that the Debtors asserted that they could not operate the parks or maintain their infrastructure without them.²³⁴

Some of these vendors were claimed to be the only available source for a particular good or

²²⁹ *Id.*

²³⁰ MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AUTHORIZATION TO PAY CERTAIN PREPETITION TAXES, *In re Premier International Holdings, Inc., et. al.*, Case No 09-12019 (Bankr. Del. 2009) (No. 9).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 5).

service required.²³⁵ Also, the Debtors made up the majority of the business of some of these critical vendors, so they are reliant on each other.²³⁶ The Debtors asserted that the vendors would stop providing their services if they did not pay their outstanding claims.²³⁷ If these critical services were to stop, the Debtors asserted that their ability to operate during peak season would diminish, their reputation would be harmed, their ability to maintain customer loyalty would be undermined, and their restructuring efforts would be compromised.²³⁸

c. Business Operations

i. Motion to Prohibit Utility Companies from Altering, Refusing, or Discontinuing Service

In this motion, the Debtors sought to prohibit utility companies currently providing service as well as those who would later provide service from altering, refusing, or discontinuing that service.²³⁹ Any such disruption would have hindered or prevented a successful reorganization attempt. In support of the motion, the Debtors asserted that the utility companies had adequate assurance of payment because the Debtors deposited a significant amount of cash with the utility companies or in an account set aside for the payment of the utility companies, and the Debtors established procedures to allow the utility companies to seek greater or different security for additional assurance of payment.²⁴⁰

ii. Motion to Maintain Certain Customer Programs

The Debtors used customer programs to obtain and develop a positive reputation of their

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS ESTABLISHING ADEQUATE ASSURANCE PROCEDURES WITH RESPECT TO THEIR UTILITY PROVIDERS PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009) (No. 11).

²⁴⁰ *Id.*

parks and merchandise and attract new customers.²⁴¹ Such programs included Season Passes, Group Ticket Sales, as well as other discounts and premiums.²⁴² In 2008, 28% of park attendance could be attributed to season passes, and 29% of park attendance could be attributed to group ticket sales.²⁴³ These figures showed the importance of the customer programs to the continued operation of the parks.

iii. Motion to Pay Insurance Policies in the Ordinary Course of Business and Other Obligations in Respect Thereof

The Debtors filed this motion in order to continue all prepetition insurance policies in the ordinary course of business and to pay all obligations related to those insurance policies.²⁴⁴ The Debtors asserted that the coverage provided by the insurance policies was necessary because it preserved value of the Debtors' assets and was under the various laws and contracts that govern Debtors' business operations.²⁴⁵ The Debtors' obligations related to the insurance policies were estimated to be approximately \$3.3 million.²⁴⁶

d. Financial Operations

i. Motion to Maintain Existing Cash Management System and Bank Accounts

The Debtors asserted that their corporate and park operations depended on the continued

²⁴¹ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR AUTHORIZATION TO (A) MAINTAIN CERTAIN CUSTOMER PROGRAMS AND (B) HONOR OR PAY RELATED PREPETITION OBLIGATIONS TO THEIR CUSTOMERS, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009) (No. 4).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR AUTHORIZATION TO: (I) MAKE INSTALLMENT PAYMENTS UNDER PREPETITION PREMIUM FINANCE AGREEMENTS; (II) CONTINUE PREPETITION INSURANCE PROGRAMS IN THE ORDINARY COURSE OF BUSINESS; AND (III) PAY ALL PREPETITION OBLIGATIONS IN RESPECT THEREOF, *In re Premier International Holdings, Inc., et. al.*, Case NO. 09-12019, (Bankr. Del. 2009) (No. 10).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

use of their existing cash management system.²⁴⁷ The centralized system allowed the Debtors to control and monitor corporate funds, ensure cash availability, and reduce administrative expenses by facilitating the movement of funds.²⁴⁸ If not permitted to use the existing system, the Debtors believed that payments to certain critical vendors, contractors, and employees would have been disrupted.²⁴⁹ The Debtors further stated in their motion that continued use of the cash management system would help stabilize post-petition business operations and assist in reorganization efforts.²⁵⁰

According to guidelines set forth by the U.S. Trustee for the District of Delaware, a Chapter 11 debtor is required to close all existing bank accounts and open new debtor in possession bank accounts.²⁵¹ The Debtors seek to have this requirement waived because it would cause enormous delays and disruptions to the Debtors' business and efforts to reorganize.²⁵² The Debtors have over 100 bank accounts in North America alone that are part of part of a carefully constructed cash management system, and just like any disruption to the cash management system would potentially disrupt payments critical to the operation of the Debtors' business, any disruption to the bank accounts that make up the cash management system would potentially disrupt those payments.²⁵³

