

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:

TCI 2 HOLDINGS, LLC, et al.,

Debtors.

Chapter 11
Case No.: 09-13654 (JHW)

(Jointly Administered)

**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**

TO THE HONORABLE JUDITH H. WIZMUR
CHIEF UNITED STATES BANKRUPTCY JUDGE

TCI 2 Holdings, LLC ("TCI 2") and its subsidiary and other affiliated entities, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), as and for their 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 Notes Due 2015 (the "Ad Hoc Committee"), dated September 23, 2009 (the "AHC Disclosure Statement")¹ [Docket No. 617] respectfully represent:

PRELIMINARY STATEMENT

1. A chapter 11 disclosure statement is the critical document that is required by law to inform holders of impaired claims and interests exactly how they are treated under a chapter 11 plan, the value of that treatment, and the chances they will actually receive the proposed distribution. The AHC Disclosure Statement is fatally flawed because, despite all its words, it fails to provide information that is fundamental for making an informed decision as to whether to vote to accept or reject the plan proposed by the Ad Hoc Committee (the "AHC Plan"). In particular, the AHC Disclosure Statement fails to disclose or adequately describe (i) that the recovery for holders of the Debtors' 8.5% Senior Secured Notes due 2015 (the "Noteholders") and the General Unsecured Creditors ("Unsecured Creditors") is minimal and highly speculative, (ii) that the \$175 million of cash to fund the obligations under the AHC Plan has not been committed and that the AHC Plan can be withdrawn at any time, (iii) that a material condition to the effectiveness of the AHC Plan – the sale of the Trump Marina Hotel Casino ("Marina") to

¹ The Ad Hoc Committee amended its proposed chapter 11 plan and disclosure statement (originally filed on August 3, 2009) the evening of the day before this objection was originally scheduled to be filed. This objection addresses such amended plan and disclosure statement.

Coastal² – is highly unlikely to take place, and (iv) exactly how the \$488 million of first lien debt held by Beal Bank (“Beal”) is being treated.

2. The AHC Disclosure Statement leaves the reader with the impression that the Debtors will receive \$175 million in new equity investment, that Beal will receive a significant repayment on its secured claim, and that the Noteholders and the Unsecured Creditors will receive property of significant value. A careful review of the AHC Plan and related documents reveals that the AHC Plan is a house of cards – it is conditioned on events highly unlikely to occur; it is based on inadequately specified “commitments” that can be withdrawn at any time and for any reason; and it provides de minimis value to the Noteholders and Unsecured Creditors (admittedly less than 1%). The AHC Disclosure Statement fails to adequately disclose and describe these critical issues.

3. First, while the AHC Disclosure Statement touts that the AHC Plan is far, far superior to the Debtors’ Plan (defined below), it now admits on two lines in a chart and without any meaningful explanation whatsoever that the Noteholders and the Unsecured Creditors will receive less than 1% recovery. That is less than \$12 million of recovery for outstanding debt of \$1.25 billion. The Debtors are gratified that the Ad Hoc Committee has finally come clean on an issue that they have obscured since the initial filing of the AHC Plan and their motion to terminate the Debtors’ exclusivity, but the AHC Disclosure Statement still fails to disclose exactly *how little* the Noteholders will receive (and what, if anything, the Noteholders can do to realize on that “value”). In particular, the AHC Disclosure Statement provides *no explanation* of the value of the 5% equity provided to the Noteholders and the Unsecured Creditors. While the

² The AHC Disclosure Statement is internally inconsistent with respect to a sale of the Marina. In one section, the Disclosure Statements provides that the sale of the Marina is a material condition to the AHC Plan, but in another section it is implied that the AHC Plan can be confirmed without such a sale. (*Compare* AHC Disclosure Statement at 53 *with id.* at 65.)

AHC Disclosure Statement provides that the right to acquire the 75% of new equity (at a cost to the Noteholders of \$175 million) is valued at \$7 million in the aggregate, there is no explanation of how such value is derived. The value that the Noteholders and Unsecured Creditors will receive under the AHC Plan should be prominently stated, and it is not. Finally, it is notable that the hedge funds purportedly providing the backstop to the \$175 million rights offering (“Backstopping Parties”) reserve an incredible twenty percent (20%) of the new equity for themselves as a “backstop fee.” Nowhere is the value of such consideration — or the basis for the fee — disclosed to creditors.

