

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

In re:

**TRUMP ENTERTAINMENT RESORTS,
INC., et al.,¹**

Debtors.

Chapter 11

Case No. 14-12103 (KG)

Jointly Administered

Hearing Date: March 12, 2015 at 9:00 a.m. (ET)

Objection Deadline: March 4, 2015 at 4:00 p.m. (ET)

(Extended for NRF to March 10, 2015 at 10:00 a.m. (ET))

Ref. No. 712

**OBJECTION TO THE DEBTORS' THIRD AMENDED JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The National Retirement Fund ("NRF") hereby submits this objection (the "Objection") to the above-captioned Debtors' Third Amended Joint Plan of Reorganization (the "Plan").² Terms not otherwise defined in this Objection will have the meanings ascribed to them in the Plan.

Objection

1. There is a significant possibility that the Effective Date of the Debtors' Plan will occur *before* final adjudication of Local 54's (the "Union's") appeal of this Court's *Order (I) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425), and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

² NRF obtained from the Debtors an extension of its time to object to the Plan through Monday, March 10, at 10 am. During this time, NRF, the Debtors and the Lenders attempted to reach a consensual resolution of the matters set forth in this Objection, but have been unsuccessful to date. As of the filing of this Objection, the parties are continuing their dialogue.

*UNITE HERE Local 54 Pursuant to 11 U.S.C. Section 1113(c) and (II) Implementing Terms of Debtors' Proposal under 11 U.S.C. Section 1113(b) (the "CBA Order").*³

2. NRF's current claims are premised on withdrawal liability incurred by the Debtors as a result of the entry of the CBA Order.⁴ If, in fact, no withdrawal occurred (*e.g.*, as a result of the CBA Order's reversal or modification), then NRF has no claims related to the rejection of the Debtors' collective bargaining agreement with the Union. In that event, NRF would be entitled to no distribution on account of those claims. Reversal or modification of the CBA Order, however, would mean the Debtors had, and the Reorganized Debtors have, an obligation to continue making pension contributions to NRF. If the CBA Order is reversed or modified after the Effective Date, however, then NRF's claims related to these contribution obligations could be negated by virtue of the Plan's Release provisions.⁵

3. Under the Plan, NRF is 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 Trust Assets will be allocated. The Release provides, in pertinent part, that creditors agree to release the Released Parties, including the Debtors and Reorganized

³ Under Section 11.2(f) of the Plan, it is a condition precedent that the CBA Order be a Final Order; however, the Debtors, with the consent of the Consenting First Lien Lenders, may waive any condition precedent and cause the "Effective Date" to occur at any time after confirmation of the Plan.

⁴ In addition to general unsecured claims filed against the Debtors premised on withdrawal liability incurred by the Debtors as a result of the entry of the CBA Order, the NRF properly filed a *Request for Allowance and Payment of Administrative Claim by National Retirement Fund* [Docket No. 970 and Claim No. 879] (the "NRF Administrative Claim"). The NRF Administrative Claim requests allowance and payment of, among other things, an administrative expense claim in an unliquidated amount for pension contributions that would be due and owing to the NRF from and after September 26, 2014, if and to the extent that the CBA Order is reversed or vacated. Under Section 9.2 of the Plan, creditors are permitted to amend their claims only until the Effective Date. Were the Effective Date to occur before the CBA Order became a Final Order, it is unclear whether NRF could quantify and amend its Requested Administrative Claim.

⁵ The Release is predicated on the occurrence of the Effective Date, and thus, the issues raised by this Objection are limited to a situation in which the Effective Date occurs before the CBA Order becomes a Final Order.

Debtors, from any claims existing on the Plan's Effective Date based on any transaction that took place prior to the Plan's Effective Date. Plan § 12.7(b).

4. NRF has a fiduciary obligation to its members to maximize the value of its claims. Thus, were the CBA Order already a Final Order, NRF would grant the Release in order to maximize its recovery for the benefit of its constituency, which includes baggage and house-keeping attendants, cooks, and food servers who have provided critical services to the Debtors during these bankruptcy cases. However, NRF is in the unique and untenable position of having to decide to grant or not grant the Release prior to final adjudication of the issues that will determine whether there has even been a withdrawal from NRF.

5. As a result, NRF may be faced with an unjust and irrational outcome if an appellate court reverses or vacates the CBA Order after the Plan Effective Date. In that situation, NRF would have no withdrawal liability claims related to entry of the CBA Order and thus would be entitled to no distribution on account of such claims. But by opting into the Release, NRF could be estopped from asserting administrative claims against the Debtors and the Reorganized Debtors for pension contributions due and owing from and after September 26, 2014, the date of rejection of the collective bargaining agreement under the CBA Order.⁶ In that event, NRF will have received no consideration in exchange for its Release.

