

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TSAWD HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

Jointly Administered

Ref. Docket No. 3415

**ORDER AUTHORIZING THE DEBTORS' ENTRY INTO THE SUPPLEMENTAL
ENGAGEMENT LETTER WITH HILCO IP SERVICES LLC D/B/A
HILCO STREAMBANK, THE INTELLECTUAL PROPERTY DISPOSITION
CONSULTANT FOR THE DEBTORS**

Upon the *Debtors' Supplemental Application for Order Authorizing the Debtors' Entry into the Supplemental Engagement Letter with Hilco IP Services LLC d/b/a Hilco Streambank, the Intellectual Property Disposition Consultant for the Debtors* (the "Supplemental Application")² filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012; and the Court having found that venue of these Chapter 11 Cases and the Supplemental Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that due and sufficient notice of the

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: TSAWD Holdings, Inc. (9008); Slap Shot Holdings Corp. (8209); TSAWD, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 2305 East Arapahoe Road, Suite 234, Centennial, Colorado 80122.

The Debtors were formerly known as: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664).

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Supplemental Application.



Supplemental Application has been given under the particular circumstances and that no other or further notice of the Supplemental Application need be given; and the Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found and determined that the relief sought in the Supplemental Application is in the best interest of the Debtors, their estates, their creditors, and all other parties in interest; and that the legal and factual bases set forth in the Supplemental Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Supplemental Application is GRANTED as set forth herein.
2. The Debtors are authorized, pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-2, to enter into the Supplemental Engagement Letter, attached hereto as Exhibit 1, with Hilco Streambank, and to compensate and reimburse expenses to Hilco Streambank on the terms and conditions set forth in the Supplemental Engagement Letter.
3. The engagement and fee structure of Hilco Streambank is hereby modified, as set forth in the Supplemental Engagement Letter.
4. The terms of the Supplemental Engagement Letter are reasonable terms and conditions of employment and are approved, as hereinafter modified, including the following Indemnification Provisions:
 - (a) Subject to the provisions of subparagraph (c) below, the Debtors are authorized to indemnify, and to provide reimbursement to, and shall indemnify, and provide reimbursement to, Hilco Streambank and its respective affiliates, officers, directors, employees, agents, and independent contractors in accordance with the Indemnification Provisions for any claim arising from, related to, or in connection with the services provided for in the Supplemental Engagement Letter, but not for any claim arising from, related to, or in connection with Hilco Streambank's postpetition

performance of any other services unless such postpetition services and indemnification are therefore approved by the Court;

- (b) notwithstanding any of the Indemnification Provisions to the contrary, the Debtors shall have no obligation to indemnify Hilco Streambank, or provide contribution or reimbursement to Hilco Streambank, for any claim or expense to the extent it is either: (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from Hilco Streambank's gross negligence, willful misconduct or bad faith; (ii) for a contractual dispute in which the Debtors allege breach of Hilco Streambank's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Company*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c) below to be a claim or expense for which Hilco Streambank should not receive indemnity, contribution or reimbursement under the terms of the Supplemental Engagement Letter, as modified by this Order; and
- (c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, Hilco Streambank believes it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification and/or reimbursement obligations under the Indemnification Provisions (as modified by this order), including, without limitation, the advancement of defense costs, Hilco Streambank must file an application in the Court, and the Debtors may not pay any such amounts to Hilco Streambank before the entry of an order by the Court approving the payment. This subparagraph (c) is intended only to specify the period of time during which the Court shall have jurisdiction over any request for compensation and expenses by Hilco Streambank for indemnification, contribution and/or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, Hilco Streambank. All parties in interest shall retain the right to object to any demand by Hilco Streambank for indemnification, contribution and/or reimbursement.

5. The limitation of liability in paragraph 12 of the Supplemental Engagement Letter shall be of no force and effect.

6. Hilco Streambank shall not be required to file monthly or interim fee applications and is not required to maintain time records; provided, however, that Hilco Streambank shall file a declaration (the "Declaration") in connection with the sale or other disposition of the Remaining

Assets setting forth, among other things, the fees earned and expenses incurred by Hilco Streambank and paid (or to be paid) by the Debtors, which shall be served on the U.S. Trustee and the Committee, who shall have ten (10) days to review and object to the expenses set forth in the Declaration (including any pre-approved expenses). If there are no objections, the Debtors are authorized to promptly pay Hilco Streambank its expenses; any objections shall be brought at the next omnibus hearing following the filing of the Declaration.