4. Second, the AHC Disclosure Statement fails to adequately describe the highly contingent nature of the AHC Plan. Nowhere in the AHC Plan or in the accompanying documents do the Backstopping Parties make a binding commitment. Instead, the documentation submitted shows that the Backstopping Parties can withdraw or change their “commitment” at any time. This makes the AHC Plan no more than an option for the Backstopping Parties and provides no certainty to the Debtors or their creditor constituencies that reorganization is likely. The AHC Disclosure Statement should prominently state these facts. To add to this flaw is the fact that there is no discussion in the AHC Disclosure Statement of how much existing debt each Backstopping Party currently holds or the financial wherewithal of any of the Backstopping Parties. There is simply no way for a creditor to assess the viability of the AHC Plan without these facts. Moreover, the entire AHC Plan is subject to revocation or withdrawal at any time for any reason by the Ad Hoc Committee.

5. Third, the effectiveness of the AHC Plan is highly suspect because its success is expressly conditioned on the sale of the Trump Marina Hotel Casino (the “Marina”) to Coastal Marina, LLC and Coastal Development, LLC (collectively “Coastal”) on terms that have not

been committed by Coastal. The only documentation for such a sale is a “letter of intent.”³ However, there is no reason to believe that Coastal will follow through on a “letter of intent” when it failed to perform under previous detailed and binding contracts with the Debtors for the sale of the Marina. The AHC Disclosure Statement fails to adequately describe the risks of this condition.

6. Fourth, the AHC Plan purports to provide the same interest rate on its debt owed to Beal that the bank is consenting to take under the Debtors’ Plan. The Ad Hoc Committee well knows that Beal *will not* consent to this favorable interest rate to finance a casino company owned by a bunch of hedge funds. The Ad Hoc Committee has been advised that Beal places significant value on Mr. Trump’s continued involvement with the Debtors and does not believe that the members of the Ad Hoc Committee, as potential owners, could provide that value. The AHC Disclosure Statement is, therefore, intentionally misleading because it implies that financing at such an interest rate is possible. In the alternative, the AHC Plan provides for a cram down of Beal’s secured claim. However, nothing in the AHC Disclosure Statement describes the risks of a cram down or analyzes the effect on the Debtors of having to pay a market rate of interest to Beal or even whether the AHC Plan would be feasible under those circumstances. Moreover, there is no disclosure of the other terms of the Ad Hoc Committee’s proposed loan from Beal. The AHC Disclosure Statement is silent as to the maturity date and all other material terms. Therefore, the AHC Disclosure Statement fails to adequately disclose how Beal would be treated under the Ad Hoc Committee’s Plan.

7. Finally, the AHC Disclosure Statement includes numerous factual inaccuracies, which are described below.

³ Apparently, the sale agreement will be provided ten days before the AHC Plan is voted on by the creditors.

8. For these and other reasons, and as more fully expressed below, the AHC Disclosure Statement is fatally flawed, and this Court should deny the Ad Hoc Committee's motion for approval of the same.

BACKGROUND

9. On August 3, 2009, the Debtors filed their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as it may be amended or modified, the "Debtors' Plan") and their Proposed Disclosure Statement (as it may be amended or modified, the "Debtors' Disclosure Statement") with respect to the Plan. The Debtors' Plan is based on a restructuring proposal made by Beal and Donald Trump, which was selected by the Debtors over a competing proposal submitted by the Ad Hoc Committee.

10. On August 31, 2009, the Court entered an order terminating the Debtors' exclusive periods to file and solicit a plan of reorganization. That same day, the Ad Hoc Committee filed its first plan, with an accompanying disclosure statement. On September 23, 2009, the Ad Hoc Committee filed an amended plan and disclosure statement (referred to herein as the "AHC Plan" and the "AHC Disclosure Statement," respectively).

ARGUMENT

I. The Proposed Disclosure Statement Contains Insufficient and Misleading Information Regarding the AHC Plan

11. Section 1125(b) of the Bankruptcy Code requires a disclosure statement to contain adequate information to accompany any solicitation of acceptances or rejection of a plan.

"Adequate information" means:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that

would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan

11 U.S.C. § 1125(a)(1).

12. The adequacy of the information provided to creditors is crucial to a court's or creditor's ability to evaluate a proposed plan. As the Third Circuit has stated: "[g]iven this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'" *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *cert. denied*, 488 U.S. 967; *see also In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) ("At the 'heart' of the chapter 11 process is the requirement that holders of claims in impaired classes be furnished with a proper disclosure statement 'that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan.'" (quoting H.R. Rep. No. 95-595, at 408 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6364).

