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Proposed Counsel for Official Committee
of Equity Security Holders

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	)	CHAPTER 11
	)	
THCR/LP CORPORATION, *et al.*,	)	Case Nos. 04-46898 (JHW) through
	)	Case Number 04-46925 (JHW)
	)	
	)	(Jointly Administered)
Debtors.	)	

OBJECTION OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO (A) EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING POST-PETITION SECURED SUPERPRIORITY FINANCING PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 362, 364(c)(1), 364(c)(2), 363(c)(3) AND 364(d) AND (II) SETTING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c) AND (B) EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL STIPULATION AND ORDER PROVIDING FOR USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION [REGARDING DOCKET NUMBERS 10 & 11]

The official committee of equity security holders (the "Equity Committee"), by and through its undersigned proposed counsel, The Bayard Firm and Riker, Danzig, Scherer, Hyland

& Perretti, LLP, hereby objects (the "Objection") to (A) the Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Post-Petition Secured Superpriority Financing Pursuant to Bankruptcy Code Sections 105(a), 362, 364(c)(1), 364(c)(2), 363(c)(3) and 364(d) and (II) Setting Final Hearing Pursuant to Bankruptcy Rule 4001(c) (the "DIP Motion") [Docket Number 10]; and (B) the Emergency Motion of Debtors for Entry of Interim and Final Stipulation and Order Providing for Use of Cash Collateral and Providing Adequate Protection (the "Cash Collateral Motion") [Docket Number 11]. In support of the Objection, the Equity Committee respectfully represents as follows:

BACKGROUND

1. On November 21, 2004, the above-captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") filed voluntary petitions for relief pursuant to chapter 11, of title 11, of the United States Code (the "Bankruptcy Code"). In their petitions, the Debtors collectively list approximately $1.8 billion in liabilities and $1.6 billion in assets.

2. The Debtors continue to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

A. The Equity Committee

3. On November 26, 2004, less than a week after the filing of these cases, Robino Stortini Holdings LLC ("RSH") sent a request for the appointment of a statutory committee of equity security holders (the "Equity Committee Request") to the Office of the United States Trustee (the "United States Trustee"). On December 6, 2004, the Debtors sent an Opposition to Request for Appointment of Official Committee of Equity Holders (the "Opposition") to the United States Trustee, and on December 8, 2004, the TAC Bondholders sent a letter to the

United States Trustee joining in the Debtors' opposition. Thereafter, numerous letters were sent by equity security holders to the United States Trustee in support of the Equity Committee Request. After careful deliberation, the United States Trustee made a decision to solicit interest from equity security holders in an effort to form an Equity Committee.

4. On December 28, 2004, more than one month after the initial Equity Committee Request, and despite the continuous and vehement opposition by the Debtors and other parties-in-interest in these cases, the United States Trustee concluded its solicitation process and appointed the Equity Committee. The members of the Equity Committee are: (i) Robino Stortini Holdings LLC (Chair); (ii) Harbert Distressed Investment Master Fund, LTD., (iii) Emanuel Ciminello III; (iv) Martin E. Hennesey; (v) Michael Yacyk; (vi) Sebastian Pignatello; and (vii) Phillip Sternberg.

5. The members of the Equity Committee are, in the aggregate, minority holders of approximately 44% of the stock (fully diluted after giving effect to options) of Trump Hotels and Resorts, Inc. ("Trump Hotels")—an affiliated Debtor. The majority shareholder, Donald J. Trump ("Mr. Trump") is the chairman of the board, president and chief executive officer of Trump Hotels. As of the Petition Date, Mr. Trump owned or controlled approximately 56% of the shares of Trump Hotels on a diluted basis (after giving effect to exercise of options).

B. Treatment of Equity under Debtors' Plan of Reorganization

6. The Debtors' plan of reorganization (the "Plan") and accompanying disclosure statement (the "Disclosure Statement") was filed on December 15, 2004 and represents the Debtors efforts to implement the prepetition Restructuring Support Agreement entered into by and among the Debtors, certain of the TAC Noteholders, certain of the TCH Noteholders and Mr. Trump.

