

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	:	
	:	CHAPTER 11
TRUMP ENTERTAINMENT RESORTS	:	
INC., et al.,	:	Case No. 14-12103 (KG)
	:	(Jointly Administered)
DEBTORS.	:	

**OBJECTION OF INTERNATIONAL PAINTERS AND ALLIED TRADES INDUSTRY
PENSION FUND TO DEBTOR’S MOTION FOR AN ORDER APPROVING THE
DEBTORS THIRD AMENDED DISCLOSURE STATEMENT
AND LIMITED JOINDER IN THE SECOND SUPPLEMENTAL OBJECTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS ¹**

The International Painters and Allied Trades Industry Pension Fund (“Pension Fund”), by and through their undersigned attorneys, hereby submits this objection with respect to the Debtors’ motion seeking the entry of an order: (a) approving the Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket 713] (“Third Amended Disclosure Statement”). In support of its objection, the Funds aver as follows:

BACKGROUND

1. The Fund is a trust fund established under 29 U.S.C. §186(c)(5) and “multiemployer plan” and “employee benefit [pension] plan” within the meaning of 29 U.S.C. §1002(37), (2) and (3).

2. Prior to its bankruptcy filing, the Debtors were party to collective bargaining

¹ The original date of filing for Debtor’s Disclosure Plan and Plan of Reorganization was October 29, 2014. Since that date, the Disclosure Statement and Plan have been amended with language which the Pension Fund finds objectionable. The currently pending motion on the Third Amended Disclosure Statement was originally scheduled for hearing on January 16, 2015 and was subsequently continued to January 28, 2015.

agreements (“Labor Contracts”) with one or more local labor unions or district councils affiliated with the International Union of Painters and Allied Trades (“Union”). The Labor Contracts remain in effect and have not been terminated.

3. The Company also signed or agreed to abide by the terms of the agreements and declarations of trust of the Funds (“Trust Agreement”) made between certain employers and employee representatives in an industry(ies) affecting interstate commerce to promote stable and peaceful labor relations.

4. Company also agreed to abide by the rules and regulations of the Pension Fund as set forth in the International Painters and Allied Trades Industry Pension Plan (“Pension Plan”).

5. The Labor Contracts requires Debtors to make certain fringe benefit contributions to the Funds for hours worked by or paid to its covered employees.

6. On November 7, 2014, the Pension Fund filed eight (8) proof of claims for estimated, contingent statutory withdrawal liability in the amount of \$1,468,533.00 pursuant to 29 U.S.C. §§1301(b), 1381 et seq., jointly and severally amongst all Debtors. Of this amount the Pension Fund claimed that \$74,030.45 from Debtor Trump Marina Associate, LLC, was entitled to priority under 11 U.S.C. §507(a)(5).

7. On January 5, 2015, Debtor filed its Third Amended Joint Plan of Reorganization (“Plan”) and Third Amended Disclosure Statement.

8. Article X, Section 10.4 of the Plan generally provides that all employment and severance policies, all compensation and benefit plans, policies, and programs, “plans and arrangements subject to sections 1113 and 1129(a)(13)” of the Debtors entered into before the Petition Date and not since terminated or modified shall be terminated or treated as executory contracts and rejected under the Plan pursuant to sections 365, 1113 and 1123 of the Bankruptcy

Code. *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, Article X, Section 10.4(a).

9. Article X, Section 10.6 of the Plan unilaterally asserts that all collective bargaining agreements related to the Plaza Hotel and Casino “shall be deemed terminated and shall no longer have any force or effect.”

10. Article XII, Section 12.3 of the Plan provides that holders of any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date, including any Claim related to any “withdrawal liability” arising from any multi-employer pension plan, shall be precluded and enjoined from prosecuting or asserting any such Claim against any Debtor or any Reorganized Debtor.

11. The Plan does not provide for payment of the Fund’s priority claim, entitled to priority in accordance with Section 507(a)(5), in cash on the effective date or in deferred payments over time with interest. The Funds have not agreed to accept less than payment in full on the Effective Date.