13. A disclosure statement accompanying a chapter 11 plan is designed to provide sufficient information to creditors to permit them to determine whether to vote for or against the plan and "plays a pivotal role in the give and take among creditors and between creditors and the debtor that leads to a confirmed negotiated plan of reorganization by requiring adequate disclosure to the parties so they can make their own decisions on the plan's acceptability." *In re A.H. Robins Co., Inc.*, 216 B.R. 175, 180 (E.D. Va. 1997); *In re Stanley Hotel, Inc.*, 13 B.R. 926, 929 (Bankr. D. Colo. 1981) (noting that creditors need material information to make "informed choice" with respect to acceptance or rejection of plan).

14. Moreover, a disclosure statement may not serve simply as a "sales brochure" proclaiming the virtues of a particular plan, but must make a balanced presentation and include complete – and not one-sided – disclosure. *See In re Ligon*, 50 B.R. 127, 130 (Bankr. M.D.

Tenn. 1985) (“Conclusory allegations or opinions without supporting facts are generally not acceptable in a disclosure statement.”); *In re Egan*, 33 B.R. 672, 675-76 (Bankr. N.D. Ill. 1983) (“[A disclosure statement] is not intended to be an advertisement or a sales brochure.”).

15. The Court cannot approve the AHC Disclosure Statement because it fails to or inaccurately and inadequately describes: (a) the de minimis value of the recovery for the Noteholders and Unsecured Creditors (and any calculation to show how such de minimis value was derived), (b) that the \$175 million of cash to fund the obligations under the AHC Plan has not been committed and that the AHC Plan can be withdrawn at any time, (c) the unlikely nature of the sale of the Marina to Coastal, and (d) exactly how the \$488 million of first lien debt held by Beal is being treated.

A. The AHC Plan Does Not Adequately Disclose the Value that the Noteholders Will Receive

16. The AHC Disclosure Statement repeatedly touts that the Noteholders and the Unsecured Creditors will receive a recovery under the AHC Plan as opposed to the Debtors’ Plan. However, nowhere in the AHC Disclosure Statement is the value of this recovery specified, except for a fleeting reference on one page to the recovery being “less than 1%.” (*See* AHC Disclosure Statement at 4.) This is woefully inadequate in light of the fact that the Ad Hoc Committee convinced this Court to terminate exclusivity, at least in part, based on the contention that Noteholders would receive a meaningful recovery under the AHC Plan, while receiving no recovery under the Debtors’ Plan. Now it comes to light that Noteholders will receive “less than 1%” recovery, but nowhere in the AHC Disclosure Statement does the Ad Hoc Committee calculate how that “less than 1%” is reached *or* exactly how much less than 1% the AHC Plan provides. Certainly it is never linked to the \$175 million capital contribution that is the cornerstone of the AHC Plan (the “Rights Offering”). It appears that the Ad Hoc Committee

intentionally is obscuring the fact that next to no value will be received by the Noteholders and the Unsecured Creditors under the AHC Plan.

17. First, while the AHC Disclosure Statement states that Unsecured Creditors and Noteholders “would receive a pro rata share of 5% of the equity of the Reorganized Debtors,” the value of this 5% is never disclosed. (*Id.* at 75.) The value of this distribution is critical to the AHC Disclosure Statement. Without this information, it is impossible for a creditor to meaningfully evaluate the AHC Plan.

18. Second, the AHC Disclosure Statement asserts that “Houlihan Lokey has determined that the Subscription Rights [to be provided to the Unsecured Creditors and the Noteholders] in the aggregate have a present market value of approximately \$7 million.” (*Id.* at 32.) However, the Ad Hoc Committee fails to provide *any* information as to how this figure was derived, and no reasonable set of assumption using Black-Scholes results in this number. In fact, the Debtors believe that such subscription rights have no value, based on the value the Ad Hoc Committee ascribes to the Debtors.

19. Indeed, the AHC Disclosure Statement contains a convoluted description of what the Noteholders and the Unsecured Creditors would receive under the AHC Plan that requires one to reference numerous circular defined terms. In describing the value, it states: “Holders of Allowed Second Lien Note Secured Claims, if any, shall receive, in full and final satisfaction of such Claims, their Pro Rata Secured Share (together with the holders Allowed General Unsecured Claims) of the Creditor Distribution.” (*Id.* at 8.)

