UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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In re:	CHAPTER 11
TCI 2 HOLDINGS, LLC, et al.,	Case No. 09-13654 (JHW)
	Jointly Administered
Debtors.	Hearing Date & Time: December 14, 2009 at 2:00 p.m.

OBJECTION BY DONALD J. TRUMP TO APPROVAL OF THE AMENDED DISCLOSURE STATEMENT FILED BY BEAL BANK AND BEAL BANK NEVADA

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

Donald J. Trump, a substantial creditor of the Debtors, by and through his undersigned counsel, hereby joins in the objection of the Ad Hoc Group (the "Ad Hoc Group") of Holders of

8.5% Senior Secured Notes due 2015 (the "Objection") to approval of the *Amended Disclosure Statement* (the "Beal Bank Disclosure Statement") *for the Joint Plan of Reorganization* (the "Beal Bank Plan") *Under Chapter 11 of the Bankruptcy Code Proposed by Beal Bank (f/k/a Beal Bank S.S.B.) and Beal Bank Nevada* ("Beal Bank"), and respectfully represents as follows:

PRELIMINARY STATEMENT

The Beal Bank Disclosure Statement fails to provide any, much less adequate, information regarding a critical component of the Debtors' reorganization: use of the Trump Names (as defined below).

Beal Bank is well aware that the Debtors' operations heavily depend on the Trump Names. Indeed, it previously argued that very point to this Court when attacking the Ad Hoc Group's competing plan, stating as follows:

> Notably, based on Beal Bank's belief that its recovery would be maximized through the active ongoing participation in the business of the Debtors' erstwhile celebrity owner, Donald Trump (and his daughter, Ivanka), the Beal Bank proposal contemplated and was conditioned upon the Trumps' commitment to do so. In contrast, the ad hoc noteholders' proposal would have left the Debtors' casinos to compete in an increasingly cluttered and challenging market stripped of their most distinguishing feature.

[Docket No. 681][1] at ¶ 5. In other words, "[t]o maximize that prospect [of recovery on Beal's loan], the casinos' going-forward marketing strategy would be built on what Beal Bank believed to be the best available platform – the Trump name." Id. at ¶ 6.

As Beal Bank is well aware and has properly acknowledged, the Debtors cannot use the Trump Names without Mr. Trump's consent. In challenging the Ad Hoc Group's disclosure statement for its initial plan (which did not have Mr. Trump's consent), Beal Bank criticized the

[1] *Motion of Beal Bank, S.S.B. and Beal Bank Nevada for a Stay Pending Appeal of the Order Terminating the Debtors' Exclusive Period in Which to File a Plan of Reorganization.*

Ad Hoc Group's reliance on the Debtors' projections, which assumed continued use of the Trump Names.[2] Beal Bank observed that while the Debtors' projections assumed "Mr. Trump will enter into agreements pursuant to which he will . . . grant the Debtors a license to use the 'Trump' name for use in certain gaming and certain related activities," the Ad Hoc Group "provided nothing but unlitigated legal assertions and conclusory valuation opinions regarding these licensing issues." Id. at ¶ 71. Ironically, Beal Bank now commits the very sin for which it chastised the Ad Hoc Group in connection with the Ad Hoc Group's prior plan, which did not have Mr. Trump's consent.

Despite acknowledging the importance of the Trump Names and the need for Mr. Trump's consent, Beal Bank fails to disclose these issues in its disclosure statement. Nor does it disclose the negative impact that would befall the Debtors' operations and valuation without the Trump Names.

Based upon the foregoing and the arguments set forth below and in the Objection, the Court should not approve the Beal Bank Disclosure Statement.

OBJECTION

1. Mr. Trump joins the Objection and opposes approval of the Beal Bank Disclosure Statement for the reasons set forth therein.