²⁴⁷ MOTION FOR ORDER UNDER 11 U.S.C. §§ 345, 363, 1107 AND 1108 AUTHORIZING (I) CONTINUED USE OF EXISTING (A) CASH MANAGEMENT SYSTEM, (B) BANK ACCOUNTS, (C) BUSINESS FORMS, AND (D) DEPOSIT AND INVESTMENT GUIDELINES, (II) CONTINUATION OF INTERCOMPANY TRANSACTIONS WITH NON-DEBTOR AFFILIATES, AND (III) ACCORDING ADMINISTRATIVE STATUS TO ALL POSTPETITION INTERCOMPANY CLAIMS, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 6).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

ii. Motion to Use Pre-Petition Cash Collateral

The Debtors requested the use of the lenders' cash collateral, including that cash under the Credit Agreement, because there was an urgent need of cash to continue operating the business and to make all the necessary operating and restructuring expenses.²⁵⁴ Though the lenders had already agreed to the Debtors' use of the cash collateral, it was still necessary to propose adequate protection for the lenders.²⁵⁵ The Debtors proposed to provide protection to the lenders in the form of super-priority administrative claims, liens on post-petition collateral, continued payment of interest and fees at the non-default rate with default interest to accrue on pre-petition obligations, reimbursement of certain fees and expenses, and adherence to a budget with regular reporting on the Debtors' financial performance.²⁵⁶

E. Creditors' Committee

On June 26, 2009, the U.S. Trustee appointed 7 members to the Committee of Unsecured Creditors.²⁵⁷ These appointments include John J. Gorman, The Coca-Cola Company, Esopus Creek Value, The Bank of New York Mellon, Richard Schottenfeld, Whirley Industries, and HSBC Bank USA, N.A.²⁵⁸ The Creditors' Committee had 3 advisors including Brown Rudnick LLP, Peter J. Solomon Company, and Pachulski Stang Ziehl & Jones.²⁵⁹

²⁵⁴ MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF ORDERS (I) AUTHORIZING THE USE OF LENDERS' CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363, AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B), *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009) (No. 22).

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ NOTICE OF APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009), (No. 121).

²⁵⁸ *Id.*

²⁵⁹ DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 47, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 240).

F. The First Proposed Plan

a. Classification of Creditors and Equity Holders

According to the Bankruptcy Code, the creditors and equity holders must be divided into separate classes. Each class should represent a group that has substantially similar interests and legal status as to the debtor. In this case, the creditors and equity holders were divided up into 18 classes.²⁶⁰ Of those classes, 5 would not be impaired by the proposed plan, and 13 would be impaired.²⁶¹ Those classes that would have their legal, equitable, or contractual rights altered included Class 4 (SFTP Prepetition Credit Agreement Claims), Class 5 (SFTP TW Guaranty Claims), Class 6 (SFTP TW Indemnity Claims), Class 9 (SFO Prepetition Credit Agreement Claims), Class 10 (SFO TW Guaranty Claims), Class 11 (SFO TW Indemnity Claims), Class 12 (SFI TW Guaranty Claims), Class 13 (SFI TW Indemnity Claims), Class 14 (SFI Unsecured Claims), Class 15 (Subordinated Securities Claims), Class 17 (Preconfirmation SFO Equity Interests), and Class 18 (Preconfirmation SFI Equity Interests).²⁶² As stated in the Bankruptcy Code, these impaired classes had the right to vote on the confirmation of the chapter 11 plan and the right to receive no less than they would under a Chapter 7 liquidation of the Debtors.²⁶³

b. Treatment of Claims Under the First Proposed Plan

i. Unclassified Claims

The claims that fall under this category include administrative expense claims, professional

²⁶⁰ DEBTORS' JOINT PLAN FOR REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 15, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009), (No. 239).

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ 11 U.S.C. § 1126.

compensation and reimbursement claims, and priority tax claims.²⁶⁴ These claims are unimpaired, and as such they are deemed to have accepted the Chapter 11 Plan.²⁶⁵

ii. Class 1: Other Priority Claims

The claims that fall under “Other Priority Claims” include certain wages, salaries, and other compensation obligations to the Debtors’ employees that fall under Section 507(a)(4), (5), (6), and (7) of the Bankruptcy Code.²⁶⁶ Under the plan, each holder of such a claim will receive cash in an amount equal to his or her claim.²⁶⁷ This class is considered unimpaired, and therefore, deemed to have accepted the terms of the Chapter 11 Plan²⁶⁸.

iii. Class 2: Secured Tax Claims

Class 2 was among the unimpaired classes and those claims were deemed to have accepted the plan. Included in Class 2 were any secured claims that, without its secured status, would be entitled to priority in right of payment under Sections 502(i) and 507(a)(8) of the Bankruptcy Code.²⁶⁹ Under the Plan, all holders of a Class 2 claim will receive cash equal to the amount of the claim or semi-annual cash payments over a 5-year period in an amount equal to the claim.²⁷⁰

iv. Class 3: Other Secured Claims

This class was another of the unimpaired classes. It included all secured claims other the Secured Tax Claims, SFTP Prepetition Credit Agreement Claims, and SFO Prepetition Credit

²⁶⁴ DEBTORS’ JOINT PLAN FOR REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 13-14, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019, (Bankr. Del. 2009), (No. 239)

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 7.