20. A reader can tell virtually nothing from this statement, and looking to the defined terms provides little clarification. For example, the term “Creditor Distribution” itself contains

multiple defined terms and requires the reader to cross reference multiple pages without resolving the issue. (*See id.* at xi, 8.)

21. Simply put, the AHC Disclosure Plan must clearly and prominently state what value creditors voting on the AHC Plan will receive. Instead, the AHC Disclosure Statement fails to value the 5% distribution that the Noteholders and the Unsecured Creditors are receiving and fails to provide any basis for the value of the acquisition rights that is provided. The Ad Hoc Committee cannot reasonably expect creditors to vote on a plan when the AHC Disclosure Statement does not fairly and fully disclose the value they will receive.

B. The Contingent Nature of the AHC Plan is Not Adequately Described

22. Moreover, the core of the AHC Plan, a \$175 million capital contribution in the form of new equity, is laden with undisclosed uncertainties. (*See* AHC Disclosure Statement at 3.) The AHC Disclosure Statement fails to adequately describe the highly contingent nature of this capital contribution and, thus, the uncertainty surrounding whether the AHC Plan could ever be confirmed.

1. The Backstopping Parties Can Withdraw or Change Their “Commitment” at Any Time

23. The Ad Hoc Committee proposes to raise the \$175 million capital contribution that is the cornerstone of their plan through the Rights Offering to “Second Lien Note Secured in Class 4 who are Accredited Investors.” (*Id.* at 12.) The AHC Disclosure Statement does not give any reason why Noteholders who are to receive less than 1% recovery on their claims should or will invest an additional \$175 million in the Debtors.

24. If the offering fails to draw sufficient investors, the AHC Plan purports to contain a “backstop,” under which the Backstopping Parties have purportedly “committed” to purchase

all of the shares of equity that are not otherwise subscribed. (*Id.*) The AHC Disclosure Statement, however, does not adequately disclose that the obligations of the Backstopping Parties do not run to the benefit of the Debtors, their estates, or even to the Noteholders. On the contrary, they can be withdrawn at any time by agreement among the Backstopping Parties and, even among those parties, individual Backstopping Parties may withdraw their commitments if certain conditions do not occur. Based on a plain reading of the AHC Plan and the Backstop Agreement, it appears that the Ad Hoc Committee has the right to unilaterally amend or terminate both the AHC Plan and the Backstop Agreement. (*See* AHC Plan ¶ 12.7; Backstop Agreement ¶¶ 5, 8-9, 13.) The Backstop Agreement — which is essential to the funding of the \$175 million under the AHC Plan — is nothing more than an agreement among certain members of the Ad Hoc Committee. The Debtors are not a party to the Backstop Agreement and would have no recourse if the Backstopping Parties decided not to backstop the Rights Offering after all.

25. In addition, under paragraph 8(viii) of the Backstop Agreement, the Backstop Agreement may be terminated if “the Requisite Investors determine to support a plan of reorganization for the Debtors other than the [AHC Plan],” and under paragraph 13(a) thereof, it may simply be cancelled by written agreement of the Requisite Investors. Accordingly, while not disclosed in the AHC Disclosure Statement, the Backstop Agreement will provide no support for the AHC Plan if a sufficient number of Backstopping Parties simply decide to support another plan of reorganization or otherwise decide to terminate the Backstop Agreement.

2. The Backstopping Parties’ Obligations Are Subject to the Satisfaction of Numerous Contingent Conditions

26. Under paragraph 5(d) of the Backstop Agreement, “[t]he obligations of the [Backstopping Parties] to purchase Unsubscribed Shares pursuant to their respective Backstop

Commitments on the Plan Effective Date is subject to the satisfaction” of “[a]ll conditions to confirmation and all conditions to the Plan Effective Date set forth in the [AHC Plan]”

(Backstop Agreement ¶ 5(d).)