2. Moreover, Beal Bank cannot satisfy the requirements of 11 U.S.C. § 1125 because it fails to disclose (a) that Beal Bank has no right to use the Trump Names under its plan without Mr. Trump's consent (which consent has not been obtained), (b) how the Debtors' operations and valuation with respect to, and the feasibility of, the Beal Bank Plan, are impacted

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[2] *Objection of Beal Bank, S.S.B., and Beal Bank Nevada to Motion of Ad Hoc Committee of Holders of the 8.5% Senior Secured Notes Due 2015 for an Order with Respect to Noteholders' Amended Disclosure Statement and Solicitation of Votes on Noteholders' Amended Joint Plan of Reorganization* [Docket No. 751].

if the Debtors cannot use the Trump Names, and (c) critical issues affecting the minority shares to be issued under the Beal Bank Plan.

A. Failure To Disclose The Debtors' Need For Mr. Trump's Consent To Use The Trump Names.

3. Mr. Trump is the owner of all rights in the various marks and registrations including "DONALD J. TRUMP", "DONALD TRUMP", "D.J. TRUMP", "D. TRUMP" and "TRUMP" and related intellectual property (the "Trump Names"). As discussed above, Beal Bank recognizes the critical importance of the Trump Names for the Debtors' operations and valuation. Yet, the Beal Bank Disclosure Statement fails to disclose that, as a matter of law, the Debtors cannot use the Trump Names absent Mr. Trump's consent.

4. The Debtors' use of the Trump Names is governed by the Amended and Restated Trademark License Agreement (the "License Agreement"), dated as of May 20, 2005. For the following reasons, among others, the License Agreement is not assumable and therefore, absent agreement from Mr. Trump which Beal Bank has not obtained, the Debtors cannot use the Trump Names under the Beal Bank Plan:

- **Termination of the Services Agreement**. The License Agreement was entered into contemporaneously with a Services Agreement ("Services Agreement") dated as of May 20, 2005, providing for Mr. Trump to render ongoing personal services to the Debtors. The License Agreement ties the Debtors' use of the Trump Names to continuation of the Services Agreement. In particular, the Debtors' enjoyment of a royalty free license terminates automatically "[i]n the event that: (a) the Services Agreement is terminated (i) by Company and/or Trump Holdings other than for Cause, or (ii) by Trump for Good Reason, or (b) Company and Trump Holdings are not offering terms to Trump pursuant to a services agreement at least as favorable to Trump as the Services Agreement . . ." § 5.1. Plainly, both of the termination conditions in subsections 5.1(a) and (b) have occurred, although either condition is independently sufficient to cause the termination of the License Agreement. Under subsection (a), the Services Agreement is not assumable in bankruptcy and terminated upon the Debtors' chapter 11 filing. Moreover, under subsection (b), the Debtors have dishonored the Services Agreement, have not met any of their obligations thereunder since before their chapter 11 filing, and have not offered Mr. Trump a comparable agreement "at least as favorable". While the Debtors may have had the

right to retain the Trump Names in exchange for agreeing to a cash royalty obligation, their time to exercise that right expired long ago.

- **Non-Monetary Defaults**. Even if the License Agreement had not already terminated, the Debtors cannot assume it because of past non-monetary defaults that the Debtors cannot cure. The License Agreement contains Trump Holdings' covenant not to "engage in any activity which could reasonably, in Trump Holdings' reasonable business judgment, be expected to harm the reputation of the Licensed Marks." § 6.1.5(vi). As set forth in greater detail in Mr. Trump's proof of claim filed May 28, 2009, the Debtors have violated this covenant and cannot cure that violation.

