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Trump Entertainment Resorts: Three Bankruptcies and the Failure to Make Atlantic City Great Again

Workouts and Reorganizations – Professor George Kuney

Spring 2017

Ryan Gallagher and Andrew Hale



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1 Introduction and Overview: The Gamble on Atlantic City and a History of Trump Entertainment Resorts

*“Legalized gambling was supposed to rescue the city from its obsolescence...”*¹

New Jersey voters approved casino gambling in 1976, and locals celebrated the promise of economic revitalization.² Atlantic City, then only one of two destinations for legal gaming in the United States, rapidly evolved into the go-to location for east coast tables and slots. Nine Casinos opened within four years, and Atlantic City enjoyed a surge in tourism, employment, and tax revenue.³ Fifteen casinos operated on the New Jersey coast beginning in 1980—over half have since closed their doors.⁴

The story of Trump Entertainment Resorts spans over three decades and has recently concluded with the 2017 closure of its last, and greatest, casino.⁵ The foundation of Trump Entertainment was laid in the earliest days of what was once a promising opportunity for investors, but the casinos of Trump Entertainment Resorts would fall victim to poor marketing and management, failed attempts to diversify, overwhelming third-party litigation, an economic downturn, and a natural disaster in the years that followed. This article condenses three near-consecutive bankruptcies filed by Trump Entertainment Resorts and analyzes the failures in management and reorganization that led to its demise.

1.1 Background

Donald Trump received his first gaming license from the New Jersey Casino Control Commission on March 15, 1982.⁶ Soon after, Mr. Trump opened Atlantic City’s tenth gaming location, Harrah’s Boardwalk Hotel Casino at Trump Plaza (“Trump Plaza”), in a 1984, \$210

¹ Nick Paumgarten, *The Death and Life of Atlantic City*, *The New Yorker* (Sept. 7, 2015), <http://perma.cc/B3CA-2R9B>.

² Atlantic City Free Public Library, *History of Casino Gambling in Atlantic City*, <http://perma.cc/YC8C-F2MU>.

³ *Id.*

⁴ *Id.*

⁵ Maria Armental, *Carl Icahn to Sell Trump Taj Mahal to Group Led by Hard Rock*, *The Wall Street Journal* (Mar. 1, 2014, 9:25 PM), <http://perma.cc/T93C-CKTQ>.

⁶ State of N.J. Dep’t of Law and Pub. Safety Div. of Gaming Enf’t, Report to the Casino Control Commission In Re The Application of Trump Plaza Corporation for a Casino License, The Qualifications of Donald J. Trump as Sole Stockholder, Officer and Director Thereof and the Application of Donald J. Trump for a Casino Key Employee License as Chief Executive Officer/President, (Oct. 16, 1981), <http://perma.cc/VA3B-PXWW>.

million joint-venture with Harrah's.⁷ Approximately one year later, Mr. Trump purchased an unfinished casino project from Hilton Hotels at the Atlantic City Marina, which became Trump's Castle Hotel and Casino ("Trump's Castle").⁸ Mr. Trump purchased the remaining interest in Trump Plaza in 1986 following a legal dispute with his original partner, Harrah's, over the similarities between the hotels' names.⁹ Donald Trump was the first to own more than one casino property in Atlantic City.¹⁰

In 1987 Mr. Trump seized a second opportunity to take over a mid-construction casino project by purchasing a controlling interest in "Resorts International," the parent company of Atlantic City's first casino.¹¹ Resorts International's project, threatened by skyrocketing costs and need for additional capital, was headed for failure. Mr. Trump sought to purchase the remaining stock in Resorts International,¹² intending to personally finance the project. A competing offer from Merv Griffin led to highly publicized litigation between the two,¹³ the settlement of which resulted in Mr. Trump's sale of his entire interest in Resorts International and his retaining ownership of what was to become the Trump Taj Mahal casino ("Taj Mahal").¹⁴ The Taj Mahal opened in April of 1990,¹⁵ and Mr. Trump became the sole owner of his third Atlantic City casino, each of which would file bankruptcy in the next three years.

In 1995 Mr. Trump established a public holding corporation, Trump Hotels and Casino Resorts ("THCR"), which assumed ownership of the newly reorganized Trump Plaza.¹⁶ THCR

⁷ Donald Janson, *10th and Largest Casino Opens in Atlantic City*, The New York Times (May 15, 1984), <http://perma.cc/SYL8-5V3H>.

⁸ Russ Buettner & Charles V. Bagli, *How Donald Trump Bankrupted His Atlantic City Casinos, but Still Earned Millions*, The New York Times (June 11, 2016), <http://perma.cc/5GN7-AKV9>.

⁹ David Schwartz, *Plaza Suite: History of Trump Plaza*, Casino Connection AC, Vol. 7, No. 2 (Feb. 2, 2010), <http://perma.cc/KKK5-VW6N>.

¹⁰ *Id.*

¹¹ NewsBank, <http://infoweb.newsbank.com/resources/doc/nb/news/0EB29D0F2B2C52E2?p=AWNB> (last visited Apr. 13, 2017).

¹² *Trump Offers to Buy Rest of Resorts' Common Stock*, Los Angeles Times (Dec. 22, 1987), <http://perma.cc/AX3M-VCYB>.

¹³ Richard W. Stevenson, *Griffin Wins Resorts in Deal With Trump*, The New York Times (Apr. 15, 1988), <http://perma.cc/6FFQ-N9RS>.

¹⁴ *Takeover battle ends for Trump, Griffin*, Chicago Tribune, Apr. 15, 1988, at § 3, at 3, <http://perma.cc/X77S-P5FZ>.

¹⁵ NewsBank, <http://infoweb.newsbank.com/resources/doc/nb/news/0EAEA84E88B487F6?p=AWNB> (last visited Apr. 13, 2017).

¹⁶ Floyd Norris, *Trump Plaza Casino Stock Trades Today on Big Board*, The New York Times (Jun. 7, 1995), <https://perma.cc/7ZGX-Z7B7>.

filed Chapter 11 in 2004, and emerged from bankruptcy with a reduction of Mr. Trump's stock ownership from 56% to 27%, stepping down as CEO to become chairman of the board, as well as a rebranding of THCR to Trump Entertainment Resorts ("TER," "Debtor(s)," or the "Company").¹⁷

In response to the 2008 economic recession and the spread of legalized gambling to neighboring states, selloffs, unsuccessful buyout attempts, and heavy cutbacks failed to save TER from yet another Chapter 11 filing in 2009.¹⁸ Mr. Trump resigned as chairman of TER's board four days prior to the second filing in 5 years.¹⁹ Andrew Beal, owner of approximately \$500 million of TER's \$1.25 billion debt, partnered with Carl Icahn, a seasoned billionaire investor who bought Beal's debt in TER, in an attempt take over control of the casinos.²⁰ However, the takeover attempt ultimately failed after the court favored the Trump backed Debtor plan over the plan proposed by Beal and Icahn.²¹ Mr. Icahn would later take control of TER²² and become a proponent of Mr. Trump in the 2016 presidential campaign.²³ The 2009 TER reorganization diluted Mr. Trump's equity to 5% of new company stock for the "Trump" license in perpetuity along with warrants to purchase an additional 5%.²⁴ Mr. Trump would later file suit to have his name removed from the properties.²⁵

Lawsuits from various creditors forced an already struggling Trump Entertainment Resorts into its third Chapter 11 bankruptcy in September 2014. TER became a subsidiary of Icahn Enterprises upon emergence from the bankruptcy and went on to close and sell both the Plaza and

¹⁷ David Phillips, *Reorganized Trump Entertainment Still Has The Donald Factor*, Seeking Alpha (Mar. 27, 2006), <https://perma.cc/YC3Z-J8T3>.

¹⁸ [Declaration of John P. Burke, In Support of First Day Motions](#), Docket no. 19, Case no. 09-13654-JHW, filed February 17, 2009 [hereinafter *Burke Declaration*].

¹⁹ Clare O'Conner, *Fourth Time's A Charm: How Donald Trump Made Bankruptcy Work For Him*, Forbes (Apr. 29, 2011, 7:31 PM), <http://perma.cc/JKK3-BMP7>.

²⁰ [Verified Statement of Beal Bank Pursuant to Bankruptcy Rule 2019\(a\)](#), Docket no. 901, Case No. 09-13654-JHW, filed November 13, 2009.

²¹ Daniel Gill & Deborah Swann, *The Bankruptcies Behind Trump's 'King of Debt' Claim*, BNA.com (Nov. 1, 2016), <https://perma.cc/BU8D-U4LU>.

²² *Infra*, note 530.

²³ Jeff Cox, *Carl Icahn: Here's why I'm Supporting Trump for president*, CNBC.com (Sept. 13, 2016, 5:45 PM), <http://perma.cc/6EK4-ZKPI>.

²⁴ Gill & Swann, *supra* note 21.

²⁵ [Trump AC Casino Marks v. Trump Entertainment Resorts](#), No. C50-14, 2014 WL 3843844 (N.J. Super. Ch. Aug. 5, 2014).

Taj Mahal.²⁶ The properties of Trump Entertainment Resorts are now vacant and ready for the next group of investors to rebrand and continue Atlantic City’s legacy as the gambling capital of the United States’ east coast.

2 [Trump Hotels & Casino Resorts, Inc. 2004 Bankruptcy: Uncovering the Sweetheart Deal](#)

2.1 [THCR 2004 Organizational, Operational, and Capital Structures](#)

The corporate and capital structures of Trump Hotels & Casino Resorts, Inc. (“THCR” or “Debtor”) were far more complex prior to the 2004 bankruptcy filing. Donald Trump was the majority stockholder of THCR.²⁷ THCR’s principal assets were comprised of 59.9% in general and limited partnership interests in THCR Holdings L.P. (“THCR Holdings”), its wholly owned subsidiary.²⁸ A second subsidiary, THCR/LP, was a 3.5% limited partner of THCR Holdings.²⁹ Further, Mr. Trump and two of his wholly owned companies, Trump Casinos, Inc. and Trump Casinos II, Inc. (“TCI” and “TCI II”, respectively), were roughly 36% limited partners of THCR Holdings.³⁰ These interests afforded Mr. Trump a 56.4% direct and indirect voting power in the governance of THCR.³¹ THCR Holdings owned substantially all the Debtor’s assets through its subsidiaries, which are illustrated in the diagrams below. Thus, as the sole general partner, THCR’s only operation was the ownership and management of THCR Holdings and its subsidiaries, Trump Taj Mahal, Trump Plaza, and Trump Marina.³²

THCR was funded primarily by equity, consisting of 29,904,764 publicly traded shares of common stock and 1,000 shares of Class B common stock with a voting equivalency of 13,918,723 shares of common stock, owned exclusively by Mr. Trump, and long term secured mortgage

²⁶ Armental, *supra* note 5.

²⁷ See [Declaration of Francis X. McCarthy, Jr., In Support of First Day Motions](#), Docket no. 2, Case no. 04-46898-JHW, filed November 21, 2004 [hereinafter *McCarthy Declaration*]; See also [Notice of Filing Exhibits to Disclosure Statement Accompanying Joint Plan of Reorganization Dated as of December 15, 2004](#), Docket no. 371, Case no. 04-46898-JHW, filed January 14, 2005.

²⁸ See *McCarthy Declaration*, *supra* note 27.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

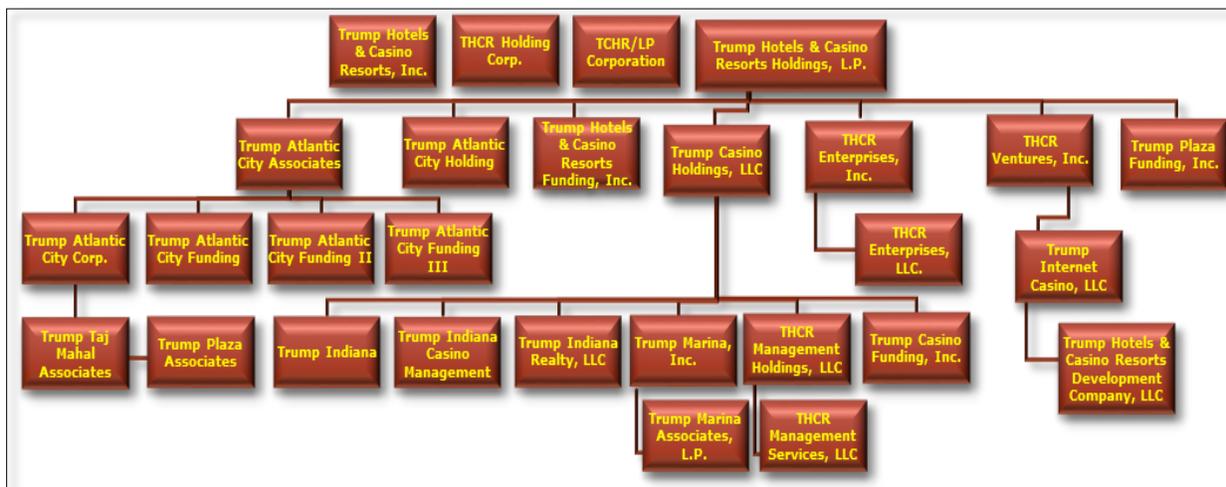
³² *Id.*

notes.³³ These secured mortgage notes totaled around \$1.8 billion and were made up of two groups of notes named after the THCR subsidiaries who issued them, the Trump Atlantic City (“TAC”) Notes and the Trump Casino Holdings (“TCH”) Notes.³⁴

The TAC Notes amounted to approximately \$1.3 billion of the \$1.8 billion, the amount of which was the principal amount of 11.25% First Mortgage Notes Due 2006 issued by THCR subsidiary, Trump Atlantic City Associates.³⁵ The TAC Notes were guaranteed by Trump Atlantic City Associates, which owned and operated Trump Taj Mahal and Trump Plaza, on a first priority secured basis by all of the assets of Trump Atlantic City Associates.³⁶

The TCH Notes constituted approximately \$490 million of principal indebtedness issued by Trump Casino Holdings, LLC.³⁷ The \$490 million was made up of \$425 million of 11.625% of First Priority Mortgage Notes and \$68.8 million of 17.625% Second Priority Mortgage Notes, both due in 2010.³⁸ These were guaranteed by the TCH subsidiaries, Trump Marina, Trump Indiana, and Trump 29, and were secured by the assets of the TCH subsidiaries on a first priority basis.³⁹

Trump Hotels & Casino’s 2004 Corporate Structure



³³ *McCarthy Declaration*, *supra* note 27.

³⁴ *Id.*

³⁵ *Id.*

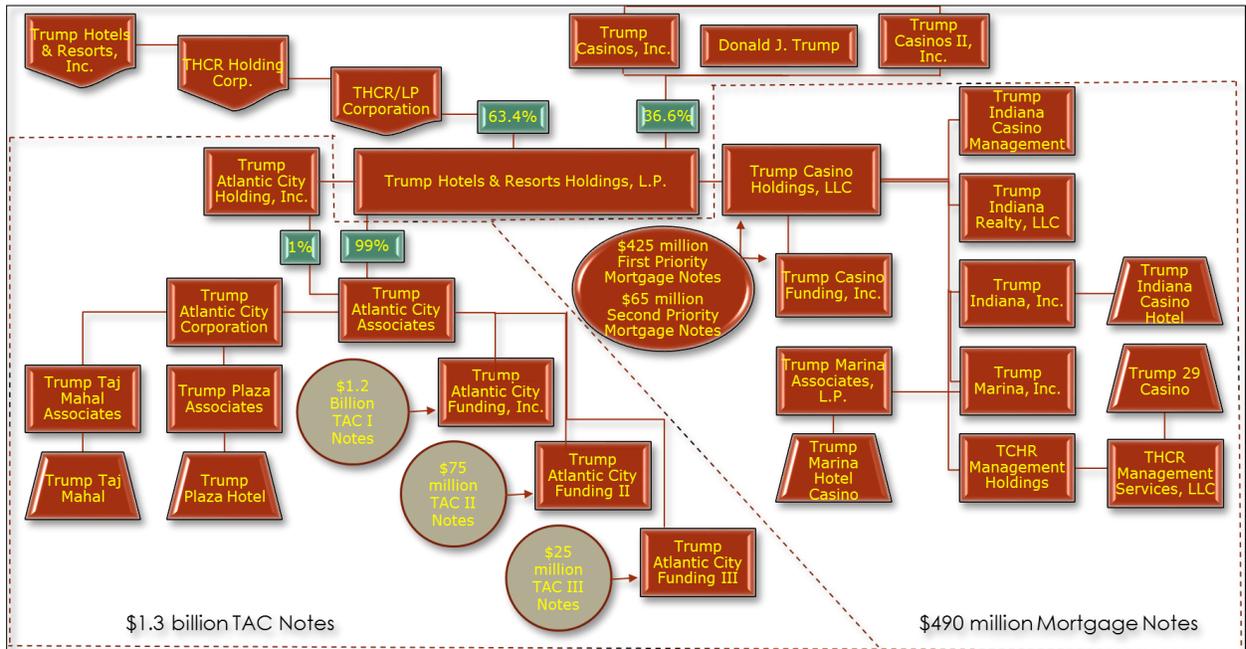
³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

THCR Ownership Interests and Obligations Represented by TAC and TCH Notes⁴⁰



2.2 Triggering Events of the 2004 Bankruptcy

The Debtors noted a significant increase in competition since taking the company public in 1995⁴¹ despite the constant number of casinos operating in Atlantic City at the time.⁴² Specifically, one competitor cited by the Debtors as having a significant impact on THCR was the July 2003 opening of the Borgata, a major casino and hotel venture between MGM Mirage, Inc. and Boyd Gaming Corporation.⁴³

⁴⁰ [Notice of Filing Exhibits to Disclosure Statement Accompanying Joint Plan of Reorganization Dated as of December 15, 2004](#), Exhibit E, Docket no. 371-2, Case no. 04-46898-JHW, filed January 14, 2005; *McCarthy Declaration*, *supra* note 27, Exhibit C.

⁴¹ *McCarthy Declaration*, *supra* note 27.

⁴² From 1995 to 2004, a constant 12 casinos were open and operating in Atlantic City. In fact, this number remained constant from 1987 to 2006. *See* Center for Gaming Research, Atlantic City Casino Statistics, University of Nevada Las Vegas, <https://perma.cc/2NTJ-NHT9>.

⁴³ *See* *McCarthy Declaration*; *See also* [Disclosure Statement Accompanying Joint Plan of Reorganization Dated as of December 15, 2004](#), Docket no. 189, Case no. 04-46898-JHW, filed December 15, 2004 [hereinafter *First Disclosure Statement*]; *see generally* <https://www.theborgata.com/>.

THCR's market share diminished, and its projected cash flows failed to meet stakeholders' expectations due to the alleged increase in the Atlantic City gaming competition.⁴⁴ The diminished cash flows had two principle effects. First, although the Debtors had sufficient cash to fund casino operations and honor interest payments for several years, THCR's liquidity began to dry up in 2004.⁴⁵ The Debtors used a 30-day grace period to make interest payments on both the TAC Notes and TCH Notes, but ultimately were not able to fund a \$73 million interest payment due on November 1, 2004.⁴⁶ Instead, the Debtors filed for relief under Chapter 11 of the United States Bankruptcy Code on November 21, 2004.⁴⁷ The second effect of the underwhelming cash flows was the prevention of further investment into THCR's casinos to expand and update their facilities to remain attractive and competitive.⁴⁸ As newer casinos opened in Atlantic City, Mr. Trump's casinos operated in an increasingly dated and shopworn condition.

2.3 Failed Investment Negotiations with DLJ Merchant Bank

After exploring new initiatives to improve the casino's efficiencies and capital structure, including reducing overhead, selling properties, and raising funds through new equity investments by third parties, the Debtors began to restructure their debt out of court by hiring restructuring counsel and forming the "Informal Noteholder Committees" to represent the TAC and TCH Noteholder interests.⁴⁹ THCR organized a "Special Committee" of directors of which Mr. Trump was not a member.⁵⁰

THCR received only one legitimate investment offer from DLJ Merchant Bank.⁵¹ The initial discussions provided that DLJ Merchant Bank would inject \$400 million in equity into the failing casinos.⁵² Further, the TAC and TCH noteholders would receive cash and new notes at a discounted value.⁵³ However, after months of negotiating and a public announcement that an

⁴⁴ *McCarthy Declaration*, *supra* note 27, at 7.

⁴⁵ *Id.*

⁴⁶ *Id.* at 8.

⁴⁷ [Voluntary Petition](#), Docket no. 1, Case no. 04-46898-JHW, filed November 21, 2004 [hereinafter *2004 Voluntary Petition*].

⁴⁸ *McCarthy Declaration*, *supra* note 27, at 8.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Andrew Bary, *The Debtor*, *Barron's* (Feb. 16, 2004, 12:01 AM), <https://perma.cc/SS26-5GNG>.

⁵³ *McCarthy Declaration*, *supra* note 27, at 11.

agreement-in-principal had been reached to restructure THCR's debt obligations in a pre-negotiated Chapter 11 case,⁵⁴ the negotiations fell through after the Debtors and DLJ Merchant Bank could not reach a final agreement.⁵⁵ According to one source citing a person close to DLJ, "a particular group of bondholders," presumably the TAC and TCH Noteholders, did not like the offer they had been extended under the deal, which resulted in DLJ growing impatient with the amount of time the deal was taking.⁵⁶ As a result, having failed to secure necessary operational funding, THCR initiated Chapter 11 proceedings to insulate itself from the impending interest payment default.

2.4 First Plan Filing; Uncovering the "Sweetheart Deal;" Confirming a Plan

Trump Hotel & Casino Resorts filed its voluntary petition for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of New Jersey on November 21, 2004.⁵⁷ Although Mr. Trump's casinos were plenty familiar with reorganization, this was the first filed by THCR itself. Francis McCarthy, Jr. was THCR's Executive Vice President of Corporate Finance and Chief Financial Officer, a position he held since 1998, and served as an officer of each debtor at the petition date.⁵⁸ Mr. McCarthy associated with Mr. Trump's casino empire in various capacities beginning in 1992.⁵⁹

The first Plan of reorganization and disclosure statement were filed on December 15, 2004.⁶⁰ The Plan was pre-negotiated and agreed to by almost all key parties in interest prior to the filing.⁶¹ Per the disclosure statement, the first proposed plan contemplated the following:

⁵⁴ *Trump Hotels and Casino Resorts Plans to File for Bankruptcy Protection by the End of September, 2004; Claims Agreement Reached with Significant Number of Trump Hotels' Bondholders to Reorganize Under New Management and New Financing*, Hotel Online, <https://perma.cc/KGB8-9HYP> (last visited May 3, 2017).

⁵⁵ *McCarthy Declaration*, *supra* note 27, at 12.

⁵⁶ *On Wall Street: Donald Trump's secret to success*, Financial Times, <https://www.ft.com/content/e7464388-13ae-11d9-aa94-00000e2511c8> (last visited May 3, 2017).

⁵⁷ *2004 Voluntary Petition*, *supra* note 47.

⁵⁸ *McCarthy Declaration*, *supra* note 27, at 2.

⁵⁹ See Francis X. McCarthy, Jr., Executive Profile, Bloomberg.com, <https://perma.cc/X8S2-KLBT>.

⁶⁰ [Joint Plan of Reorganization Dated as of December 15, 2004](#), Docket No. 191, Case No. 04-46898-JHW, filed December 15, 2004; *First Disclosure Statement*.

⁶¹ *Trump casinos file for bankruptcy*, NBCnews.com (Nov. 22, 2004, 3:10 PM), <https://perma.cc/ZSM8-R46X>.

- An exchange of the TAC and TCH Notes for New Common Stock, Cash and/or New Notes;⁶²
- A distribution of New Class A Warrants to existing beneficial owners of old THCR Common Stock (excluding DJT), with an aggregate purchase price of \$50 million (\$14.60 per share), and a distribution of New Class A Warrants Proceeds to TAC Noteholders on or as soon as reasonably practicable after the first anniversary of the Effective Date;
- A \$55 million cash equity investment by DJT (or a controlled affiliate of DJT) and the contribution of the TCH Second priority Notes beneficially owned by him to the Reorganized Debtors, and material modifications to existing arrangements between the Debtors and DJT;
- A Reverse Stock Split whereby 1000 shares of Old THCR Common Stock will be consolidated into one share of New Common Stock on the Effective Date;
- A reorganized board of directors of Reorganized THCR initially consisting of nine members, five of whom will initially be Class A Directors acceptable to the TAC Noteholder Committee and three of whom will initially be appointed by DJT (including DJT himself, as Chairman), with DJT's power to appoint future directors dependent on DJT's percentage of ownership of New Common Stock, and the continued election of Class A Directors for the Nomination Period;
- Repayment of a DIP Facility of up to \$100 million secured by a first priority priming Lien on Substantially all the assets of the Debtors during the pendency of the Chapter 11 Cases;⁶³ and
- An Exit Facility of up to \$500 million secured by a first priority security interest in substantially all the assets of the Reorganized Debtors upon the Effective Date, with a portion of such Exit Facility to be used to repay the DIP Facility in full.⁶⁴

Despite the Plan's pre-negotiation and near-unanimous approval, Mr. Trump, the secured creditors, and the "Special Committee" were met with resistance from the U.S. Trustee.⁶⁵ Although there was no official committee of unsecured creditors—since they were to be paid in full—the U.S. Trustee formed an Official Committee of Equity Security Holders ("The Equity Committee"), made of up THCR "non-insider" shareholders⁶⁶ in order to combat what it viewed as a "sweetheart

⁶² See *First Disclosure Statement*, *supra* note 43, at 2-3 (The TAC Noteholders would receive "\$777.3 million in aggregate principal face amount of New Notes, 26,325,562 shares of New Common Stock", and a Cash Distribution that would equal the simple interest accruing on the New Notes at a 8.5% per annum rate. The TCH First Priority Noteholders would receive "\$425 million aggregate principal face amount of New Notes, \$21.25 million in cash, 582,283 shares of New Common Stock," and a cash distribution that would equal the simple interest accrued on the New Notes at a 12.65% per annum rate. In exchange for their notes, TCH Second Priority Noteholders other than Mr. Trump would receive "\$47.7 million aggregate principle amount of New Notes, \$2.3 million in cash, 145,116 shares of New Common Stock," and a cash distribution equal to the simple interest accrued on the New Notes at a 8.5% per annum rate as well as \$54.6 million at a rate of 18.625% per annum).

⁶³ See [Interim Stipulation and Order Providing For Use of Cash Collateral and Providing Adequate Protection](#), Docket No 44, Case No. 04-46898-JHW, filed November 22, 2004.

⁶⁴ *First Disclosure Statement*, *supra* note 43, at 1-2.

⁶⁵ Gill & Swann, *supra* note 21.

⁶⁶ Shareholder's other than Trump and the directors that were a part of the Special Committee.

deal” benefiting Mr. Trump.⁶⁷ The Equity Committee filed an objection primarily because non-insider shareholders were to receive only \$300,000 in estimated value as a result of the 1000-1 Reverse Stock Split, and reduced equity to 0.01% ownership interest in the reorganized company.⁶⁸

An amended Plan was filed in response to the objection, on March 30, 2005⁶⁹ (and was ultimately confirmed by the court 6 days later on April 5, 2005).⁷⁰ Under the amended Plan, the non-insider shareholders retained new shares and warrants and would share distributions totaling \$40 million—substantially better treatment than under the original plan.⁷¹ A portion of the distributions included a \$17.5 million slice of \$25.15 million from the sale of Mr. Trump’s World’s Fair site property offered up by Mr. Trump in the Amended Plan.⁷²

Mr. Trump, on the other hand, traded \$55 million in cash along with 25% of his stake in Miss Universe LP, reduced ownership interest from 56% to approximately 27%, and forfeited the CEO title and \$1.5 million salary.⁷³ However, Mr. Trump entered into an agreement to serve as chairman of the board for a \$2 million yearly fee.⁷⁴ TER issued \$1.25 billion of 8.25% Senior Secured Notes due 2015.⁷⁵

The Plan reorganized and simplified the Company’s corporate structure upon emergence from the 2004 filing. Trump Hotels & Casino Resorts’ moniker changed to Trump Entertainment

⁶⁷ Gill & Swann, *supra* note 21; [Appointment of Equity Security Holders’ Committee](#), Case No. 04-46898, Docket No. 292, filed December 30, 2004.

⁶⁸ [Objection of Official Committee of Equity Security Holders to \(A\) Emergency Motion of Debtors For Entry of Interim and Final Orders \(I\) Authorizing Post-Petition Secured Superpriority Financing Pursuant To Bankruptcy Code Sections 105\(a\), 362, 364\(c\)\(1\), 364\(c\)\(2\), 363\(c\)\(3\) and 364\(d\) and \(II\) Setting Final Hearing Pursuant to Bankruptcy Rule 4001\(c\) and \(B\) Emergency Motion of Debtors for Entry of Interim and Final Stipulation and Order Providing For Use of Cash Collateral and Providing Adequate Protection](#), Case No. 04-46898, Docket No. 297, filed December 31, 2004.

⁶⁹ [Second Amended Joint Plan of Reorganization of THCR/LP Corporation, Et. Al. Dated as of March 30, 2005](#), Docket no. 901, Case no. 04-46898, filed March 30, 2004.

⁷⁰ [\(1\) Order Confirming Second Amended Joint Plan of Reorganization of THCR/LP Corporation Et. Al. Dated as of March 30, 2005, and \(2\) Findings of Fact and Conclusions of Law](#), Docket no. 976, Case no. 04-46898-JHW, entered April 5, 2005.

⁷¹ Gill & Swann, *supra* note 21.

⁷² *Id.*

⁷³ Phillips, *supra* note 17.

⁷⁴ *Id.*

⁷⁵ *Burke Declaration*, *supra* note 18.

Resorts, Inc.⁷⁶ The diagram below illustrates the new structure of the entities after confirmation of the amended plan.

Debtors' Post-Reorganization Corporate Structure



3 [Trump Entertainment Resorts, Inc. 2009 Bankruptcy: Here We Go Again.](#)

3.1 Changes in THCR Capital Structure

Following the 2004 Chapter 11 cases, the reorganized TER entered into a \$500 million secured credit facility in 2005.⁷⁷ The line of credit was obtained in order to repay the \$100 million DIP financing assumed in the prior reorganization.⁷⁸ Then, to repay the outstanding amounts and the \$6.6 million in transactional fees from the 2005 credit facility, the Debtors consolidated their long term debt as a senior secured credit facility with Beal Bank and Beal Bank Nevada, with an outstanding principal balance of \$493,250,000.⁷⁹ This facility began as an initial \$393.3 million loan, which grew by \$100 million, representing the amounts borrowed to finish construction of the Chairman Tower, a new hotel tower at the Trump Taj Mahal.⁸⁰

⁷⁶ Gill & Swann, *supra* note 21.