²⁶⁷ *Id.* at 16.

²⁶⁸ *Id.* at 15.

²⁶⁹ *Id.* at 16.

²⁷⁰ *Id.*

Agreement Claims.²⁷¹ However, The Debtors believed that the amount of such claims would be \$0, and so this class was not important.²⁷²

v. *Class 4: SFTP Prepetition Credit Agreement Claims*

This is the first of the unimpaired classes. Those claims that fall into this class included any claims held against SFTP and SFTP subsidiaries by Prepetition Lenders under the Prepetition Credit Agreement.²⁷³ Under the Chapter 11 Plan, each of these claims will receive its ratable proportion of the New Term Loan and its ratable proportion of 92% of newly issued common stock.²⁷⁴ The stock will be subject to dilution by the Long Term Incentive Plan.²⁷⁵

vi. *Class 5: SFTP TW Guaranty Claims*

This class included any claims that arose under SFTP's guaranty of obligations owed to Time Warner and its affiliates under the TW Loan.²⁷⁶ However, the claims had a maximum aggregate amount of \$10 million.²⁷⁷ Under the plan, SFTP's guaranty of the obligations would be discharged and Time Warner would receive a new guaranty of the obligations from the reorganized SFTP.²⁷⁸

vii. *Class 6: SFTP TW Indemnity Claim*

This class included any claims that arose under SFTP's guaranty of obligations to Time Warner and its affiliates under the Subordinated Indemnity Agreement.²⁷⁹ Under the plan, those obligations will be discharged and a new guaranty of the obligations under the Subordinated

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.* at 17.

²⁷⁴ *Id.* at 17.

²⁷⁵ *Id.* at 17.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

Indemnity Agreement shall be made by the reorganized SFTP.²⁸⁰

viii. Class 7: Subsidiary Unsecured Claims

Class 7 is another of the unimpaired classes and each holder of such claims is deemed to have accepted the plan.²⁸¹ This class included any claim against the Debtors other than an Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Secured Tax Claim, Other Secured Claim, Prepetition Credit Agreement Claim, TW Guaranty Claim, TW Indemnity Claim, Subordinated Securities Claim, or Intercompany Claim.²⁸² At the option of the reorganized Debtors, each Class 7 claim will be reinstated, and each holder of a Class 7 claim will be paid in full in cash on the distribution date or soon thereafter.²⁸³

ix. Class 8: SFO Prepetition Credit Agreement Claims

This class included all claims against SFO that arose under the Prepetition Credit Agreement.²⁸⁴ Under the Plan, any guaranty made by SFO of the obligations under the Prepetition Credit Agreement would be discharged and replaced by a new guaranty by the reorganized Debtors under the New Term Loan.²⁸⁵

x. Class 9: SFO TW Guaranty Claims

This class included any claims arising under SFO's obligation to Time Warner and certain affiliates under the TW Loan, up to a maximum of \$10,000,000.²⁸⁶ Under the Plan, SFO's guaranty of the obligations under the TW Loan would be discharged in exchange for a new

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.* at 18.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

guaranty of the obligations by the reorganized Debtors.²⁸⁷

xi. Class 10: SFO TW Indemnity Claims

This class included any claims against SFO arising under the guaranty by SFO of obligations to Time Warner and certain affiliates under the Subordinated Indemnity Agreement.²⁸⁸ Under the Plan, SFO's guaranty of the obligations under the Subordinated Indemnity Agreement would be discharged in exchange for a new guaranty by the reorganized Debtors.²⁸⁹

xii. Class 11: SFO Unsecured Claims

Included in this class were any unsecured claims against SFO, including the 2016 Notes.²⁹⁰ Under the Plan, each holder of a Class 11 claim would receive a pro rata distribution of 7% of newly issued stock in the reorganized Debtors, subject to dilution by the Long-Term Incentive Plan.²⁹¹

xiii. Class 12: SFI TW Guaranty Claims

Included in this class were any claims against the Debtors that arose under SFI's guaranty of obligations owed to Time Warner and certain affiliates under the TW Loan up to \$10 million.²⁹² Under the Plan, SFI's guaranty of the obligations under the TW Loan would be discharged in exchange for a new guaranty of the obligations by the reorganized Debtors.²⁹³

xiv. Class 13: SFI TW Indemnity Claims

Included in this class were any claims against the Debtors that arose under SFI's guaranty

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.* at 19.