- **Non-Exclusive Licenses**. Even if the License Agreement had not already terminated and the Debtors could cure the defaults thereunder, the License Agreement is not assumable under non-bankruptcy law. See 11 U.S.C. § 365(c)(1). The License Agreement provides the Debtors a non-exclusive license; Mr. Trump is free to use the Trump Names for business purposes other than casino and gaming activities. See § 2.2.1. Under federal trademark law, non-exclusive trademark licenses are "personal and non-assignable without the consent of the licensor." In re N.C.P. Marketing Group, Inc., 337 B.R. 230, 237 (D. Nev. 2005) (affirming bankruptcy court ruling that trademark license was not assumable) *aff'd without op.*, 279 Fed. Appx. 561 (9th Cir. May 23, 2008); see also Matter of West Electronics Inc., 852 F.2d 79, 83 (3d Cir. 1988) ("if non-bankruptcy law provides that [a party] would have to consent to an assignment of the West contract to a third party, i.e., someone "other than the debtor or the debtor in possession," then West, as the debtor in possession, cannot assume that contract. This provision limiting assumption of contracts is applicable to any contract subject to a legal prohibition against assignment."); In re Valley Media, Inc., 279 B.R. 105, 135 (Bankr. D.Del. 2002) ("A non-exclusive license of rights by a copyright owner to another party is not assignable by that party without the permission of the copyright holder under federal copyright law since the license represents only a personal and not a property interest in the copyright."). Accordingly, absent agreement from Mr. Trump, the Debtors cannot assume the License Agreement and therefore cannot continue using the Trump Names.

B. Failure To Address Impact On The Debtors' Operations And Valuation If Mr. Trump Does Not Consent.

5. The Beal Bank Disclosure Statement further fails to provide adequate disclosure by omitting any discussion of the impact on the Debtors' businesses and valuation if the Debtors cannot use the Trump Name.

6. The Beal Bank Disclosure Statement relies on the Ad Hoc Group's valuation of the Debtors which incorporates the Debtors' projections properly assuming utilization of the

Trump Names. (Article V). Beal Bank heavily depends on the Debtors' projections for its "belie[f] that cash flow from operations and available cash will be adequate to fund the Plan and meet the Debtors' future liquidity needs." (Article IX, B. 1, 2). Addressing the "feasibility" requirement, Beal Bank explains that "[f]or purposes of determining whether the Plan meets this requirement, Beal Bank has analyzed the Debtors' ability to meet their obligations under the Plan. As part of this analysis, Beal Bank has review (sic) the Debtors' Projections described in Section V above. Based upon such Projections, Beal Bank believes that the Debtors will be able to make all payments required pursuant to the Plan and, therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization." (X.E).

7. Clearly absent from the Beal Bank Disclosure Statement is any analysis (or even mention) of how the Debtors' projections would be impacted without the Trump Names. Without this information – especially in a plan that asks creditors to make an investment in the Debtors' future – the disclosure statement fails the requirements of Bankruptcy Code section 1125.

C. Failure To Disclose Critical Issues Affecting The Shares Offered To Unsecured Creditors In The Rights Offering.

8. The Beal Bank Plan grants general unsecured claims and Noteholders subscription rights in a rights offering for new equity in the reorganized Debtors. As set forth in Page 17 of the Beal Bank Disclosure Statement, depending on the subscription level, Beal Bank will hold between 65.638% and 97.990% of the membership units in reorganized TER Holdings, and NewCo, an entity owned by general unsecured creditors and Noteholders, will hold substantially all the remaining membership interests.

9. The Beal Bank Disclosure Statement does not disclose that these minority membership units will be largely illiquid and of dubious value since they will not be traded on a

public market. Moreover, Beal Bank fails to disclose what protections, if any, it proposes giving these minority interests. Given Beal Bank's large controlling block, the value of these interests would be substantially hampered if Beal Bank can unilaterally dictate all corporate actions including, for instance, transactions with its own affiliates, as the Beal Bank Plan appears to permit Beal Bank to do.

CONCLUSION

Mr. Trump respectfully submits that the Beal Bank Disclosure Statement should not be approved because it fails to provide adequate disclosure with respect to material issues relating to the Beal Bank Plan.

Dated: December 9, 2009

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General Information

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