⁷⁷ *Burke Declaration*, *supra* note 18, at 6.

⁷⁸ *Id.*

⁷⁹ *Id.* at 10; *Infra*, note 97.

⁸⁰ *Burke Declaration*, *supra* note 18, at 10.

3.2 Triggering Events of the 2009 Bankruptcy

As TER emerged from the 2004 Chapter 11 Bankruptcy cases, the legalized gambling economy in the Northeast—and the country’s economy, generally—were changing for the worse. Since Atlantic City legalized gambling in 1978, the city was *the* gambling mecca on the eastern seaboard. As the second largest gaming market in the United States, Atlantic City served the 30 million adults in the New York-Philadelphia-Baltimore-Washington D.C. corridor that were within, at most, 3-hours from the city center.⁸¹ In 2007, however, a new wave of competitive forces presented itself. The largest of these was the opening of multiple new casino properties in southeast Pennsylvania.⁸² Importantly, the economic recession hit the United States in late 2008, and impacted virtually every industry.⁸³ Specific to the Atlantic City gaming economy, New Jersey commercial casino revenues dropped from \$4.921 billion in 2007 to 4.503 billion in 2008.⁸⁴

In addition to market decline and recession, the City Council of Atlantic City passed an ordinance banning smoking on casino floors in early 2008.⁸⁵ Although, due to the economic downturn, the City Council delayed its effective date and ultimately withdrew the ordinance, instituting instead a requirement that 75% of the casino floors be non-smoking.⁸⁶ Although they could not quantify the monetary effect the smoking ban had on their revenues, the Debtors asserted significant negative impact on casino revenues and guest traffic.⁸⁷

As a result of these external circumstances, TER defaulted on the interest payments due on the \$1.25 billion Senior Secured Notes extended in the 2004 reorganization and voluntarily entered their second companywide reorganization.⁸⁸

⁸¹ *Id.* at 12.

⁸² *Id.* at 13.

⁸³ See *Burke Declaration*, *supra* note 18, at 11.

⁸⁴ American Gaming Association, *2009 State of the States: The AGA Survey of Casino Entertainment* (2009), <https://perma.cc/DUR4-DHER>.

⁸⁵ Atlantic City, N.J., Ordinance 27-2008 (Mar. 26, 2008), <https://perma.cc/R899-427Y>; Donald Wittkowski, *Atlantic City Council unanimous on casino smoking ban, takes effect Oct. 15*, *The Press of Atlantic City* (Apr. 24, 2008), <https://perma.cc/64CY-Y73H>.

⁸⁶ *Burke Declaration*, *supra* note 18, at 14; Atlantic City, N.J., Ordinance 95-2008 (Oct. 2, 2008), <https://perma.cc/F7GW-7RLB>; Atlantic City, N.J., Code § 221-6(A)(6) (2008).

⁸⁷ See *Burke Declaration*, *supra* note 18, at 14.

⁸⁸ *Id.*

3.3 Bankruptcy Petition and Commencement of the Case

On February 13, 2009, four days before TER filed its voluntary petition for Chapter 11, Mr. Trump and daughter Ivanka Trump stepped down from TER's board.⁸⁹ The Debtors were still overleveraged at the time of the filing and burdened with roughly \$1.7 billion of consolidated debt.⁹⁰ The prepetition debt was owned primarily by two groups of creditors at odds throughout the entirety of the 2009 chapter 11 proceedings.

The first group was Beal Bank and Beal Bank Nevada, ("Beal," "Beal Bank," "First Lien Lender Claims") whose claims amounted to approximately \$486 million as a result of the 2007 Credit Facility.⁹¹ The debt was secured by a first priority lien on substantially all of TER's assets.⁹² The second group were holders of TER's 8.5% Senior Secured Notes Due 2015, ("Second Lien Note Claims," or the "Ad Hoc Committee"), which were issued as a result of the 2004 Chapter 11 cases, and had an outstanding principal amount of \$1.25 billion.⁹³ These notes were granted a second priority lien on TER's hotels and casinos.⁹⁴

3.3.1 First Day Motions

Among the Debtor's numerous first day motions were a motion for joint administration, use of cash collateral, utility continuation, cash management order, employee continuation, taxes and fees motion, customer claims motion, critical vendor motion, PACA motion, reclamation claims motion, Ordinary Course Professionals motion, Keystone professionals motion, and applications to hire counsel.⁹⁵ These motions were largely unopposed, and the court generally granted the relief sought by the debtors.⁹⁶

⁸⁹ O'Connor, *supra* note 19; [Voluntary Petition](#), Docket no. 1, Case no. 09-13654-JHW, Filed February 17, 2009 [hereinafter *2009 Voluntary Petition*].

⁹⁰ O'Connor, *supra* note 19.

⁹¹ *Infra*, note 97.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See generally *Burke Declaration*, *supra* note 18.

⁹⁶ See [Order Directing the Joint Administration of Debtors' Chapter 11 Cases Pursuant to Federal Rule of Bankruptcy Procedure 1015\(b\)](#), Docket No. 38, Case No. 09-13654-JHW, entered February 18, 2009; [Order \(A\) Authorizing Continued Use of Existing Business Forms and Records and Maintenance of Existing Corporate Bank Accounts and Cash Management Systems, and \(B\) Approving Investment Guidelines](#), Docket No. 43, Case No. 09-13654-JHW, entered February 19, 2009; [Order \(A\) Authorizing the Debtors to \(1\) Pay Prepetition Employee Wages, Salaries, Bonuses and Related Items, \(2\) Reimburse Prepetition Employee Business Expenses, \(3\) Make Payments](#)

3.4 The Plan Carousel

The 2009 TER Chapter 11 Cases involved numerous competing plans and shifting interests between the players involved: The Joint Debtors, Donald Trump, the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes, Beal Bank, and Carl Icahn. Over a 9-month span, battle lines shifted, players switched teams, and new lenders entered the game.

3.4.1 “The Insider Plan”: The Debtor’s First Joint Plan

On August 3, 2009, the Debtor’s filed a Disclosure Statement (“Debtors’ First Disclosure Statement”),⁹⁷ as well as a Joint Plan of Reorganization (“Debtors’ First Joint Plan”).⁹⁸ At the time of filing, the Debtors, Mr. Trump, and Beal Bank had mutual goals.⁹⁹ Based on their own estimates, the value of TER’s casino and hotel operations were less than the amount of the First Lien Lender Claims held by Beal Bank.¹⁰⁰ Thus, the holders of the Ad Hoc Committee’s Second Lien Note

[for which Payroll Deductions Were Made, \(4\) Make Prepetition Contributions and Pay Benefits Under Employee Benefit Plans, \(5\) Pay Prepetition Insurance Premiums, and \(6\) Pay All Costs Incidental to the Foregoing Payments and Contributions and \(B\) Authorizing and Directing Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay Any and All Checks Drawn on the Debtors’ Accounts for Such Purposes](#), Docket No. 50, Case No. 09-13654-JHW, entered February 19, 2009; [Order Approving Motion for Order Authorizing Debtors to Pay Prepetition Trust Fund Taxes and Gaming Taxes and Fees](#), Docket No. 51, Case No. 09-13654-JHW, entered February 19, 2009; [Order Authorizing Payment of Certain Prepetition Customer-Related Claims and Obligations](#), Docket No. 52, Case No. 09-13654-JHW, entered February 19, 2009; [Order Under 11 U.S.C. §§ 105\(a\) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals](#), Docket No. 54, Case No. 09-13654-JHW, entered February 19, 2009; [Final Order Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Approving Procedures Related Thereto](#); Docket No. 58, Case No. 09-13654-JHW, entered February 20, 2009; [Amended Order Pursuant to Sections 327, 328, 363\(c\)\(1\) and 1108 of the Bankruptcy Code Authorizing the Employment of Professionals on Non-Debtor TER Keystone Development Co., LLC Utilized in the Ordinary Course of Business](#), Docket No. 80, Case No. 09-13654-JHW, entered February 27, 2009; [Order Pursuant to Sections 327, 328, 363\(c\)\(1\) and 1108 of the Bankruptcy Code Authorizing the Employment of Professionals Utilized in the Ordinary Course of Business](#), Docket No. 81, Case No. 09-13654-JHW, entered February 27, 2009; [Order \(A\) Prohibiting Utilities from Altering, Refusing or Discontinuing Services on Account of Prepetition Claims and \(B\) Establishing Procedures for Determining Requests for Additional Adequate Assurance](#), Docket No. 155, Case No. 09-13654-JHW, entered March 20, 2009; [Final Order \(I\) Authorizing Use of Cash Collateral Pursuant to Section 363 of Bankruptcy Code and \(II\) Providing Adequate Protection to Prepetition Secured Parties Pursuant to Sections 361, 362, and 364 of Bankruptcy Code](#), Docket No. 157, Case No. 09-13654-JHW, entered March 23, 2009.

⁹⁷ [Disclosure Statement for Debtors’ Joint Plan Under Chapter 11 of the Bankruptcy Code](#), Docket no. 519, Case no. 09-13654, filed August 3, 2009 [hereinafter *Debtors’ First Disclosure Statement*].

⁹⁸ [Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 518, Case no. 09-13654-JHW, filed August 3, 2009.

⁹⁹ *Debtors’ First Disclosure Statement*, *supra* note 97.

¹⁰⁰ *Id.*

Claims had no value underpinning their security interests and would be treated as wholly unsecured creditors.¹⁰¹ The Debtors First Joint Plan estimated an approximate recovery of 94% for Beal, but would extend repayment to December of 2020, rather than 2012, with a below market interest rate and allowed flexibility of cash interest payments.¹⁰² Beal and Mr. Trump would also invest \$100 million into the Company in exchange for 100% of the equity interests in a reorganized TER.¹⁰³ Mr. Trump would regain control of his casino empire, and the Ad Hoc Committee Noteholders would receive nothing under the proposed Plan; neither would unsecured claim and equity interest holders.¹⁰⁴

3.4.2 Ad Hoc Committee Objection; Appointment of Examiner

As one would imagine, the Ad Hoc Committee strongly opposed the Plan proposal. In response, they filed a motion to terminate the exclusive period to file proposed Plans pursuant to 1121(d) of the Bankruptcy Code and to adjourn the hearing considering TER's proposed plan.¹⁰⁵ The Ad Hoc Committee argued that the exclusivity period should end because the "Insider Plan" breached the Debtors' fiduciary duty to maximize creditor recovery and violated the priority ladder rule by only favoring Beal Bank and Mr. Trump, while wiping every other creditor out.¹⁰⁶ Further, the Ad Hoc Committee stated they had a Plan proposal in-wait in the event exclusivity was lifted.¹⁰⁷ The Ad Hoc Committee asserted that its alternative plan was "fully documented and financed" and was "ready to go" if the motion was granted.¹⁰⁸ The Ad Hoc Committee also moved for a court appointed examiner from the U.S. Trustee's Office to review the Debtors' proposed plan, citing the Debtors' "charade and stall tactic[s]" in their plan process."¹⁰⁹

¹⁰¹ *Id.*

¹⁰² *Id.* at 4, 5.

¹⁰³ *Id.* at 3

¹⁰⁴ *Id.* at 4.

¹⁰⁵ [Emergency Motion of the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 For an Order \(A\) Terminating the Debtors' Exclusive Periods in Which to File a Plan of Reorganization and Solicit Acceptances Thereto, and \(B\) Adjourning the Hearing to Approve the Debtors' Disclosure Statement for Debtors' Joint Plan of Reorganization](#), Docket no. 530, Case no. 09-13654-JHW, filed August 11, 2009.

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 3.

¹⁰⁹ [Motion of the Ad Hoc Committee of Holders of the 8.5% Senior Secured Notes Due 2015 for Appointment of Examiner Pursuant to Section 1104\(c\) of the Bankruptcy Code](#), Docket no. 531, p. 8, Case no. 09-13654-JHW, filed August 11, 2009.

Over the Debtors' objection to lift exclusivity and appointment of an examiner, the Court granted both motions.¹¹⁰ In a hearing on August 27, 2009, Judge Wizmur stated that an examiner was necessary to determine if the Debtors' proposed their plan in good faith, as well as whether Mr. Trump's timely resignation was to protect his own interests or with the intent to regain control of the Company after the Chapter 11 proceedings wiped out the Debtors' monstrous debt and old equity holders.¹¹¹ If Mr. Trump acted under the latter, the Plan would not have been proposed in good faith, a requirement for confirmation under 11 U.S.C. § 1129(a)(3), and would be unconfirmable.¹¹² It appears the court determined the debtor and its insiders had too much leverage in the case with exclusivity intact and appointment of an examiner was needed in order to put the parties on notice that no one was going to give anyone else the "bum's rush" in these cases.¹¹³ Judge Wizmur leveled the playing field.

3.5 Ad Hoc Committee Proposed Plan

As promised, on the same day Judge Wizmur lifted the exclusivity period and appointed the examiner, the Ad Hoc Committee filed its Disclosure Statement and Joint Plan for Reorganization (the "First Ad Hoc Plan").¹¹⁴ The Ad Hoc Noteholders contended the Plan provided more recoveries to creditors, which would in turn lead to a more successful reorganization.¹¹⁵ The First Ad Hoc Plan called for the Debtors' to receive a contribution of \$175 million in new equity capital in the form of a Rights Offering, backstopped by the Ad Hoc Committee, issued to all the holders of General Unsecured Claims who were Accredited Investors.¹¹⁶

¹¹⁰ [Order Granting Motion of the Ad Hoc Committee of Holders of the 8.5% Senior Secured Notes Due 2015 For an Order \(A\) Terminating the Debtors' Exclusive Periods in Which to File a Plan of Reorganization and Solicit Acceptances Thereto, and \(B\) Adjourning the Hearing to Approve the Debtors' Disclosure Statement for Debtors' Joint Plan of Reorganization](#), Docket no. 613, Case no. 09-13654-JHW, Filed August 31, 2009; [Order Granting Motion of the Ad Hoc Committee of Holders of the 8.5% Senior Secured Notes Due 2015 for Appointment of Examiner Pursuant to Section 1104 of the Bankruptcy Code](#), Docket no. 679, Case no. 09-13654-JHW, filed September 15, 2009.

¹¹¹ Brendan Pierson, *Trump Entertainment Plan Will Face Examiner: Report*, Law360.com (Aug. 28, 2009, 5:53 PM), <https://perma.cc/BWB5-UE4P>.

¹¹² *See Id.*

¹¹³ *Get/be given the bum's rush: to be forced to leave a place where people do not want you*, <https://perma.cc/Y7EX-VCKV> (last visited May 5, 2017).

¹¹⁴ [Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015](#), Docket no. 617, Case no. 09-13654-JHW, filed August 31, 2009.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 7 (Under a rights offering vehicle, the General Unsecured Claim holders who were accredited investors will be eligible to buy additional shares of New Common Stock in the reorganized company in proportion to their

Additionally, the Plan contemplated the sale of Trump Marina Hotel Casino to Costal Marina, LLP, for \$75 million, “resulting in the infusion of immediate value to the estate in exchange for the elimination of the large cash drain caused by the Trump Marina’s losses and the costs associated with prosecuting the litigation pending with the Costal Parties[.]”¹¹⁷ Further, the First Lien Lenders would get new debt at a court determined interest rate, along with the \$75 million in proceeds from the potential Trump Marina sale and Rights Offering.¹¹⁸ Finally, the General Unsecured Claim holders would receive a pro rata share of 5% of the common stock after reorganization, while the holders of General Unsecured Claims not eligible to participate in the Rights Offering would “receive a cash distribution on account of their claims of up to \$0.01 per \$1.00 of such Claims.”¹¹⁹

3.5.1 Debtors’ Objection

In their objection, the Debtors argued that the Ad Hoc Committee’s Plan was flawed because it failed to disclose that the Senior Noteholders and Unsecured Creditors recovery was “minimal and highly speculative,” that the \$175 million cash infusion had not been committed, and there was no explanation as to how Beal Bank’s \$488 million of first lien debt was being treated.¹²⁰ The Debtors’ also claimed, without any objective support, that the Trump Marina sale for \$75 million was “highly unlikely to take place.”¹²¹

3.6 Ad Hoc Committee Motion for Compliance with Bankruptcy Procedure

During a telephone conference on October 21, 2009, counsel for the Ad Hoc Committee moved the court to require Beal Bank and Mr. Trump to comply with Federal Rule of Bankruptcy Procedure 2019.¹²² Under this rule, in a Chapter 11 reorganization case, “every entity or committee

existing stake in the company. *See* Offering, Black’s Law Dictionary (10th ed. 2014). Since it is uncertain how many General Unsecured Claim holders will take advantage of the offer, which in turn leads to uncertainty in how much capital would be raised, the Ad Hoc Committee pledged to buy the New Common Stock that went unpurchased, or to “backstop” the rights offering).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 3.

¹²⁰ [Debtors’ Objection to the Amended Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Noted Notes Due 2015](#), Docket no. 744, Case no. 09-13654-JHW, filed September 29, 2009.

¹²¹ *Id.* at 2.

¹²² [Letter from Judge Wizmur to Counsel Regarding Directive Requiring Beal Bank and Donald Trump to Comply with Rule 2019](#), Docket no. 825, Case no. 09-13-654, filed October 22, 2009.

representing more than one creditor or equity security holder . . . shall file a verified statement” setting forth their “name and address . . . [and] the nature and amount of each disclosable interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed.”¹²³ Judge Wismur ordered compliance with the rule, reasoning that because “both Beal Bank and Donald Trump qualify as ‘entities’ who represent more than one creditor or equity security holder in the case,” compliance with Rule 2019 was required.¹²⁴ Beal and Mr. Trump were given until November 13, 2009 to file their verified statements given the short notice.¹²⁵ Both Beal and Mr. Trump filed verified statements on the due date, which set out their interests in relation to the Debtor.¹²⁶ Both were consistent with the representations they had made throughout the Chapter 11 cases.

3.7 Approval of Both Proposed Disclosure Statements

After repetitious Plan modification submissions back and forth between the parties, the Court entered a Joint Order approving the proposed Disclosure Statements by both parties on November 5, 2009.¹²⁷ In the Debtors’ modified disclosure statement, Beal and Mr. Trump agreed to increase their contribution on account of receiving new equity to \$113.9 million from the originally proposed \$100 million.¹²⁸ The extra \$13.9 million was in the form of a cash payment to the Second Lien Noteholder Claim holders, which would represent a 1.11% distribution on their \$1.25 billion claim.¹²⁹ On the other front, the noteholders Amended Ad Hoc Plan increased equity’s capital contribution to \$225 million and provided that Beal Bank would receive the \$75

¹²³ *Id.* at 2; Fed. R. Bankr. P. 2019(a) - (c)(2)(B).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ [Verified Statement of Beal Bank Pursuant to Bankruptcy Rule 2019\(a\), Docket No. 901, Case No. 09-13654-JHW, Filed November 13, 2009; Verified Statement of Kasowitz, Benson, Torres & Friedman LLP and Brown & Connery LLP Pursuant to Bankruptcy Rule 2019\(a\), Docket No. 902, Case No. 09-13654-JHW, filed November 13, 2009.](#)

¹²⁷ [Joint Order Approving \(i\) Disclosure Statements and Related Notice and Solicitation Procedures and \(ii\) The Notice and Objection Procedures for Confirmation of Plans of Reorganization](#), Docket no. 877, Case no. 09-13654-JHW, filed November 5, 2009 [hereinafter *Statement Order*].

¹²⁸ [Modified Second Amended and Restated Disclosure Statement For Debtors’ Joint Plan Under Chapter 11 of the Bankruptcy Code](#), Docket no. 864, Case no. 09-13654-JHW, filed November 4, 2009.

¹²⁹ *Id.*

million from the sale of Trump Marina.¹³⁰ The deadline to vote on the Plans was set for December 28, 2009.¹³¹

3.8 Donald Trump Switches Teams

On November 16, 2009, nine days after the competing Plans and Disclosure Statements were approved by Judge Wizmur, Mr. Trump sent a letter¹³² to Beal Bank withdrawing his support from the Debtors' Plan, citing the "expensive and distracting litigation" surrounding the competition for getting a plan approved, and urged creditor support of the senior noteholder's Ad Hoc Plan.¹³³ Mr. Trump stated in his letter that the Examiner Order, The Scheduling Order, and "other bases" gave him a right to terminate the purchase agreement related to the Debtors' Plan.¹³⁴ Further, the letter claimed that a "Material Adverse Effect [had] occurred and that the Debtors estates [had] become burdened with heretofore unprojected and unanticipated massive administrative and other expenses resulting from, among other things, the inability of the parties to resolve the competing plan litigation."¹³⁵ Mr. Trump issued the following statement after withdrawing support of the Debtors' Plan:

*"Had circumstances not changed, I would have aggressively continued to pursue the [D]ebtors' plan with the objective of acquiring control of and revitalizing a company that I have not run for many years. However, the [D]ebtor's plan has become mired in highly expensive and distracting litigation that threatens the entire enterprise. It is in the company's best interests for all parties to coalesce around the noteholders' plan, and I urge them to do so."*¹³⁶

¹³⁰ [Third Amended Disclosure Statement For Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015](#), Docket no. 872, Case no. 09-13654-JHW, Filed November 5, 2009.

¹³¹ *Statement Order*, *supra* note 127.

¹³² [Motion of Beal Bank, S.S.B. and Beal Nevada For an Order Pursuant to Fed. R. Bankr. P. 9006: \(A\) Fixing Reduced Time For Hearing on Disclosure Statement with Respect to Plan to be Proposed by Beal Bank; \(B\) Fixing Reduced Time for filing Objections Thereto; \(C\) Temporarily Suspending Solicitation of Competing Plan and \(D\) Granting Related Relief](#), Docket no. 936-1, p. 2-3, Case no. 09-13654-JHW, Filed November 25, 2009 [hereinafter *Beal Bank Motion*].

¹³³ Abigail Rubenstein, Trump, *Noteholders End Battle for Bankrupt Casino*, Law360.com (Nov. 17, 2009, 5:16 PM), <https://perma.cc/35X3-YJQ8>.

¹³⁴ *Beal Bank Motion*, *supra* note 132.

¹³⁵ *Id.*

¹³⁶ Rubenstein, *supra* note 133.

In exchange for his support, Mr. Trump was offered 5% equity in the reorganized company, as well as a warrant package and a release.¹³⁷ Mr. Trump agreed to enter into amended trademark and service deals for the casinos' continued use of the "Trump" license, and released all claims against the Debtors.¹³⁸

3.8.1 Beal Bank's Motion to File a Competing Plan

As a result of Mr. Trump withdrawing support of the Debtors Joint Plan, Beal Bank contacted the Debtors on November 19, 2009 and proposed an agreement with material amendments to the Debtors' Plan.¹³⁹ TER rejected the agreement, which forced Beal Bank to move the court to enter an order modifying the Plan confirmation schedule so that they could introduce their own Plan ("Beal Bank Motion"), and for the court to temporarily suspend solicitation of the Ad Hoc Plan.¹⁴⁰ Beal Bank proposed five amendments to the Debtors' Plan:

- Beal Bank would adopt the mid-point valuation the Ad Hoc Plan presented, which "values the Debtors at approximately \$13.9 million more than the outstanding principal of the First Lien Lender Claims."¹⁴¹ This was a significant proposal because Beal Bank at the Debtors had disputed this valuation.¹⁴² Thus, by conceding to this valuation, they would "eliminate potentially complex and protracted disputes over competing valuations," and therefore cutting out the costly litigation cited by Mr. Trump.¹⁴³
- Instead of the \$114 million in equity Beal Bank and Mr. Trump originally offered, Beal Bank would provide a \$225 million Rights Offering to the Second Lien Note Claim holders to purchase common stock in the reorganized Debtor.¹⁴⁴ This Rights Offering would be backstopped by Beal Bank for a fee equal to a 10% equity stake after reorganization, as opposed to the 20% equity stake fee proposed in the Ad Hoc Plan.¹⁴⁵

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Beal Bank Motion, supra* note 132.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 4, 5.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

- Beal Bank would reduce their secured First Lien Lender Claim by \$100 million.¹⁴⁶ This was to be paid from the Rights Offering.¹⁴⁷
- The balance of Beal Bank’s secured First Lien Lender Claim would be converted into common stock.¹⁴⁸
- Unsecured creditors, including Second Lien Note Claim holders, would be distributed common stock with a 5% stake, an identical value and offer in the Ad Hoc Plan.¹⁴⁹

Further, Beal Bank asserted that the Examiner’s investigation into Mr. Trump’s involvement in the plan formulation with the Debtor would become moot because of Mr. Trump’s withdraw of support for the Debtors’ Plan, thus eliminating more timely and costly litigation.¹⁵⁰ The reorganized Debtor would emerge from Chapter 11 with an even balance sheet at worst.¹⁵¹ Although solicitation had not yet commenced, Beal Bank stated this was a minor, but necessary Order, so that their Plan would be on the same schedule as the Ad Hoc Plan. In their objection to Beal Bank’s motion, the Ad Hoc Committee claimed, among other things, that Beal Bank was now taking a completely opposite stance, and essentially adopting the same plan and solicitation process as themselves, a position which “Beal Bank asserted was illegal just over a month ago.”¹⁵²

On a December 3, 2009 teleconference hearing between Judge Wizmur and Debtor’s Counsel, Beal Bank, and the Ad Hoc Committee, the Court allowed Beal Bank to file their proposed Plan the next day.¹⁵³ During the hearing, the Debtors announced they would no longer pursue their own but would resort to the Ad Hoc Plan since theirs was “dead in the water” after Mr. Trump switched teams.¹⁵⁴ Also during the hearing, the court and the parties agreed on the need for discussions to continue and for the process to move along after the Debtors had been in a

¹⁴⁶ *Id.*

¹⁴⁷ *Beal Bank Motion, supra* note 132.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² [Objection of the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 to Motion of Beal Bank, S.S.B. and Beal Bank Nevada for an Order Pursuant to Fed. R. Bankr. P. 9006: \(A\) Fixing Reduced Time for Hearing on Disclosure Statement with Respect to Plan to be Proposed by Beal Bank; \(B\) Fixing Reduced Time for Filing Objections Thereto; \(C\) Temporarily Suspending Solicitation of Competing Plans and \(D\) Granting Related Relief](#), Docket No. 944, p. 4, Case No. 09-13654-JHW, filed December 3, 2009.

¹⁵³ [Transcript of December 3, 2009 Hearing Before the Honorable Judith H. Wizmur United States Bankruptcy Court Judge](#), Docket No. 952, Case No. 09-13654-JHW, entered December 12, 2009.

¹⁵⁴ *Id.* at 4.

“stalemate.”¹⁵⁵ During the hearing, the parties seemed optimistic that a settlement could be reached if they continued forward.¹⁵⁶ Objections had to be filed by December 9, 2009.¹⁵⁷ The next day, December 4, 2009, Beal Bank filed their proposed Plan¹⁵⁸ and Disclosure Statement.¹⁵⁹ On December 9, Mr. Trump, Debtors, and Ad Hoc all filed timely objections to the Beal Bank Plan.¹⁶⁰

3.9 Enter Carl Icahn, Savior

Beal Bank and the Ad Hoc Committee would never come to an agreement. As a result of the breakdown in negotiations, on December 11, 2009, Beal Bank filed its Notice with the Court that Icahn Partners, owned by Carl Icahn, purchased 51% of Beal Bank’s First Lien Lender claims for \$229 million in cash.¹⁶¹ According to Beal Bank, the inability to reach an agreement hinged on the fact that they “could not get comfortable with the ability of the Ad Hoc Committee . . . to walk away from their plan obligations without any meaningful protection to the estate and its other creditors.”¹⁶² Thus, Beal Bank sought out Icahn for a joint sponsorship in their proposed deal and “made a proposal that was simply too attractive to pass up. . . . Icahn Group [was] willing to . . . put their money where their mouth [was]. . . .”¹⁶³

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ [Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank \(F/K/A Beal Bank, S.S.B.\), and Beal Bank Nevada](#), Docket No. 948, Case No. 09-13654-JHW, filed December 4, 2009.

¹⁵⁹ [Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank \(F/K/A Beal Bank S.S.B\) and Beal Bank Nevada](#), Docket No. 949, Case No. 09-13654-JHW, filed December 4, 2009.

¹⁶⁰ [Objection by Donald J. Trump to Approval of the Amended Disclosure Statement Filed by Beal Bank and Beal Bank Nevada, Docket No. 959](#), Case No. 09-13654-JHW, filed December 9, 2009; [Objection of the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 to Amended Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank \(f/k/a Beal Bank S.S.B.\) and Beal Bank Nevada](#), Docket No. 960, Case No. 09-13654-JHW, filed December 9, 2009; [Debtors’ Objection to the Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank \(F/K/A Beal Bank S.S.B\) and Beal Bank Nevada](#), Docket No. 961, Case No. 09-13654-JHW, filed December 9, 2009.

¹⁶¹ [Notice of Beal Bank \(F/K/A Beal Bank, S.S.B.\) and Beal Bank Nevada Regarding First Lien Debt](#), Docket No. 970, Case 09-13654-JHW, filed December 11, 2009.

¹⁶² *Id.* at 3.

¹⁶³ *Id.* at 4.