²⁹³ *Id.*

of obligations owed to Time Warner and certain affiliates under the Subordinated Indemnity Agreement.²⁹⁴ Under the Plan, the guaranty of obligations under the Subordinated Indemnity Agreement would be discharged and exchanged for a new guaranty by the reorganized Debtors.²⁹⁵

xv. Class 14: SFI Unsecured Claims

Included in this class were any unsecured claims against SFI, including 2010 Notes, 2013 Notes, 2014 Notes, 2015 Notes, and SFI's guaranty of the 2016 Notes.²⁹⁶ Under the Plan, any holder of Unsecured SFI Claims will receive a pro rata share of 1% of newly issued common stock of the reorganized Debtors.²⁹⁷

xvi. Class 15: Subordinated Securities Claims

These Claims included any claim against the Debtors (i) arising from the rescission of a purchase or sale of stock, debt, or any other securities of the Debtors or affiliates, (ii) for damages from the purchase or sale of any security, (iii) for violations of the securities laws, misrepresentations, or other similar claims, or (iv) for reimbursement, contribution, or indemnification allowed under the Bankruptcy Code on account of any such claims.²⁹⁸ This class is not important, however, as the Debtors estimated that such Class 15 claims would amount to \$0.²⁹⁹

xvii. Class 16: Preconfirmation Subsidiary Equity Interests

Class 16 was among the 5 unimpaired classes. Included in this class were any instruments that evidenced an ownership interest in the Debtors, other than SFI or SFO, and all options,

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

warrants, or rights to acquire interests.³⁰⁰ Under the Plan, all such interest shall be reinstated.³⁰¹

xviii. Class 17: Preconfirmation SFO Equity Interests

Class 17 included all instruments that evidenced an ownership interest in SFO, and all options, warrants, or rights to acquire such an interest.³⁰² Under the Plan, all SFO equity interests would be cancelled, and any holder of a Class 17 interest would not be entitled to any property or interest on account of such cancellation.³⁰³

xix. Class 18: Preconfirmation SFI Equity Interests

Class 18 included all instruments that evidenced an ownership interest in SFI, and all options, warrants, or rights to acquire such an interest.³⁰⁴ Under the Plan, all SFI equity interests would be cancelled, and any holder of a Class 18 interest would not be entitled to any property or interest on account of such cancellation.³⁰⁵

G. Objections and Amendments to the Proposed Plan

a. Amendments to the Proposed Plan

The original proposed plan was first amended in August, though very little was changed except some additions regarding the Debtors' financial condition and business projections.³⁰⁶ The second amendment to the proposed plan increased amount of distribution of the SFO and

³⁰⁰ *Id.* at 20.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE DEBTORS' MODIFIED FOURTH AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 2114).

SFI unsecured note holders.³⁰⁷ The distribution to the SFO note holders was increased from a pro rata share of 7% of the newly issued common stock to a pro rata share of 69.77% share of newly issued common stock, and the distribution to the SFI note holders was increased from a pro rata share of 1% of the newly issued common stock to a pro rata share of 7.34% of the newly issued common stock.³⁰⁸ In addition to increasing the amount of distribution to the SFO and SFI note holders, the second amended plan also created a new class that included unsecured claims against a subsidiary called Funtime, Inc.³⁰⁹ The third and fourth amendments to the proposed plan only added technical amendments and additional disclosures.³¹⁰

b. Objection by the Committee of Unsecured Creditors

In March 2010 the Committee of Unsecured Creditors filed an objection to the fourth amended proposed plan.³¹¹ In the filed objection, the asserted reasons for the objection were an undervaluation of the Debtors, which resulted in in excess distributions to SFO note holders at the expense of SFI creditors.³¹² To resolve the problem, Debtors entered into negotiations with the Committee of Unsecured Creditors, which resulted in an Agreement in Principle.³¹³ Under the Agreement in Principle, which was incorporated in the modified fourth amendment to the proposed plan, the SFO note holders would receive cash distributions equal to the share of their claims, and SFI note holders would receive a pro rata share of 9.5% of newly issued common

³⁰⁷ DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 22-23, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2009) (No. 944).

³⁰⁸ *Id.*

³⁰⁹ *Id.*, at 18.

³¹⁰ FINDS OF FACT AND CONCLUSIONS OF LAW, at 2.

³¹¹ OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS RELATED TO PROPOSED CONFIRMATION OF DEBTORS' FOURTH AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, *In re Premier Holdings International, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2010) (No. 1626).

³¹² *Id.*

³¹³ FINDINGS OF FACT AND CONCLUSIONS OF LAW, at 3.

stock.³¹⁴

c. Resilient Capital Management, LLC

In April, Resilient Capital Management, LLC filed a motion with the court to participate in the confirmation hearing regarding the Debtors' plan of reorganization.³¹⁵ Resilient, a large holder of PIERS, asserted that the Debtor were undervalued according to the plan of reorganization, and if properly valued they would have enough to make distributions to the holders of PIERS.³¹⁶ Unfortunately for Resilient, the court rejected Resilient's request and confirmation went ahead as planned.³¹⁷

H. Voting and Confirmation

Classes 1, 2, 3, 4, 6, 7, 10, 13, 17, and 18 were unimpaired and, therefore, deemed to have accepted the plan for reorganization.³¹⁸ Classes 15, 16, and 19 are impaired and deemed to have rejected.³¹⁹ Classes 5, 8, 9, 11, 12, and 14 were impaired and voted to accept the plan.³²⁰ The court filed its order confirming the Debtors' plan of reorganization on April 30, 2010.³²¹ Under the plan, Six Flags was able to cut its obligations to \$1 billion from \$2.7 billion, and a

³¹⁴ DEBTORS' MODIFIED FOURTH AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, at 24-25, *In re Premier International Holdings, Inc., et. al.*, (Bankr. Del. 2010) (No. 1928).