6. To avoid such an inherently unfair result, the confirmation order must provide that if the CBA Order is reversed after the Effective Date, NRF's Ballot and Release are deemed,

⁶ In fact, the Release could be read so broadly as to impact the Reorganized Debtors' obligation to continue making post-Effective Date pension contributions even after the CBA Order is reversed or vacated. 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 11 U.S.C. §§ 365, 1113 and 1123 of the Bankruptcy Code. To the extent that the Debtors intend that this provision would serve to automatically reject the Taj Mahal Collective Bargaining Agreement were the CBA Order reversed, the NRF objects.

and are, void *ab initio*. Both the law and common sense dictate that the NRF should not be held to its Release of the Released Parties if the Release would serve to deprive NRF of the ability to assert valid administrative expense claims against the applicable Released Parties.

7. In particular, the Third Circuit has held that a third-party release is appropriate when, among other things, it is “fair” and “given in exchange for reasonable consideration.” *In re Continental Airlines*, 203 F.3d 203, 214-15 (3d Cir. 2000); *see also In re Medford Crossings North, LLC*, 2011 WL 182815, at *16 (Bankr. D. N.J. 2011). Here, NRF has claims against the Debtors for withdrawal liability. If the CBA Order is reversed or vacated after the Effective Date and it is determined that the Debtors have not withdrawn from NRF, however, then NRF will have no withdrawal liability claims resulting from entry of the CBA Order. Were that to occur, NRF would have provided a Release on account of claims it never had and for no consideration.

8. Put simply, NRF is 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 -- despite having received no consideration on account of any claims from any of them. It would be patently unjust if the NRF were compelled to grant a broad third party release and then not be permitted to assert claims against the applicable Released Parties should its claim (on account of which it would have granted the Release in the first instance) ultimately be invalidated by a ruling of an appellate court after the Effective Date. In other words, the fortuity of the mandated timing of NRF’s decision whether to grant the Release and the unknown timing of any reversal of the CBA Order should not be permitted to deprive NRF of its right to assert valid administrative claims that arose prior to the Effective Date.

Purported Plan Rejection of Plaza Collective Bargaining Agreement Should Not Be Permitted

9. The Plan provides that “[d]ue to the closure of the Plaza Hotel and Casino, on the Effective Date, unless previously terminated, the Plaza Collective Bargaining Agreements shall be deemed terminated and shall no longer have any force or effect.” See Plan § 10.6.

10. The Debtors have only sought and received authorization from this Court to reject the Taj Mahal collective bargaining agreement. See *Debtors’ Motion for Entry of an 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 the Debtors’ Proposal under 11 U.S.C. § 1113(b)* (Docket No. 134) and *Memorandum Opinion* (Docket No. 325).

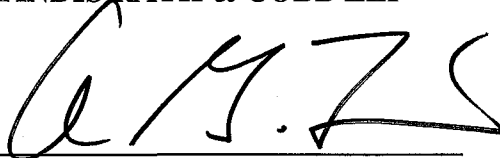
11. To date, the Debtors have not moved to reject the Plaza Collective Bargaining Agreement. The Plaza Collective Bargaining Agreement only can be rejected pursuant to section 1113 of the Bankruptcy Code. Upon information and belief, the Debtors have not provided the Union with a proposal for modification to the Plaza Collective Bargaining Agreement. See *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of America*, 791 F.2d 1074, 1093 (3d Cir. 1986) (debtor must meet its negotiating obligation before the court may approve its rejection of the labor contract).

12. Thus, the Court should not authorize the Debtors’ purported rejection of the Plaza Collective Bargaining Agreements in contravention of section 1113 of the Bankruptcy Code and applicable Third Circuit precedent.

WHEREFORE, NRF requests that the Court (i) order that any Confirmation Order entered by the Court specifically provide that, if and to the extent that the CBA Order is modified, reversed or vacated such that the Debtors or Reorganized Debtors had or continue to have an ongoing obligation to make contributions to the NRF from and after September 26, 2014, then the NRF's Ballot and Release will be deemed void *ab initio*, and (ii) grant NRF such other and further relief as is just and proper.

Dated: March 10, 2015
Wilmington, Delaware

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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.¹

Case No.: 14-12103 (KG)

Debtors.

(Jointly Administered)

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

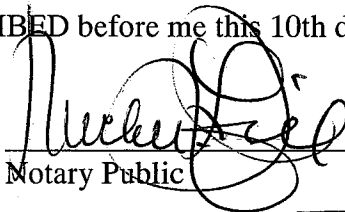
Cathy A. Adams, being duly sworn according to law, deposes and says that she is employed by the law firm of Landis Rath & Cobb LLP, counsel to the National Retirement Fund in the above referenced cases, and on the 10th day of March, 2015, she caused a copy of the following:

OBJECTION TO THE DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

to be served upon the parties identified on the attached list in the manner as indicated.


Cathy A. Adams

SWORN TO AND SUBSCRIBED before me this 10th day of March, 2015.


Notary Public

MICHELLE L. IFILL
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Sept. 6, 2015

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's deferral tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425), and TERH LP, Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

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Case No. 14-12103 (KG)

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