3.10 Trump vs. Icahn: Competing Personalities and Plans

On January 5, 2010 both the Trump/Debtor backed Ad Hoc Committee and the newly formed Beal/Icahn partnership filed Amended Disclosure Statements.¹⁶⁴

3.10.1 Ad Hoc Committee's Proposals

The Ad Hoc Committee's Fifth Amended Disclosure Statement largely advocated for the same terms proposed prior to gaining Mr. Trump and the Debtors' support. In sum, the key terms laid out in the Disclosure statement were as follows:

- \$225 million equity rights offering to Accredited Investors, which is 70% of the New Common Stock, backstopped by the Ad Hoc Committee, which in return will receive fee in the form of 20% of New Common Stock. Debtors must consent to material change or termination.
- Non-Accredited Investor Second Lien noteholders and General Unsecured Claim holders and Eligible Holders who do not exercise rights in the rights offering will both receive cash equal to the value of the Accredited Investors rights.
- Second Lien Noteholders and General Unsecured Claim holders would receive pro rata share of 5% of the New Common Stock, or a cash equivalent of such, as well as subscription rights to acquire up to 70% of the New Common Stock.
- Mr. Trump and his affiliated parties will receive 535,714 shares of New Common Stock, 5% of the new outstanding common stock, in exchange for waiving all claims against the Debtor and entering into the new Trademark deal.
- Possible sale of Trump Marina for \$75 million to Costal Marina, the proceeds of which would go to Beal Bank as First Lien Lenders
- \$125 million Rights Offering proceeds and new debt to First Lien Lenders.¹⁶⁵

Further, if the Plan was confirmed, the Debtors' would be provided DIP Financing with the Ad Hoc Committee, totaling \$45 million at a 10% interest rate.¹⁶⁶

¹⁶⁴ [Modified Sixth Amended Disclosure Statement for Joint plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 and the Debtors](#); Docket No. 1076, Case No. 09-13654-JHW, filed January 5, 2010 [hereinafter *Ad Hoc Sixth Disclosure Statement*]; [Fifth Amended Disclosure Statement for Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank and Icahn Partners](#), Docket No. 1072, Case No. 09-13654-JHW, filed January 5, 2010 [hereinafter *Beal Icahn Fifth Amended Disclosure Statement*].

¹⁶⁵ See *Ad Hoc Sixth Disclosure Statement*, *supra* note 164, at 9-10.

¹⁶⁶ *Infra*, note 179.

3.10.2 Beal and Icahn Key Proposals

Under the Beal/Icahn Plan, Mr. Icahn would provide a \$45 million DIP loan on the date of confirmation¹⁶⁷ to ensure “the Debtors maintain[ed] adequate liquidity.”¹⁶⁸ The Plan contemplated a \$225 million Rights Offering that would consummate only if two conditions were met.¹⁶⁹ First, 50% or more of the stock issued in the Rights Offering had to be subscribed and paid for.¹⁷⁰ Second, Beal and Mr. Icahn opposed a confirmation hearing on the Ad Hoc Plan.¹⁷¹ One of the reasons set forth to justify the condition was that the Ad Hoc plan allegedly failed requirements set forth in Section 1129(a)(10) of the Bankruptcy Code.¹⁷² As noted in the Disclosure Statement, Ad Hoc Committee members held approximately 61% of the Second Lien Notes.¹⁷³ Thus, if they were not to elect to participate in the Rights offering, which was expected, the 50% involvement condition would not be met and a Rights Offering would not take place.¹⁷⁴

Whether or not the Rights Offering took place would determine the course of the Plan. If a Rights Offering were to take place, partial proceeds would be used to reduce First Lien Lender Claims by \$100 million; the balance would be converted into an equity stake.¹⁷⁵ If the Rights Offering were to fail to take place, however, the full balance of the First Lien Lender Claims would convert to equity. Further, the \$45 million DIP Loan was to be repaid from the proceeds of the Rights Offering should it take place.¹⁷⁶ If not, then then the DIP Loan was to be converted into equity, and Mr. Icahn would invest an additional \$80 million to offset lost Rights Offering funds.¹⁷⁷ Importantly, Second Lien Note Claim holders and General Unsecured claim Holders would receive a pro rata cash distribution of approximately \$13.9 million, but only if the Ad Hoc Plan was not heard in court due to the alleged §1129(a)(10) deficiencies.¹⁷⁸

¹⁶⁷ *Beal Icahn Fifth Amended Disclosure Statement, supra* note 164.

¹⁶⁸ *Id.* at 8

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* (“(a) The court shall confirm a plan only if all of the following requirements are met: . . . (10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.”).

¹⁷³ *Id.* at 6

¹⁷⁴ *Beal Icahn Fifth Amended Disclosure Statement, supra* note 164, at 6.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

3.11 Ad Hoc Plan wins

On April 12, 2010 the court confirmed the Ad Hoc Plan although both plans were deemed confirmable.¹⁷⁹ One of components of the Plan at issue were the Trademark agreements and releases between the Debtors and Mr. Trump. In analyzing the fairness of the agreement to other parties, the court stated that “we see no unfairness in the willingness of the AHC members to carve out a piece of the reorganized equity in exchange for the anticipated benefits of the modified agreements with the Trump Parties.”¹⁸⁰ The court also recognized the value of the Trump brand, and how it’s worldwide recognition and Mr. Trump’s reality television celebrity would benefit the newly reorganized Debtors. “The debtors’ identification with the Trump Organization raises its profile in the gaming industry.”¹⁸¹ According to one source, the Debtors valued their trademarks following the Chapter 11 cases at \$8.7 million.¹⁸² The order confirming the plan was entered on May 7, 2010.¹⁸³

4 Trump Entertainment Resorts, Inc. 2014 Bankruptcy: Taj and Plaza Left Behind

4.1 More on Atlantic City’s Market Decline

The Atlantic City gaming industry thrived between 1978 and 1985 with an average annual growth of approximately 55%.¹⁸⁴ Growth rates slowed from 1986 to 2006, and the casinos collectively maintained a 4% to 5% rise year over year.¹⁸⁵ Recently, the Atlantic City gaming industry suffers near-consistent annual losses of approximately 7.5% since 2007.¹⁸⁶ New Jersey tax revenues correlate with these findings—New Jersey reported casino tax revenue at an all-time high of over \$500,000 in 2006 and a low, not seen since 1986, of approximately \$200,000 in

¹⁷⁹ [Opinion on Confirmation](#), Docket No. 1434, Case No. 09-13654-JHW, entered April 12, 2010.

¹⁸⁰ *Id.* at 23.

¹⁸¹ *Id.*

¹⁸² However, TER apparently did not “specifically allocate the entire sum to the Trump licensing agreement.” *Supra*, note 21.

¹⁸³ [Findings of Fact, Conclusions of Law and Order Confirming Supplemental Modified Sixth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 and the Debtors](#), Docket no. 1500, Case no. 09-13654-JHW, filed May 7, 2010.

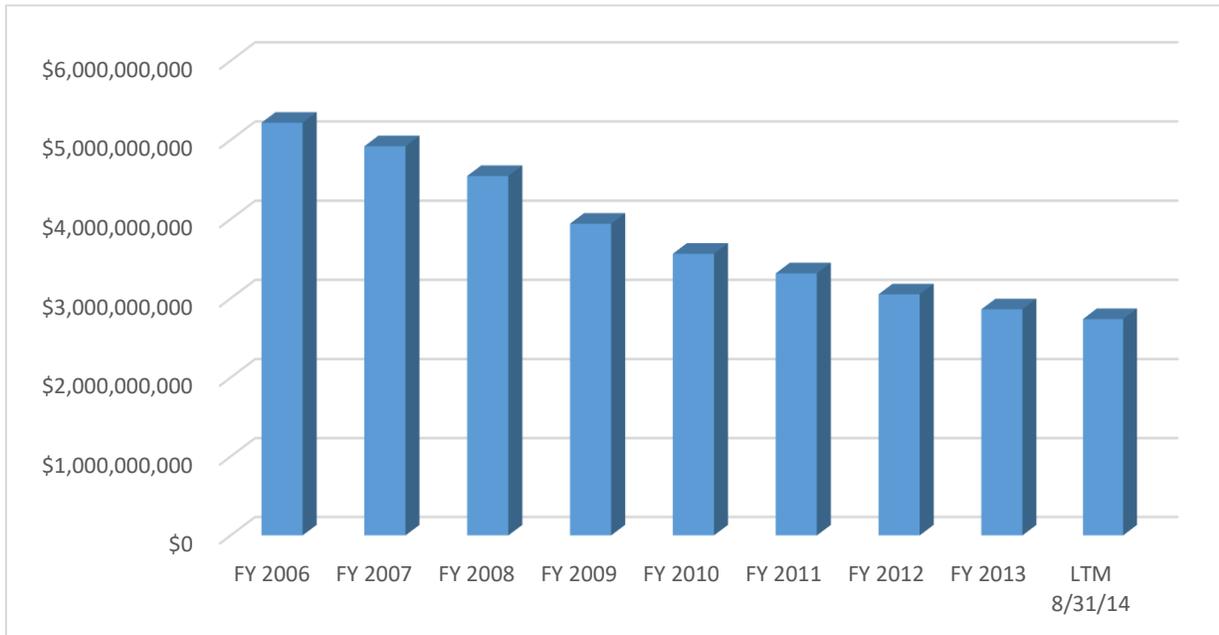
¹⁸⁴ UNLV Center For Gaming Research, *Atlantic City Gaming Revenue* (Jan. 2017), <http://perma.cc/ZA7U-DJY9>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

2015.¹⁸⁷ The industry’s downturn is still generally thought to be the result of neighboring states’ legalization of gambling, an economic recession in the mid-2000s, the rising influence of internet gaming, sole reliance on the industry to support Atlantic City’s local economy, and a failure to sell the Atlantic City brand.¹⁸⁸

Atlantic City Gaming Market Decline¹⁸⁹



4.2 Triggering Events of the 2014 Bankruptcy

Robert Griffin, TER’s then and final Chief Executive Officer, noted the declining Atlantic City market as the leading circumstance of TER’s 2014 filing in an introductory motion supporting the bankruptcy.¹⁹⁰ Mr. Griffin explained TER’s market share was diluted by the 2012 opening of the “Revel” casino in Atlantic City, significant improvements to existing competing casinos,

¹⁸⁷ New Jersey Division of Gaming Enforcement, *Atlantic City Gaming Industry Casino Revenue Fund Taxes and Fees Source Report*, <http://perma.cc/YKQ9-WHEZ>.

¹⁸⁸ Interestingly, the Creditors’ Committee claimed a competing casino, the Tropicana, had “flourished” and increased 2013 revenues by 29.9%. *Infra* note 575, at 43.

¹⁸⁹ [Debtors’ Motion for Entry of Order \(I\) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and Unite Here Local 54 Pursuant to 11 U.S.C. § 1113\(C\) and \(II\) Implementing Terms of Debtors’ Proposal Under 11 U.S.C. § 1113\(B\)](#), Docket no. 134, Case no. 14-12103, filed September 26, 2014 [hereinafter *CBA Motion*].

¹⁹⁰ [Declaration of Robert Griffin in Support of Debtors’ Chapter 11 Petitions and First-day Motions and Applications at 15](#), Docket no. 2, Case no. 14-12103, filed September 9, 2014 [hereinafter *Griffin Declaration*].

competition from neighboring states, and a general economic decline in southern New Jersey.¹⁹¹ Mr. Griffin went on to relate the negative effects of Superstorm Sandy and Hurricane Irene on the TER casinos, stating that the closure of surrounding businesses, repeated evacuation of Atlantic City, temporary suspension of Atlantic City gaming licenses, and physical property damage resulted in a dramatic reduction to TER's customer base. Many of these factors were again related in TER's Disclosure Statement filed in conjunction with its Plan of Reorganization.¹⁹²

In addition to Mr. Griffin's reasoning, it appears TER's failure to maintain its casinos' appeal substantially encouraged its decline and eventual closure. Guest reviews frequently identify the casinos as outdated; in fact, "Outdated" is the main heading of Trump Taj Mahal's "tripadvisor" webpage as of March 2017.¹⁹³ TER invested in a number of property improvements beginning in 2011,¹⁹⁴ but the modest upgrades were unable to restore the Taj Mahal's appeal. The years of declining reputation likely made it impossible to revive TER short of reckless investment into large-scale remodeling and rebranding.

Trump Entertainment Resorts acknowledged the need to reduce its footprint, still facing approximately \$346.5 million in First Lien Debt despite its debt reduction under the 2010 Bankruptcy Plan.¹⁹⁵ TER sold the Trump Marina to Golden Nugget Atlantic City, LLC for \$38 million in 2011, the "Steel Pier" for approximately \$4.3 million, an off-site warehouse for \$1.9 million, former corporate offices for \$3.1 million, and an unused parcel of land near Trump Plaza for \$1.3 million,¹⁹⁶ in an effort to decrease costs. TER solicited offers for Trump Plaza subsequent to the above sell-off but was unable to consummate a deal due to its inability to obtain releases of the Plaza's security interests.¹⁹⁷ TER reduced its staff, improved its labor and other operational efficiencies, and negotiated significant concessions with its unions in addition to reducing property assets.

¹⁹¹ *Id.*

¹⁹² [Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 20](#), Docket no. 166, Case no. 14-12103, filed October 01, 2014 [hereinafter *First Disclosure Statement*].

¹⁹³ *Review of Trump Taj Mahal Casino*, www.tripadvisor.com, <http://perma.cc/H2JQ-AQJF>.

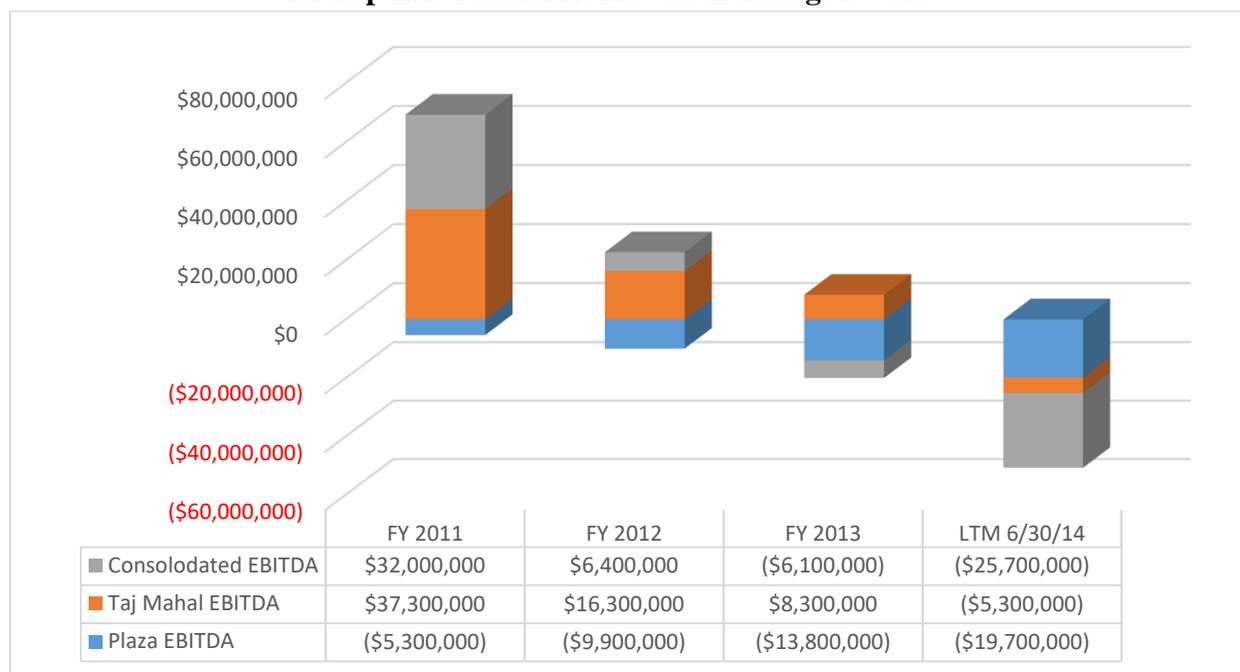
¹⁹⁴ *Griffin Declaration*, *supra* note 190, at 13-14.

¹⁹⁵ *Griffin Declaration*, *supra* note 190, at 11.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 12-13.

Trump Entertainment Resorts Earnings Decline¹⁹⁸



4.3 2014 Organizational, Operational, and Capital Structures of Trump Entertainment

4.3.1 Detailed Prepetition Overview

Trump Entertainment Resorts was incorporated in Delaware following the 2004 reorganization and served as the parent company of the collective debtors below (the “Debtors”).¹⁹⁹ Following its emergence from the 2009 filing, TER held a 99% interest in Trump Entertainment Resorts Holdings, L.P. (“TER Holdings”) as a general partner.²⁰⁰ The remaining 1% of TER Holdings was held by TERH LP Inc. (“TERH”), a subsidiary of TER.²⁰¹ TER Holdings owned 100% of the equity interest in each of the subsidiary Debtors.²⁰² The Key Executives of Trump Entertainment Resorts included Mr. Robert Griffin: Chairman and Chief Executive Officer, Mr. Daniel McFadden: Chief Financial Officer, Ms. Kathleen McSweeney: Senior Vice President of Marketing Operations, Mr. Michael Mellon: Vice President of Hotel Operations, and Mr. Gary Ng: Executive Director of Far East Marketing.²⁰³

¹⁹⁸ *CBA Motion*, *supra* note 189, at 19.

¹⁹⁹ *Id.* at 44.

²⁰⁰ *Id.* at 4.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Company Overview of Trump Entertainment Resorts, Inc.*, Bloomberg.com, <http://perma.cc/CA4Q-ECPP>.

TER Subsidiary Debtors, 2014

Debtor Name	Debtor Case Number
Trump Entertainment Resorts Holdings, L.P.	14-12104
Trump Plaza Associates, LLC	14-12105
Trump Marina Associates, LLC	14-12106
Trump Taj Mahal Associates, LLC	14-12107
Trump Entertainment Resorts Development Company, LLC	14-12108
TER Development CO., LLC	14-12109
TERH LP Inc.	14-12110

Trump Entertainment Resorts Organizational Structure, 2014



Trump Entertainment Resorts Shareholders; Board Members; Officers

Name	Title	Ownership
David Hughes	Board Member/Former CFO	
David Licht	Board Member	
Eugene Davis	Board Member	
Jeffrey Gilbert	Board Member	
Michael Elkins	Board Member	
Stephen McCall	Board Member	

Robert Symington	Board Member	
Dan McFadden	CFO	
Robert Griffin	Shareholder/Board Member/CEO	1.0%
Avenue Capital Group	Shareholder	20.58%
Contrarian Capital Management LLC	Shareholder	12.81%
Goldentree Asset Management LP	Shareholder	7.03%
MFC Global Investment LLC	Shareholder	5.16%
Oaktree Capital Management	Shareholder	9.0%
Northeast Investors Trust	Shareholder	8.04%
Polygon Investment Partners	Shareholder	22.29%
Donald J. Trump	Shareholder	5.0%
Remaining Shareholders	Shareholder	9.09%

Trump Entertainment Resorts owned and operated Taj Mahal, a 35.9 acre property consisting of approximately 2,000 hotel rooms, 162,000 square feet of gaming space, 16 dining facilities, 5 cocktail lounges, “Scores” gentleman’s club, and various additional facilities used for entertainment, parking, and leisure.²⁰⁴ The Taj Mahal’s net revenues in 2013 were approximately \$257.0 million and approximately \$108.5 million in the first six months of 2014.²⁰⁵ TER also owned and operated Trump Plaza, a 10.9 acre property that included 906 hotel rooms, 87,000 square feet of gaming space, a large conference center, several restaurants and bars, and a large parking garage. Trump Plaza’s net revenue was approximately \$76.3 million in 2013 and approximately \$28.1 million in the first six months of 2014.²⁰⁶ However, despite its seemingly high revenues, TER was in the process of closing Trump Plaza during the 2014 filing due to losses of approximately \$29 million between January 2012 and July 2014.²⁰⁷

In addition to the Taj Mahal and Trump Plaza, TER partnered with two online gaming companies—Fertitta Acquisitins CO LLC (D/B/A “Ultimate Gaming”) and Betfair Interactive US LLC (“Betfair”) (collectively, the “Gaming Companies”).²⁰⁸ The Gaming Companies operated the internet gambling enterprise under TER’s internet gaming permits. In exchange, the Gaming Companies paid approximately \$15.5 million to TER as well as a percentage of their revenue.²⁰⁹

²⁰⁴ *Griffin Declaration*, *supra* note 190, at 4-5.

²⁰⁵ *Id.* at 5.

²⁰⁶ *Id.* at 5-6.

²⁰⁷ *Id.* at 22-23.

²⁰⁸ *Id.* at 6-7.

²⁰⁹ *Griffin Declaration*, *supra* note 190, at 7.

4.3.2 Revisiting the First Lien Agreement and Terms

In July 2010, pursuant to that year's Chapter 11 filing, TER, TER Holdings, and certain subsidiaries of TER ("Guarantors") entered into a credit agreement with Beal Bank as the initial collateral and administrative agent (the "First Lien Agent"), and several companies controlled by Mr. Icahn as initial lenders (collectively, the "Icahn Partners" or "First Lien Lenders"), loaning the companies approximately \$346.5 million in principal secured by a first lien on all of the companies' assets.²¹⁰ Icahn Partners replaced Beal Bank as collateral and administrative agent in April 2012.²¹¹ The agreement between TER and the First Lien Lenders required quarterly principal amortization payments in the amount of \$866,000 with an annual interest rate of 12%.²¹² The loan would mature and the final payment would be due in December 2015.²¹³ TER paid approximately \$60.9 million to the First Lien Lenders until the 2014 bankruptcy filing.²¹⁴ The outstanding amount due to the First Lien Lenders, including interest, as of the petition date was approximately \$292.2 million.²¹⁵ TER owed approximately \$13.5 million in accounts payable in addition to the credit agreement.²¹⁶

4.3.3 Critical Prepetition Third-Party and Creditor Litigation

I. Levine Staller

The Law Firm of Levine, Staller, Sklar, Chan & Brown, P.A. ("Levine Staller") represented TER with the Company's 2008 appeal of its Casinos' real property tax assessments, the settlement of which resulted in tax savings to the Debtors' of approximately \$50.5 million.²¹⁷ Levine Staller filed a motion with the Tax Court of New Jersey seeking to enforce an Attorney's Charging Lien with respect to a \$1.25 million Contingency Fee associated with the tax appeal litigation on August 5, 2014.²¹⁸ Levine Staller's motion went uncontested and was granted by the Court, which attached

²¹⁰ *Id.* at 9.

²¹¹ *Id.* at 10.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Griffin Declaration*, *supra* note 190, at 10.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ [Objection of Levine, Staller, Sklar, Chan, & Brown, P.A. to the Debtors' Motion for Entry of an Order Approving the Proposed Disclosure Statement](#), Docket no. 144, Case no. 14-12103, filed September 29, 2014 [hereinafter *Levine Cash Collateral Objection*].

²¹⁸ *First Disclosure Statement*, *supra* note 192, at 27.

the Charging Lien to the Tax Court judgment and “the proceeds thereof in whosoever hands they may come.”²¹⁹ This language would become a point of contention between the parties as they litigated over TER’s liquid asset appropriation. Levine Staller agreed to allow TER to pay the Contingent Fee in installments as a result of its uncertain financial condition²²⁰ and later reduced or amended the contingent fee on several occasions. The final installment of the reduced Contingent Fee in the amount of \$1.25 million became due on July 30, 2014, pursuant to their final agreement.²²¹

On July 31, 2014, Mr. Griffin informed Levine Staller that the final installment would not be paid.²²² Levine Staller filed a Motion to enforce its Charging Lien the following month.²²³ The Tax Court granted Levine Staller’s Motion and issued an Order of Judgement in the amount of \$1.25 million in favor of the Law Firm. TER sought bankruptcy relief a few days after service of a Writ of Execution to collect Levine Staller’s fees.²²⁴ Trump Entertainment Resorts argued that, although the Tax Court of New Jersey granted the motion, the Court limited its enforcement to the proceeds of the tax settlement.²²⁵ TER stated its intention to appeal the judgment in its First Disclosure Statement, and, even if an appeal was not pursued or granted, argued the proceeds of the tax settlement were fully expended in the Company’s course of business and no longer available.²²⁶

II. *Trump AC Casino Marks*

Trump Entertainment Resorts entered into a third Trademark License Agreement with Donald and Ivanka Trump following the 2009 reorganization.²²⁷ The Agreement granted TER a perpetual royalty-free license to use certain marks associated with the name “Trump.”²²⁸ Mr. and Mrs. Trump were replaced as “Licensors” with Trump AC Casino Marks LLC (“Trump

²¹⁹ *Levine Cash Collateral Objection*, *supra* note 217, at 6.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.* at 6-7.

²²⁴ *Id.* at 8.

²²⁵ *First Disclosure Statement*, *supra* note 192, at 27.

²²⁶ *Id.*

²²⁷ *First Disclosure Statement*, *supra* note 192, at 26.

²²⁸ *Id.*

Marks”).²²⁹ Trump Marks alleged various breaches of the Trademark License Agreement in a lawsuit against TER and the First Lien Agent on August 5, 2014.²³⁰ Trump Marks assertions of breach included:²³¹

- Failing a quality assurance review at the Plaza and failing to cure that default within the required timeframe.
- Failing to utilize the Trump Marks in a “dignified manner” consistent with “the highest quality” and “at a level consistent with or exceeding the high reputation and importance of” the Trump Marks at both the Plaza and the Taj.
- Engaging in online internet gaming activities with customers who reside outside the State of New Jersey.
- Utilizing the Trump Marks in association with the closed and on-operational Plaza.

Trump Marks sought imposition of an injunction to compel TER’s cure of the alleged breaches from Judge Gross.²³² Trump Entertainment Resorts disputed the assertions and argued that termination of the License Agreement or an injunction against the use of the Trump name would constitute an event of default under the First Lien Credit Agreement and would have a significant adverse effect on the Debtors’ business.²³³

Trump Marks also claimed the Debtors refused to honor their obligations as successors to a ground lease relating to real property that comprised the driveway leading to the Trump Plaza entrance.²³⁴ Mr. Trump, as a former assignee, remained responsible to the landlord and received no benefit from the property under the ground lease.²³⁵

²²⁹ *Id.*

²³⁰ *Id.* at 26-27.

²³¹ [Limited Objection of Trump AC Casino Marks LLC, Donald J. Trump and Ivanka Trump to the Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 742, Case no. 14-12103, filed January 12, 2015 [hereinafter *Trump Marks Third Statement Objection*].

²³² [Objection of Trump AC Casino Marks, LLC and Donald J. Trump to the Disclosure Statement for Debtors’ Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code at 26-7](#), Docket no. 376, Case no. 14-12103, filed October 29, 2014 [hereinafter *Trump Marks First Statement Objection*].

²³³ *Id.* at 27.

²³⁴ *Trump Marks Third Statement Objection*, *supra* note 231, at 4-5.

²³⁵ *Id.* at 5.

III. *The Gaming Companies: Betfair and Ultimate Gaming*

The New Jersey Division of Gaming Enforcement issued internet gaming permits to Trump Taj Mahal Associates and Trump Plaza Associates in October 2013,²³⁶ and TER entered into 10 year Gaming Agreements with Betfair²³⁷ and Ultimate Gaming²³⁸ in June 2013. Betfair paid \$7.5 million to Plaza Associates²³⁹ and Ultimate Gaming Paid \$8 million to Taj Mahal Associates²⁴⁰ as “Advancement Fees.”

Betfair purported to deliver notices of default under the Online Gaming Agreement in July 2014, began diverting existing funds from TER’s Online Gaming Accounts, and redirected new deposits into a segregated bank account under Betfair’s exclusive control (“Betfair Suspense Account”).²⁴¹ Betfair later sought to terminate the Online Gaming Agreement on September 4, 2014.²⁴² Betfair filed a Motion for Order (the “Betfair Motion”) on November 21, 2014, during the course of TER’s 2014 bankruptcy, aiming to declare the Automatic Stay inapplicable to the funds in the Suspense Account and allow Betfair to remit those funds to itself.²⁴³ The Betfair Motion asserted approximately \$9.6 million in claims against the Debtors for default under the Online Gaming Agreement, which Betfair argued was secured by a right to setoff against the funds in the Suspense Account.²⁴⁴

Ultimate Gaming delivered a written notice of default under the Online Gaming Agreement on August 22, 2014 and sought to terminate the Agreement in a letter dated September 3, 2014.²⁴⁵ Ultimate Gaming asserted that TER had agreed to segregate the Online Gaming Accounts from its general accounts and funds therein would not be permitted for TER’s general operational

²³⁶ [Debtors’ Motion for Entry of an Order, Pursuant to Section 105\(a\) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement By and Among the Debtors and Betfair Interactive US LLC](#), Docket no. 591, Case no. 14-12103, filed December 4, 2014 [hereinafter *Betfair Settlement*].

²³⁷ *Id.*

²³⁸ [Debtors’ Motion for Entry of an Order, Pursuant to Section 105\(a\) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement By and Among the Debtors and Ferititta Acquisitions CO LLC, D/B/A Ultimate Gaming](#), Docket no. 595, Case no. 14-12103, filed December 4, 2014 [hereinafter *Ultimate Gaming Settlement*].

²³⁹ *Betfair Settlement*, *supra* note 236, at 3.

²⁴⁰ *Ultimate Gaming Settlement*, *supra* note 238, at 3.

²⁴¹ *Betfair Settlement*, *supra* note 236, at 3-4.

²⁴² *Id.* at 4.

²⁴³ *Id.* at 4-5.

²⁴⁴ *Id.* at 5.

²⁴⁵ *Ultimate Gaming Settlement*, *supra* note 238, at 4.

purposes.²⁴⁶ Ultimate Gaming argued the cash held in Online Gaming Accounts, and identified in the First Day Cash Collateral Order, was not property of the Debtors' estates.²⁴⁷

4.4 Bankruptcy Petitions and Commencement of the Case

4.4.1 TER Petitions for Chapter 11 Bankruptcy

The collective Debtors individually filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on September 9, 2014.²⁴⁸ TER's petition stated the Company had less than 50 creditors, held between \$100 million and \$500 million in assets, had liabilities between \$100 million and \$500 million, and TER would have funds available for distribution to unsecured creditors.²⁴⁹ The Debtors were represented by Stroock & Stroock & Lavan LLP of New York, NY and Young Conaway Stargatt & Taylor, LLP of Wilmington, DE. Houlihan Lokey, Inc. was retained as Debtors' restructuring advisor. Jane M. Leamy, Trial Attorney for the Office of the United States Trustee in Wilmington, DE²⁵⁰ (hereinafter "Ms. Leamy" or the "U.S. Trustee") was assigned to cover the case. United States Bankruptcy Judge Kevin Gross ("Judge Gross") presided over the reorganization.

4.4.2 First Day Motions

The Debtors filed a series of 11 First Day Motions on September 9, 2014. Judge Gross held an interim hearing the following day. TER requested joint administration of the collective Debtors' Chapter 11 cases²⁵¹ and appointment of its Claims and Noticing Agent.²⁵² Operationally, TER sought an order barring its utility and insurance companies from cessation of service and

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Docket, Voluntary Petitions*, Primeclerk.com, <http://perma.cc/56P8-PELE>.