7. Submission of the Declaration shall constitute notice to the Debtors of termination of Hilco Streambank's services under the Supplemental Engagement Letter. If Hilco Streambank terminates its engagement, other than by submission of the Declaration, Hilco Streambank shall provide at least two (2) weeks' notice to the Debtors prior to such termination.

8. The information requirements of Local Rule 2016-2(d) are waived and Hilco Streambank shall not be required to maintain records of detailed time entries in connection with professional services rendered pursuant to the Supplemental Engagement Letter.

9. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted herein.

10. Notwithstanding the possible application of Bankruptcy Rule 6004(h) or otherwise, this Order shall be immediately effective and enforceable upon its entry.

11. The Court shall retain jurisdiction with respect to all matters arising from or related to the Application or the implementation of this Order.

Dated: March 6, 2017
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

ENGAGEMENT LETTER



November 11, 2016

TSAWD Holdings, Inc.
1050 West Hampden Avenue
Englewood, CO 80110
Attention: Douglas Garrett

Re: Agreement to Market and Sell Assets of TSAWD Holdings, Inc.

Ladies and Gentlemen:

This letter (the "Agreement") sets forth the terms of the agreement between Hilco IP Services, LLC d/b/a Hilco Streambank ("Hilco Streambank") and TSAWD Holdings, Inc. f/k/a TSA Stores, Inc. ("TSA"), and TSA's affiliates (hereinafter the "Debtors" or the "Company") with respect to the marketing and sale of certain of the Debtors' remaining intangible assets, including, without limitation litigation claims, loans and notes receivable, trade/barter credits, internet protocol addresses, and other rights and interests that have not been sold by the Debtors prior to the date hereof ("Remaining Assets"). Schedule A annexed hereto lists the Remaining Assets that Hilco Streambank will market and sell on behalf of the Debtors (the "Intangible Assets"). If requested by the Debtors, Hilco Streambank shall assist the Debtors during the term of this Agreement to identify additional Remaining Assets and if mutually agreed to in writing by Hilco Streambank and the Debtors, those identified Remaining Assets will be added to Schedule A. The Debtors are currently debtors and debtors in possession under chapter 11 of title 11 of the United States Code in cases (the "Chapter 11 Cases") pending before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). This Agreement is subject to the approval of the Bankruptcy Court, and the Company agrees to promptly file an application seeking approval of Hilco Streambank's retention on the terms and conditions contained in this Agreement.

Hilco Streambank is an expert in managing the sale of assets such as the Intangible Assets, and has provided similar services in numerous bankruptcy cases. Hilco Streambank will immediately commence working on behalf of the Company to market and sell, license or otherwise monetize the Intangible Assets subject to the following terms and conditions:

1. **Engagement and Exclusivity.** Hilco Streambank shall be engaged as the Debtors' exclusive agent to market and sell, assign, license, or otherwise dispose of the Intangible Assets.

2. Scope of Services. Hilco Streambank shall work with the Company and its other advisors to collect and secure all of the available information and data concerning the Intangible Assets. Hilco Streambank shall prepare marketing materials designed to inform potential purchasers of the availability of the Intangible Assets for sale, assignment, license, or other disposition and shall develop and execute a sales and marketing program designed to elicit proposals to acquire the Intangible Assets from qualified acquirers with a view toward completing one or more sales, assignments, licenses, or other dispositions of the Intangible Assets. Hilco Streambank shall assist the Company in connection with the transfer of the Intangible Assets to the acquirer(s) who offer the highest or otherwise best consideration for the Intangible Assets. Hilco Streambank shall be responsible for all execution of all marketing and sales activities related to the Intangible Assets.

We will promptly advise the Company and its professionals of all offers made with respect to the Intangible Assets. We understand that we are authorized on behalf of the Company only to negotiate the terms of sales, assignments, or other dispositions of the Intangible Assets but not to commit the Company to any such agreement or arrangement or to sign any instrument on behalf of the Company.