7. According to the Debtors, the Plan is "the product of diligent efforts and intense negotiations by the Debtors, DJT [Trump], the TAC Noteholder Committee and the TCH Noteholder Committee to formulate a plan that provides for a fair allocation of the Debtors' assets" *See Disclosure Statement at 39.*

8. The Equity Committee vehemently disagrees with this conclusory statement and suggests that the Plan proposed by the Debtors is *prima facie* evidence that one group the minority shareholders on whose backs the Debtors raised large amounts of capital following their last restructuring of these casinos – was not only excluded from the prepetition negotiations, but is now forced to suffer the fool as the group that gets the "benefit" of a 1000-1 Reverse Stock Split and issuance of new common stock the dilutive effect of which reduces the existing equity to a 0.05% ownership interest in the reorganized Debtor.

9. Under this Plan, the current holders of debt instruments, some of whom have already been acknowledged by the Debtors as being oversecured, take a majority ownership of the reorganized entity and Mr. Trump benefits, yet again, by remaining a significant holder of equity in the reorganized company and from a laundry list of one-sided agreements including the DJT Investment Agreement, the DJT Services Agreement, the DJT Voting Agreement, the DJT New Trademark License Agreement, the DJT ROFO Agreement as well as receiving a 25% beneficial interest in Miss Universe, L.P., pursuant to the Miss Universe Assignment Agreement and the Debtors' interest in the parcel of land known as the World's Fair site pursuant to the World's Fair Assignment Agreement. *Disclosure Statement at 98-104.*

10. What is or is not "fair allocation" in the eyes of the Debtors and the Equity Committee will undoubtedly be a question that will be explored and analyzed in great detail as these cases progress, but what the Equity Committee knows with certainty today is that two full

weeks after the filing of the Plan and Disclosure Statement, not a single exhibit supporting the Debtors' contention that the "deleveraging of the balance sheet" discussed so prominently at the outset of theses cases is either necessary or fair to ***ALL*** parties-in-interest as currently proposed. In fact, as discussed in more detail below, the Equity Committee preliminarily questions the wisdom of the Plan as proposed without considering whether a plan that reorganizes around TCH, and thereby preserves the equity in TCH, is a viable alternative that provides substantially more than the value of the stock and warrants to be retained and received under the "Prenegotiated Plan." The Equity Committee cannot stress strongly enough that these cases are in their infancy and the Equity Committee has no choice but to oppose the timeline proposed by the Debtors so that the Equity Committee can assess all possible alternatives to the "Prenegotiated Plan" and determine what is in the best interests of the Debtors and ***ALL*** parties-in-interest.

C. Debtors' Post-Petition Financing

11. On November 21, 2004, the Debtors filed the DIP Motion and the Cash Collateral Motion. Through the DIP Motion, the Debtors seek this Court's approval of a financing agreement (the "DIP Agreement") by and between the Debtors and Beal Bank, S.S.B., as agent to the secured lenders (collectively, the "Lenders") to provide up to $100 million in post-petition, secured financing. Pursuant to the Cash Collateral Motion, the Debtors seek this Court's approval of the stipulation (the "Cash Collateral Stipulation") by and between the Debtors and the TAC Noteholders and the TCH Noteholders (each as defined in the Cash Collateral Motion, and collectively, the "Pre-Petition Lenders").

12. On November 22, 2004, after the "first day" hearing (the "First Day Hearing")[1] in these cases, this Court entered an Interim Order approving the DIP Motion (the "Interim DIP Order" [Docket Number 43], and together with the DIP Motion and DIP Agreement, the "DIP Documents") and an Interim Order approving the Cash Collateral Motion (the "Interim Cash Collateral Order" [Docket Number 44], and together with the Cash Collateral Motion and Cash Collateral Stipulation, the "Cash Collateral Documents").

13. On December 10, 2004, RSH, as a party-in-interest, filed its Objection to (1) the Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Post-Petition Secured Superpriority Financing Pursuant to Bankruptcy Code Sections 105(a), 362, 364(c)(1), 364(c)(2), 363(c)(3) and 364(d) and (II) Setting Final Hearing Pursuant to Bankruptcy Rule 4001(c); and (2) the Emergency Motion of Debtors for Entry of Interim and Final Stipulation and Order Providing for Use of Cash Collateral and Providing Adequate Protection (the "RSH Objection") [Docket No. 149].