²⁴⁹ [Chapter 11 Voluntary Petition](#), Docket no. 1, Case no. 14-12103, filed September 9, 2014 [hereinafter *Voluntary Petition*].

²⁵⁰ The United States Department of Justice, *Region 3: Staff Directory*, <http://perma.cc/4YAS-PFHH>.

²⁵¹ [Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases](#), Docket no. 3, Case no. 14-12103, filed September 9, 2014.

²⁵² [Debtors' Application for an Order, Pursuant to 28 U.S.C. § 156\(c\), Bankruptcy Rule 2002\(f\), and Local Rule 2002-1\(f\), Appointing Prime Clerk LLC as Claims and Noticing Agent, Nunc Pro Tunc to the Petition Date](#), Docket no. 4, Case no. 14-12103, filed September 9, 2014.

coverage,²⁵³ as well as permission to honor prepetition insurance obligations incurred in the ordinary course of business²⁵⁴ and continued funding of post-petition obligations to customer programs.²⁵⁵ Additionally, TER requested authorization to make payments to critical vendors and service providers,²⁵⁶ payments of prepetition employee wages and salaries, reimbursement of employee business expenses, and other employment related obligations.²⁵⁷

Schedule of First Day Motions

Dkt #	Motion Heading
3	Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases
4	Debtors' Application for an Order, Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f), and Local Rule 2002-1(f), Appointing Prime Clerk LLC as Claims and Noticing Agent, Nunc Pro Tunc to the Petition Date
5	Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto.
6	Debtors' Motion for and Order, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto.
7	Debtors' Motion for an Order, Pursuant to Sections 105(a), 363, and 364 of the Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With Liability, Property, and Other Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premiums Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto.

²⁵³ [Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105\(a\) and 366 of the Bankruptcy Code, \(I\) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, \(II\) Deeming Utility Companies Adequately Assured of Future Payment...](#), Docket no. 5, Case no. 14-12103, filed September 9, 2014.

²⁵⁴ [Debtors' Motion for an Order... \(I\) Authorizing \(A\) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With Liability, Property, and Other Insurance Programs, Including Payment of Policy Premiums, and \(B\) Continuation of Insurance Premiums Financing Programs...](#), Docket no. 7, Case no. 14-12103, filed September 9, 2014.

²⁵⁵ [Debtors Motion for an Order... Authorizing \(I\) The Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs In the Ordinary Course of Business...](#), Docket no. 9, Case no. 14-12103, filed September 9, 2014.

²⁵⁶ [Debtors' Motion for Entry of Interim and Final Orders... \(I\) Authorizing the Debtors to Pay Certain Prepetition Claims \(A\) Arising Under the Perishable Agricultural Commodities Act, \(B\) of Lien Vendors, \(C\) Arising Under Section 503\(b\)\(9\) of the Bankruptcy Code and \(D\) of Critical Vendors and Service Providers...](#), Docket no. 8, Case no. 14-12103, filed September 9, 2014.

²⁵⁷ [Debtors' Motion for an Order... \(A\) Authorizing \(I\) Payment of Prepetition Employee Wages, Salaries and Other Compensation; \(II\) Reimbursement of Prepetition Employee Business Expenses; \(III\) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; \(IV\) Payment of Workers' Compensation Obligations...](#), Docket no. 11, Case no. 14-12103, filed September 9, 2014.

8	Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act, (B) of Lien Vendors, (C) Arising Under Section 503(b)(9) of the Bankruptcy Code and (D) of Critical Vendors and Service Providers, (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto and (III) Granting Certain Related Relief
9	Debtors Motion for an Order, Pursuant to Sections 105(a), 363(c), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code, Authorizing (I) The Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs In the Ordinary Course of Business and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto.
10	Debtors' Motion for an Order, Pursuant to Sections 105(a), 345, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management Systems, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Authorizing Payments of Prepetition Costs and Fees Associated With Customer Credit and Debit Card Transactions, (IV) Waiving the Requirements of Section 345(b) on an Interim Basis, (V) Granting Administrative Expense Status to Post-Petition Intercompany Claims, and (VI) Granting Certain Related Relief
11	Debtors' Motion for an Order, Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries and Other Compensation; (II) Reimbursement of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto.
12	Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 362 and 541 of the Bankruptcy Code, Establishing Notification Procedures for Transfers of or Claims of Worthless Stock Deductions with Respect to Common Stock
13	Debtors' Motion for Interim and Final Orders (A) Authorizing Post-petition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), and (D) Granting Related Relief

4.4.3 The Cash Collateral Motion

Additionally, TER requested use of its cash holdings (“Cash Collateral”) that constituted collateral of its First Lien Lenders (Icahn Partners), to approve a proposal of adequate protection to the First Lien Lenders and other potentially secured parties, and to schedule the Final Hearing within approximately 30 days of filing the Cash Collateral Motion.²⁵⁸ TER argued that it would have to close its doors without a grant of the requested relief, stating:

“[T]he Debtors have been unable to obtain commitments for post-petition financing, such that the Cash Collateral is the Debtors’ sole source of funding for

²⁵⁸ [Debtors’ Motion for Interim and Final Orders \(A\) Authorizing Postpetition Use of Cash Collateral, \(B\) Granting Adequate Protection to the Secured Parties ... at 20](#), Docket no. 13, Case no. 14-12103, filed September 9, 2014 [hereinafter *Cash Collateral Motion*].

*their operations and the costs of administering the chapter 11 process. Absent authority to immediately use Cash Collateral, the Debtors, their creditors and the estates generally would suffer irreparable harm because the debtors would immediately cease operations...*²⁵⁹

If authorized to use the Cash Collateral, TER proposed to secure the First Lien Lenders through Adequate Protection Liens, Superpriority Claims,²⁶⁰ and payment of fees and expenses, incurred before or after the petition date, by the First Lien Lenders and Agent (“Adequate Protection Fees”).²⁶¹ TER argued these guarantees would sufficiently safeguard the interests secured by the Cash Collateral and moved the court to approve them as adequate protection.

Material Terms and Summary of the Cash Collateral Motion

Terms	Summary of Material Terms
Entities in Interest	Icahn Parties (First Lien Lenders)
Purpose for Use of Cash Collateral	The Debtors sought authority to use cash collateral for, among other things, (i) working capital requirements; (ii) general corporate purposes, and (iii) the costs and expenses of administering the chapter 11 cases (including making adequate protection payments, fees, and payments to case professionals), and payments under the carve-out.
Proposed Adequate Protection	<p><u>Adequate Protection Liens.</u> Subject to the carve-out, adequate protection for any postpetition diminution in value of the Secured Parties’ interests in the Debtors’ interests in the Prepetition Collateral. The First Lien Agent, for the benefit of itself and the First Lien Lenders, is hereby granted, to the extent of any diminution in value, valid, binding, enforceable, non-avoidable, and automatically perfected security interests in and liens, without the necessity of the execution by the Debtors of security agreements, upon all agreements, property (whether then owned or thereafter acquired) of each Debtor and each Debtor’s “estate,” as well as all of the issued and outstanding capital stock or other equity or ownership interests. Any proceeds from causes of action under the Bankruptcy Code and any other avoidance actions, proceeds thereof or property or cash recovered pursuant to Avoidance Actions, and all products proceeds and supporting obligations or the foregoing would be collectively known as the Collateral.</p> <p><u>Adequate Protection Superpriority Claims.</u> Subject to the carve-out, as further adequate protection for the benefit of the First Lien Lenders, an allowed administrative expense claim in the Debtors’ cases ahead of and senior to any and all other administrative expense claims in such cases to the extent of any postpetition diminution in value.</p>

²⁵⁹ *Id.*

²⁶⁰ See 11 U.S.C. § 507(b) (“If the trustee... provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim ... arising from the stay of action against such property... from the use, sale, or lease of such property..., or from the granting of a lien... then such creditor’s claim under such subsection shall have priority over every other claim allowable under such subsection.”).

²⁶¹ *Cash Collateral Motion, supra* note 258.

	Other Adequate Protection. As further adequate protection, the Debtors shall pay the reasonable and documented costs and expenses, whether incurred before or after the Petition Date, of the First Lien Agent and the First Lien Lenders, including attorneys' fees and expenses, to the extent provided under the First Lien Credit Documents. All amounts paid as adequate protection are deemed permitted uses of cash collateral.
Carve-Out	The Carve-Out shall mean the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee, plus interest; (ii) all allowed and unpaid professionals fees, expenses, and disbursements incurred prior to the Termination Date by professionals of the estates retained by order of the Court, in the aggregate not to exceed \$450,000 for Estate Professionals and \$50,000 for Creditors Committee Professionals.
Releases	Any and all claims or causes of action against either the First Lien Agent and/or any First Lien Lenders shall be released by the Debtors' estates, all creditors, interest holders, and other parties in interest in the Cases and any successor cases.

4.4.4 Appointment of the Official Committee of Unsecured Creditors

The U.S. Trustee filed a Notice of Appointment and established the Creditors' Committee (the "Committee" or "OCC") to represent the unsecured claimants on September 23, 2014.²⁶² The seven-chair Committee included: Thermal Energy Limited Partnership, Bally Gaming, Inc., Unite Here Local 54, National Retirement Fund, Atlantic City Linen Supply, LLC, Southern New Jersey Paper Products, and Conner Strong & Buckelew Companies, Inc.²⁶³

Campbell & Levine, LLC and Orrick Herrington & Sutcliffe LLP represented Thermal Energy in the bankruptcy proceedings.²⁶⁴ Thermal Energy entered into service agreements with the Taj Mahal and Trump Plaza (the "Thermal Service Agreement(s)") on June 30, 1996 and September 26, 1996, respectively²⁶⁵ and filed post-petition proofs of claim against the Debtors:²⁶⁶

- A general unsecured claim against Taj Mahal Associates in the amount of \$2,332,436.09
- A claim pursuant to section 503(b)(9) against Taj Mahal Associates in the amount of \$476,634.78
- A general unsecured claim against Trump Plaza Associates in the amount of \$339,053.04

²⁶² [Notice of Appointment of Committee of Unsecured Creditors](#), Docket no. 109, Case no. 14-12103, filed on September 9, 2014.

²⁶³ *Id.*

²⁶⁴ [Notice of Appearance and Request for Service of All Papers](#), Docket no. 66, Case no. 14-12103, filed September 12, 2014.

²⁶⁵ [Order...Approving the Release and Settlement Agreement By and Among the Debtors and Thermal Energy Limited Partnership I at 3](#), Docket no. 1252, Case no. 14-12103, filed April 21, 2015 [hereinafter *Thermal Energy Order*].

²⁶⁶ *Id.* at 9.

- An administrative expense claim against Taj Mahal Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Taj Mahal Service Agreement
- A administrative expense claim against Trump Plaza Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Trump Plaza Service Agreement

Joseph Rhodes and Stephen Morrow of Wilmington, Delaware represented the Taj Mahal and Trump Plaza employees’ union UNITE HERE Local 54 (“Local 54” or “Union”).²⁶⁷ The Union sought to prohibit TER from reconfiguring the terms of its Collective Bargaining Agreement (“CBA”). Judge Gross and, ultimately, the United States Court of Appeals for the Third District permitted the CBA’s modification. The National Retirement Fund (“NRF”) assumed an interest in the reorganization as a result. Landis Rath & Cobb LLP represented the NRF during the bankruptcy.²⁶⁸ Atlantic City Linen Supply Inc., Southern New Jersey Paper Products, and Conner Strong & Buckelew Companies, Inc asserted general unsecured claims against the Debtors in the amounts of \$128,538, \$286,896, and \$245,000, respectively. Bally Gaming Inc. asserted an administrative priority claim of approximately \$568,957.

4.4.5 Objections to First Day Motions and Proposed Orders

I. Levine Staller

Levin Staller filed a formal objection to TER’s Cash Collateral Motion on September 29, 2014.²⁶⁹ Levine Staller argued the Debtors’ use of Cash Collateral would heighten the risk of nonpayment of their remaining fees and requested the Court to condition the Debtors’ Cash Collateral use upon providing Levine Staller with first priority replacement liens on cash and proceeds²⁷⁰ and an Administrative Expense claim to the extent of any diminution in value.²⁷¹ Levine Staller based its argument on the facts that (i) Levine Staller possessed a first-priority, prior-perfected Charging Lien, (ii) the Debtors’ commingling of the Tax Refund with other cash did not eliminate their debt, and (iii) under New Jersey law, the Charging Lien priority “relates back” to 2008 and must be honored before subsequent creditors’ claims.²⁷²

²⁶⁷ [Entry of Appearance](#), Docket no. 71, Case no. 14-12103, filed September 15, 2014.

²⁶⁸ [Affidavit of Service](#), Docket no. 971, Case no. 14-12103, filed February 24, 2015.

²⁶⁹ *Levine Cash Collateral Objection*, *supra* note 217.

²⁷⁰ Levine Staller asked the court to prioritize its claim senior to the First Lien Lenders.

²⁷¹ *Levine Cash Collateral Objection*, *supra* note 217, at 19.

²⁷² *Id.* at 8-9.

The Debtors and Levine Staller later announced an agreement regarding adequate protection, which included an expedited claims objection process that allowed prompt adjudication of the dispute concerning the Charging Lien's validity and priority so it would be properly addressed as such in TER's Plan and Disclosure Statement.²⁷³ Levine Staller subsequently filed a motion on October 15, 2014 for entry of an order fixing the value and priority of, and allowing its claim as secured in full.²⁷⁴

II. The Unsecured Creditors' Committee

The Unsecured Creditors' Committee objected to the Cash Collateral Motion on October 2, 2014, and commented that a final hearing on the Motion was "not only a matter that can wait, but a matter that will benefit greatly from a deferral."²⁷⁵ The OCC stated that an order allowing the use of Cash Collateral would be highly prejudicial to its constituents as TER's proposed Plan at the time offered nothing to the Unsecured Parties. This was true particularly in light of the fact that the Debtors' actions, in conjunction with those by the Icahn Parties, seemed to indicate a transition from preservation of the going concern value of the operating business to a liquidation of the casino properties.²⁷⁶ The OCC related its concern that the Debtors set forth several difficult conditions to be met if the Taj Mahal were to remain open—conditions including nine-figure government cash infusions or tax breaks, dissolution of the Taj Mahal Collective Bargaining Agreement (which was arguably illegal under the National Labor Relations Act at the time), and the confirmability of financing from the Icahn Parties.²⁷⁷

The OCC requested the Court adjourn the Cash Collateral Hearing until November 5, 2015²⁷⁸ and insisted on including clarifying language and procedural protections to ensure due process notice to the Committee in a second interim order.²⁷⁹ If the Court were to proceed with the final hearing, the Committee requested the Court condition final approval on modifications to the Final Cash Collateral Order based on:

²⁷³ *Id.* at 19.

²⁷⁴ [Motion to Allow Levine Staller... for Entry of an Order Fixing the Value and Priority of, and Allowing its Claims as Secured in full...](#), Docket no. 295, Case no. 14-12103, filed October 15, 2014.

²⁷⁵ [Objection of the Official Committee of Unsecured Creditors to Entry of Final Order...Authorizing Use of Cash Collateral...at 2](#), Docket no. 202, Case no. 14-12103, filed October 2, 2014 [hereinafter *OCC Cash Collateral Objection*].

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 6.

²⁷⁸ *Id.* at 25.

²⁷⁹ *Id.* at 21.

- *An Adequate Protection Lien on Avoidance Actions.*²⁸⁰

The OCC argued that the Secured Creditor’s replacement liens must be granted only to the extent of its showing that the debtors’ use of the lender’s collateral resulted in a diminution thereof, and, because TER was increasingly facing the possibility of resorting to a liquidation rather than a successful reorganization, any replacement liens would significantly reduce the availability of TER’s unencumbered assets to the unsecured creditors.

- *A Waiver of Surcharge Rights combined with insufficient Carve-Out for the Committee.*²⁸¹

The OCC argued that the Carve-Out in the Proposed Final Cash Collateral Motion did not reasonably approximate the costs of administering the Secured Parties’ collateral because the amount allocated to the Committee was “completely disproportionate” to both the responsibilities that the Committee had under the Bankruptcy Code and the amount allocated to the Debtors’ professionals and the Secured Parties’ professionals. Ultimately, the Carve-Out for the Committee would be less than 3.3% of the Carve-Out for the Debtors’ professionals, and only 14% of the Carve-Out for the Secured Parties’ counsel alone.

- *An unjustified waiver of § 552(b)(1) “Equities of the Case” Exception.*²⁸²

Section 552(a) provides a general rule that property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before commencement of the case. However, § 552(b)(1) creates an exception to the general rule, which preserves a secured creditors’ lien on post-petition proceeds, products, or profits of pre-petition collateral as long as the security agreement so provides.

The OCC argued that the purpose of the Equities of the Case Exception is to balance the need to preserve valid security interests in proceeds with the need to protect the interests of unsecured creditors—often in cases where a debtor may provide value used in combination with a secured creditor’s collateral to generate (cash) assets that could be considered proceeds of the secured creditor’s collateral.²⁸³ The OCC stated that, under the circumstances, the Debtors’ casino operation generates revenues as a result of an “amalgamation” of personal and real property, goods, and services upheld by a necessary labor staff. Thus, “as much as the Secured Parties might like to ignore the Thirteenth Amendment, they do not have a lien on the Debtors’ employees [nor the value generated therefrom]... and value generated by the Debtors’ employees is not proceeds of the Secured Parties’ collateral.” Therefore, there remained a critical issue as to what portion of the

²⁸⁰ *Id.* at 7-10.

²⁸¹ *Id.* at 10-13.

²⁸² *OCC Cash Collateral Objection, supra* note 275, at 13-17.

²⁸³ In that circumstance, the exception allows the court to allocate value to the estate in order to avoid a windfall to the secured creditor(s).

Debtors' post-petition revenues could be considered proceeds of the Secured Parties' prepetition collateral.

- *Improper Debtor and Third-Party releases.*²⁸⁴

The OCC argued the proposed Cash Collateral Order contained overbroad, improper, and unwarranted releases of the Secured Parties. Specifically, that upon expiration of the Challenge Period, “any and all claims or causes of action against either the First Lien Agent and/or any First Lien Lenders shall be released by the Debtors’ estates, all creditors, interest holders, and other parties in interest to the Cases and any successor Cases.” Thus, the release would not be limited to derivative claims on behalf of the Debtors’ estates or claims against the Secured Parties. According to the OCC, the proposal would effectively release the Secured Parties from claims that their parties might hold in matters completely unrelated to the Debtors’ cases.

III. Atlantic City Electric Co.

Atlantic City Electric Co. (“ACE”) filed an Objection to the Debtors’ Motion to prohibit utility companies from refusing, altering, or discontinuing service and requested the Motion and Interim Order thereupon be denied.²⁸⁵ In addition, ACE requested that the Court order the Debtors to pay an amount equal to two months of service (\$2,372,660) or face the potential loss of service after 30 days for failure to provide satisfactory assurance of future performance.²⁸⁶ ACE argued the Debtors’ proposed adequate assurance of a utility escrow account did not satisfy the express requirements of the Bankruptcy Code²⁸⁷ if not held by the individual affected utility companies, nor would it satisfy provisions of local regulatory requirements.²⁸⁸

4.4.6 Atlantic City Exempted from the Automatic Stay

Atlantic City (the “City”) filed for relief from the automatic stay in order to collect back-taxes on November 7, 2014.²⁸⁹ The City claimed the collective Debtors owed approximately \$22

²⁸⁴ *OCC Cash Collateral Objection*, *supra* note 275, at 17-18.

²⁸⁵ [Objection of Atlantic City Electric to Debtors’ Motion for Interim and Final Orders...Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services...](#), Docket no. 143, Case no. 14-12103, filed September 29, 2014.

²⁸⁶ *Id.* at 1.

²⁸⁷ *See* 11 U.S.C. § 366(a) (“[A] utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.”).

²⁸⁸ *Id.* at 2-3.

²⁸⁹ [Motion of the City of Atlantic City for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362\(d\)](#), Docket no. 449, Case no. 14-12103, filed November 7, 2014 [hereinafter *AC Relief Motion*].

million²⁹⁰ in unpaid real-property taxes which the City proposed to mitigate through sales of tax certificates for the outstanding debts in an upcoming auction.²⁹¹ The City stated tax sale revenues were vital to the health and safety of the community and, because the amount owed by the Debtors constituted approximately 10% of the City's entire 2014 budget,²⁹² the sale of TER's debt was particularly vital.²⁹³ Atlantic City argued the post-petition perfection or real estate tax liens would not violate the automatic stay under 11 U.S.C. § 362(b)(18) as the sale of a tax certificate would constitute a non-prejudicial step in the process to enforce the lien.²⁹⁴

Trump Entertainment Resorts²⁹⁵ and the Icahn Parties²⁹⁶ each objected to the City's Motion on November 20, 2014. TER argued granting the City relief from the automatic stay would be highly prejudicial for several reasons:²⁹⁷

- The Debtors' tax liability to the City was in dispute, and the Debtors had filed prepetition appeals challenging the City's tax assessments on its property for 2104. The transfer of a tax certificate could result in the purchaser being able to foreclose at the face amount of the certificate and impair the Debtors' rights with respect to its tax appeals.
- Under New Jersey law, if the taxes remain unpaid, a purchaser would be entitled to foreclose on its tax certificate after six months if the purchaser were a municipality or two years if the purchaser was a private buyer, at which point the Debtors would be required to satisfy the terms of the tax certificate in cash. However, under the Bankruptcy Code, some of the City's tax claims may be viewed as priority claims and entitled to deferred payment over five years as opposed to immediate payment in cash under a foreclosure scenario.
- The City's Motion failed to explain the Debtors would be required to pay a statutory redemption penalty equal to 6% of the face value of the tax certificate if the Debtors were to redeem the certificate more than ten days after the sale occurred.

²⁹⁰ *Id.* at 1 (The Taj Mahal owed the City \$17,488,907.14 in unpaid taxes and the Trump Plaza owed \$4,446,891.86).

²⁹¹ *Id.*

²⁹² *Id.* ("The City relies heavily on the gaming industry as a source of revenue. [The casino] industry accounts for over 60% of the City's total real estate tax levy").

²⁹³ *Id.*

²⁹⁴ *Id.* at 4.

²⁹⁵ [Debtors' Objection to Motion of the City of Atlantic City for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362\(D\)](#), Docket no. 517, Case no. 14-12103, filed November 20, 2014 [hereinafter *TER Stay Objection*].

²⁹⁶ [Objection of First Lien Parties to Motion of the City of Atlantic City for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362\(D\)](#), Docket no. 516, Case no. 14-12103, filed November 20, 2014 [hereinafter *Icahn Stay Objection*].

²⁹⁷ *TER Stay Objection*, *supra* note 295, at 2-3.

The Debtors argued they should not be placed in a position to have their rights impaired by a claim of such a substantial amount simply because the City was seeking to monetize its claim and avoid the Chapter 11 process. TER stated the balance of hardships clearly weighed in their favor and asked the Court to deny the Motion.²⁹⁸ The Icahn Parties' Objection largely reflected TER's but related an additional argument that the City had not adequately met its burden of proof to show it would be prejudiced by imposition of the automatic stay.²⁹⁹ The City relied on "conclusory and unsubstantiated statements" that the City would be hindered in the management of its budget, according to the First Lien Lenders.³⁰⁰

The City challenged the objecting parties' arguments in a Reply to the Court on November 21, 2014, stating:

*"The objecting parties [sought] to distort the legal and factual realities underlying the Motion. Neither Debtors nor the Icahn Parties [could] legitimately dispute that (a) the City [was] owed many millions of dollars in unpaid real estate taxes, (b) the Debtors [had] not paid their post-petition property taxes, (c) Debtors [had] not paid 1.5 quarters of pre-petition property taxes, and (d) the much 'ballyhooed' tax appeals [had] sat dormant for at least the past six months, with not even the slightest hint of movement on the part of the Debtors."*³⁰¹

Further, the City argued the objecting parties misstated the relationship between the Bankruptcy Code and the New Jersey statutory tax lien regime—contrary to the objecting parties "bizarre" assertions, a tax certificate purchaser could not foreclose on the property without first obtaining relief from the automatic stay, nor could a purchaser foreclose if the Debtors remained current on their payments pursuant to a confirmed Plan of reorganization.³⁰²

Judge Gross granted the City's Motion for Relief nearly a year later on November 15, 2015.³⁰³ The Court stated the relief granted was to the extent necessary to permit the City to sell tax certificates for the Debtors' properties relating to unpaid taxes in 2015 unless the Debtors were to pay the delinquent taxes in full prior to commencement of the certificate auction, in which case

²⁹⁸ *Id.* at 2-3.

²⁹⁹ *Icahn Stay Objection*, *supra* note 296, at 2-3.

³⁰⁰ *Id.* at 3.

³⁰¹ [Reply to Objections to Atlantic City's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362\(d\)](#), Docket no. 539, Case no. 14-12103, filed November 21, 2014.

³⁰² *Id.* at 1-2.

³⁰³ [Order Granting the City of Atlantic City's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362](#), Docket no. 1741, Case no. 14-12103, filed November 19, 2015.

the relief order would no longer apply.³⁰⁴ The Court ordered purchasers of the tax certificates to be subject to the terms of the Court’s Order and issued notice of the Order and pending dispute between the Debtors and City.³⁰⁵ Judge Gross stated the Court’s retention of jurisdiction over the allowance and treatment of the tax claims and ordered the City to refrain from dismissing the tax appeals for non-payment.³⁰⁶

4.4.7 First Day Final Orders

Many of TER’s First Day Motions were granted in full on September 10, 2014. The remaining Motions were granted on an interim basis the same day, and Final Orders followed on October 6, 2014. The Court restricted TER’s spending and payments to a limited number of prepetition obligations, and ordered TER to set aside \$1.47 million as adequate assurance for its utility creditors.

Schedule of Final Orders

Topic	Final Order Material Inclusions
Utility Companies	Debtors shall deposit \$1,470,000 into an account as adequate assurance for the utility companies. Subject to this assurance procedure, no utility company may alter, refuse, terminate, or discontinue utility services to, or discriminate against, the Debtors on the basis of the commencement of these Chapter 11 cases, or require additional assurance of payment, other than the Utility Deposit, as a condition to the Debtors receiving such service. The Utility Deposit shall not constitute adequate assurance for Thermal Energy Limited Partnership (OCC Member). The Objection of Atlantic City Electric to the entry of this order is resolved pursuant to this Order and a separate agreement between to Debtors and ACE for the payment of adequate assurance. ³⁰⁷
Payment of Taxes and Fees	Debtors are authorized to pay prepetition taxes and fees to the authorities in the ordinary course of business, including those subsequently determined upon audit or otherwise, to be owed for periods prior to the petition date, up to an aggregate amount of \$4,995,000. ³⁰⁸
Insurance and Policy Premiums	Debtors are authorized to maintain the insurance programs without interruption, and to renew, supplement, modify, or enter into new insurance policies, in accordance with the same practices and procedures as were in effect prior to the petition date. The Debtors are authorized to satisfy

³⁰⁴ *Id.* at 2-3.

³⁰⁵ *Id.* at 3.

³⁰⁶ *Id.* at 2-3.

³⁰⁷ [Final Order...Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, \(II\) Deeming Utility Companies Adequately Assured...](#), Docket no. 229, Case no. 14-12103, filed October 10, 2014 [hereinafter *Utilities Order*].

³⁰⁸ [Order...Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations...](#), Docket no. 45, Case no. 14-12103, filed September 10, 2014.

	premiums, claims, deductibles, and other obligations that were due and payable prior to the petition date. ³⁰⁹
Vendors	Debtors are authorized to satisfy PACA/PASA Claims in the ordinary course of business up to the aggregate amount of \$100,000 (any vendor which accepts payment will be deemed to have waived all claims against the Debtors to the extent payment was received). The Debtors are further authorized to satisfy Lien Claims up to an aggregate amount of \$100,000. The Debtors are authorized to satisfy 503(b)(9) claims up to an aggregate amount of \$1,000,000. The Debtors are authorized to satisfy critical vendor claims up to an aggregate amount of \$3,500,000. The Debtors shall not satisfy 503(b)(9) or Critical Vendor Claims in excess of \$2,500,000 in the aggregate amount and shall confer with the OCC at least 2 days before satisfying either form of claim. The Debtors are authorized to condition payments of Vendor Claims on the agreement of the Vendor to continue supplying goods and services to the Debtors and to enter into trade agreements with the vendors (subject to good-faith terms). ³¹⁰
Customer Programs	Debtors are authorized to continue, implement new, or discontinue Customer Programs in the ordinary course of business and in a manner consistent with past practices. The Debtors are authorized to satisfy prepetition obligations relating to the Customer Programs up to an aggregate amount of \$550,000. ³¹¹
Cash Manage	Granted in Full ³¹²
Employee Wages, Benefits, Programs, and Expenses	Debtors are authorized to satisfy amounts on account of employee wages and benefits in the ordinary course of their business, and to honor pre-petition checks on account of unpaid wages that were not cashed prior to the petition date (provided that no payment on account of individual unpaid wages shall exceed \$12,475, no aggregate amount of unpaid wages shall exceed \$2,690,000, and prepetition obligations on account of Union Contributions shall not exceed \$2,200,000 in the aggregate). ³¹³

³⁰⁹ [Order Authorizing Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Liability, Property, and other Insurance Programs...](#), Docket no. 46, Case no. 14-12103, filed September 10, 2014.

³¹⁰ [Final Order...Authorizing Debtors to Pay Certain Prepetition Claims \(A\) Arising Under the Perishable Agricultural Commodities Act, \(B\) of Lien Vendors, \(C\) Arising Under Section 503\(b\)\(9\) of the Bankruptcy Code and \(D\) of Critical Vendors and Service Providers](#), Docket no. 218, Case no. 14-12103, filed October 6, 2014.

³¹¹ [Order...Authorizing \(I\) The Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs in the Ordinary Course of Business...](#), Docket no. 48, Case no. 14-12103, filed September 10, 2014.

³¹² [Order Authorizing and Approving Continued Use of Cash Management System, Authorizing Use of Prepetition Bank Accounts and Business Forms..., Waiving the Requirements of Section 345\(b\) on an Interim Basis. Granting Administrative Expense Status to Post-Petition Intercompany Claims...](#), Docket no. 49, Case no. 14-12103, filed September 10, 2014.