27. But despite the Ad Hoc Committee’s prior representations to the Court that it has a “fully funded” plan ready to go, the AHC Plan is subject to numerous conditions that must be satisfied before it can proceed to finality, several of which are subject to the Ad Hoc Committee’s approval. Among other things, the AHC Plan is expressly conditioned on the effectuation or execution of “all actions, documents and agreements necessary to implement the Plan, including the Marina Sale, entry into the Marina Sale Agreement, [and] entry into the Amended and Restated Credit Agreement” (AHC Disclosure Statement at 53.) Not only must these documents be executed, they must be “each in form and substance satisfactory to the Ad Hoc Committee” (*Id.*) Therefore, confirmation of the AHC Plan is expressly contingent on a sale of the Marina to Coastal and a restructuring of the Beal Debt on terms that are satisfactory to the Ad Hoc Committee. As described below, both of these are highly speculative. The AHC Disclosure Statement, however, fails to disclose and discuss the significance of these facts.

3. There is Inadequate Disclosure Regarding the Ad Hoc Committee and the Benefits It Will Receive Under the AHC Plan

28. These flaws in the AHC Disclosure Statement are compounded by the fact that the AHC Disclosure Statement fails to provide material information regarding the Ad Hoc Committee and the benefits that the Ad Hoc Committee will receive under the AHC Plan. The AHC Disclosure Statement does not identify, among other things, (i) the principal amount of the notes each Ad Hoc Committee member currently holds, (ii) when such notes were purchased, (iii) how much each member paid for that investment, (iv) the trading that each Ad Hoc Committee member has engaged in between December 2008 and the present, (iv) the identity of

each Ad Hoc Committee member's managing business person(s) and their experience in the gaming industry, (v) information regarding the Backstopping Parties' financial ability to perform their backstop "obligations," and (vi) whether the Ad Hoc Committee's members hold interests in gaming enterprises that compete with the Debtors.

29. This information is important to understand the motivations of the members of the Ad Hoc Committee. In fact, there is nothing in the AHC Disclosure Statement that indicates that the Backstopping Parties have any idea how to run a casino business, much less a financially-challenged business in the Atlantic City gaming market. The Debtors believe that such expertise is very important, given the challenges the Debtors will be facing in the coming years from additional competition. Nor is there any discussion of the Ad Hoc Committee's long term intentions for the business. Are they in this for a "quick fix," with the intention to sell their stock as quickly as possible, or do they have longer term plans?

30. Moreover, there is no disclosure to explain why the Backstopping Parties would receive 20% of the new equity as a "backstop fee" or the value of that consideration. Instead, the 20% fee — based on the Noteholders' own valuation range and potential debt levels — could be worth as much as \$40 million. Such fee appears to have been selected without any rational basis. Disclosure of the basis for a fee of this magnitude, at a minimum, is required. Such information is critical to an understanding of the plan proponents, how the AHC Plan impacts the Ad Hoc Committee, and whether the AHC Plan benefits the Ad Hoc Committee disproportionately to the rest of its class.

C. The Disclosure Statement Fails to Adequately Describe that a Material Condition of the Effectiveness of the AHC Plan – the Sale of the Marina to Coastal – is Highly Unlikely

31. The AHC Disclosure Statement incorrectly implies that Coastal has committed to purchase the Marina pursuant to the terms of an attached letter of intent. (See AHC Disclosure

Statement at 3.) In fact, no purchase agreement is in place, and, up until now, Coastal has refused to commit to closing any transaction involving the Marina. As the Debtors' history with Coastal has consistently shown, it cannot be assumed that Coastal will close on any transaction. Among other things, the AHC Disclosure Statement does not adequately disclose the fact that the AHC Plan calls for the dismissal of the Debtors claims against Coastal *even if* the Marina is *not* ultimately sold to Coastal. (*See id.* at 18.) Moreover, there is insufficient disclosure of the terms of a sale of the Marina to Coastal as a going concern – the sales price for the Marina under such scenario is not even provided.

1. The Debtors Previous Attempts to Sell the Marina to Coastal Have All Failed

32. The Debtors and Coastal Development, LLC have been in litigation for the last four-and-a-half years in a case styled *Trump Hotels & Casino Resorts Development, LLC v. Richard T. Fields, Coastal Development, LLC, Power Plant Entertainment, LLC, Native American Development, LLC, Joseph S. Weinberg, and The Cordish Company*, Case No. 04-20291 (Fla. Cir. Ct.) (the "Florida Litigation"). As part of an agreement to settle the Florida Litigation, the Debtors have been trying to sell the Marina to a Coastal entity for approximately two years, with no success whatsoever. Initially, Coastal breached its agreement to purchase the Marina for \$316 million because it could not obtain financing. It walked away again from an amended agreement to purchase the facility, even after the Debtors provided significantly more time to obtain financing and the parties had agreed on a significantly lower purchase price. Recently, Coastal filed an adversary proceeding in this Court related to the sale of the Marina. The Debtors believe that any offers to purchase the Marina, including Coastal's current "letter of intent," are no more than strategic litigation tactics.