Notwithstanding anything in this Agreement to the contrary, the entry into and the terms and conditions of each and every transaction relating to one or more of the Intangible Assets shall be subject to the written approval by the Company, which approval may be withheld in the sole discretion of the Company for any reason or no reason. No commission will be earned or paid to us unless the Company shall have approved or executed the applicable transaction.

3. Compensation to Hilco Streambank. For its services hereunder, Hilco Streambank shall be paid per the following commission structure:
 - a. Hilco Streambank shall be paid a commission of eight percent (8%) of the aggregate proceeds generated from the sale, assignment, license, or other disposition of the Intangible Assets.
 - b. Subject to the Bankruptcy Court's approval of this Agreement, any commissions due Hilco Streambank hereunder shall be paid in full immediately upon the successful consummation of any transaction or transactions involving the sale, assignment, license, or other disposition of the Intangible Assets from the Gross Proceeds of such transaction(s) notwithstanding any liens, claims, or other encumbrances on the Intangible Assets or the Gross Proceeds thereof.

"Gross Proceeds" means all cash received by the Company in consideration of the sale, license or other assignment of the Intangible Assets and related assets.

4. Expenses. Subject to the Bankruptcy Court's approval of this Agreement, Hilco Streambank shall be entitled to reimbursement from the Company for all reasonable and customary Reimbursable Expenses (defined below) in connection with the performance of the services proposed. "Reimbursable Expenses" means all reasonable and verified out-of-pocket costs and expenses incurred by Hilco Streambank in connection with performance of the contemplated services, including, without limitation: reasonable expenses of marketing, advertising, economy travel and transportation, postage and courier/overnight express fees; provided that the Reimbursable Expenses shall not exceed \$10,000 in the aggregate, unless otherwise agreed to in writing by the Company. The Company shall reimburse Hilco Streambank within five (5) business days of receipt of an invoice for such Reimbursable Expenses, provided the Reimbursable Expenses (i) do not in the aggregate exceed \$10,000, or (ii) were otherwise pre-approved by the Company.
5. Termination. This Agreement may be terminated by either the Company or Hilco Streambank upon giving written notice thereof to the other party. No such termination will affect (i) Hilco Streambank's rights to receive fees as set forth in Section 6 below or reimbursement of the Reimbursable Expenses as set forth in Section 4 above, or (ii) the rights of Hilco Streambank to receive indemnification in accordance with this Agreement.
6. Survival. If, within ten (10) days after the termination of this Agreement, Hilco Streambank delivers to the Company a written list of prospects with whom Hilco Streambank has had written (including email) contact for the Intangible Assets (the "Contacted Prospect List"), and within ninety days (90 days) after the termination of this Agreement, the Company consummates a sale, assignment, or other disposition of any or all of the Intangible Assets to a prospect set forth on the Contacted Prospect List, Hilco Streambank shall be entitled to a fee in accordance with Section 3 hereof as if the sale, assignment, or other disposition had been agreed to or consummated before this Agreement was terminated.
7. No Guaranty. Hilco Streambank is not guarantying any specific result on the sale, assignment, or other disposition of the Intangible Assets.
8. Nature of Services. The services to be provided by Hilco Streambank in respect of the Intangible Assets are, in general, transactional in nature, and Hilco Streambank will not be billing the Company by the hour or maintaining time records.
9. Entire Agreement/Amendment. This Agreement constitutes the entire agreement between Hilco Streambank and the Company and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of the parties to this Agreement.