³¹³ [Order...Authorizing \(I\) Payment of Prepetition Employee Wages, Salaries and Other Compensation...](#), Docket no. 50, Case no. 14-12103, filed September 10, 2014.

4.4.8 The Cash Collateral Order

Judge Gross permitted TER's access to the Cash Collateral, stating that preservation and maintenance of the Debtors' assets was necessary to maximize value of the chapter 11 estates.³¹⁴ All of TER's existing cash balances, future collection of accounts receivable, and any following proceeds, were or would become the secured parties' Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code.³¹⁵ TER was now entitled to spend money that was partially securing Icahn's loan, although the court imposed strict budgetary, reporting, and record access requirements.³¹⁶ As a result of the Cash Collateral authorization, and the imposition of the automatic stay, the court found the secured parties entitled to adequate protection for any decrease in value of their interests resulting from the automatic stay or the Debtors' use of Prepetition or Cash Collateral. By approving the Adequate Protection Liens, the court effectively gave the secured creditors priority to collect any or all of the Debtors' assets in the event TER failed to right the ship.

The Debtors were to set aside Bankruptcy Court Clerk and U.S. Trustee fees under the "Carve-Out"³¹⁷ provision of the Cash Collateral Order.³¹⁸ In addition, the Carve-Out included the sum of all allowed and unpaid Debtors' and Icahn Parties ("Estate Fees") and the OCC's, professionals' fees and expenses.³¹⁹ Judge Gross capped disbursements to \$450,000 for the Estate Fees and \$50,000 for the OCC's professionals³²⁰ and stated that the Icahn Parties would not be responsible for payment or reimbursement of any professional fees incurred in connection with the cases under any chapter of the Bankruptcy Code.³²¹ The Court designated the Icahn Parties' claims as superpriority, or senior to all claims and administrative expenses;³²² provided that, with respect

³¹⁴ [Final Order \(A\) Authorizing Postpetition Use of Cash Collateral, \(B\) Granting Adequate Protection to the Secured Parties, and \(C\) Granting Related Relief at 7](#), Docket No. 342, Case No. 14-12103, filed October 23, 2014 [hereinafter *Cash Collateral Order*].

³¹⁵ *Id.* at 3, 7.

³¹⁶ *Id.* at 9-15.

³¹⁷ An agreement by a party that is secured by all or some of the assets of the estate to allocate some portion of the proceeds of its lien to be paid to others, or in other words, an agreement by the secured creditor to "carve-out" funds from its lien position to be distributed to other parties.

³¹⁸ *Cash Collateral Order*, *supra* note 314, at 18.

³¹⁹ *Id.* at 18-19.

³²⁰ *Id.* at 19.

³²¹ *Id.*

³²² *Id.* at 20-21.

to tax judgment proceeds, the superpriority claims and the Levine Staller claims would have the same priority as that of the secured obligations and the prepetition Charging Lien.³²³

4.4.9 UNITEHERE Local 54 and the Taj Mahal Collective Bargaining Agreement

Trump Entertainment Resorts filed a Motion on September 26, 2014 for entry of an order authorizing the Debtors to reject a collective bargaining agreement between Trump Taj Mahal Associates and UNITE HERE Local 54.³²⁴ Section 1113 of the Bankruptcy Code, “Rejection of Collective Bargaining Agreements,” applies where a debtor seeks to reject a collective bargaining agreement or reach a consensual agreement with the Union to put in place long-term or permanent modification to the contract.³²⁵ Section 1113 provides the following parameters for motions to reject bargaining agreements:

- Prior to filing for rejection, debtor must make a detailed proposal to the Union of all modifications necessary to restructure while assuring all creditors and affected parties are treated “fairly and equitably.”
- Debtor must provide Union with relevant information necessary to evaluate debtor’s proposal.
- Both parties are required to meet and confer in “good faith” in an attempt to reach mutual agreement on modifications to the contract.

Once the debtor officially files the Section 1113 motion with the court, a hearing is scheduled to occur within 14 days and the judge may approve the rejection if, absent a consensual agreement, the Union has refused to accept a proposal without “good cause,” and the court determines that the concessions of other constituencies in the bankruptcy are commensurate to those made by the Union.³²⁶

TER claimed the Taj Mahal would be forced to close and liquidate if its labor costs associated with the UNITE HERE Local 54 Collective Bargaining Agreement (“CBA”) were not eliminated.³²⁷ TER operated without promise of post-petition funding at the time and, relying solely on cash collateral, was paying pension benefits of approximately \$14 to \$15 million

³²³ *Id.* at 21.

³²⁴ [Debtors’ Motion for Entry of Order \(I\) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and Unite Here Local 54...](#), Docket no. 134, Case no. 14-12103, filed September 26, 2014 [hereinafter *CBA Motion*].

³²⁵ *Summary of Section 1113 of the Bankruptcy Code*, <http://perma.cc/M5LC-HCBU>.

³²⁶ *Id.*

³²⁷ *CBA Motion*, *supra* note 324, at 9.

annually³²⁸ including \$3.5 million in contributions to the Local 54’s pension account, the National Retirement Fund (“NRF”).³²⁹ The Debtors claimed they would suffer losses of \$35 to \$49 million in fiscal years 2015 through 2019 if the CBA were to remain in place.³³⁰

Annual Payments to Local 54 Under the Collective Bargaining Agreement

Payments Under Local 54 CBA (in millions)	2011	2012	2013	2014 (to date)
Pension	\$4.48	\$4.72	\$4.61	\$2.63
Health & Welfare	\$15.22	\$13.67	\$12.18	\$6.77
Other Benefits	\$0.22	\$0.35	\$0.23	\$0.10
Total Local 54 CBA Payments	\$19.92	\$18.73	\$17.02	\$9.50
<i>Consolidated EBITDA</i>	<i>\$32.0</i>	<i>\$6.4</i>	<i>(\$6.1)</i>	<i>(\$25.7)</i>

The Debtors and Local 54 entered negotiations on August 28, 2014.³³¹ TER proposed modifications to the CBA that entailed eliminating the Debtors’ obligation to continue contributions to the NRF and replace the obligation with an employee contribution matching 401(k) program.³³² TER also proposed to substitute contributions to the Local 54 Health and Welfare Fund with additional compensation for full time employees to supplement costs under the Affordable Care Act.³³³ The Local 54 refused to make concessions regarding the health and welfare provision.³³⁴ TER sought, among other relatively superficial requests, to reduce employee paid vacation, holiday, and meal time and proposed that the term “sweep” be eliminated from the list of duties hospitality staff would not be asked to perform.³³⁵ TER stated it was forced to file the CBA Motion³³⁶ due to Local 54’s habitual avoidance of negotiations and routine failure to timely

³²⁸ *Id.* at 22.

³²⁹ *Id.* at 9.

³³⁰ *Id.* at 10.

³³¹ *Id.* at 26.

³³² *CBA Motion, supra* note 324, at 26.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.* at 31.

³³⁶ *Id.* at 37.

respond to proposals.³³⁷ Local 54 objected to TER’s Motion on October 7, 2014³³⁸ and stated the Motion should be denied for four key reasons:³³⁹

- The Debtors’ non-negotiable demand and failure to bring “relevant decision-makers” to the bargaining table constituted a failure to satisfy the good faith bargaining requirement under 11 U.S.C. § 1113(b)(2).
- The proposal failed to treat stakeholders fairly and equitably because it required permanent, irreversible concessions from the Union Employees while seeking only contingent, reversible concessions from others.
- Local 54 had good cause to reject the proposed modifications and, further, made a counteroffer that could have provided a simpler path to the relief the Debtors’ sought.
- Debtors were legally unable to obtain the relief of which they sought because Section 1113(c) provides only for rejection of a collective bargaining agreement in its entirety, not court ordered modification of particular contract terms or implementation of a new CBA.³⁴⁰

Local 54 stated Section 1113(c) did not authorize “rejection” of terms and conditions of employment that are imposed by statute.³⁴¹ Local 54 argued that, “because the CBA that established the employment terms at issue expired before the Debtors made their Section 1113 proposal, there was no contract in effect to be assumed or rejected.” Local 54 stated that federal labor law “clearly” precluded courts from compelling a union and employer to reach a collective bargaining agreement.³⁴² This argument would prove unresolved and led the dispute to the United States Court of Appeals for the Third Circuit as a matter of first impression.³⁴³

³³⁷ *CBA Motion, supra* note 324.

³³⁸ [Objection of Unite Here Local 54 to Debtors’ Motion for Entry of Order Rejecting Collective Bargaining Agreement...](#), Docket no. 242, Case no. 14-12103, filed October 7, 2014.

³³⁹ *Id.* at 9-10.

³⁴⁰ *Id.* at 10.

³⁴¹ In this case the National Labor Relations Act (“NLRA”).

³⁴² *Id.*

³⁴³ The issues on appeal: “Given that there was no collective bargaining agreement in effect between the Debtors and Local 54 at the time the Debtors made their Section 1113 proposal and filed their S1113(c) motion, because the CBA had expired by its terms on September 14, 2014 and was not thereafter renewed or extended by the parties, did the Bankruptcy Court lack authority under 11 U.S.C. § 1113(c) to grant the Debtors’ application to (i) reject Local 54’s expired collective bargaining agreement and (ii) implement changes in the post-expiration terms and conditions of employment imposed by the National Labor Relations Act?” See [Certification to Court of Appeals by All Parties](#), Docket no. 403, Case no. 14-12103, filed November 3, 2014.

4.4.10 Debtors' Schedules and Statements of Financial Affairs³⁴⁴

Trump Entertainment Resorts and the Subsidiary Debtors individually filed Schedules of Assets and Liabilities³⁴⁵ (“Schedules”) and Statements of Financial Affairs³⁴⁶ (“Statements”) on October 9, 2014.³⁴⁷

I. Annual Earnings Disclosure

The bulk of TER’s income originated from hotel and casino revenues, returns on investment bonds, and recent real estate tax settlements. Trump Taj Mahal Associates, LLC reported revenues of \$365.5 million in 2012, \$304.6 million in 2013, and \$183.3 million between January and August of 2014.³⁴⁸ Trump Plaza Associates, LLC reported \$139 million in 2012, \$90.7 million in 2013, and \$47.3 million during the same months in 2014.³⁴⁹ Trump Marina Associates, LLC added to company revenue through interest earnings of \$9.8 million in 2012, \$432,916 in 2013, and \$79,287 through August of 2014.³⁵⁰ Collectively, TER and its subsidiaries claimed approximately \$1.14 billion in revenues during the period reported.

³⁴⁴ All values in this section are rounded approximations obtained from the Debtors’ Schedules of Assets and Liabilities or Statements of Financial Affairs.

³⁴⁵ [Schedules of Assets and Liabilities for Trump Entertainment Resorts](#), Docket no. 264, Case no. 14-12103, filed October 9, 2014 [hereinafter *TER Schedule*].

³⁴⁶ [Statement of Financial Affairs for Trump Entertainment Resorts, Inc.](#), Docket no. 256, Case no. 14-12103, filed October 9, 2014 [hereinafter *TER Statement*].

³⁴⁷ Each of the Debtors’ filings included a preface that incorporated relevant limitations, methodologies, and disclaimers mutual to the collective Debtors (“Global Notes”). TER included language to proactively mitigate errors in its disclosure and accounting, to reserve its right to contest the status of pending claims, and to avoid relinquishing rights it may have under the Bankruptcy Code by making the financial statements. The Global Notes stated the filings were not financial statements prepared in accordance with Generally Accepted Accounting Principles, therefore, the values stated in the schedules and statement of financial affairs could be substantially different than reports prepared under traditional accounting standards. The Global Notes stated that the Debtors were unable to set forth a fair market value “in many instances,” that the values given reflected their “net book value,” and that some personal property assets may have been unknown or unavailable for documentation. Importantly, the Global Notes state that all existing or future setoffs were excluded from the Debtors’ Schedules and Statements as were any credits or allowances from a Creditor to any Debtor.

³⁴⁸ [Statements of Financial Affairs for Trump Taj Mahal Associates, LLC](#), Docket no. 260, Case no. 14-12103, filed October 9, 2014 [hereinafter *Taj Statement*].

³⁴⁹ [Statements of Financial Affairs for Trump Plaza Associates, LLC at 11-12](#), Docket no. 258, Case no. 14-12103, filed October 9, 2014 [hereinafter *Plaza Statement*].

³⁵⁰ [Statements of Financial Affairs for Trump Marina Associates, LLC at 11](#), Docket no. 259, Case no. 14-12103, filed October 9, 2014 [hereinafter *Marina Statement*].

Top Subsidiary Earnings, January 2012 – August 2014

	Taj Mahal	Trump Plaza	Trump Marina
2012	\$365.5 million	\$139 million	\$9.8 million
2013	\$304.6 million	\$90.7 million	\$432,916
2014 ³⁵¹	\$183.3 million	\$47.3 million	\$79,287
Total	\$853.4 million	\$277 million	\$10.3 million

II. *Personal and Property Assets*

Trump Taj Mahal Associates, LLC reported approximately \$296 million in real property and \$70.4 million in personal property assets which included \$24.5 million in cash and savings, \$8.2 million in corporate and government bonds, \$8.7 million in intellectual property, and \$12.5 million in accounts receivable.³⁵² Trump Plaza Associates, LLC reported approximately \$16.1 million in real property and \$19.3 million in personal property assets which included \$6.5 million in cash and savings, \$6 million in government and corporate bonds, \$2.4 million in accounts receivable, and approximately \$3.1 million in equipment and inventory.³⁵³

TER Holdings claimed approximately \$337 million in personal property assets, including \$3.5 million in savings accounts, \$13.5 million in receivable security deposits, \$1.9 million in insurance policy interests, and \$318 million in accounts receivable (all but \$1,574 from Co-debtors Taj Mahal, Plaza, and Marina).³⁵⁴ Trump Marina Associates, LLC reported approximately \$3.3 million in personal property assets, nearly all of which were bonds or interest receivable thereupon.³⁵⁵ TERH LP Inc., Trump Entertainment Resorts Development Company, LLC, and TER Development Co., LLC all reported zero assets and income.

Subsidiary Asset Disclosures

	Taj Mahal	Trump Plaza	Trump Marina	TER Holdings
Real Property	\$296 million	\$16.1 million	No Report	No Report
Personal Property	\$70.4 million	\$19.3 million	\$3.3 million	\$337 million
Total	\$366.4 million	\$35.4 million	\$3.3 million	\$337 million

³⁵¹ January 1, 2014 to August 31, 2014.

³⁵² [Schedules of Assets and Liabilities for Trump Taj Mahal Associates, LLC at 12-17](#), Docket no. 268, Case no. 14-12103, filed October 9, 2014 [hereinafter *Taj Schedule*].

³⁵³ [Schedules of Assets and Liabilities for Trump Plaza Associates, LLC](#), Docket no. 266, Case no. 14-12103, filed October 9, 2014 [hereinafter *Plaza Schedule*].

³⁵⁴ [Schedules of Assets and Liabilities for Trump Entertainment Resorts Holdings, L.P.](#), Docket no. 265, Case no. 14-12103, filed October 9, 2014 [hereinafter *TER Holdings Schedule*].

³⁵⁵ [Schedules of Assets and Liabilities for Trump Marina Associates, LLC](#), Docket no. 267, Case no. 14-12103, filed October 9, 2014 [hereinafter *Marina Schedule*].

III. *Trump Entertainment Resorts Creditor Claims*

Excluding TER Development Co., LLC, each of the Debtors listed the outstanding \$292 million First Lien Lender debt as the companies’ sole secured creditor liability. Unsecured *priority* claims were limited to \$12.3 million owed to the City of Atlantic City and “Casino Reinvestment Dev Authority Special Improvement District Fees” by Taj Mahal and Trump Plaza.³⁵⁶³⁵⁷ Taj Mahal, Trump Plaza, Trump Marina, and TER Holdings reported unsecured *nonpriority* claims of \$235.4 million,³⁵⁸ \$92 million,³⁵⁹ \$9.8 million,³⁶⁰ and \$112,000,³⁶¹ respectively. However, there was significant overlap in the reported claims against the Debtors. A reasonably accurate figure for TER subsidiaries’ comprehensive unsecured debt, documented in the Debtors’ final Disclosure Statement, was approximately \$212 million to \$232 million.³⁶² TER filed a detailed 170 page list of its known creditors on September 9, 2014,³⁶³ but listed each of the values on its unsecured nonpriority schedule as “unknown.”³⁶⁴

Subsidiaries’ Creditor Disclosures

	Taj Mahal	Trump Plaza	Trump Marina	TER Holdings
Secured	\$292 million	\$292 million	\$292 million	\$292 million
Unsecured Priority	\$12.3 million	\$12.3 million	No Report	No Report
Unsecured Nonpriority	\$235.4 million	\$92 million	\$9.8 million	\$112,000
Total	\$539.7 million	\$396.3 million	\$301.8 million	\$292.1 million

IV. *Payments to Creditors and Insider Creditors*

Bankruptcy Law prevents Debtors from making discretionary payments to particular creditors under 11 U.S.C. § 547. Each of TER’s creditors were entitled to its proportionate share

³⁵⁶ *Taj Schedule*, *supra* note 352.

³⁵⁷ *Plaza Schedule*, *supra* note 353.

³⁵⁸ *Taj Schedule*, *supra* note 352.

³⁵⁹ *Plaza Schedule*, *supra* note 353.

³⁶⁰ *Marina Schedule*, *supra* note 355.

³⁶¹ *TER Holdings Schedule*, *supra* note 354.

³⁶² [Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code at 22](#), Docket no. 713, Case no. 14-12103, filed January 5, 2015 [hereinafter *Third Disclosure Statement*].

³⁶³ [Certification of Debtors’ Consolidated Creditor Matrix](#), Docket no. 14, Case no. 14-12103, filed September 9, 2014.

³⁶⁴ *TER Schedule*, *supra* note 345.

of the estates, thus, the U.S. Trustee was entitled to undo certain prepetition transactions that may have had the effect of undercutting the principle of pro rata distribution.³⁶⁵ Specifically, the language of §547 states the Trustee may avoid a transfer to a creditor for an antecedent debt (one that existed before the transfer) made while the debtor was insolvent and within 90 days before bankruptcy (or one year if the recipient is an insider) if it permits the creditor's attainment of more value than it would otherwise receive in a Chapter 7 liquidation.³⁶⁶

Sections 548 and 544 provide the statutory basis to challenge fraudulent transfers under federal and state law, respectively.³⁶⁷ A transfer of the debtors' property to another party in order to deter, hinder, or defraud a creditor, or to unfairly place such property out of the reach of a creditor is a fraudulent transfer—the U.S. Trustee is given power to set aside or avoid such transfers. In cases of fraudulent transfer, actual fraud requires proof of intent from the party challenging the transfer.³⁶⁸ Constructive fraud requires the exchange for the transfer is less than the reasonably equivalent value and the debtor is unable to pay its debts either at the time of transfer or as a result thereof.³⁶⁹

Trump Entertainment Resorts payments to creditors within 90 days of filing were documented at \$51.1 million by Taj Mahal,³⁷⁰ \$16.4 million by Trump Plaza,³⁷¹ \$19.1 million by TER Holdings,³⁷² and \$39,000 by Trump Marina.³⁷³ The Debtors reported payments to current or

³⁶⁵ John Ayer, Michael Bernstein & Jonathan Friedland, *Overview of Avoidance Actions*, American Bankruptcy Institute Journal (Mar. 2004), <http://perma.cc/PY8P-W2DD>.

³⁶⁶ 11 U.S.C. § 547, Cornell University Law School, <http://perma.cc/8QW8-XWB3>.

³⁶⁷ Trey Monsour, *Understanding Fraudulent Transfers and Ensuing Litigation*, Law360.com, <http://perma.cc/QH4V-EYTJ>.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ [Notice of Amendment to Statements of Financial Affairs or Trump Taj Mahal Associates at 391](#), Docket no. 1384, Case no. 14-12103, filed June 18, 2015.

³⁷¹ [Notice of Amendment to Statements of Financial Affairs or Trump Taj Mahal Associates at 92](#), Docket no. 1382, Case no. 14-12103, filed June 18, 2015.

³⁷² [Statements of Financial Affairs for Trump Entertainment Resorts Holdings, L.P. at 12](#), Docket no. 257, Case no. 14-12103, filed October 9, 2014.

³⁷³ [Notice of Amendment to Statements of Financial Affairs or Trump Marina Associates, LLC at 3](#), Docket no. 1383, Case no. 14-12103, filed June 18, 2015.

former *insider*³⁷⁴ creditors within one year of filing in amounts of \$31.2 million by Taj Mahal,³⁷⁵ \$4.6 million by Trump Plaza,³⁷⁶ \$24.1 million by TER Holdings,³⁷⁷ and \$70,000 in intercompany transfers by Trump Marina.³⁷⁸

Subsidiary Payments to Creditors and Insider Creditors

	Taj Mahal	Trump Plaza	Trump Marina	TER Holdings
Creditors	\$51.1 million	\$16.4 million	\$39,000	\$19.1 million
Insider Creditors	\$31.2 million	\$4.6 million	\$70,000	\$24.1 million
Total	\$82.3 million	\$22 million	\$99,000	\$43.2 million

Trump Taj Mahal Associates largest insider payments were to current or former TER officers and intercompany transfers to Trump Entertainment Resorts, Inc.³⁷⁹ The Taj Mahal paid approximately \$75,600 to the company’s former CFO Dan McFadden in the year prior to the filing.³⁸⁰ Donald Karrer, Kathleen McSweeney, and Michael Mellon received approximately \$182,700, \$308,500, and \$330,600, respectively.³⁸¹ Taj Mahal’s intercompany payments to TER, Inc. were approximately \$29.8 million.³⁸² Trump Plaza’s schedule of insider payments identified approximately \$4.6 million in payments to Trump Entertainment Resorts, Inc.³⁸³

V. Summary of Debtors’ Statements and Schedules; Claims and Creditors

TER and its subsidiaries held approximately \$424.1 million in real and personal property assets³⁸⁴ and owed approximately \$641.6 million to the First Lien Lenders, Atlantic City, Levine

³⁷⁴ The Debtors define “insiders” pursuant to § 101(31) of the Bankruptcy Code as (a) current or former directors, officers or persons in control of a debtor, (b) relatives of aforementioned persons, (c) general partners, or (d) an affiliate of a debtor.

³⁷⁵ *Taj Schedule*, *supra* note 352.

³⁷⁶ *Plaza Schedule*, *supra* note 353.

³⁷⁷ *TER Holdings Schedule*, *supra* note 354.

³⁷⁸ *Marina Schedule*, *supra* note 355.

³⁷⁹ *Taj Statement*, *supra* note 348, at 418-27.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Plaza Statement*, *supra* note 349, at 114.

³⁸⁴ \$742.1 million reported minus \$318 million in intercompany receivables.

Staller, and numerous unsecured creditors.³⁸⁵ The Debtors generated approximately \$626.5 million in revenue over the 20 months leading up to the 2014 filing. These figures represent only what TER was then able or willing to claim, and, as explicitly related in the Global Notes, were subject to variation and incompleteness.

In addition to Icahn's \$292 million secured loan, TER and its subsidiaries had approximately \$212-232 million general unsecured debt and another \$13.5 million in prepetition unsecured *trade* debt.³⁸⁶ In addition to TER's large class claimants, the Company was managing disputes with Thermal Energy for approximately \$3 million, Levin Staller for \$1.5 million, Atlantic City for \$12-22 million, and the Gaming Companies for approximately \$1.5 million.

4.5 The First Plan Proposal: Icahn's Big Opportunity

4.5.1 The Plan and Disclosure Statement

Trump Entertainment Resorts and its subsidiary debtors filed a 56 page Joint Plan of Reorganization (the "First Proposal" or "First Plan")³⁸⁷ and an effectively empty Disclosure Statement³⁸⁸ on October 1, 2014. The stated purpose of TER's First Plan was to provide for the restructuring of the Debtors' liabilities in order to maximize stakeholder recovery, to enhance the Debtors' financial viability, and to preserve the existing business.³⁸⁹ The First Proposal distinguished creditors by voting entitlement, impairment of Claims or Interests, and presumption of Plan acceptance or rejection.³⁹⁰

³⁸⁵ *Schedule of Claims*, Primeclerk.com, <http://perma.cc/63RA-QY9S>.

³⁸⁶ [Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 23](#), Docket no. 166, Case no. 14-12103, filed October 1, 2014 [hereinafter *First Disclosure Statement*].

³⁸⁷ [Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 1](#), Docket no. 165, Case no. 14-12103, filed October 1, 2014 [hereinafter *First Plan*].

³⁸⁸ *First Disclosure Statement*, *supra* note 386, at 1.

³⁸⁹ *Id.* at 17.

³⁹⁰ *First Plan*, *supra* note 387, at 21.

Classification of Claims and Interests

Class	Treatment	Impairment and Voting Entitlement
Class 1 Priority Non-Tax	Rights unimpaired by Plan. Claim holder shall receive cash from the applicable Reorganized Debtor in an amount equal to the <i>Allowed Claim</i> on the First Distribution Date.	Not impaired claims. Presumed to accept plan under § 1126(f). Not entitled to vote for acceptance or rejection of Plan.
Class 2 Other Secured	Rights unimpaired by Plan. Claim holder shall receive, at the discretion of the Reorganized Debtors: (i) cash equal to such <i>Allowed Claim</i> ; (ii) the return of collateral securing such <i>Allowed</i> or <i>Secured Claim</i> ; or (iii) other treatment that will render the Claimant unimpaired, pursuant to § 1124. ³⁹¹ Undersecured portions of <i>Allowed Claims</i> shall be classified as a General Unsecured Claim. ³⁹²	Not impaired claims. Presumed to accept plan under § 1126(f). Not entitled to vote for acceptance or rejection of Plan.
Class 3 First Lien Credit Agreement	<i>Allowed Claims</i> in the amount of \$292,257,374.79. Holders of First Lien Secured Claims shall receive (i) 55% of the shares of New Common Stock issued by Reorganized TER; and (ii) the New Term Loan. ³⁹³	Impaired claims. Holders are entitled to vote to accept or reject the Plan. Class acceptance requirements for approval. ³⁹⁴
Class 4 General Unsecured	Holders of General Unsecured Claims not entitled to distribution. ³⁹⁵	Impaired claims. Presumed to reject plan under § 1126(g). Not entitled to vote for acceptance or rejection of Plan.
Class 5 Securities and Subordinated	Holders of Existing Securities Law Claims or Equitably Subordinated Claims not entitled to distribution. ³⁹⁶	Impaired claims. Presumed to reject plan under § 1126(g). Not entitled to vote for acceptance or rejection of Plan.
Class 6 Existing TER Interests	Holders of existing TER interests not entitled to distribution. All exiting TER interests deemed cancelled and extinguished.	Impaired claims. Presumed to reject plan under § 1126(g). Not entitled to vote for acceptance or rejection of Plan.

³⁹¹ *Id.* at 23 (“...provided, however, that Other Secured Claims incurred by a Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto...”).

³⁹² *Id.* See also Deficiency Claims: Law Insider, *Deficiency Claim Sample Clauses*, lawinsider.com, <http://perma.cc/FWP7-C5EL> (“If the monies collected by or received by secured party in respect of any realization upon or sale of the collateral are not sufficient to satisfy all obligations and liability of any debtor to secured party, each debtor shall remain responsible to the secured party for any deficiency, and secured party shall be entitled to claim such amount and all interest and costs associated therewith from any debtor.”).

³⁹³ *First Plan*, *supra* note 387, at 21.

³⁹⁴ *First Disclosure Statement*, *supra* note 386, at 34 (“An impaired Class of Claims shall have accepted the Plan if (a) the holders of at least two thirds in amount of the Claims in such class actually voting on the Plan have voted to accept it and (b) more than one-half in number of the holders in such class actually voting in the Plan have voted to accept it.”).

³⁹⁵ *First Plan*, *supra* note 387, at 27 (Section 7.3: “...all agreements, instruments, and other documents evidencing any Claim or Interest, other than intercompany interests, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged and of no force or effect.”).

³⁹⁶ *Id.* at 29-30 (Section 7.13: “No distributions under the Plan shall be made on account of an *Allowed Claim* that is payable pursuant to one of the Debtors’ insurance policies until the holder of such *Allowed Claims* has exhausted all remedies with respect to such insurance policy.”).

Under the First Proposal, Trump Entertainment Resorts would issue 55% of new common stock to the Icahn Partners (“New Common Stock”) while extinguishing between \$212 million and \$232 million of its unsecured debt.³⁹⁷ The First Proposal summary of TER’s claims treatment estimated 100% recovery for Classes 1 & 2, but did not estimate the value of claims in either class.³⁹⁸ TER did not give an estimated recovery percentage on the Class 3 First Lien Lender’s \$292 million balance, and stated that Classes 4 through 6 would receive no distribution.³⁹⁹

Recovery Amounts and Percentages Summary (First Proposal)

Class	Estimated Amount of Claims or Interests	Estimated Amount of Recovery
Class 1:	\$[x]	100%
Class 2:	\$[x]	100%
Class 3:	\$292,257,374.79	[x]%
Class 4:	n/a	0%
Class 5:	n/a	0%
Class 6:	n/a	0%

The stock exchange agreement between TER and the First Lien Lenders was to “equitize a portion of their existing senior secured debt and exchange the remainder of that debt for new debt requiring no cash interest payments.”⁴⁰⁰ The agreement was effectively a debt-for-equity swap and would potentially save TER approximately \$38 million in interest each year.⁴⁰¹ TER proposed to accept a second investment from the Icahn Partners in addition to cancelling the First Lien Debt in an aggregate principal amount of \$100 million with a five year maturity (the “New Term Loan”).⁴⁰² The New Term Loan would be secured by a first and second lien on substantially all of the assets of the Reorganized Debtors;⁴⁰³ however, the recapitalization was contingent on the Debtors’ receipt of \$175 million in government assistance upon exit from bankruptcy in the form of cash, tax credits, or other financial consideration.⁴⁰⁴

³⁹⁷ *Id.* at 19.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *First Plan, supra* note 387, at 17.

⁴⁰¹ *Id.* at 18.

⁴⁰² *Id.* at 17.

⁴⁰³ *First Disclosure Statement, supra* note 386, at 67.

⁴⁰⁴ *First Plan, supra* note 387, at 41.