2. The AHC Disclosure Statement Improperly Assumes the Closing of the Marina Transaction

33. In the AHC Disclosure Statement, the Ad Hoc Committee inadequately represents the uncertainty surrounding a sale of the Marina to Coastal. (*See* AHC Disclosure Statement at 18-19.) In fact, only a letter of intent is in place. (*Id.*) The AHC Disclosure Statement appears to represent that this letter of intent commits Coastal to the purchase of the Marina. Such a representation is misleading and inaccurate.⁴ Coastal has not entered into a purchase agreement to acquire the Marina and is not even required to do so until ten days before the creditors vote on the AHC Plan. (*See id.* at XV.)

34. There is little reason to assume that Coastal will close on a sale of the Marina. Coastal has twice failed to comply with its obligations to acquire the Marina and sought to extract significant concessions in downward purchase price adjustments through baseless allegations that the Debtors failed to comply with the Agreement. At no time has Coastal provided any assurance that it would close on the transaction.

35. Moreover, the additional details supplied in the recent amendment to the AHC's Disclosure Statement raise more questions than they provide answers to creditors voting on the AHC Plan. The AHC Disclosure Statement provides that Coastal will purchase the Marina as a closed facility or, as an alternative, as an operating facility at the discretion of the AHC committee and to Coastal. With all due respect to the members of the Ad Hoc Committee, they have no idea of the potential collateral damage to the Debtors' ongoing business operations that would be suffered by closing the Marina and firing over a thousand employees. Such disclosure

⁴ The AHC Disclosure Statement also states that the Debtors, after reorganizing, will enter into a "Cooperation Agreement" with Coastal, under which "the parties shall coordinate on event and room overflow bookings and certain marketing efforts." (AHC Disclosure Statement at 18.) However, the terms of such agreement and its benefits to the Reorganized Debtors, if any, are not disclosed.

is critical because even the de minimis value in the form of common stock of the Debtors that the Noteholders and Unsecured Creditors are receiving under the AHC Plan would be adversely affected by a sale of the Marina in a closed state.

36. In addition, the AHC Disclosure Statement suffers from the same defect that Coastal's letter of intent suffered – there is no disclosure of the terms of a sale of the Marina to Coastal as a going concern. Importantly, the price at which the Marina would be sold to Coastal as a going concern is not stated. Moreover, it is unclear when such a transaction could close. Nor are any of the key terms of such a sale disclosed. These details are important because the Ad Hoc Committee has structured the AHC Plan around the sale of the Marina, and recovery to Beal is significantly affected by a failure to close such a transaction under the AHC Plan.

3. The AHC Disclosure Statement Fails to Disclose the Nature of the Noteholder/Coastal Relationship.

37. The Debtors believe that the Ad Hoc Committee and Coastal have been having discussions for several months and that the latest proposals from Coastal are at the prompting of the Ad Hoc Committee. The Debtors further believe that these discussions pre-dated Coastal's most recent failure to comply with its agreement with the Debtors to purchase the Marina. The AHC Disclosure Statement fails to disclose these discussions and the effect that they had on Coastal's decision not to live up to its contractual obligations to the Debtors. Nor is there any disclosure of whether members of the Ad Hoc Committee or Coastal are separately receiving any value from each other in connection with these proposed transactions. For example, are members of the Ad Hoc Committee providing financing for Coastal's new "bid?" It is critically important, and required by section 1125 of the Bankruptcy Code, that all such relationships and information be fully disclosed.

38. The nature of this relationship is particularly important in light of the fact that, through its plan, the Ad Hoc Committee releases the Debtors' fraud claims against Coastal. (*See id.* at 18.) In fact, Coastal is released even if Beal acquires the Marina. (*See id.*) The AHC Disclosure Statement fails to disclose why such a release is provided to Coastal, who has committed to nothing more than a letter of intent to purchase a property that it has – twice before – backed out of purchasing.