³¹⁵ RESILIENT CAPITAL MANAGEMENT, LLC'S MOTION FOR PERMISSION TO PARTICIPATE IN THE CONFIRMATION HEARING, *In re Premier International Holdings, Inc., et. al.*, Case No. 09-12019 (Bankr. Del. 2010) (No. 1989).

³¹⁶ RESILIENT PROMISES FIGHT ON AMENDED SIX FLAGS BANKRUPTCY PLAN, *Daily Herald* (April 16, 2010), <http://www.dailyherald.com/article/20100416/business/304169593/print/>.

³¹⁷ Bill Rochelle, CAPMARK, SIX FLAGS, LEHMAN, PHILLY PAPER: BANKRUPTCY, *Bloomberg News* (April 29, 2010), <http://www.bloomberg.com/news/2010-04-29/six-flags-noonah-visteon-lehman-philly-newspapers-tronox-bankruptcy.html>.

³¹⁸ FINDINGS OF FACT AND CONCLUSIONS OF LAW, at 20.

³¹⁹ *Id.*

³²⁰ *Id.* at 23-24.

³²¹ *Id.* at 1.

group of investors would buy \$725 million worth of newly issued common stock.³²² The restructuring would be financed by a \$1 billion of senior secured credit facilities, \$120 million revolving credit facilities, and a \$150 million loan from Time Warner.³²³

V. POST BANKRUPTCY

A. After-affects

When the company emerged from bankruptcy, Snyder was out.³²⁴ In court documents filed with the SEC and before the bankruptcy was finalized, it was specified that Shapiro would retain a board seat with the ability to appoint the final director for the company “provided, however, that such remaining director shall not be Daniel M. Snyder.”³²⁵ Nonetheless, Shapiro and the rest of Snyder’s handpicked management team were gone shortly thereafter as well.³²⁶ In a statement regarding Shapiro’s departure, Snyder stated “Shapiro bravely led Six Flags through an incredibly difficult period. He has been an energetic, optimistic leader and problem solver... Most of all I admire his tenacious dedication to protect the interests of the 28,000 Six Flags associates during this period of transition.”³²⁷ Al Weber Jr., the former head of Paramount Parks became Six Flags’ president and interim CEO while the company searched for a

³²² Cotton Timberlake, *Six Flags Exits Bankruptcy Protection After Cutting Debt By More Than Half*, BLOOMBERG NEWS (May 3, 2010), <http://www.bloomberg.com/news/2010-05-03/six-flags-exits-bankruptcy-protection-after-cutting-debt-by-more-than-half.html>.

³²³ *Id.*

³²⁴ Tom Hals, *Six Flags Emerges From Bankruptcy*, REUTERS (May 3, 2010), <http://www.reuters.com/article/2010/05/03/us-sixflags-idUSTRE6422RF20100503>.

³²⁵ Mike Spector, *Dan Snyder, the Libel Lawsuit and the Six Flags Dispute*, THE WALL STREET JOURNAL (Feb. 4, 2011), <http://blogs.wsj.com/deals/2011/02/04/dan-snyder-the-libel-lawsuit-and-the-six-flags-dispute/>

³²⁶ Thomas Heath, *Six Flags CEO Leaves After Bankruptcy Reorganization*, THE WASHINGTON POST (May 13, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/12/AR2010051204916.html>.

³²⁷ *Id.*

permanent replacement.³²⁸ In August of 2010, James Reid-Anderson was named the new President and CEO of Six Flags, with Al Weber as the company's new COO.³²⁹ Interestingly, Reid-Anderson had no experience in the theme park industry.³³⁰ Instead, he came from the engineering and electronics industry and was the former CEO of Siemens AG Healthcare Diagnostics Division.³³¹ Commentators downplayed his lack of relevant experience and focused instead on information given in press releases, such as Reid-Anderson's record of shareholder value creation.³³² The hope was that alongside Al Weber's industry experience, the duo would be able to build upon the momentum already underway at the parks.³³³

Similar to Shapiro's previously expressed hopes that the recession would prove to be a boost to the company's revenues, investors were drawn to the company post-bankruptcy based on predictions that it would benefit from a slow recovery as parents would choose "stay-cations" over more expensive destinations.³³⁴ These predictions proved to be accurate and the company saw revenue gains and increased attendance in the years following the bankruptcy. Six Flags had been delisted from the New York Stock Exchange before it filed for bankruptcy because of the

³²⁸ Robert Niles, *Mark Shapiro is Out at Six Flags; Former Paramount Parks Head Al Weber Is In*, THEME PARK INSIDER (May 12, 2010), <http://www.themeparkinsider.com/flume/201005/1921/>.