The Reorganization would be funded by the collective Debtors' cash on hand in addition to proceeds from the New Equity Investment.⁴⁰⁵ TER planned to emerge from bankruptcy free of all claims or interests against it while vesting all pre-petition property, or property acquired during reorganization, back to the respective Reorganized Debtor.⁴⁰⁶ In addition to trimming its debt, TER allowed itself the opportunity to dispose of a number of existing executory contracts and unexpired leases,⁴⁰⁷ presumably those were connected to the closing Trump Plaza, and if any disputes arose therefrom, all claims regarding existing contracts or leases *not assumed* by TER would be classified as unsecured and ineligible for distribution.⁴⁰⁸ Existing contracts or leases *assumed* under the plan would be entitled to reimbursement for past monetary defaults as administrative claims.⁴⁰⁹

Employee compensation and benefit programs of the Debtors—including savings, retirement, healthcare, disability, and other incentive plans—would be terminated at the effective date and immediately assumed by the Reorganized Debtors.⁴¹⁰ Additionally, all employment agreements would be terminated;⁴¹¹ however, the Reorganized Debtors would assume the Taj Trade Collective Bargaining Agreements, the obligations of which were outlined in the CBA Order.⁴¹² TER would fully dispose of the Plaza Collective Bargaining Agreements, as the Plaza was in the process of closing its doors.⁴¹³

TER and the Debtors set forth several conditions precedent to confirmation of the Plan and Effective Date.⁴¹⁴ TER's conditions included: successful execution of the New Equity Investment Agreement with the First Lien Lenders, all obligations to members of Local 54 – UNITE HERE must be extinguished with entry of the modified CBA Order by the Bankruptcy Court, continued enforceability of the Cash Collateral Order, and a commitment from one or more government entities—including Atlantic City, Atlantic County, and the State of New Jersey—of \$175 million

⁴⁰⁵ *First Disclosure Statement*, *supra* note 386, at 44.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 47-50.

⁴⁰⁸ *Id.* at 47.

⁴⁰⁹ *Id.*

⁴¹⁰ *First Plan*, *supra* note 387, at 39.

⁴¹¹ *Id.* at 39-40.

⁴¹² *Id.* at 39.

⁴¹³ *Id.* at 40.

⁴¹⁴ *Id.* at 41-43.

in financial support during the 5 year period immediately following TER's reorganization.⁴¹⁵ TER allowed itself the opportunity to file a motion to vacate a Confirmation Order and, if vacated, nullify the Plan in its entirety if the conditions were to go unsatisfied.⁴¹⁶

4.5.2 Plan and Disclosure Statement Objections

On October 1, 2014, Trump Entertainment Resorts filed a Motion for the Court's approval of the Disclosure Statement and establishment of voting and objecting procedures and deadlines.⁴¹⁷ TER's Disclosure Statement and Approval Motions were immediately met by Objections from Levine Staller, Trump Marks, Atlantic City, and the Unsecured Creditors' Committee.

- Levine Staller objected to the adequacy of TER's Disclosure Statement and re-raised its argument that the Statement misrepresented the priority and status of the debt in question and that Levine Staller's Charging Lien was a fully secured claim against the Debtors' estates under New Jersey law.⁴¹⁸
- Trump Marks objected to the Disclosure Statement on three grounds.⁴¹⁹ First, it failed to disclose the risks and consequences to the estates if Trump Marks were to succeed in its State Court Action.⁴²⁰ Second, it failed to disclose the Debtors' intentions with respect to the use or disposition of the Trump name under the Plan.⁴²¹ Third, it did not disclose how the Debtors intended to address a \$147,638 priority claim by Trump Marks for a ground lease advance to the Debtors.⁴²²

⁴¹⁵ *First Plan*, *supra* note 387, at 41.

⁴¹⁶ *Id.* at 43.

⁴¹⁷ [Debtors' Motion of Order \(I\) Approving the Disclosure Statement...](#), Docket no. 175, Case no. 14-12103, filed October 1, 2014.

⁴¹⁸ [Objection of Levine, Staller, Sklar, Chan & Brown P.A. to the Debtors' Motion for Entry of an Order Approving the Proposed Disclosure Statement](#), Docket no. 366, Case no. 14-12103, filed October 28, 2014 [hereinafter *Levine First Statement Objection*].

⁴¹⁹ [Objection of Trump AC Casino Marks, LLC and Donald J. Trump to the Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 2](#), Docket no. 376, Case no. 14-12103, filed October 29, 2014 [hereinafter *Trump First Statement Objection*].

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.* at 2-3.

- Atlantic City’s objection related the Property Debtors’—Trump Taj Mahal Associates and Trump Plaza Associates—tax default of approximately \$12.3 million.⁴²³⁴²⁴ The City argued the Disclosure Statement failed to recognize the City’s first-priority liens on the Debtors’ respective properties and did not address the liens as secured claims.⁴²⁵

4.5.3 Unsecured Creditors’ Committee Objection

The Unsecured Creditors’ Committee’s constituents were to receive nothing under the Plan, and the committee’s actions were all aimed at creating some leverage that would result in amendments of benefit to these otherwise shut out creditors. The Unsecured Creditors’ Committee Objection focused first on the continued incompleteness of the Disclosure Statement after numerous attempts by the Committee to verify information through discovery.⁴²⁶ The Committee noted the Debtors failure to include Liquidation Analysis and Financial Projection attachments to the Disclosure Statement; further, that material provisions of the Plan were excluded from the Disclosure Statement; and finally, that key sections were designated as “To Come” or left blank, including TER’s necessary tax relief and caps on administrative claims.⁴²⁷ Taken together, the Committee argued the Disclosure Statement failed to provide information necessary to assess the feasibility of the Plan.⁴²⁸

Beyond the lack of information, the Committee argued the Plan and Disclosure Statement suffered from “fundamental problems” and deemed its solicitation and tabulation procedures a “charade” and “complete waste of time.”⁴²⁹ After all, the only voting class was class 3, which housed Icahn’s secured claims. All others were paid in full and deemed to accept or to receive nothing and deemed to reject. The Committee stated the Plan was orchestrated by Mr. Icahn, who “[did] not need a disclosure statement to determine whether to vote to accept or reject the Plan that he imposed on the Debtors.”⁴³⁰ The Committee humorously included an entire section in its

⁴²³ [Limited Objection of the City of Atlantic City to Debtors’ Disclosure Statement at 1-2](#), Docket no. 390, Case no. 14-12103, filed October 31, 2014 [hereinafter *AC First Statement Objection*].

⁴²⁴ Atlantic City expected the amount to reach \$22 million by the Disclosure Statement Hearing.

⁴²⁵ *AC First Statement Objection*, *supra* note 423, at 1-2.

⁴²⁶ [Preliminary Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtors’ Motion for Order \(I\) Approving the Disclosure Statement... at 5-7](#), Docket no. 389, Case no. 14-12103, filed October 31, 2014 [hereinafter *OCC First Statement Objection*].

⁴²⁷ *Id.* at 2.

⁴²⁸ *Id.* at 22.

⁴²⁹ *Id.* at 2-3.

⁴³⁰ *Id.*

objection addressing the fact that the Plan appears to solicit votes from several classes of creditors while actually soliciting votes only from Mr. Icahn,⁴³¹ and, since Mr. Icahn and TER had presumably already agreed to the terms of the Plan, the Disclosure Statement was wholly unnecessary.⁴³²

The Committee objection addressed a statement included in the Plan that noted the Debtors would proceed to confirmation even if the Taj Mahal closed; the Committee argued that action could be only for the sole purpose of preserving hundreds of millions of dollars in tax attributes for the exclusive benefit of Mr. Icahn.⁴³³⁴³⁴ The Committee ended its preliminary statement by arguing: “If Mr. Icahn wants to use the jurisdiction of the Court to preserve the Debtors’ valuable tax attributes, then he must do so in a manner that is compliant with the requirements of the Bankruptcy Code, *including the fair and equitable treatment of general unsecured creditors.*”⁴³⁵ The Committee went on to argue the Plan was “patently unconfirmable” for three reasons.⁴³⁶

First, because the Plan lacked a showing of sufficient likelihood that the Debtors would be able to satisfy the “impaired consenting class” requirement of § 1129(a)(10).⁴³⁷ Section 1129 *requires* a vote by at least one impaired class, not including the votes of insiders, if such a class exists;⁴³⁸ thus, the Committee argued the Plan could not be confirmed if the First Lien Lenders did not vote to accept. The OCC’s Objection to the Disclosure Statement asked the Court to reject it on the grounds that “[i]f the Debtors cannot obtain assurance that the Icahn Parties will vote in favor of the Plan, which is premised on conditions precedent dictated by the Icahn Parties, then the Debtors cannot show a sufficient likelihood that they will be able to satisfy the Bankruptcy Code.”⁴³⁹

⁴³¹ *OCC First Statement Objection*, *supra* note 426, at 7.

⁴³² *Id.* at 8.

⁴³³ *Id.* at 3.

⁴³⁴ The Committee related its belief that the Taj closure was a foregone conclusion and that Mr. Icahn and TER were working together to ensure Mr. Icahn would reap the benefit of the Debtors’ tax attributes.

⁴³⁵ *OCC First Statement Objection*, *supra* note 426, at 3 (emphasis added).

⁴³⁶ *Id.* at 10.

⁴³⁷ *Id.*

⁴³⁸ *See* 11 U.S.C. § 1129(a)(10) (“[i]f a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must vote to accept the plan.”).

⁴³⁹ *OCC First Statement Objection*, *supra* note 426, at 11 (emphasis omitted).

Second, the Debtors would not be able to satisfy the Conditions Precedent to Confirmation included in the Plan based on the Taj Mahal remaining open.⁴⁴⁰ The Plan conditions are required only “to the extent the Trump Taj Mahal . . . shall remain open,”⁴⁴¹ and the Committee argued that statements by Mr. Icahn suggested the Taj Mahal was certain to close.⁴⁴² Thus, because the Debtors identified Mr. Icahn as its only potential source of funding, and that source was apparently committed to the closure of the Taj Mahal, the Plan could not be confirmed. The objection also acknowledged TER’s inability to meet a second condition by failing to obtain government financial support at the time of filing.⁴⁴³

Lastly, the Plan would violate 11 U.S.C. §§ 1129(a)(1)-(3) and § 1129(d) of the Bankruptcy Code if the Debtors sought confirmation under alternative Conditions Precedent following closure of the Taj Mahal.⁴⁴⁴ Section 1129(d) states that, if on request by a government party in interest, a reorganization plan will not be confirmed if the principal purpose is the avoidance of taxes. The aforementioned United States Code sections relate to good-faith and compliance with the Bankruptcy Code. Based on the suggestion by Mr. Icahn that the Taj Mahal would almost certainly close, the Committee argued that the only purpose of the Debtors was to preserve significant net operating losses⁴⁴⁵ and other tax attributes to enable the First Lien Lenders to avoid paying taxes on future income.⁴⁴⁶ In the Committee’s words: “There is no other reason for the debtors to incur the delay and expense of a plan confirmation process in order to hand over two dark casinos to the Icahn Parties under a Chapter 11 Plan of Reorganization that provides zero value to any other non-priority creditors.”⁴⁴⁷

The Committee maintained that strong factual and legal grounds mandated distribution of significant value to the Debtors’ general unsecured creditors, and therefore a vote by the Class 4 claimants.⁴⁴⁸ But, even assuming the Plan would be amended to allow its constituents a seat at the table, the Committee preemptively refused the terms in its reiteration of the Disclosure Statement’s

⁴⁴⁰ *Id.* at 10.

⁴⁴¹ *First Plan*, *supra* note 387, at 36.

⁴⁴² *OCC First Statement Objection*, *supra* note 426, at 12.

⁴⁴³ *Id.* at 11-14.

⁴⁴⁴ *Id.* at 10.

⁴⁴⁵ Federal carryover figures were approximately \$450 million. New Jersey carryover figures were approximately \$840 million.

⁴⁴⁶ *OCC First Statement Objection*, *supra* note 426, at 15.

⁴⁴⁷ *Id.* at 17.

⁴⁴⁸ *Id.* at 20-21.

exclusion of information on the treatment of intercompany claims or insider compensation, material terms of the Plan such as the Conditions Precedent to confirmation, and analysis on the valuation of the Reorganized Debtors.

4.5.4 Judge Gross’s CBA Order Reaches the Third Circuit Court of Appeals

Judge Gross granted TER’s Motion to reject the Local 54 and Trump Taj Mahal Collective Bargaining Agreement on October 17, 2014.⁴⁴⁹ The Court held the Debtors’ Proposal to Local 54 was based on the most complete and reliable information available, provided modifications necessary to permit the reorganization of the Debtors, and that Local 54 failed to show good cause for its rejection.⁴⁵⁰ Judge Gross stated that “The balance of equities clearly favors rejection of the CBA”⁴⁵¹ and authorized TER to implement the terms and conditions of the proposed modifications to the Taj Mahal Bargaining Agreement.⁴⁵²

Material Modifications to the Taj Mahal Collective Bargaining Agreement⁴⁵³

Control, Discharge and Seniority	The Debtor proposes to expand its right to direct and control employees, such as by consolidating jobs, by determining and re-determining job content and determining the assignment of work, in order to allow for a more flexible use of staff and generate cost-savings.
Meal and Locker Facility	The Debtor proposes to eliminate paid meal times. Rather than a paid meal time, the Debtor proposes that all employees working on a shift of six hours or more will be provided with an unpaid, uninterrupted thirty minute meal period. Accordingly, the Debtor would also require that employees clock out prior to the commencement of their assigned unpaid break and clock in upon the conclusion of their break and return to work. This modification would ensure that amounts paid will match actual work performed.
Holidays	The Debtor proposes to reduce the amount of pay employees receive for working on a holiday. Rather than receiving straight pay for hours actually worked plus holiday pay, the employee would only receive a more market-standard time-and-a-half for hours actually worked on the holiday, thereby matching the amount paid to work actually performed. Employees would still receive holiday, at straight time, for the portion of the employee’s usual shift which the employee does not work due to the holiday.
Hours of Work	The Debtor proposes to eliminate the guarantee that employees will be paid for a full shift if they are sent home at the direction of the employer after the completion of more than half their

⁴⁴⁹ [Order Granting Debtors’ Motion for Entry of Order \(i\) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and Unite Here Local 54 Pursuant to 11 U.S.C. § 1113\(C\) and \(ii\) Implementing Terms of Debtors’ Proposal Under 11 U.S.C. § 1113\(B\)](#), Docket no. 318, Case no. 14-12103, filed October 17, 2014 [hereinafter *CBA Order*].

⁴⁵⁰ *Id.* at 2.

⁴⁵¹ *Id.*

⁴⁵² *Id.* at 3.

⁴⁵³ *Id.* at 1-3.

	shift. Instead, the Debtor proposes that employees who are sent home shall be guaranteed pay for half of their scheduled shift of the hours actually worked, whichever is greater.
Health and Welfare, Pension and Severance	The Debtor proposes to withdraw from the Health and Welfare Fund and, instead, substitute with health care coverage under the 2010 Patient Protection and Affordable Care Act. Full-time employees, however, would receive additional compensation of \$2,000 per year which will enable them to offset and, in some cases, completely defray the cost of obtaining health insurance. Non-union employees would receive identical treatment. The Debtor further proposes to cease making contributions to, and permanently withdraw from, the Pension Fund (National Retirement Fund) and, instead institute an employer sponsored 401(k) plan with the employer matching employee contributions up to 1% of each employee's compensation per year.
Term of Contract	The Debtor proposes to enter into a four year agreement such that the benefits of the proposed modifications are realized over a necessary period of time.

The Debtors and Local 54 petitioned the United States Court of Appeals for the Third Circuit for a direct appeal to review Judge Gross's Order. The appeal was granted on December 15, 2014.⁴⁵⁴ The Court of Appeals "resolved the effect of two potentially conflicting provisions of federal law" between Section 1113 of the Bankruptcy Code, which allowed a Chapter 11 debtor to reject its CBA, and the National Labor Relations Act, which prohibited an employer from unilaterally changing the terms and conditions of a CBA even after its expiration.⁴⁵⁵

The Court of Appeals held the Bankruptcy Court had jurisdiction over TER's motion to reject the CBA, and, although the Bankruptcy Court did not have authority to interpret or administer the NLRA, the governing statute was non-jurisdictional and only allowed a debtor to terminate or modify its ongoing obligations to its employees.⁴⁵⁶ The Court of Appeals affirmed the Bankruptcy Court's holding and stated that a debtor may reject an expired CBA or its continuing obligations as defined by the expired CBA, and that the rejection of the Debtors' continuing labor obligations, as defined by the expired CBA, was necessary to permit the Debtors' reorganization.⁴⁵⁷ The United States Supreme Court denied Local 54's cert petition in May 2016.⁴⁵⁸

⁴⁵⁴ In re Trump Entertainment Resorts, UNITE HERE Local 54, 810 F.3d 161 (3rd Cir. 2016).

⁴⁵⁵ *Id.* at 163.

⁴⁵⁶ *Id.* at 166.

⁴⁵⁷ *Id.* at 175.

⁴⁵⁸ Jonathan Randles, *Trump Workers Denied High Court Review of Union Deal*, Law360.com, <http://perma.cc/86LK-92QX>.

4.6 The Second Plan Proposal: Crumbs for Unsecured Creditors

4.6.1 The Amended Plan and Disclosure Statement

In response to the objections to its first plan proposal, Trump Entertainment Resorts filed amendments to the initial Plan and Disclosure Statement on November 3, 2014. The first amendments were effectively copies of the originals, continuing to refuse payment to the Unsecured Creditors, but included approximately \$370,000 in disbursements to Class 2. TER submitted a second round of amendments less than 5 hours before a continued hearing⁴⁵⁹ on November 14, 2014,⁴⁶⁰⁴⁶¹ in response to a settlement offer made by the Committee three days prior.⁴⁶²

The second amendment to the Plan (the “Second Proposal” or “Second Plan”) offered the Unsecured Creditors a seat at the voting table and entitled them to their pro rata share of “General Unsecured Claims Distribution” plus “Litigation Trust Interests.” However, the Distribution was set at \$1 million—less than half of a percentage point of the collective unsecured claims’ amount,⁴⁶³ and the Litigation Trust was unfunded at that time.⁴⁶⁴

Recovery Amounts and Percentages Summary (Second Proposal)

Class	Estimated Amount of Claims or Interests	Estimated Amount of Recovery
Class 1:	\$0.00	100%
Class 2:	\$369,000.00	100%
Class 3:	\$292,257,374.79	45.3% - 56.5%
Class 4:	\$212,000,000.00	0.47% ⁴⁶⁵
Class 5:	n/a	0%
Class 6:	n/a	0%

⁴⁵⁹ [Motion...to Terminate Exclusivity...and \(II\) Supplemental Objection of the Official Committee of Unsecured Creditors to Debtors’ Motion for Order \(A\) Approving the Disclosure Statement... at 3](#), Docket no. 482, Case no. 14-12103, filed November 14, 2014 [hereinafter *OCC Motion to Terminate and Second Objection*].

⁴⁶⁰ [Debtors’ Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 476, Case no. 14-12103, filed November 14, 2014 [hereinafter *Second Plan*].

⁴⁶¹ [Disclosure Statement for Debtors’ Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 477, Case no. 14-12103, filed November 14, 2014 [hereinafter *Second Statement*].

⁴⁶² *OCC Motion to Terminate and Second Objection*, *supra* note 459, at 10.

⁴⁶³ *Second Statement*, *supra* note 461, at 22.

⁴⁶⁴ *OCC Motion to Terminate and Second Objection*, *supra* note 459, at 10.

⁴⁶⁵ “Potential value” of the Litigation Trust Interests not included.

4.6.2 The Reorganized Debtors' Financial Forecast

I. TER Valuation Analysis

TER's valuation analysis was conducted under the assumption the Company's financial projections and relief conditions would be met, the Taj Mahal operating on a going concern basis, and the Plaza on a closed basis.⁴⁶⁶ TER's financial advisor, Houlihan Lokey, estimated the range of the Reorganized Debtors' value to be between \$240 million and \$290 million⁴⁶⁷ as of October 24, 2014.⁴⁶⁸ Houlihan Lokey estimated TER's value would be between \$125 million and \$170 million if the Taj Mahal were closed.⁴⁶⁹ The valuations below incorporate the \$100 million New Term Loan which, if excluded, would leave a maximum total enterprise value available to pre-petition creditors at \$165 million if the Taj Mahal remained open and \$132.5 million if the Taj Mahal closed its doors.⁴⁷⁰

Valuation of Reorganized Debtors' Casino Assets

	Valuation	Factors and Methodology
Trump Plaza	\$20 - \$30 million ⁴⁷¹	(1) Previous offers received (2) Metrics on recently closed casinos
Taj Mahal (Open)	\$265 million	(1) Comparable public company analysis (2) Precedent transactions analysis (3) Discounted cash flow approach
Taj Mahal (Closed)	\$80 - \$100 million	(1) Discount of "Revel" casino recent sale price (2) Asset liquidation proceeds

II. TER Liquidation Analysis

Trump Entertainment Resort's Liquidation Analysis showed that the holders of claims in Class 3 would receive less value in a Chapter 7 liquidation than they would under the Plan.⁴⁷² In fact, TER's analysis showed its hypothetical liquidation value estimates at a low of \$105.2 million

⁴⁶⁶ *Second Statement, supra* note 461, at 111.

⁴⁶⁷ Value determined after incorporating the \$100 million New Term Loan.

⁴⁶⁸ *Second Statement, supra* note 461, at 111.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.* at 116.

⁴⁷¹ Assumes Taj Mahal remains open and TER obtains requested government relief.

⁴⁷² *Second Statement, supra* note 461, at 118.

and a high of \$143.4 million.⁴⁷³ The final proceeds for distribution, excluding TER's property assets, would ultimately be between \$78 million and \$102 million after wind-down costs, professional and trustee fees, disputed claims, and the Cash Collateral Administrative Fee Carve-out.⁴⁷⁴ TER claimed the Taj Mahal and Plaza would be sold on a "fire sale" basis, at a 20% discount, which would result in liquidation value ranges of \$64-80 million and \$16-24 million, respectively. According to TER, general unsecured claims would receive zero recovery under a Chapter 7 liquidation given the insufficient value to satisfy the secured portion of the First Lien Credit Agreement Claims in full.

III. Reorganized Debtors' Financial Projections

The Reorganized Debtors' financial forecast was prepared by TER management with assistance from various professionals and reflected the Debtors' estimation of the expected results of operations and cash flow for fiscal years 2015-2019.⁴⁷⁵ TER warned that although the assumptions were reasonable, it operated in an extremely competitive environment and faced many uncertainties.⁴⁷⁶ Among the challenges facing the organization was the potential for gaming expansion in nearby communities, regulatory developments, competitor actions, and adverse effects of changes to the Debtors' customary practices.⁴⁷⁷

Gaming revenue estimates were based on several factors including presumptions regarding the growth of the Atlantic City gaming market and the effect of competitor closures.⁴⁷⁸ TER stated 50% of the market attributed to recently closed casinos would remain in Atlantic City, but the overall market was expected to decline approximately 5% in 2015-2017.⁴⁷⁹ Non-gaming revenues were based on assumed percentages of revenue based on 2014 expected results.⁴⁸⁰

⁴⁷³ *Id.* at 120.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.* at 125.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Second Statement, supra* note 461, at 126.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* at 127.

Financial Projections	2015	2016	2017	2018	2019
<u>REVENUES</u>					
Gaming	206.5	235.4	223.6	223.6	223.6
Rooms	46.9	53.4	50.7	50.7	50.7
Food and Beverage	26.4	30	28.5	28.5	28.5
Other	11.3	12.9	12.3	12.3	12.3
Gross Revenues	\$291.1	\$331.7	\$315.1	\$315.1	\$315.1
Less Promotional Allowances	(78.4)	(89.3)	(84.9)	(84.9)	(84.9)
Net Revenues	\$212.7	\$242.4	\$230.3	\$230.3	\$230.3
<u>COSTS AND EXPENSES</u>					
Gaming (ex-gaming taxes)	(76.8)	(82.1)	(80)	(80)	(80)
Gaming Taxes	(19.1)	(21.8)	(20.7)	(20.7)	(20.7)
Rooms Food and Beverage	(27.2)	(29)	(28.3)	(28.3)	(28.3)
Property Taxes	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)
General and Administrative	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)
Corporate Allocation	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)
Plaza Carrying Costs	(9.2)	(9.2)	(9.2)	(9.2)	(9.2)
Unadjusted EBITDA	(\$5.3)	\$14.6	\$6.5	\$6.5	\$6.5
<u>SECTION 1113 SAVINGS</u>					
Health and Welfare	8.5	8.5	8.5	8.5	8.5
Pension Savings	3.7	3.7	3.7	3.7	3.7
Work Rule Changes	5.8	5.8	5.8	5.8	5.8
Pro Forma EBITDA	\$12.7	\$32.6	\$24.5	\$24.5	\$24.5
<u>OTHER CASH FLOW</u>					
Maintenance Capex	(15)	(15)	(15)	(15)	(15)
Required CRDA Investments	(3)	(3)	(3)	(3)	(3)
Free Cash Flow	(\$5.3)	\$14.6	\$6.5	\$6.5	\$6.5

4.6.3 Unsecured Creditors' Objection to the Second Proposal

The frustrated Committee filed a Supplementary Objection to the Second Proposal on November 14, 2014.⁴⁸¹ The OCC stated its dissatisfaction with the nominal proposed allocation to the Unsecured Creditors and argued that TER, with \$30 million of cash on hand, had sufficient liquidity even without additional financing to avoid a liquidation; thus, the “Debtors [could not] afford to embark on a doomed chapter 11 plan confirmation process and then push the ‘reset’ button when confirmation of the Debtors/Icahn Plan is denied.”⁴⁸² The Committee requested the Court’s denial of the Second Disclosure Statement and, if the Court was not inclined to do so, asked that the Court modify the proposed Statement so that (1) an allowance of Class 3 First Lien

⁴⁸¹ OCC Motion to Terminate and Second Objection, *supra* note 459.

⁴⁸² *Id.* at 2-3.

Credit Agreement Claims for voting purposes would not impair the rights of any party in interest to seek to have such vote designated pursuant to § 1126(e),⁴⁸³ and (2) ordinary course trade creditors should be excluded from the Administrative Claims Bar Date for goods or services provided within 30 days of the Bar Date.⁴⁸⁴

The Committee questioned the Second Proposal’s inclusion of unspecified terms and amounts of debtor-in-possession financing, the Debtors’ cash position, and the Icahn Parties’ refusal of transparency, stating: “The Debtors and the Icahn Parties have sought to steamroll the Committee with conclusory allegations about the extent of their liens and claims. When the Committee attempted to test [those] allegations in discovery, the Icahn Parties hid behind a specious assertion of common interest privilege⁴⁸⁵ with the Debtors.”⁴⁸⁶

The OCC compared the TER Valuation and Liquidation Analyses, which were effectively the same if the Taj Mahal were to close⁴⁸⁷ and analyzed TER’s cash position.⁴⁸⁸ The Committee’s analysis showed that the Debtors’ overall cash balance had increased since the Petition Date which was contrary to TER’s position that, absent debtor-in-possession financing, the Debtors would run out of cash near the end of 2014.⁴⁸⁹

Creditors’ Committee Financial Analysis

Cash Balances	Original Budget (Petition Date)	Variance Report (November 7, 2014)	Closure Budget (November 14, 2014)
Floor Cash	\$17,550,000	\$10,522,000	\$10,600,000
Working Capital	\$7,954,000	\$17,164,000	\$14,947,000
Internet Gaming	(\$1,300,000)	(\$1,700,000)	(\$1,000,000)
Total Cash	\$26,804,000	\$29,386,000	\$26,547,000

⁴⁸³ See U.S.C. § 1126(e) (“On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title”).

⁴⁸⁴ *OCC Motion to Terminate and Second Objection*, *supra* note 459, at 16.

⁴⁸⁵ See [United States v. Schwimmer](#), 892 F.2d 237, 243 (2nd Cir. 1989) (The common interest privilege serves to protect the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel).

⁴⁸⁶ *Id.* at 2.

⁴⁸⁷ Debtors’ reorganization value of \$100 million to \$155 million if the Taj Mahal closed and \$105 million to \$143 million upon liquidation before wind-down costs.

⁴⁸⁸ *OCC Motion to Terminate and Second Objection*, *supra* note 459, at 5-6.

⁴⁸⁹ *Id.* at 6-7.

In addition to the Supplementary Objection, and based on their theory the Taj Mahal was primed to cease operations, the OCC's Motion requested termination of exclusivity to permit the Committee to file and solicit acceptances of a Chapter 11 liquidating plan, pursuant to 11 U.S.C. § 1121(d).⁴⁹⁰ The Committee then set forth a plan proposal of its own (the "Committee Plan"). The OCC stated the Committee Plan would provide fair and equitable treatment to all creditors and satisfy outstanding administrative and priority claims.⁴⁹¹ The objectives and key terms of the Committee Plan were as follows:

- The Icahn Parties would receive the Debtors' casino assets to satisfy their secured claims.
- The City of Atlantic City would retain its secured tax claims against the applicable properties.
- Administrative expenses and priority claims would be paid from the remaining cash on hand.
- The Debtors' non-casino assets, including additional remaining cash and claims and causes of action, would be transferred to a liquidating trust for the benefit of holders of allowed general unsecured claims (including the Icahn Parties' deficiency claims).

4.6.4 Trump Entertainment's Motion for Authorization of Post-Petition Financing

On November 26, 2014, the Debtors filed a Motion for authorization to obtain post-petition financing from the Icahn Parties (the "DIP Motion").⁴⁹² TER sought to obtain senior secured priming and superpriority financing, first in the form of a \$5 million loan facility, later readjusted and approved for the final amount of \$26.5 million.⁴⁹³ The Debtors and First Lien Lenders stated the available Cash Collateral was insufficient to satisfy their ongoing financial requirements regarding administration of the Chapter 11 cases. DIP financing was necessary, the Debtors argued, to enable the Taj Mahal's continued operations through consummation of the Plan.⁴⁹⁴

I. Levine Staller Objection

Levine Staller objected to the entry of an order on the DIP Motion that would grant any relief that may be inconsistent with the Court's then-pending decision in connection with the

⁴⁹⁰ *Id.* at 1.

⁴⁹¹ *Id.* at 3.