4. The AHC Disclosure Statement and Plan Are Inconsistent with Respect to the Timing of the Sale of the Marina

39. Further, the AHC Disclosure Statement is intentionally inconsistent with respect to whether the Marina sale must be closed in order for the AHC Plan to be confirmed. The AHC Disclosure Statement states that as a condition to effectiveness of the AHC Plan, “all actions, documents and agreements necessary to implement the Plan, including, without limitation, all actions, documents and agreements necessary to implement and consummate the . . . Marina Sale [and] entry into the Marina Sale Agreement . . . shall have been effective or executed.” (*Id.* at 53.) However, the AHC Disclosure Statement also suggests that the AHC Plan can become effective before the sale of the Marina or without any sale at all. (*See id.* at 65.)

40. Despite conditioning effectiveness on a sale of the Marina, the AHC Disclosure Statement later states that the “closing of the sale [of the Marina] under the ‘closed’ option can be expected to occur within approximately 30 days of the *Effective Date*.” (*Id.* at 18 (emphasis added).) To make matters more confusing, it also warns that there is no “assurance or guarantee that the Marina Sale will close.” (*Id.* at 65.) It then explains that if it does not close, the Marina “will remain an Asset of the Reorganized Debtors’ estates . . .” (*See id.*)

41. These statements are obviously inconsistent. Finalizing the sale of the Marina is a condition precedent to the effectiveness of the AHC Plan. (*See id.* at 53.) The AHC Disclosure

Statement gives no explanation as to how the AHC Plan will become effective without that condition precedent, even though it twice implies that it can. (*See id.* at 18, 65.) Voters should not be made to guess which of the various assertions govern; the AHC Disclosure Statement should adequately disclose when the AHC Plan would become effective. This is particularly true for Beal, who would not receive a \$75 million payment under the AHC Plan if the Marina sale does not occur.

5. The AHC Disclosure Statement Does Not Adequately Disclose How Working Capital Has Been Estimated with Respect To a Sale of the Marina

42. Finally, the AHC Disclosure Statement refers to \$10 million of working capital being made available to the Debtors if the Marina is sold to Coastal in a closed state, but there is no basis for this assertion. Nowhere in the AHC Disclosure Statement is information given to explain how the \$10 million figure was reached. Such information should be disclosed.

D. The AHC Disclosure Statement fails to Provide an Explanation of the Value Beal Would Receive Under the AHC Plan

43. The AHC Disclosure Statement states that Beal will provide the same terms under the AHC Plan as it does under the Debtors' Plan, stating that the AHC Plan "provide[s] [Beal] with . . . new debt at an interest rate and other terms that Beal has determined to be acceptable under the [Debtors'] Plan." (*See id.* at 4.) However, the AHC Plan is much less clear on this issue. In essence, the AHC Plan states that Beal will receive a new term loan in form and substance acceptable to the Ad Hoc Committee, with one exception – interest rate. As to this term, the AHC Plan provides that Beal will get the interest rate it had agreed to provide to the Debtors or "such other rate as may be determined by the Bankruptcy Court as necessary to satisfy section 1129(b) of the Bankruptcy Code." (AHC Plan § 1.19.) Thus, the AHC Disclosure Statement fails to disclose to Beal exactly what it will be getting under the AHC Plan.

Moreover, the AHC Disclosure Statement fails to disclose the potential terms and risks of a cram-down of the Beal Debt.

44. Indeed, other than the interest rate, the AHC Disclosure Statement includes no discussion of the proposed terms of the new debt to be provided to Beal. Rather, the AHC Plan makes the completely unreasonable assumption that Beal will provide the same below-market interest rate that Beal offered under the Debtors' Plan. (*See id.* at 19 (“[T]he distribution to [Beal] will include the New Term Loan pursuant to an Amended and Restated Credit Agreement between Reorganized Debtors and [Beal] . . . The New Term Loans will bear interest at the annual rate specified in the current version of that certain Amended and Restated First Lien Credit Agreement in the form attached as an exhibit to that certain commitment letter dated August 3, 2009 from [Beal] and TER Holdings as filed with the Bankruptcy Court on August 3, 2009, [pursuant to Debtors' Plan]”))

45. There is no discussion of the term or maturity for the amended Beal debt anywhere in the AHC Disclosure Statement. Under the Debtors' Plan, Beal has offered significant concessions that are well beyond anything currently available in the market. Specifically, under the Debtors' plan, Beal agreed to a ten year loan (an eight year extension from the current maturity of 2012) and is giving the Debtors the ability to reduce the cash portion of interest to 3% per annum in the event of future financial and business uncertainty. These are benefits that are well below market terms and would not, under any circumstances, be available under the AHC Plan without the express consent of Beal.