OBJECTIONS

12. The Pension Fund joins in the Second Supplemental Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtors’ Motion for Order (A) Approving the Disclosure Statement; (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (C) Establishing Deadline and Procedures for Filing Objections; and (D) Granting Related Relief [Docket entry 743] to the extent set forth in Section III, Supplemental Objection, subsection A, The Third Amended Plan is Patently Unconfirmable on Feasibility Grounds, and subsection B, The Disclosure Statement Lacks Adequate Information to Justify the Broad Non-Debtor Releases Provided for in the Third Amended Plan.

13. 11 U.S.C. § 1129(a) states that for a plan of reorganization to be confirmable the plan and the plan proponent must comply with the applicable provisions of Title 11. 11 U.S.C. § 1129(a)(1)-(2). Additionally it requires that “the plan has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). The Code requires that administrative priority claims be paid “on the effective date” and that priority claims for amounts payable to employee benefit plans pursuant to section 507(a)(5) be paid “on the effective date” or, if the class has accepted the plan, in “deferred cash payments.” 11 U.S.C. § 1129(a)(9)(A)-(B). Further, it is required as a condition to confirmation that the plan “is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11).

14. The Pension Fund objects to the Third Amended Disclosure Statement on the basis that the Plan is not feasible nor proposed consistent with applicable law for several reasons. The Plan fails to disclose these problems and waste of resources on a plan that cannot be confirmed.

(a) The Plan proponent fails to provide for the payment of priority claims in full on the effective date, or to provide for interest on the proposed deferred payments on the Funds’ priority claims, the Plan proposes to pay the Fund less than the value of its claim as of the effective date in violation of 11 U.S.C. §1129(a)(9)(B)(i), (ii). See In re Marcal Paper Mills, Inc., 650 F.3d 311 (3d Cir. 2011) (withdrawal liability includes priority claims). The Fund has not agreed to accept deferred payments in lieu of cash equal to the amount of its priority claim on the effective date.

(b) The Plan proponent proposes to reject collective bargaining agreements and treat the benefit plans provided for therein as executory contracts which would then be terminated. The Plan then intends to treat “all Claims arising from the rejection of executory contracts or unexpired leases...as General Unsecured Claims.” *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, Article X, Section 10.2. To the extent the Plan proponents seek to avoid or disallow administrative expense priority to the portion of withdraw liability that accrued after filing of the bankruptcy petition, the plan is in violation of 11 U.S.C. §507(a)(2) and §503(b)(1)(A).

(c) The Plan proponent illegally seeks to reject a collective bargaining agreement without compliance with the requirements of 11 U.S.C. §1113. See Article X, Section 10.4(a), *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*. Among other things, the Plan proponent illegally ignores required procedural steps under 11 U.S.C. §1113(b)(1)(A)-(B) of providing the union with a proposal for modification and relevant information to evaluate the proposal prior to seeking the Court’s rejection of the collective bargaining agreement. See *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of American, AFL-CIO-CLC*, 791 F.2d 1074, 1093 (3d Cir. 1986)(stating that the negotiation obligations of 1113 must be met before a court may reject or modify the CBA): see also *In re William P. Brogna & Co.*, 64 B.R. 390, (Bankr. E.D. Ps. 1986)(Section 1113 imposes obligations to provide relevant information as is necessary to union representatives and meet and confer in good faith).

(d) The Plan proponent seeks to release non-debtor parties from withdrawal liability obligations in violation of 11 U.S.C. §524(e). See also Einhorn v. ML Ruberton Const. Co., 632 F.3d 89 (3rd Cir. 2011) (holding that the successor of an asset sale is still liable for Debtor's delinquent ERISA obligation); see also Golden State Bottling Co. v. NLRB, 414 U.S. 168 (1973) (same).

WHEREFORE, the Fund respectfully requests that the court deny Debtor's motion for approval of the Disclosure Statement for the Third Amended Join Plan.

Respectfully submitted,

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/s/Rick S. Miller

Dated: January 21, 2015

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
TRUMP ENTERTAINMENT RESORTS, INC., *et. al.*,)
) Case No. 14-12103 (KG)
Debtors.) **(Jointly Administrated)**
)

CERTIFICATE OF SERVICE

I, Teresa K.D. Currier, hereby certify that on January 13, 2015, I caused a copy of the **Supplemental Objection of Levine, Staller, Sklar, Chan & Brown, P.A. to the Debtors' Motion for Entry of an Order Approving the Proposed Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization** to be served on the parties on the attached service list in the manner indicated therein.

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Dated: January 13, 2015

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