⁴⁹² [Debtors' Motion for Order Authorizing Debtors to Obtain Postpetition Financing...Granting Adequate Protection to the Prepetition Secured Parties...Granting Liens and Superpriority Claims, and Modifying the Automatic Stay](#), Docket no. 565, Case no. 14-12103, filed November 26, 2014 [hereinafter *DIP Motion*].

⁴⁹³ [Order Authorizing the Debtors to Amend the DIP Credit Agreement and Amending the Final DIP Order on Account of Such Amendment at 2](#), Docket no. 1144, Case no. 14-12103, filed March 19, 2015 [hereinafter *DIP Order*].

⁴⁹⁴ *DIP Motion*, *supra* note 492, at 6-7.

disputed Charging Lien Motion and Levin Staller's secured claim.⁴⁹⁵ Levine Staller argued the DIP financing would impermissibly prime its fully secured claim and perfected Charging Lien without Levine Staller's consent in a supplemental objection on January 13, 2015.⁴⁹⁶ Levine Staller stated it fully supported DIP financing, provided the firm receive adequate protection.⁴⁹⁷ The Icahn Parties filed a reply to the objection and argued the court had only considered the perfection and priority of Levine Staller's claim, not the value.⁴⁹⁸ Further, Levine Staller had yet to meet its burden of valuing the claim—the evidence proffered by Levin Staller to date had conclusively established the value of their claim as unsecured.⁴⁹⁹ Because the lien was subordinate to the First Lien Parties' claims, Section 506(a) mandated that Levin Staller's claim must be treated as unsecured.⁵⁰⁰

II. *Trump Marks Objection*

Trump AC Casino Marks filed a limited objection and reservation of rights with respect to the Debtors' Motion for DIP financing "to the limited extent that it provides for an impermissible modification of the parties' rights and obligations under the License Agreement...and impermissibly includes among the collateral securing the DIP Loan the license agreement and the Debtors' rights thereunder."⁵⁰¹ Icahn responded to Trump Marks' objection by stating that Trump Marks failed to disclose a provision of the License Agreement that stated Trump Marks in fact consented to the Debtors' pledge of their rights under the Agreement to the First Lien Parties—"it is utter gamesmanship for Trump [Marks] to have consented to the Debtors' pledge of their rights to secure hundreds of millions of dollars due under the prepetition facility, but to oppose the grant to secure the proposed... [DIP Loan]."⁵⁰²

The parties came to an agreement regarding Trump Marks initial objection to the modification of its license agreement; however, after the Court approved an extension for the Debtors' use of DIP Loans as cash collateral, the Debtors notified Trump Marks the Icahn Parties

⁴⁹⁵ [Objection and Reservation of Rights of Levine Staller...](#), Docket no. 583, Case no. 14-12103, filed December 3, 2014.

⁴⁹⁶ [Supplemental Objection of Levine Staller... at 4](#), Docket no. 757, Case no. 14-12103, filed January 13, 2015.

⁴⁹⁷ *Id.*

⁴⁹⁸ [First Lien Parties' Reply to Levine Staller... at 3-4](#), Docket no. 805, Case no. 14-12103, filed January 23, 2015 [hereinafter *Icahn Reply to Levine Objections*].

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.* at 9.

⁵⁰¹ [Limited Objection and Reservation of Rights of Trump AC Casino Marks... at 1-2](#), Docket no. 589, Case no. 14-12103, filed December 3, 2014.

⁵⁰² [Response of First Lien Parties to Trump AC's Objection to the Debtors' Debtor in Possession Financing Motion at 2](#), Docket no. 646, Case no. 14-12103, filed December 17, 2014.

may have second thoughts with respect to language agreed upon by the parties in the motion to extend.⁵⁰³ Trump Marks supplemented the initial objection later the same day and therein renewed the limited objection and cross-moved for entry of an order vacating the Cash Collateral extension order “to the extent they provide that the license agreement and the Debtors’ rights thereunder [were] included within the collateral securing the Adequate Protection Liens.”

III. DIP Agreement and Financing Authorization

After determining the relief requested in the DIP Motion “fair and reasonable and in the best interests of the Debtors, their creditors, their estates, and all parties in interest,”⁵⁰⁴ Judge Gross authorized the Debtors to obtain senior secured priming and superpriority post-petition financing, in an aggregate principal amount not to exceed \$26.5 million, pursuant to the terms of the Court Order and Credit Agreement between the Icahn Parties and TER.⁵⁰⁵ The Court found TER’s position in need of post-petition financing persuasive and held the Debtors “need[ed]” to obtain financing in order to permit the orderly continuation of the operation of their business, to maintain relationships, to make capital expenditures, and to satisfy other working capital and operational needs.⁵⁰⁶ Judge Gross permitted liens placed on TER’s assets to the assurance and benefit of the Icahn Parties (the “DIP Collateral”)⁵⁰⁷ and prohibited use of the DIP financing to obtain other security interests equal or senior to the DIP Liens or to take any proactive measures to challenge the validity of the DIP Agreement or Liens therein.⁵⁰⁸

⁵⁰³ [Supplement to Limited Objection and Reservation of Rights of Trump AC Casino Marks, LLC, with Respect to the Debtors’ Motion for Order \(I\) Authorizing Debtors to Obtain Postpetition Financing...](#), Docket no. 750, Case no. 14-12103, filed January 12, 2015.

⁵⁰⁴ [Final Order Authorizing Debtors to Obtain Postpetition Financing...Granting Adequate Protection to the Prepetition Secured Parties...Granting Liens and Superpriority Claims, and Modifying the Automatic Stay at 4](#), Docket no. 846, Case no. 14-12103, filed January 30, 2015 [hereinafter *DIP Financing Order*].

⁵⁰⁵ *Id.* at 2.

⁵⁰⁶ *Id.* at 6.

⁵⁰⁷ *Id.* at 3.

⁵⁰⁸ *Id.* at 33.

4.6.5 Trump Entertainment's Settlement with the Online Gaming Companies

Trump Entertainment Resorts filed Motions to approve settlements between the Debtors, Betfair Interactive,⁵⁰⁹ and Ultimate Gaming⁵¹⁰ on December 4, 2014 (respectively the “Betfair” and “Ultimate Gaming” “Settlements”). The Betfair⁵¹¹ and Ultimate Gaming⁵¹² Settlements were approved in full by Judge Gross on December 19, 2014. TER formally denied Betfair’s accusations but stated the settlement agreement would “preserve estate assets” by avoiding further litigation.⁵¹³ The Betfair Settlement encompassed all claims and causes of action with respect to the Online Gaming Agreement, ownership of Betfair Customer Data, and cash deposited in the Online Gaming and Suspense Accounts.⁵¹⁴ The Betfair settlement provided that Betfair owned the Customer Data, the remaining funds in the Suspense Account belonged and would be remitted to Betfair, the Online Gaming Agreement would be terminated, and Betfair would pay Plaza Associates \$46,000 in cash.⁵¹⁵ Betfair was deemed to hold an Allowed General Unsecured Claim in the amount of \$700,000.⁵¹⁶ TER would have access to approximately \$400,000 in the Online Gaming Account for reimbursement of third-party expenses and operational use.⁵¹⁷

The Ultimate Gaming Settlement terms generally reflected the Betfair Settlement in respect to causes of action. However, Ultimate Gaming was to cease operations, as opposed to Betfair, who would continue operating under an alternate gaming license.⁵¹⁸ TER was permitted to use Gaming Account funds to reimburse itself for expenses associated with the Gaming Agreement, New Jersey Division of Gaming Enforcement fees, and Debtor-funded player withdrawals.⁵¹⁹ All

⁵⁰⁹ [Debtors’ Motion for Entry of an Order...Approving Settlement By and Among the Debtors and Betfair interactive US LLC](#), Docket no. 591, Case no. 14-12103, filed December 4, 2014.

⁵¹⁰ [Debtors’ Motion for Entry of an Order...Approving Settlement Agreement by and Among the Debtors and Fertitta Acquisitions Co LLC, D/B/A Ultimate Gaming](#), Docket no. 595, Case no. 14-12103, filed December 4, 2014.

⁵¹¹ [Order...Approving Settlement By and Among the Debtors and Betfair Interactive US LLC](#), Docket no. 670, Case no. 14-12103, filed December 19, 2014 [hereinafter *Betfair Settlement*].

⁵¹² [Order...Approving Settlement By and Among the Debtors and Fertitta Acquisitions Co LLC, D/B/A Ultimate Gaming](#), Docket no. 669, Case no. 14-12103, filed December 19, 2014 [hereinafter *Ultimate Gaming Settlement*].

⁵¹³ *Betfair Settlement*, *supra* note 511, at 5.

⁵¹⁴ *Id.* at 5-6.

⁵¹⁵ *Id.* at 6-7.

⁵¹⁶ *Id.* at 7.

⁵¹⁷ *Id.* at 9.

⁵¹⁸ *Ultimate Gaming Settlement*, *supra* note 512, at 5.

⁵¹⁹ *Id.* at 5-6.

remaining funds in the Gaming Account would go to TER, less \$500,000 payable to Ultimate Gaming.⁵²⁰ The Ultimate Gaming Online Gaming Agreement was terminated on September 3, 2014.⁵²¹

4.7 The Final Plan Proposal: Little Hope for the Taj Mahal

4.7.1 The Plan and Disclosure Statement

Trump Entertainment Resorts filed a third amended disclosure statement⁵²² and Plan Proposal (“Third Proposal” or “Final Plan”)⁵²³ on January 1, 2015. The Final Plan conspicuously changed the language of Debtors’ intention to preserve its business from a “going concern” basis to a “go-forward” basis,⁵²⁴ perhaps to suggest a change in attitude toward a resolution. TER again stated the Plan would enable TER to avoid a forced liquidation and continue operations. The Third Proposal stated the Taj Mahal was to remain open without government assistance and removed the impractical condition to the Plan’s approval.⁵²⁵ TER proposed to enter into an agreement with the Icahn Parties⁵²⁶ (then D/B/A IEH Investments I LLC) who would fully equitize their existing senior secured debt by receiving 100% of new TER shares post-reorganization.⁵²⁷ IEH Investments would provide \$13.5 million in new-money exit financing in the form of a New Term Loan. The New Term Loan⁵²⁸ would be used to repay the outstanding principal amount of loans under the DIP Credit Agreement, fees and expenses associated with the First Lien Term Loan Facility, payment of administrative expenses, priority claims, and to finance TER’s ongoing working capital.⁵²⁹ To summarize, Mr. Icahn was to purchase Trump Entertainment Resorts for the

⁵²⁰ *Id.* at 6.

⁵²¹ *Id.*

⁵²² [Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 713, Case no. 14-12103, filed January 1, 2015 [hereinafter *Third Statement*].

⁵²³ [Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 712, Case no. 14-12103, filed January 1, 2015 [hereinafter *Third Plan*].

⁵²⁴ *Third Statement*, *supra* note 522, at 20.

⁵²⁵ *Id.* at 36.

⁵²⁶ *Id.* at 56.

⁵²⁷ *Id.* at 52.

⁵²⁸ Later adjusted to \$16 million plus the aggregate outstanding principal amount of loans under the DIP Credit Agreement.

⁵²⁹ [Notice of Filing of Plan Supplement for Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 227-28](#), Docket no. 928, Case no. 14-12103, filed February 15, 2015.

remaining amount owed under the First Lien Credit Agreement and provide a loan to offset its relatively superficial debt resolution to the remaining secured and priority interests.

4.7.2 Treatment of Claims under the Final Plan

All allowed DIP Claims were to be paid in full in cash, and all liens and security interests granted to secure such claims and obligations would be terminated upon full satisfaction thereof.⁵³⁰ Holders of administrative expense and fee claims would be paid in cash in an amount equal to the claim allowed, provided that allowed administrative expense claims representing liabilities incurred in the ordinary course of business by the debtors, as debtors in possession, would be paid from the Debtors' pockets.⁵³¹ TER stated it would establish a Professional Fee Account that would be funded with cash equal to the lesser value of the estimated amount of the collective Fee Claims or the amount set forth on the Fee Schedule, less any post-petition payments made prior to the effective date.⁵³² Holders of Priority Tax Claims (Atlantic City) would receive cash in an amount equal to such claim at the effective date or deferred payments over a period of no less than five years after the Petition Date.⁵³³ TER eventually settled with Atlantic City for \$12 million in late 2015.⁵³⁴

Although the Plan's claimant classifications remained the same, Trump Entertainment Resorts modified its treatment of General Unsecured Claims.⁵³⁵ Unsecured claimants now had an option under the Plan. If a claimant opted to release the Debtors from all claims existing on the Plan's Effective Date based on any transaction that took place prior to the Effective Date, they would be entitled to a proportional share of Class A Distribution Trust Beneficial Interests. The releases were valuable—Class A held 75% of the aggregate value of the Distribution Trust assets. Claimants that opted not to release the Debtors would receive disbursement from the Class B Distribution Trust.

⁵³⁰ [Findings of Fact, Conclusions of Law, and Order Under Section 1129 of the Bankruptcy Code and Bankruptcy Rule 3020 Confirming Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as Modified](#) at 24, Docket no. 1123, Case no. 14-12103, filed March 12, 2015 [hereinafter *Plan Order*].

⁵³¹ *Id.* at 24-26.

⁵³² *Id.* at 26.

⁵³³ *Third Plan*, *supra* note 523, at 20.

⁵³⁴ Casino Connection AC, *Trump Entertainment Pays Atlantic City Property Taxes* (Dec. 2015), <http://perma.cc/HB6P-L9EH>.

⁵³⁵ *Plan Order*, *supra* note 530, at 30.

4.7.3 Objections to the Third Statement and Plan Proposal

1. Creditors' Committee Objection to Disclosure Statement Approval

The Committee filed its objection to the Third Disclosure Statement on January 12, 2015.⁵³⁶ The OCC contended the Debtors failure to finalize an agreement with the prepetition lenders (including the Icahn Parties) to fund the administration of the Debtors' Chapter 11 cases rendered consideration of the Statement premature.⁵³⁷ Indeed, the Court determined prior to the OCC's objection that postpetition financing was a necessary condition to confirmation of the Plan.⁵³⁸ The OCC argued that even if TER and the Icahn Parties were to formalize a post-petition financing agreement before the Confirmation Hearing, the Third Plan remained "too incomplete, contingent and speculative to warrant approval of the Disclosure Statement."⁵³⁹ The Committee's assertion that the Third Statement and Plan were unconfirmable relied on the arguments that:

- The Third Plan provided that the Debtors would be required to repay \$20 million in post-petition financing (in addition to "millions of dollars" in other administrative expense and priority claims) but were to receive only \$13.5 million in exit financing to do so,⁵⁴⁰
- The Third Plan removed two key components previously identified as necessary to future profitability: It no longer included a \$100 million New Term Loan from the Icahn Parties to fund capital improvements to allow TER to remain competitive, nor did it include the formerly necessary \$175 million in government concessions.⁵⁴¹
- The Disclosure Statement failed to contain critical "adequate information" that would allow unsecured creditors to make an informed decision to accept or reject the Plan, including (1) lists of Causes of Action being retained or waived by the Debtors, (2) a discussion of outstanding intercompany claims, (3) the terms and conditions of the New Term Loan (other than the \$13.5 million principle amount, and (4) a discussion of the Debtors' viability under the "dramatically different circumstances" if the Third Plan.⁵⁴²

⁵³⁶ [Second Supplemental Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtors' Motion for Order \(A\) Approving the Disclosure Statement...](#), Docket no. 743, Case no. 14-12103, filed January 12, 2015 [hereinafter *OCC Third Statement Objection*].

⁵³⁷ *Id.* at 2.

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.* at 3.

⁵⁴¹ *Id.*

⁵⁴² *OCC Third Statement Objection*, *supra* note 536, at 4.

The OCC stated that “At its core, the Third Amended Plan [was] nothing more than an option for the Icahn Parties to exercise, renegotiate, or terminate in [their] sole discretion.” The Icahn Parties continued to demand broad and impermissible third party releases, yet refused to offer more than \$1 million to unsecured creditors.⁵⁴³ The Committee maintained that moving forward with Plan confirmation would not serve the interests of the Debtors’ estates or any creditor other than Mr. Icahn.⁵⁴⁴

II. Levine Staller Objection to Disclosure Statement Approval

Levine Staller argued the Debtors continued to defiantly contest the Firm’s status as a fully secured creditor in its Objection to the Third Statement on January 13, 2015.⁵⁴⁵ Levine Staller again based its objection to the Disclosure Statement on the ground that it failed to provide adequate information pertaining to the “fully secured claim.”⁵⁴⁶ Despite the Court’s ruling that the Charging Lien was in fact secured, and junior only to First Lien claims, TER refused to list it as such in its filings.⁵⁴⁷ Finally, Levine Staller argued, the Order perfecting the Charging Lien made no limitation on the value or allowance of Levine Staller’s claim in the case and, if the debt were in fact secured, it should be a Class 2 “Other Secured” claim under the Plan.⁵⁴⁸

The Icahn parties addressed Levine Staller’s Objection by arguing that it failed to object to the valuation set forth in the previous and current Disclosure Statements—the valuation in which the First Lien Parties were considered under-secured.⁵⁴⁹ Therefore, Icahn stated, Levine Staller’s argument that the Court took into account various valuations presented to it and must have meant to decide there was sufficient collateral to secure its claim was demonstrably false.⁵⁵⁰ Not valuation evidence existed in the record of the case except for that in the Disclosure Statement.⁵⁵¹

⁵⁴³ *Id.* at 3-4.

⁵⁴⁴ *Id.*

⁵⁴⁵ [Supplemental Objection of Levine...to the Debtors Motion for Entry of an Order Approving the Proposed Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization](#), Docket no. 758, Case no. 14-12103, filed January 13, 2015 [hereinafter *Levine Staller Third Statement Objection*].

⁵⁴⁶ *Id.* at 2.

⁵⁴⁷ The Third Amended Plan provided that “General Unsecured Claim” means any claim (*including, for the avoidance of doubt, the Levine Staller Claims*) (emphasis added).

⁵⁴⁸ *Levine Staller Third Statement Objection*, *supra* note 545, at 7.

⁵⁴⁹ [First Lien Parties’ Reply to Levine Staller, Sklar, Chan & Brown, P.A.’S Supplemental Objections to the Debtors’ Motion for Approval of...Disclosure Statement at 9](#), Docket no. 805, Case no. 14-12103, filed January 23, 2015.

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

III. National Retirement Fund's Objection to Plan Confirmation

The Local 54 employees' pension account, the National Retirement Fund ("NRF"), objected to the Plan on March 10, 2015⁵⁵² and requested the Court provide in the Confirmation Order that if the CBA Order was reversed after the effective date, NRF's ballot and release would be deemed void.⁵⁵³ The NRF argued the Plan's proposed effective date would likely occur *before* approval of the OCC's CBA Order. The NRF claims were premised on withdrawal liability incurred by the Debtors as a result of the entry of the CBA Order, and if TER did not withdraw, it would have no claims related to the rejection of the CBA Agreement or distribution entitlements therein.⁵⁵⁴ The NRF stated that a reversal or modification of the CBA Order after the effective date would force the Reorganized Debtors to continue its contributions to the NRF; alternatively, if the CBA Order were reversed after the effective date, the NRF's claims related to TER's obligation to the fund would be negated by the Plan's release provisions.⁵⁵⁵

The critical component of the proposed agreement was the creditor's decision to release the Debtors and Reorganized Debtors from any claims existing on the Plan's effective date⁵⁵⁶ The NRF argued that under the Plan it would be required to provide a broad release to the Released Parties in order to participate in the Class A Distribution Trust (to which 75% of the aggregate value of the distribution assets would be allocated). The NRF claimed the predicament subjected it to a potential "unjust and irrational" outcome if an appellate court were to reverse or vacate the CBA Order after the effective date.⁵⁵⁷ "Simply put, NRF [was] merely trying to avoid the whipsaw effect of both (a) its withdrawal liability claims being negated by a subsequent appellate ruling, and (b) being prohibited from asserting administrative claims against the Released Parties."⁵⁵⁸

IV. U.S. Trustee's Objection to Plan Confirmation

The U.S. Trustee argued against certain third-party release and exculpation provisions of the Plan in an Objection filed March 9, 2015.⁵⁵⁹ The language at issue in the Plan contemplated

⁵⁵² [Objection to the Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 1084, Case no. 14-12103, filed March 10, 2015 [hereinafter *NRF Objection*].

⁵⁵³ *Id.* at 3-4.

⁵⁵⁴ *Id.* at 1-2.

⁵⁵⁵ *Id.* at 2.

⁵⁵⁶ *Id.* at 2-3.

⁵⁵⁷ *Id.* at 3.

⁵⁵⁸ *NRF Objection*, *supra* note 552, at 4.

⁵⁵⁹ [United States Trustee's Objection to Confirmation of Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified](#), Docket no. 1072, Case no. 14-12103, filed March 9, 2015.

release by holders of allowed general unsecured claims entitled to vote on the Plan (unless parties were to opt-out of the release).⁵⁶⁰ The Trustee claimed the release “did not appear to be voluntary,” stating “to the extent such parties do not return a ballot [to opt-out], they [had] not consented to a release, and [could not] be compelled to involuntarily grant a release.” The Trustee argued the non-debtor release provision was overbroad and the majority of parties seeking to be released had not provided “critical financial contributions” necessary to enable the Plan’s success.⁵⁶¹ The exculpation provision of the Plan provided exculpation to the Released Parties and thus was overbroad (and impermissible) according to the Trustee.⁵⁶² The Trustee stated the list of parties receiving exculpation should be limited to those who served as estate fiduciaries.⁵⁶³ This argument, if accordingly ordered, would effectively allow releases to unsecured creditors while barring releases to the First Lien Lenders.

V. *Icahn’s Reply to the Trustee and the NRF*

The Icahn Parties responded to the NRF and U.S. Trustee’s objections on March 11, 2015.⁵⁶⁴ The response asked the Court to reject the Trustee’s assertion that releases in the Plan were impermissibly involuntary because the releases were, in fact, consensual.⁵⁶⁵ The response also challenged the Trustee’s suggestion that nonconsensual releases of the First Lien Lenders, as third parties, were prohibited because they did not make a “critical financial contribution” to the case.⁵⁶⁶ The Icahn Parties argued they had contributed significantly to the case, which provided the basis for granting them release and exculpation.⁵⁶⁷

The Icahn Parties addressed the NRF Objection based on its “perceived unfairness allegedly caused by the Solicitation Procedures Order (“SPO”).”⁵⁶⁸ The NRF’s failure to timely oppose the SPO was “fatal” to the Objection before the Court. The Icahn Parties also argued against the NRF’s Objection pertaining to the Plaza Bargaining Agreement—the NRF, Icahn

⁵⁶⁰ *Id.* at 4.

⁵⁶¹ *Id.* at 6.

⁵⁶² *Id.*

⁵⁶³ *Id.*

⁵⁶⁴ [Response of First Lien Parties to United States Trustee’s and the National Retirement Fund’s Objections to Confirmation of Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as Modified](#), Docket no. 1095, Case no. 14-12103, filed March 11, 2015.

⁵⁶⁵ *Id.* at 2.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.* at 2-3.

⁵⁶⁸ *Id.* at 3.

claimed, was not a party to the Plaza CBA Agreement as a result of its admission of “complete withdrawal with respect of the Plaza.”⁵⁶⁹

VI. *Trump AC Casino Marks*

Trump AC Casino Marks filed a limited objection to the Third Statement on January 12, 2015,⁵⁷⁰ which, according to Mr. Trump, sought to “impermissibly strip away rights of many critical parties in favor of one...”⁵⁷¹ Trump Marks questioned the extended time-frame during which the creditors would be “left in limbo” awaiting resolution of the CBA Order⁵⁷² and expressed to the Court several concerns regarding the Disclosure Statement, arguing it:

- Wrongly stated that the First Lien Lenders could unilaterally transfer the rights and obligations under the license agreement.
- Failed to address the nature of all administrative and priority claims and whether the debtors could and would satisfy them.
- Failed to identify the Debtors’ significant loss of employees and management personnel and the impact it will have on operations.
- Described a process that ignores the protections of a contract and lease counterparty under Section 365.⁵⁷³
- The Plan sought impermissible third party releases.⁵⁷⁴

4.7.4 *Committee Moves for Standing to Prosecute Claims against Debtors’ Assets*

On New Year’s Day, 2015 the Committee took a stab at TER’s cash assets and moved for an order granting the Committee authority to prosecute claims against the Icahn Parties on behalf of the Debtors’ estates.⁵⁷⁵ In order for the Court to grant such standing, the movant must prove by a preponderance of the evidence that: (i) the claims it seeks to bring are colorable, (ii) the benefit

⁵⁶⁹ *Id.*

⁵⁷⁰ [Limited Objection of Trump AC Casino Marks LLC, Donald J. Trump and Ivanka Trump to the Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 742, Case no. 14-12103, filed January 12, 2015.

⁵⁷¹ *Id.* at 1.

⁵⁷² *Id.* at 2-3.

⁵⁷³ *Id.* at 12.

⁵⁷⁴ *Id.*

⁵⁷⁵ [Motion of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief](#), Docket no. 826, Case no. 14-12103, filed January 1, 2015 [hereinafter *OCC Termination Motion*].

of bringing the claim will outweigh the costs, and (iii) the Debtors have unjustifiably refused to pursue the claims.⁵⁷⁶

The OCC argued the Debtors' waiver of claims against the Icahn Parties and their joint assertion of a "common interest protection"⁵⁷⁷ entitled the OCC to bring claims against "tens (and perhaps even hundreds) of millions of dollars that [were] excluded from the First Lien Lenders' collateral."⁵⁷⁸ The Committee further argued certain transactions were preferential or fraudulent transfers that should have been avoided and recovered for the Committee's benefit. The Committee asked the Court to consider the high likelihood of a substantial recovery if allowed to assert the claims balanced against the possibility of "almost no recovery" if denied.⁵⁷⁹ The Committee requested relief under attached Complaint:

- A judgment declaring that the Icahn Parties do not have a lien on Cage Cash.⁵⁸⁰
- A judgment avoiding the Icahn Parties' alleged lien on Cage Cash and preserving such lien for the benefit of the estate
- A judgment declaring net operating losses attributable to any year prior to 2015 and any increase in the Debtors' post-petition going concern value excluded from the Icahn Parties' collateral.⁵⁸¹
- A judgment declaring the value of the Icahn Parties' secured claim did not exceed the liquidation value of the collateral and that any claims exceeding the liquidation value be reclassified as general unsecured.
- A judgment avoiding an amendment to the First Lien Credit Agreement as a preference and/or as a constructively fraudulent transfer and recovery thereof.
- An award of pre- and post-judgment interest, costs and fees, and other relief.

⁵⁷⁶ [Memorandum Order Re Motion of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief](#), Docket no. 943, Case no. 14-12103, filed February 18, 2015 [hereinafter *Termination Order*].

⁵⁷⁷ See *OCC Termination Motion*, *supra* note 575, at 2 ("[The Debtors'] common interest protection with the First Lien Lenders with respect to 'the Debtors' strategy and efforts to prosecute and ultimately confirm the plan of reorganization.").

⁵⁷⁸ *Id.* at 2-3.

⁵⁷⁹ *Id.* at 3.

⁵⁸⁰ Unknown amount of cash on hand used for gambling operations and payouts.

⁵⁸¹ Including the rejection of the Local 54 CBA or the termination of the pension fund with NRF.

Trump Entertainment Resorts⁵⁸² and the Icahn Parties⁵⁸³ each filed objections to the Committee’s Motion five weeks later on February 6, 2015. The First Lien Lenders stated the OCC had not met its burden of showing that the claims it proposed to seek were colorable or that pursuit of those claims would benefit the estate.⁵⁸⁴ The Icahn Parties challenged the Committee’s claims:⁵⁸⁵

- The Secured Parties’ liens on all assets, explicitly including the cage cash, were granted pursuant to a final non-appealable 2010 Confirmation Order of the prior Bankruptcy Plan.
- The 2010 Confirmation Order grant of liens was an *in rem* order of the Bankruptcy Court and “binding on the world.”⁵⁸⁶
- The Complaint alleging that the secured parties’ lien on cage cash was voidable as a preference failed because the Committee did not allege the minimal facts necessary to assert that the Secured Parties’ position in cage cash improved in the ninety days before the filing. “In fact, it did not. It actually diminished.”⁵⁸⁷
- The Committee’s theory that the Secured Parties’ collateral should be valued at a liquidation value as of the petition date was contrary to controlling Third Circuit precedent.
- The Committee’s Section 552(b) argument must be rejected because the Secured Parties had liens on *all* of the Debtors’ assets including proceeds therefrom. Further, the equities of the case exception applied to carve our value for unsecured creditors only to the extent that unencumbered assets are used to enhance the estate’s value.
- TER was a general partner of TER Holdings, the obligor under the First Lien Credit Agreement, and was liable for all of TER Holdings’ unpaid obligations. Since TER was liable on the debt prior to the amendment of the First Lien Credit Agreement, its change of status from a guarantor to a co-obligor did not diminish its estate or trigger an avoidable transfer.

Trump Entertainment Resorts argued there were insufficient funds to pay its First Lien Debt in full,⁵⁸⁸ and “unfortunately, general unsecured creditors are ‘out-of-the-money’ and not

⁵⁸² [Debtors’ Objection to Motion of the Official Committee of Unsecured Creditors for Entry of and Order Granting Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief](#), Docket no. 874, Case no. 14-12103, filed February 6, 2105 [*TER Objection to OCC Claims Motion*].

⁵⁸³ [Objection of the Secured Parties to the Motion of the Official Committee of Unsecured Creditors for Entry of and Order Granting Leave, Standing, and Authority to Commence, Prosecute, and Settle Certain Causes of Action on Behalf of the Debtors’ Estates](#), Docket no. 873, Case no. 14-12103, filed February 6, 2105.