³²⁹ Sandra Daniels, *James Reid-Anderson Named Chairman, President and Chief Executive Officer of Six Flags Entertainment Corporation*, PR NEWSWIRE (Aug. 13, 2010), <http://www.prnewswire.com/news-releases/james-reid-anderson-named-chairman-president-and-chief-executive-officer-of-six-flags-entertainment-corporation-100615754.html>.

³³⁰ Robert Niles, *Six Flags Names New President/CEO*, THEME PARK INSIDER (Aug. 13, 2010), <http://www.themeparkinsider.com/flume/201008/2057/>.

³³¹ *Id.*

³³² *Six Flags Entertainment Appoints James Reid-Anderson As Chairman, President And CEO – Update*, RTT NEWS (Aug. 13, 2010), <http://www.rttnews.com/1393227/six-flags-entertainment-appoints-james-reid-anderson-as-chairman-president-and-ceo-update.aspx>; Nathan Becker, *Six Flags Selects CEO*, THE WALL STREET JOURNAL (Aug. 13, 2010), <http://online.wsj.com/news/articles/SB10001424052748703960004575427300556123806>.

³³³ *Id.*

³³⁴ Hals, *supra* note 122.

company's precarious debt situation and its failure to meet the NYSE's listing criteria.³³⁵ On May 3, 2010, nearly a year after it was delisted, the company emerged from bankruptcy and simultaneously announced its intention to relist on the NYSE under its old ticker, SIX.³³⁶

The company posted strong second quarter results in August 2010, and stated that the company saw a revenue increase of 7%, and an adjusted EBITDA increase of 68%.³³⁷ The company also highlighted its strong liquidity position, stating that it had a cash balance of \$210 million as of August 1, 2010.³³⁸ Increased attendance, sponsorship, top line growth, and effective cost management along with the new management team's focus on theme park excellence and shareholder value creation were cited as reasons for the growth.³³⁹ The company reported similar strong performance during the following year, with revenue growth of 5%, and an adjusted EBITDA increase of 20%.³⁴⁰ The management team credited the identification of several large areas of revenue growth opportunities and the achievement of industry-leading margins such as improved ticket yields, cost management, and a more cohesive marketing plan as reasons for the strong results.³⁴¹ The following two years the company reported similar gains, again citing solid attendance growth along with a substantial tax benefit for the strong

³³⁵ Chris Hefty, Major Bankruptcy Success Stories, THE LAW OFFICE OF CHRIS D. HEFTY (Dec. 17, 2013), <http://nocobankruptcy.com/major-bankruptcy-success-stories/>.

³³⁶ *There and Back Again: 10 Stocks That Returned to the Market After Bankruptcy*, FORBES, <http://www.forbes.com/pictures/fkmm45fejg/six-flags-2/> (last visited Apr. 23, 2014).

³³⁷ *Six Flags Announces Strong Second Quarter 2010 Results*, PR NEWswire (Aug. 16, 2010), <http://www.prnewswire.com/news-releases/six-flags-announces-strong-second-quarter-2010-results-100751279.html>.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Six Flag's CEO Discusses Q2 2011 Results – Earnings Call Transcript*, SEEKING ALPHA, at 2 (Jul. 25, 2011), <http://seekingalpha.com/article/281519-six-flags-ceo-discusses-q2-2011-results-earnings-call-transcript>.

³⁴¹ *Id.*

earnings.³⁴²

Six Flags most recent stock price is down 0.35% to \$39.77 a share.³⁴³ However, the price is up 6.47% year-over-year from \$37.35 last year.³⁴⁴ In fact, the theme park operator's current market standing could be characterized as surprising given former projections that the company would be looking at a loss of 20 cents per share during the fourth quarter of 2013.³⁴⁵ In February, the company actually reported a revenue increase year-over-year, delivering a substantial 15 cent per share profit.³⁴⁶ This is particularly significant because the company has historically experienced a loss during the fourth quarter due to the highly seasonal nature of the industry.³⁴⁷ Nevertheless, this development not only breaks a streak of two consecutive quarter losses, but also shows that the company may be well-positioned for the 2014 fiscal year.³⁴⁸

Despite strong revenue numbers, there are still some naysayers. Some commentators believe that the parks should have actually posted greater revenues due to the improving economic climate and that the revenue increase of 4% was a result of higher admission prices and in-park spending, and not the result of greater than average attendance.³⁴⁹ Critics often point to the Disney parks as the standard by which all theme parks should constantly be striving to

³⁴² Sandra Baker, *Six Flags Reports Strong Fourth-Quarter Profits*, STAR-TELEGRAM, at 1 (Feb. 20, 2013), <http://www.star-telegram.com/2013/02/20/4633774/six-flags-reports-strong-fourth.html?rh=1>.