46. There is absolutely no basis to expect Beal to agree to the same terms under the AHC Plan, and the Ad Hoc Committee knows this. In fact, the Ad Hoc Committee has been advised that Beal places significant value on the continued involvement of Mr. Trump in the

business, and Beal does not believe Mr. Trump will continue to participate under the Ad Hoc Committee's Plan. As if this were not clear enough, Beal has actually advised the Ad Hoc Committee and the Debtors that it would *not* consent to similar financing terms in any chapter 11 plan proposed by the Ad Hoc Committee. Not surprisingly, the AHC Disclosure Statement fails to disclose this representation by Beal or to address why the Ad Hoc Committee expects Beal to offer new debt on such terms. The AHC Disclosure Statement must include such information to advise those voting on the AHC Plan that such financing terms cannot be confirmed over the dissent of Beal.

47. To the extent the AHC Plan relies on a cram down of the Beal debt, there is no disclosure of what interest rate the Ad Hoc Committee proposes or how the payment of Beal at that rate adversely affects the ability of the Debtors to weather another economic downturn in the Atlantic City market or even whether the AHC Plan is feasible at such rates. Furthermore, there is no discussion of when the Beal debt will mature. Beal has agreed with the Debtors to extend its debt to the year 2020. But, as described above, it will not give those terms to the Ad Hoc Committee. Refinancing the Beal debt at an earlier date is a significant risk that the AHC Disclosure Statement fails to discuss.

II. The AHC Disclosure Statement Contains Significant Factual Inaccuracies

48. Finally, the AHC Disclosure Statement includes several misstatements of fact, including, but not limited to, the following statements:

- Contrary to the AHC Disclosure Statement, the alleged proposal exchanging Second Lien Notes for Debtors' equity *was subject to the Ad Hoc Committee reaching an agreement with Trump and Beal.* (*See id.* at 40.)
- The AHC Disclosure Statement inaccurately asserts that the Ad Hoc Committee increased the value of its proposed plan above \$150 million prior to the filing of the AHC Plan. (*See id.*) This is not the case. The Ad Hoc Committee never increased its proposed \$150 million investment until the filing of the AHC Plan.

- The AHC Disclosure Statement incorrectly asserts that “Mr. Trump personally was to receive sums in excess of \$20 million from the asset sale proceeds as some form of fee in connection with orchestrating the Florida Litigation and [this fee] was approved by the other members of the Debtors’ Board of Directors.” (*Id.*) No such fee was ever approved.

49. Such factual inaccuracies contribute to the overriding misleading tone of the AHC Disclosure Statement. As set forth in *Egan*, a disclosure statement should be a balanced recitation of facts, not be a one-sided brochure for a specific proposal. *See Egan*, 33 B.R. at 675-76.

CONCLUSION AND REQUESTED RELIEF

50. The AHC Disclosure Statement fails to provide creditors with critical information necessary to consider the AHC Plan, including the value of the rights purportedly provided to the Noteholders and Unsecured Creditors under the AHC Plan, the expressly conditional nature of the AHC Plan, the risk that the Debtors will not reach an agreement with Coastal to sell the Marina, and the fact that the generous terms offered by Beal to the Debtors are not available in the market and will not be available from Beal pursuant to the AHC Plan. Moreover, the AHC Disclosure Statement fails to describe the Ad Hoc Committee’s interest in advancing this plan. Indeed, the AHC Disclosure Statement does not even clearly identify the interests of the Noteholders who make up the Ad Hoc Committee. Unless and until the Ad Hoc Committee modifies the AHC Disclosure Statement to correct these infirmities, the AHC Disclosure Statement should not be approved.

RESERVATION OF RIGHTS

51. Debtors reserve their right to amend, modify, or supplement this Objection in response to, or as a result of, the filings of any modifications to the AHC Plan or AHC Disclosure Statement, any proposed plan supplement, and/or any submission in connection with the AHC Plan in these chapter 11 cases. Debtors additionally reserve their right to amend,

modify, or supplement this Objection in response to decisions on related matters currently pending before this Court and the District Court. Debtors reserve all of their rights to assert any and all further objections in advance of confirmation of the AHC Plan.

WHEREFORE Debtors respectfully request entry of an order denying the Ad Hoc Committee's motion for approval of the AHC Disclosure Statement and granting Debtors such other and further relief as is just.

Dated: September 29, 2009
New York, New York

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General Information

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