⁵⁸⁴ *Id.* at 2.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ *TER Objection to OCC Claims Motion*, *supra* note 582, at 1.

otherwise entitled to receive a distribution.”⁵⁸⁹ TER attacked the fact that the Committee’s Complaint proffered zero quantitative analysis or evidence otherwise demonstrating the impact of its proposed lien avoidance actions.⁵⁹⁰ The Company stated the allegations in the OCC Complaint should be properly addressed at the Confirmation Hearing.⁵⁹¹

The Court addressed the Committee’s claims in an Order on February 18, 2015.⁵⁹² Judge Gross stated the Termination Motion revealed the complexity of the Committee’s claims and held the claims were in fact colorable, although the Icahn Parties and TER had raised “weighty defenses to [them].”⁵⁹³ However, the Court held that the Committee failed to provide evidence as to the cost-benefit of prosecuting the proposed claims, and, therefore, any finding on the issue would amount to speculation.⁵⁹⁴ The Icahn Parties had provided \$20 million in DIP financing, \$13.5 million in exit financing, permitted their collateral to be used for administrative expenses and cure claims, were making funds available for the \$1 million distribution to the unsecured creditors, and waived their \$100 million deficiency claim. Judge Gross balanced the Icahn Parties’ expenditures, the interest in preserving three thousand jobs, and the fact that unsecured creditors would receive a nominal portion of their claims under the Plan—approximately \$0.005/\$1.00—but deferred the Motion.⁵⁹⁵ Judge Gross stated the Court would be in a far better position to evaluate the Motion when considering whether to confirm the Plan.⁵⁹⁶

4.7.5 OCC Member Thermal Energy’s Settlement Compromise

On February 20, 2015, Trump Entertainment Resorts filed a motion to reject its service agreement with Thermal Energy.⁵⁹⁷ TER entered into agreements with Thermal Energy to service the Trump Plaza and Taj Mahal in 1996 (the “Thermal Service Agreements”)⁵⁹⁸ which were

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.* at 2.

⁵⁹¹ *Id.* at 9.

⁵⁹² *Termination Order*, *supra* note 576, at 2.

⁵⁹³ *Id.* at 3-4.

⁵⁹⁴ *Id.* at 3.

⁵⁹⁵ *Id.* at 4-5.

⁵⁹⁶ *Id.* at 5.

⁵⁹⁷ [Debtors’ Motion for Entry of an Order...Authorizing the Debtors to Reject Certain Energy Service Agreements with Thermal Energy...](#), Docket no. 954, Case no. 14-12103, filed February 20, 2015 [hereinafter *Thermal Motion*].

⁵⁹⁸ *Id.* at 3-4.

extended to 2027 and 2036, respectively.⁵⁹⁹ The Taj Mahal and Trump Plaza Service Agreements provided that “title to Thermal Energy’s production facilities⁶⁰⁰ shall remain with the Debtors,” and Thermal Energy “shall not remove, alter, or permit any lien to exist” on the production facilities.⁶⁰¹ The parties stipulated proper adequate assurance protections after the Petition Date that entailed the continued performance of both parties under the Service Agreements.⁶⁰² Despite its post-petition agreement to continue service, TER stated it could adequately supply its own energy needs through the on-site facilities without the need for Thermal Energy’s service.⁶⁰³ TER claimed Thermal Energy’s 2014 invoices totaled approximately \$16.5 million.⁶⁰⁴

Without the additional third-party cost TER would save approximately \$9 million annually in energy expenditures.⁶⁰⁵ TER relied on Section 365(a) of the Bankruptcy Code, which states that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor”⁶⁰⁶ in order to “permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’”⁶⁰⁷ The standard applied to determine whether the rejection of a contract should be authorized is the “business judgment” standard.⁶⁰⁸ Under the business judgment standard, once a debtor states a valid business justification, “the business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company.”⁶⁰⁹ TER argued under applicable precedent⁶¹⁰ that if a debtor’s business judgment has been reasonably exercised,

⁵⁹⁹ *Id.* at 4.

⁶⁰⁰ *Id.* at 5-6 (The production facilities provided chilled water and steam necessary for cooling and heating the casinos and were located on site at the respective casinos. Thermal Energy opted to bypass the Plaza facility and supplied resources via its “Midtown Thermal Control Center.”).

⁶⁰¹ *Id.* at 4-5.

⁶⁰² *Id.* at 6.

⁶⁰³ *Thermal Motion*, *supra* note 597, at 6-7.

⁶⁰⁴ *Id.* at 7.

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.* at 8.

⁶⁰⁷ [Orion Pictures Corp. v. Showtime Networks, Inc.](#), 4 F.3d 1095, 1098 (2d Cir. 1993).

⁶⁰⁸ *Thermal Motion*, *supra* note 597, at 8-9.

⁶⁰⁹ [Smith v. Van Gorkom](#), 488 A.2d 858, 872 (Del. 1985).

⁶¹⁰ [NLRG v. Bildisco & Bildisco](#), 462 U.S. 513, 523 (1984).

the court should approve the rejection of the contract.⁶¹¹ Judge Gross granted the Motion on March 12, 2015, terminating the Thermal Energy Service Agreements and Adequate Assurance Stipulations.⁶¹²

On March 31, 2015, the Debtors filed a Motion for approval of a settlement agreement with Thermal Energy.⁶¹³ Trump Plaza’s annual capacity costs were reduced by \$3 million and rate escalation rates were capped under the settlement.⁶¹⁴ TER proposed to make an immediate payment of \$81,000 to Thermal Energy in satisfaction of claims against title and ownership of the on-site production facilities.⁶¹⁵ TER agreed to continued performance under the Energy Service Agreements and Adequate Assurance Stipulation through March 31, 2015.⁶¹⁶ Judge Gross granted the Motion on April 21, 2015.⁶¹⁷

Thermal Energy Claims Against Trump Entertainment Resorts

Debtor	Initial Claim⁶¹⁸	Settlement Outcome
<u>Taj Mahal</u> <i>General Unsecured</i>	\$27,496,374	\$32,496,374 <i>General Unsecured</i>
<u>Taj Mahal</u> <i>503(b)(9)</i>	\$476,634	\$287,500 <i>Admin. Expense</i>
<u>Plaza Associates</u> <i>General Unsecured</i>	\$16,673,783	\$21,673,783 <i>General Unsecured</i>
<u>Plaza Associates</u> <i>503(b)(9)</i>	\$339,053	\$287,500 <i>Admin. Expense</i>

4.7.6 Settlement of Levine Staller and Trump Marks Disputes

The Court determined that Levine Staller’s Charging Lien Claim was junior to the liens of the First Lien Lenders and subsequently approved a settlement agreement between Levine Staller

⁶¹¹ *Thermal Motion*, *supra* note 597, at 10.

⁶¹² [Order...Authorizing the Debtors to Reject Certain Energy Agreements with Thermal Energy, Effective as of the Rejection Effective Date](#), Docket no. 1118, Case no. 14-12103, filed March 12, 2015.

⁶¹³ [Debtors’ Motion for Entry of an Order...Approving the Release and Settlement Agreement by and Among the Debtors and Thermal Energy Limited Partnership I](#), Docket no. 1192, Case no. 14-12103, filed March 31, 2015.

⁶¹⁴ *Id.* at 5.

⁶¹⁵ *Id.* at 8.

⁶¹⁶ *Id.*

⁶¹⁷ [Order...Approving the Release and Settlement Agreement by and Among the Debtors and Thermal Energy Limited Partnership I](#), Docket no. 1252, Case no. 14-12103, filed April 21, 2015.

⁶¹⁸ Revised amounts in Final Order.

and TER on March 12, 2015.⁶¹⁹ Judge Gross held Levine Staller's Proofs of Claim associated with the Charging Lien were to be reduced and reclassified as a single allowed "Other Secured Claim" in the aggregate amount of \$200,000 and a single allowed General Unsecured Claim in the aggregate amount of \$1,437,551.⁶²⁰

Trump Marks, TER, and the Icahn Parties reached a settlement agreement approved by Judge Gross on March 12, 2015.⁶²¹ The settlement addressed Mr. Trump's motion to modify the automatic stay to terminate the TER Trademark Licensing Agreement ("TLA"), the parties' dispute over approximately \$147,600 regarding Trump Marks' Ground Lease Claim, and a new Administrative Claim by Mr. Trump in the amount of \$24,578.25.⁶²² The settlement provided that the Trump Marina and Trump Plaza would no longer constitute qualifying casino properties as of the Plan's Effective Date, and all rights and interest in the License granted to TER for the use of the "Trump" name would become null and void in respect to those properties.⁶²³ TER was responsible for the labor and expense of removal of all signage that displayed Mr. Trump's name.⁶²⁴ Further, Trump Marks was entitled to terminate the Trademark Licensing Agreement for signage at the Taj Mahal if it were to close.⁶²⁵

Trump Marks consented to the Reorganized Debtors' assumption of an amended TLA for their continued use of the Trump name, but held the right to fully terminate the licensing agreement if the Plan Effective Date did not occur on or before March 15, 2017.⁶²⁶ The Reorganized Debtors agreed to pay Mr. Trump \$172,216.65 on the Plan Effective Date to fully satisfy the Ground Lease Claim.⁶²⁷

⁶¹⁹ [Order, Pursuant to Section 105\(A\) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement by and Among the Debtors and Levine Staller](#), Docket no. 1120, Case no. 14-12103, filed March 12, 2015 [hereinafter *Levine Settlement Order*].

⁶²⁰ *Id.* at 2.

⁶²¹ [Order, Pursuant to Section 105\(A\) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement by and Among the Debtors, the Trump Parties, and the First Lien Parties](#), Docket no. 1119, Case no. 14-12103, filed March 12, 2015 [hereinafter *Trump Settlement Order*].

⁶²² *Id.* at 6.

⁶²³ *Id.* at 4-5.

⁶²⁴ *Id.* at 5.

⁶²⁵ *Id.* at 6.

⁶²⁶ *Id.* at 7-8.

⁶²⁷ *Trump Settlement Order*, *supra* note 621, at 8.

4.7.7 Approval of the Plan and Disclosure Statement

Classes 3 and 4 were the only classes entitled to vote on the Plan. As evidenced in the chart below, Class 3 and the Accepting Class 4 Creditors voted to accept the Plan, although some of Class 4 voted to reject. Classes 1 and 2 were unimpaired and deemed to have accepted the Plan. The Remaining classes would not receive distribution under the Plan and were deemed to have accepted.

Despite the voting classes' failure to satisfy section 1129(a)(8) of the Bankruptcy Code, which requires the affirmative vote of each class of claims, the Court stated the Plan could nevertheless be confirmed over the non-acceptance of the Rejecting Class 4 Creditors and the Deemed Rejecting Classes—that is, those classes could be “crammed down.”⁶²⁸ The Impaired Class 3 and 4 acceptances were sufficient in number and amount to satisfy the section 1129(a)(10) requirement that at least one Impaired Class must vote to accept. Further, the Final Proposal satisfied sections 1129(b)(1) and (b)(2) as there were no holders of any interest of the Debtors junior to any Rejecting Class that would receive property under the Plan, and holders of Claims against the Debtors that were senior to the Rejecting Classes were to receive distributions valued less than 100% of their Allowed Claims.⁶²⁹

Final Plan Voting Results⁶³⁰

Debtor Name	Class Description	# Accept	# Reject	Amount Accepting	Amount Rejecting	Class Voting Result
		% Accept	% Reject	%	%	
All Debtors	Class 3 – First Lien Creditors	3	0	\$292,257,374	\$0.00	ACCEPT
		100%	0%	100%	0%	
TER	4A – General Unsecured	28	30	\$203,497,458	\$32,534,000	REJECT
		48.28%	51.72%	86.22%	13.78%	
TER Holdings	4B – General Unsecured	7	7	\$198,626,800	\$30,647,015	REJECT
		50%	50%	86.63%	13.37%	
Trump Plaza	4C – General Unsecured	20	26	\$198,679,572	\$23,449,614	REJECT
		43.48%	56.52%	89.44%	10.56%	
Trump Marina	4D – General Unsecured	8	4	\$198,627,312	\$21,792,266	ACCEPT
		66.67%	33.33%	90.11%	9.89%	
Taj Mahal		25	91	\$199,157,202	\$25,575,061	REJECT

⁶²⁸ *Id.*

⁶²⁹ *Id.* at 16-17.

⁶³⁰ See Lori Butler & John Weil, *A Practitioners Guide to Counting Ballots for a Chapter 11 Plan*, American Bankruptcy Institute (Jan. 1997) (stating that unimpaired classes are conclusively presumed to have accepted the Chapter 11 Plan. If a plan provides that any class will not receive or retain any property under the plan, that class is deemed to have rejected the plan. In order to accept the plan, the allowed voting classes must vote in one-half in number and two-thirds in amount), <http://perma.cc/38TP-6VCE>.

	4E – General Unsecured	21.55%	78.45%	88.62%	11.38%	
Trump Development	4F – General Unsecured	7	2	\$198,626,800	\$21,866,295	ACCEPT
		77.78%	22.22%	90.08%	9.92%	
TER Development	4G – General Unsecured	7	2	\$198,626,800	\$21,866,295	ACCEPT
		77.78%	22.22%	90.08%	9.92%	
TERH LP	4H – General Unsecured	6	2	\$196,739,532	\$21,866,295	ACCEPT
		75%	25%	90%	10%	

4.8 Plan Confirmation Order; Findings of Fact and Conclusions of Law

4.8.1 General Entitlements and Obligations

Judge Gross confirmed the Final Plan on March 12, 2015 after all confirmation objections were “fully and fairly” litigated in satisfaction of the Bankruptcy Code.⁶³¹ The Court granted TER releases from holders of Unsecured Claims that failed to exercise Opt-Out Elections, discharged all third-party claims and injunctions against TER and its assets, approved satisfaction of all DIP Claims immediately in cash, and approved the New First Lien.⁶³²

Trump Entertainment Resorts convinced Judge Gross it would not be forced to liquidate post-confirmation,⁶³³ and the Court found the Debtors’ current liquidity sufficient to meet its obligations arising under the Plan based on TER’s Financial Projections—the Court stated TER’s Financial Projections and evidence in support thereof were “uncontroverted and persuasive,” and satisfied standard of U.S.C. § 1129(a)(11).⁶³⁴ Interestingly, though, Judge Gross determined the Debtors’ enterprise value was insufficient to support a distribution to holders of General Unsecured Claims under absolute priority principles.⁶³⁵ Judge Gross explicitly rejected the OCC’s argument that the principle purpose of the Plan was avoidance of taxes for the benefit of the Icahn Parties.⁶³⁶

The Plan Order stated the Final Proposal satisfied the Best Interests of Creditors Test under section 1129(a)(7) of the Bankruptcy Code.⁶³⁷ According to the court, the Liquidation Analysis

⁶³¹ *Plan Order*, *supra* note 530.

⁶³² *Id.* at 25-29.

⁶³³ *Id.* at 15.

⁶³⁴ *Id.* at 15-16.

⁶³⁵ *Id.* at 19.

⁶³⁶ *Id.* at 17.

⁶³⁷ *Plan Order*, *supra* note 530, at 14.

and other evidence adduced in connection with the Confirmation Hearing in support of the Final Plan was “persuasive and credible,” had not been controverted by other evidence, and established that each claim holder had either accepted the Plan or would receive an amount “not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.”⁶³⁸

The Court allowed TER to enter into proposed Severance Benefit Plans for up to nine executives not to exceed an aggregate amount of \$2,634,000.⁶³⁹ Judge Gross stated that any diminution in a particular executive’s authority or responsibilities directly resulting from the closure of the Taj Mahal or Plaza did not constitute a “good reason” to reduce severance compensation under TER’s Executive Severance Plan so long as the reduced authority was consistent with the executive’s job title.⁶⁴⁰ In addition to permitting executive severance disbursements, Judge Gross terminated the Trump Plaza Collective Bargaining and other Employment Agreements, allowed TER to reject its Compensation and Benefit Programs,⁶⁴¹ and granted TER the right to vacate the Plan Confirmation Order upon any modification or reversal of the CBA Order,⁶⁴² stating “Without the CBA Order...the Plan would not be able to be consummated.”⁶⁴³

4.8.2 The Distribution Trust and Professional Fee Escrow Account

The Distribution Trust Agreement was supplemented to the Plan on March 11, 2015 and set forth terms for satisfaction of the Unsecured Creditors’ Claims.⁶⁴⁴ The Distribution Trust was funded by cash on hand in the amount of \$3.5 million in addition to avoidance actions.⁶⁴⁵ Avoidance actions totaled approximately 23 for those cases with potential transfers greater than

⁶³⁸ *Id.*

⁶³⁹ *Id.* at 41.

⁶⁴⁰ *Id.*

⁶⁴¹ *Id.* at 41-42.

⁶⁴² *Plan Order*, *supra* note 530, at 52.

⁶⁴³ *Id.* at 60.

⁶⁴⁴ [Notice of Filing of Modified Exhibits 6 and 8 to Plan Supplement for Debtors’ Third Chapter 11 Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#), Docket no. 1097, Case no. 14-12103, filed March 11, 2015 [hereinafter *Plan Supplement*].

⁶⁴⁵ *Plan Order*, *supra* note 530, at 76.

\$75,000⁶⁴⁶ and approximately 53 for cases less than \$75,000 in November of 2016.⁶⁴⁷ The Plan's Distribution Trust Provisions were approved in the Plan Order and attorney Nathan Schultz was appointed as the Distribution Trustee.⁶⁴⁸ A Distribution Trust Advisory Board was established with the National Retirement Fund and UNITE HERE Local 54 as its sole members.⁶⁴⁹ TER and the holders of General Unsecured Claims were to establish and execute the Distribution Trust Agreement, and all costs and expenses of the Distribution Trust were paid from the Trust itself.⁶⁵⁰

Judge Gross ordered the Debtors to fund a Professional Fee Escrow Account with cash equal to the lesser of the estimated professional fees and the amounts noted on the Fee Schedule.⁶⁵¹ The Fee Account was maintained by TER's counsel, Young, Conaway Stargatt & Taylor, LLP.⁶⁵² Any cash remaining in the Fee Account after all Professional Fee Claims were satisfied would revert to the Reorganized Debtors.⁶⁵³ The Court ordered any unpaid Fee Claims due to insufficient Fee Account funds to be held in reserve and satisfied in cash by the Reorganized Debtors immediately upon entry of the Court's Order of Approval of such Allowed Fee Claims.⁶⁵⁴ Judge Gross approved Trump Entertainment Resorts' submission of its final application for Professional Fee and Expenses on April 28, 2016 in the approximate amount of \$14,264,653.⁶⁵⁵ The Court ordered TER to pay all reasonable pre and post-petition expenses and fees of the First Lien Lenders in connection with the Chapter 11 proceedings in addition to its own Allowed Professional Fees.⁶⁵⁶

⁶⁴⁶ [Order Establishing Streamlined Procedures Governing Adversary Proceedings...](#), Docket no. 2187, Case no. 14-12103, filed November 18, 2016.

⁶⁴⁷ [Order Establishing Streamlined Procedures Governing Adversary Proceedings...](#), Docket no. 2186, Case no. 14-12103, filed November 18, 2016.

⁶⁴⁸ *Id.* at 35.

⁶⁴⁹ *Plan Supplement*, *supra* note 644.

⁶⁵⁰ *Plan Order*, *supra* note 530, at 35.

⁶⁵¹ *Id.* at 48.

⁶⁵² *Id.* at 26.

⁶⁵³ *Id.*

⁶⁵⁴ *Id.*

⁶⁵⁵ [Order Approving Final Fee Applications of the Debtors' Professionals](#), Docket no. 2003, Case no. 14-12103, filed May 28, 2016.

⁶⁵⁶ *Plan Order*, *supra* note 530, at 49.

TER Final Professional Fees Application

Professional	Fees	Expenses
<u>Ernst & Young LLP</u> <i>Auditors and Tax Advisors</i>	\$1,094,580.95	\$14,023.55
<u>Houlihan Lokey Capital, Inc.</u> <i>Financial Advisor and Investment Banker</i>	\$1,200,000.00	\$19,357.25
<u>Merlin Law Group, P.A.</u> <i>Insurance Litigation Counsel</i>	\$0.00	\$1,836.81
<u>Levine, Staller, Sklar, Chan & Brown, P.A.</u> <i>Real Estate Tax Appellate Counsel</i>	\$7,335.00	\$0.00
<u>Prime Clerk LLC</u> <i>Administrative Advisor</i>	\$57,397.38	\$71.28
<u>Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP</u> <i>Appellate Counsel</i>	\$202,865.00	\$2,739.33
<u>Sills Cummis & Gross P.C.</u> <i>Counsel and Government Regulatory Services Provider</i>	\$344,237.00 ⁶⁵⁷	\$225.26
<u>Stroock & Stroock & Lavan LLP</u> <i>Debtor Co-Counsel</i>	\$9,199,571.50 ⁶⁵⁸	\$136,817.82
<u>Young Conaway Stargatt & Taylor, LLP</u> <i>Debtor Co-Counsel</i>	\$1,904,238.50	\$79,362.55

4.8.3 Executory Contracts and Unexpired Leases

The Court deemed all executory contracts and unexpired leases rejected as of the Effective Date.⁶⁵⁹ Although, each *assumed* contract or lease vested in the appropriate Subsidiary Debtor and was recognized as fully enforceable after the Effective Date. Judge Gross ordered all Claims arising from the rejection of executory contracts and unexpired leases to be treated as General Unsecured Claims, and “all such Claims [were] discharged and unenforceable against the Debtors.”⁶⁶⁰ All monetary defaults arising under assumed contracts and leases were ordered to be satisfied by payment of the appropriate cure amounts documented on the “Cure Schedule,”⁶⁶¹ and

⁶⁵⁷ Amount reflects a voluntary reduction of \$40,000.00 pursuant to discussions with the First Lien Parties.

⁶⁵⁸ Amount reflects a voluntary reduction of \$100,000.00 pursuant to discussions with the First Lien Parties.

⁶⁵⁹ *Plan Order*, *supra* note 530, at 37.

⁶⁶⁰ *Id.* at 37-38.

⁶⁶¹ *Id.* at 39.

all non-debtor counterparties to the assumed contracts and leases were barred from disputing the Cure Amounts.⁶⁶²

Cure Schedule and Amounts Summary

Debtor	Counterparty ⁶⁶³	Cure Amount
TER Holdings	Philadelphia Coca Cola	\$65,358
TER Holdings	Ecolab Inc.	\$14,137
TER Holdings	Waste Management of NJ	\$108,534
TER Holdings	Low-value Miscellaneous	\$25,562
Taj Mahal	AC Linen Supply	\$316,228
Taj Mahal	Bally Gaming	\$252,023
Taj Mahal	Otis Elevator Co.	\$215,332
Taj Mahal	WMS Gaming Corp.	\$184,361
Taj Mahal	Low-value Miscellaneous	\$223,673
TER, Inc.	Low-value Miscellaneous	\$51,273
Total		\$1,456,481

5 The Aftermath: Casino Employees Lose, Industry Moves Forward

Judge Gross stated the Plan represented a “Global Settlement” between Trump Entertainment Resorts, the Icahn Parties, and the Creditors’ Committee.⁶⁶⁴ The Chapter 11 settlement left Mr. Icahn with the skeleton of a once-thriving casino group and prepetition executives with relatively modest severance packages. Tropicana Entertainment Inc., a subsidiary of Icahn Enterprises LP, managed the Taj Mahal following the reorganization.⁶⁶⁵ The Unsecured Class was granted \$3.5 million⁶⁶⁶ to be divided amongst the unsecured parties’ \$230 million claims in addition to money from preference suits overseen by Distribution Trustee Mr. Shultz. The lawsuits filed by Mr. Shultz ranged from \$7,000 to over \$2 million—Aetna Life Insurance, Marsh USA Inc., Sysco Philadelphia LLC, and South New Jersey Federal Credit Union, asserted claims between \$1 million and \$2 million and were each challenged by the Distribution Trustee.⁶⁶⁷ TER

⁶⁶² *Id.*

⁶⁶³ Multiple contracts condensed.

⁶⁶⁴ *Plan Order*, *supra* note 530, at 24.

⁶⁶⁵ Bill Wichert, *Atlantic City’s Trump Taj Mahal To Close Amid Strike*, Law360.com (Aug. 3, 2016), <http://perma.cc/Q5NA-2FPH>.

⁶⁶⁶ Matt Chiappardi, *Trump Entertainment Launches \$14M Clawback Campaign*, Law360.com (Sep. 7, 2016), <http://perma.cc/49X3-AJQP>.

⁶⁶⁷ *Id.*

documented approximately \$4 million in cash balances and \$106.8 million in total assets in a final Post-Confirmation Report for Q4 2016.⁶⁶⁸

The Local 54 was forced to accept significant changes to its Collective Bargaining Agreement, and the National Retirement Fund was left completely in the cold as the Reorganized Debtors shifted millions in retirement funds to private banks. Both parties disputed the new agreement's impact on the employees, but the Local 54 and NRF positions would soon be irrelevant following the Taj Mahal's closure in 2017.

Taj Mahal management rejected a final effort, post-bankruptcy proposal from the Local 54 to end the dispute with a price tag of approximately \$1.3 million above the terms of the Debtors' reorganization offer.⁶⁶⁹ In September 2016, the Taj Mahal announced its pending closure following a strike by the Local 54.⁶⁷⁰ Tropicana Entertainment released a statement claiming Icahn Enterprises had "lost almost \$100 million⁶⁷¹ trying to save the Taj" and "now with [the] strike, [they saw] no path to profitability."⁶⁷² Tropicana's CEO Tony Rodio noted the company's fiduciary duties to its shareholders and stated the Local 54 had "single handedly blocked any path to profitability," and "[e]ven if the union accepted what [the Reorganized Debtors] previously offered... [the company] would still be losing significant amounts each month, but at least there would be hope."⁶⁷³ Following the three-month Local 54 strike, Mr. Icahn stated the Taj Mahal would require a \$100 million to \$200 million capital investment and decided to "sell the facility as a loss, if possible."⁶⁷⁴ Icahn was presumably (and reasonably) reeling from his exchange of a \$350 million lien for the doomed casino chain.

Local 54 President Bob McDevitt criticized Carl Icahn stating he was "a playground bully, who picks up his ball and announce[d] he [was] going home because nobody else would do it his way," and that "the great deal-maker would rather burn Trump Taj Mahal down just so he [could]

⁶⁶⁸ [Post Confirmation Quarterly Operating Report](#), Docket no. 2205, Case no. 14-12103, filed January 30, 2017.

⁶⁶⁹ Daniel Siegal, *Icahn's Taj Mahal Rebuffs Union's Last Bid to Save Casino*, Law360.com (Aug. 30, 2016), <http://perma.cc/B5UN-B3U5>.

⁶⁷⁰ Wichert, *supra* note 665.

⁶⁷¹ Mr. Icahn later claimed he had lost approximately \$300 million on Trump Entertainment Resorts beginning with the First Lien Agreement. See The Associated Press, *Atlantic City mayor urges Icahn to sell Trump Taj Mahal casino building* (Jan. 5, 2017), <http://perma.cc/AQZ8-8PE6>.

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ Jeannie O'Sullivan, *Christie Vetoes Bill To Strip Icahn Of Casino License*, Law360.com (Feb. 6, 2017), <http://perma.cc/6QS9-ZANW>.

control the ashes.”⁶⁷⁵ For a few million bucks, Mr. McDevitt said, Mr. Icahn could have had peace with the Union but, instead, he will “have to live with what he’s done to working people in Atlantic City.”⁶⁷⁶ Following the Taj closure announcement, New Jersey Governor Chris Christie vetoed legislation that would strip Carl Icahn of his license to operate the Trump Taj Mahal—a government effort to protect union jobs in the City.⁶⁷⁷ Senate President Steven Sweeney called the veto “flat-out wrong” stating it would “allow Icahn to exploit and manipulate bankruptcy laws and casino licensing regulations in ways that would enrich himself at the expense of regular casino workers and the families who depend on them.”⁶⁷⁸ The casino’s closure on October 10, 2016 left approximately 3,000 unemployed.⁶⁷⁹

Atlantic City faced its own financial burden following the downturn in gambling revenue and unsuccessful tax appeals; troubles likely attributed, at least in part, to Trump Entertainment Resorts. The shutdown of Trump Taj Mahal, the fifth casino closure in two years, reduced the number of Atlantic City gaming establishments to seven. The State of New Jersey approved a bailout package for the City in May 2016,⁶⁸⁰ which resulted in reduction of the municipality’s bond rating.⁶⁸¹ The Mayor of Atlantic City, Don Guardian, vowed the City would continue to move forward during such challenging times. “Atlantic City has been resilient for over 160 years and we will continue to do so, as we rise to meet any challenge ahead of us.”⁶⁸²

Today all that remains of Trump Entertainment Resorts is the former Trump Marina, now a Golden Nugget casino owned by Landry’s Inc. The Trump Taj Mahal and Trump Plaza are empty and abandoned, although a group of investors led by Hard Rock International Inc. purchased the Trump Taj Mahal in February 2017⁶⁸³ with plans to reopen the casino under its name in the spring of 2018.⁶⁸⁴ A purchase price has yet to be released, but Hard Rock CEO James Allen stated the

⁶⁷⁵ Wichert, *supra* note 665.

⁶⁷⁶ *Id.*

⁶⁷⁷ O’Sullivan, *supra* note 674.

⁶⁷⁸ *Id.*

⁶⁷⁹ *Id.*

⁶⁸⁰ Jeannie O’Sullivan, *Atlantic City Bailout Bills Win NJ Gov.’s Approval*, Law360.com (May 27, 2016), <http://perma.cc/K8JU-X4AL>.

⁶⁸¹ *Id.*

⁶⁸² Wichert, *supra* note 665.

⁶⁸³ Suevon Lee, *Hard Rock Leads Buyers of Trump Taj Mahal From Icahn*, Law360.com (Mar. 1, 2017), <http://perma.cc/9U7M-6S6L>.

⁶⁸⁴ The Associated Press, *Sale of Trump Taj Mahal to Hard Rock Finalized* (Mar. 31, 2017), <http://perma.cc/V6MK-7ZQ9>.

purchase and *extensive* renovations together totaled approximately \$300 million.⁶⁸⁵ As of February 2017, Nathan Shultz has asked the Court for an extension to the claim objection deadline and additional time to administer the avoidance actions to decide whether objections to remaining general unsecured claims are appropriate.⁶⁸⁶ Mr. Shultz claimed to have expunged or resolved \$1.7 billion of approximately \$1.9 billion in general unsecured claims at that time.⁶⁸⁷

⁶⁸⁵ *Id.*

⁶⁸⁶ Cara Mannion, *Trump Entertainment Needs More Time to Finish With Claims*, Law360.com (Feb. 24, 2017), <http://perma.cc/XLV4-VK6U>.

⁶⁸⁷ *Id.*