³⁴³ *Six Flags Entertainment Corp.*, THE WALL STREET JOURNAL, <http://quotes.wsj.com/SIX> (last visited Apr. 24, 2014).

³⁴⁴ *Id.*

³⁴⁵ *Six Flags Entertainment, Whole Foods Market, TriQuint Semiconductor, RF Micro Devices and Apple highlighted as Zacks Bull and Bear of the Day*, YAHOO FINANCE (Feb. 26, 2014), <http://finance.yahoo.com/news/six-flags-entertainment-whole-foods-133412534.html>

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ Rick Aristotle Munarriz, *Regional Amusement Parks Need to Increase the Fun Factor*, DAILY FINANCE (Feb. 21, 2014), <http://www.dailyfinance.com/2014/02/21/regional-amusement-parks-need-increase-fun-factor/#!slide=2003736>.

mimic. Although Six Flags can hardly be expected to spend the kind of money that Disney does in investing in new attractions, the small perks like the ability to reserve expedited ride lines, or larger perks designed to appeal to more affluent guests such as gourmet food offerings, are the sort of Disney-imitating changes that some believe would improve Six Flag's bottom line.³⁵⁰ Other commentators have praised the company's changes since the bankruptcy in 2009, noting that the park now hosts outside advertisers and brands within the park, and have strategically cut out products that were not selling well and offering new, more appealing options.³⁵¹

The company's current CEO, Jim Reid-Anderson, has noted that guest-satisfaction scores were at a record high last year, "our guests recognize we are providing innovative rides and attractions, superb service, and great value for their money."³⁵² Not all customers agree with Reid-Anderson's estimation and believe the parks are still overpriced with regard to relative value. Some customers continue to report feeling "gouged."³⁵³ One reviewer stated that she felt like "Six Flags was trying to shake enough money out of me to singlehandedly keep them solvent."³⁵⁴ She noted that since the company's emergence from bankruptcy, "their financials give some telling insight into my expensive experience."³⁵⁵ The commentator also discussed a recent Wall Street Journal article concerning the parks' higher single-day ticket margins, stating

³⁵⁰ *Six Flags Entertainment, Whole Foods Market, TriQuint Semiconductor, RF Micro Devices and Apple highlighted as Zacks Bull and Bear of the Day*, YAHOO FINANCE (Feb. 26, 2014), <http://finance.yahoo.com/news/six-flags-entertainment-whole-foods-133412534.html>

³⁵¹ Mandy Kilinskis, *Branding on a Budget: 5 Dos and Don'ts from Six Flags Great America*, BRANDING BEAT, <http://www.qualitylogoproducts.com/blog/dos-donts-six-flags-great-america/> (last visited Apr. 11, 2014).

³⁵² *Fourth Consecutive Record Year at Six Flags*, SIXFLAGS.COM (Feb. 19, 2014), <http://investors.sixflags.com/phoenix.zhtml?c=61629&p=irol-newsArticle&ID=1901176&highlight>.

³⁵³ Laura Townsend Elion, *Laura's Theme Park Smack Down: Disney, Sea World, Six Flags—Part I*, CONSUMER TRAVELER (Aug. 19, 2010), <http://www.consumertraveler.com/columns/disney-a-bargain/>

³⁵⁴ *Id.*

³⁵⁵ *Id.*

“Six Flags knows they don’t offer an attractive enough experience to get you to return throughout the season, so they have to zap your wallet the first time you go.”³⁵⁶ Regardless of criticism of the parks, Reid-Anderson is credited with achieving the noteworthy turnaround of the company, an occurrence directly attributable to his carefully carried out strategy to invest in every park.³⁵⁷ The investment has paid off not only in terms of attendance numbers, but has also served to significantly increase overall morale at the parks.³⁵⁸

Despite the overwhelmingly good news regarding the park’s record-breaking quarter, the company has recently dealt with an unfortunate and tragic event at its park in Arlington where a woman fell to her death from a roller coaster named the Texas Giant in July of 2013.³⁵⁹ The family of the decedent, 52-year old Rosa Esparza, filed suit against Six Flags seeking a minimum of \$1 million in damages for wrongful death due to alleged negligence.³⁶⁰ Six Flags filed a cross-claim against the German roller coaster manufacturer, maintaining that the manufacturer and not the park were at fault for the accident.³⁶¹ Along with bad publicity, the park hosted significantly fewer guests at the Texas location due to the tragedy, and has estimated litigation

³⁵⁶ *Id.*

³⁵⁷ W. Scott Bailey, *Six Flags Setting New Financial Benchmarks Post Bankruptcy*, SAN ANTONIO BUSINESS JOURNAL (Oct. 23, 2013), <http://www.bizjournals.com/sanantonio/blog/2013/10/six-flags-setting-new-financial.html>

³⁵⁸ *Id.*

³⁵⁹ Erica Teichert, *Six Flags Sued For Wrongful Death Over Texas Coaster Fall*, LAW360.COM (Sep. 11, 2013), <http://www.law360.com/articles/471980/six-flags-sued-for-wrongful-death-over-texas-coaster-fall>.