10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to any conflicts of laws provisions thereof, except where governed by title 11 of the United States Code. Each of the parties hereto irrevocably and unconditionally submits, for itself and its properties, to the exclusive jurisdiction of the Bankruptcy Court in any action or proceeding arising out of or relating to this Agreement.
11. WAIVER OF JURY TRIAL. EACH OF HILCO STREAMBANK AND THE COMPANY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
12. Limitation of Liability. Hilco Streambank's maximum liability to the Company, in the aggregate, arising for any reason out of or relating to this Agreement, whether a claim in tort, contract, or otherwise, shall be limited to the amount of fees paid to Hilco Streambank under this Agreement for these services, except to the extent such liability is finally determined to have been caused by gross negligence, fraud, or willful misconduct of Hilco Streambank or its personnel.
13. Indemnification. The Company shall indemnify Hilco Streambank and hold it harmless against any and all losses, claims, damages, liabilities and expenses incurred by Hilco Streambank, including without limitation, reasonable legal expenses, arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco Streambank hereunder, unless such losses, claims, damages, liabilities and expenses resulted from Hilco Streambank's breach of this Agreement or the negligence, fraud, or willful misconduct of Hilco Streambank. Hilco Streambank shall not be entitled to any indemnification payments unless such payments are expressly approved by the Bankruptcy Court. Hilco Streambank shall indemnify the Company and hold it harmless against any and all losses, claims, damages, liabilities and expenses arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco Streambank hereunder, unless such losses, claims, damages, liabilities and expenses resulted from the negligence, fraud, or willful misconduct of the Company in breach of this Agreement.
14. Confidentiality.
 - a. Hilco Streambank acknowledges that information furnished or made available by the Company and its employees and representatives to Hilco Streambank and its employees or representatives relating to the Intangible Assets or the business or affairs of the Company is confidential and is the property of the

Company (such information hereinafter referred to as "Confidential Information"). During and after the term of this Agreement, Hilco Streambank will not disclose any such information to any person or use any such information for any purpose other than the performance of its obligations hereunder, in each case, without the prior written consent of the Company. Hilco Streambank shall exercise the same degree of care, but no less than a reasonable degree of care, to keep confidential the Confidential Information as Hilco Streambank uses to protect its own confidential information of a like nature. Hilco Streambank may disclose the Confidential Information only to its employees, subcontractors or agents on a "need to know" basis. Hilco Streambank shall be responsible and liable for the unauthorized disclosure of any Confidential Information by its employees, subcontractors and agents.

- b. If Hilco Streambank is served with any subpoena or other compulsory judicial or administrative process calling for production of Confidential Information, Hilco Streambank may comply with such subpoena or compulsory process, but will immediately notify the Company in order that it may take such action as it deems necessary to protect its interest. Hilco Streambank shall reasonably cooperate with the actions of the Company in this regard.
- c. Notwithstanding anything to the contrary contained herein, Hilco Streambank shall have no obligation under this Agreement to hold information in confidence that has been or is (a) developed by Hilco Streambank independently and without the benefit of information disclosed hereunder by the Company; (b) lawfully obtained by Hilco Streambank from a third party without restriction; (c) publicly available without breach of this Agreement or from information readily ascertainable in the marketplace by proper means; (d) disclosed without restriction by the Company to a third party, including the United States government; or (e) known to Hilco Streambank prior to its receipt from the Company.
- d. Hilco Streambank acknowledges that the Confidential Information is a valuable asset of the Company and that the breach of this Section would cause the Company irreparable harm for which there is no adequate remedy at law. Accordingly, in the event of a breach or alleged breach of this Section, the Company shall be entitled to injunctive relief and any other equitable remedies in addition to remedies afforded by law.

15. Bankruptcy Court Approval. The Company shall file an application with the Bankruptcy Court seeking the assumption of this Agreement and the retention of Hilco Streambank as a professional advisor to the Company on the terms set forth herein effective as the date hereof.

16. Further Assurances. Hilco Streambank and the Company shall take all such further

actions as are necessary or appropriate to carry out the terms and conditions of the Agreement, including (without limitation) with respect to Hilco Streambank's retention and all sales, assignments, or other dispositions of the Intangible Assets.

Please confirm your agreement to engage Hilco Streambank on the foregoing terms and conditions by executing this letter on the space provided below. If you have any questions concerning this letter, or the proposed scope of this project, please give the undersigned a call at (781) 471-1239. Thank you very much.

Sincerely,

Hilco IP Services LLC d/b/a Hilco Streambank

By: 

Name: David Peress

Title: EVP

Agreed/Accepted:

TSAWD Holdings, Inc.

By:  11/22/16

Name: Douglas Garrett

Title: Chairman of the Wind Down Committee and General Counsel

SCHEDULE A

Intangible Assets

1. The Company's anti-trust claim against American Express
2. The Company's bankruptcy claim against Circuit City
3. Barter credits owned by the Company

Note: The descriptions of the Intangible Assets may be further supplemented.