³⁶⁰ Craig Hlavaty, *Six Flags Responds to Fatal Accident: We Don’t Design or Build Rides*, HOUSTON CHRONICLE (Oct. 16, 2013), <http://www.chron.com/news/article/Six-Flags-responds-to-fatal-accident-We-don-t-4900136.php?cmpid=hpfc>.

³⁶¹ Jeff Mosier, *Texas Giant Train Designer Blaming Six Flags For Fatal Accident*, DALLAS NEWS (Mar. 6, 2014), <http://thescoopblog.dallasnews.com/2014/03/texas-giant-train-designer-blaming-six-flags-for-fatal-accident.html/>

costs to be around \$3 million.³⁶² Nevertheless, the company reported that guest satisfaction scores which include safety ratings, were at record highs during the past year.³⁶³

In Six Flag's most recent quarterly earnings call on April 23, CEO Reid-Anderson specifically highlighted a 7% growth in guest spending per cap, which he credited to ticket pricing and in-park revenue strategies.³⁶⁴ In addition, he stated that the company's Active Pass Base has grown 25%.³⁶⁵ He described the "Active Pass Base" as a new term representing the combined total active season pass holders and guests on the company's membership plan, which reflect the company's success in emphasizing membership plans.³⁶⁶ Furthermore, membership plans that renew automatically after one year create a recurring revenue and cash flow stream for the company.³⁶⁷ Reid-Anderson stated that these developments encourage an optimistic outlook for the 2014 season and beyond, "it all starts with delighting our guests ensuring they have fun at Six Flags, receive great value for their money and are eager to visit our parks again and again."³⁶⁸ A recently published independent survey was also mentioned, recognizing Six Flags as a leader in guest satisfaction compared to all regional theme parks.³⁶⁹ Another high point was the company's recent offering of an all-season dining pass that has turned out to be extremely

³⁶² Kyle Stock, *A Roller-Coaster Death Haunts Six Flags*, BUSINESSWEEK (Oct. 23, 2013), <http://www.businessweek.com/articles/2013-10-23/a-roller-coaster-death-haunts-six-flags>.

³⁶³ *Id.*

³⁶⁴ *Six Flags' CEO Discusses Q1 2014 Results – Earnings Call Transcript*, SEEKING ALPHA, at 2 (Apr. 23, 2014), <http://seekingalpha.com/article/2157993-six-flags-ceo-discusses-q1-2014-results-earnings-call-transcript>.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

successful with customers, resulting in considerable profits.³⁷⁰ During the 2014 season the park will also introduce several record-breaking rides, including a ride at Six Flags Great Adventure in New Jersey that has the distinction of being the tallest drop ride in the world, and a wooden roller coaster named Goliath at Six Flags Great America near Chicago that breaks several world records for speed, drop steepness, and drop depth.³⁷¹

In the call's question and answer session, Reid-Anderson alluded to potential international expansion but was vague about the company's specific plans for overseas locations. In response to direct questions about licensing opportunities outside North America he stated "the number [of theme parks] will increase... there is a growing middle-class... across the world and when you look at Asia, especially the Middle East, now there is more disposable income."³⁷² According to the company's CFO, John Duffey, who fielded questions toward the end of the call, Six Flags is currently in discussions with real estate developers to gauge interest in plans to sell excess land.³⁷³ Responding to whether the sale of excess land could result in a sea change in leverage, Duffey stated that the company's plans to monetize the land are contingent on the real estate market, and would likely not produce significant change in terms of the company's leverage.³⁷⁴ In response to questions concerning whether the company had goals to return additional capital to shareholders from fee-related revenue, Duffey affirmed that they would consider returning additional capital to shareholders if they continue to see leverage decline with EBITDA growth, and that the company is "very happy with where our leverage is

³⁷⁰ Six Flags' *CEO Discusses Q1 2014 Results – Earnings Call Transcript*, SEEKING ALPHA, at 2 (Apr. 23, 2014), <http://seekingalpha.com/article/2157993-six-flags-ceo-discusses-q1-2014-results-earnings-call-transcript>.

³⁷¹ *Id.* at 3.

³⁷² *Id.* at 6.

³⁷³ *Id.* at 13.

³⁷⁴ *Id.* at 26.

today.”³⁷⁵ In closing, Reid-Anderson encouraged the call participants to “visit our beautiful parks this season to experience all that we have to offer. You can rest assured that our team is focused on delighting our guests and creating incremental shareholder value in the years ahead.”³⁷⁶

³⁷⁵ *Id.* at 13.

³⁷⁶ *Id.* at 27.