14. At the conclusion of a hearing held on December 15, 2004, the Court entered the (i) Second Interim and Contingent Final Order Authorizing Post-Petition Secured Superpriority Financing Pursuant to Bankruptcy Code Sections 105(a), 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) (the "Second Interim DIP Order" [Docket No. 194] and together with the Interim DIP Order, the "Interim DIP Orders") and the (ii) Stipulation and Second Interim Order and Contingent Final Order Providing for Use of Cash Collateral and Providing Adequate Protection (the "Second Interim Cash Collateral Order" [Docket No. 195] and together with the Interim Cash Collateral Order, the "Cash Collateral Orders").

15. Each of those Orders provided that a duly formed Equity Committee would have the right to lodge further objection with this Court by December 31, 2004.

[1] The transcript of the First Day Hearing is referred to herein as the "First Day Transcript."

OBJECTION

16. Given the current status of these cases, this Court should refrain from approving final orders for either the DIP Motion or the Cash Collateral Motion in their current proposed form. While many of the grounds covered by the instant Objection were also included in the RSH Objection and previously brought to the attention of this Court, the Equity Committee has additional objections to the terms and conditions under which the Debtors seek to procure final financing.

A. Objections to the DIP Documents

17. The Equity Committee asserts the following objections to the DIP Documents (and also incorporates by reference the RSH Objection):

18. The DIP Documents, as currently drafted, require the participation of all Debtors in these cases, and a pledge of the assets of all Debtors. *See generally, Interim DIP Orders.* The Debtors have provided no information to allow the Equity Committee to evaluate if all Debtor entities actually require post-petition financing and if the assets of each Debtor are properly pledged as collateral for the post-petition borrowings. In cases such as these where there are two separate and distinct Debtor "families" with two separate and distinct debt structures (TAC Noteholders and TCH Noteholders) each of whom is individually represented, it would seem to mandate that, at a minimum, the Debtors be forced to put on proof of actual need on behalf of each of the Debtors and not simply be permitted to make statements about the Debtors being "hopelessly insolvent" as a justification for a DIP facility of this size. Should the Debtors fail in this endeavor, this Court should not permit the DIP facility, as currently structured, to be approved.

19. Concomitantly, the liens granted through the DIP Documents are subject to inter-company transfers that would otherwise constitute an administrative claim in these cases *Interim DIP Order*, pp. 12-14. Without additional information regarding these inter-company transfers, this Court and parties-in-interest do not have the ability to assess whether these transfers are proper or a mere continuation of the self-dealing in these cases. For instance, the Organizational Chart filed with the various chapter 11 petitions indicates that Debtor, Trump Hotels & Casino Resorts Holdings, L.P., is owned 63.4% by Trump Hotels—the publicly traded Debtor—and its affiliates, and 36.6% by Mr. Trump and/or entities wholly-owned by Mr Trump. Any transfers made to Debtor, Trump Hotels & Casino Resorts Holdings, L.P., may actually represent additional transfers of assets to Mr. Trump during the pendency of these cases, without proper disclosure. This Court and parties-in-interest should be afforded clear and straight-forward information to determine if the inter-company transfers made in these cases are proper. To facilitate this review, the Debtors should provide a complete accounting of each inter-company transfer that sets forth: (i) the amount of the transfer; (ii) the transferor; (iii) the transferee; (iv) the basis for the transfer; and (v) the remaining balance, if any, owed by the transferring Debtor.

20. The Equity Committee also objects to what appears to be a wholly unnecessary and unreasonable "unused line fee," which requires the Debtors to pay a monthly fee equal to fifty basis points for the total unused balance of the $100 million facility so long as the maximum loans under the facility do not exceed $33 million. *DIP Agreement*, pg. 21.

21. This "unused line fee" is in addition to: (i) a $375,000.00 loan origination fee, which presumably, the Lenders have already received; (ii) a $50,000.00 annual agency fee; and (iii) the payment of the Lenders' attorneys' fees and expenses. *Id.* Notably, the Debtors' have

repeatedly assured this Court that they never intend to borrow more than $25 million of the $100 million available under the DIP facility. These fees are excessive. *First Day Transcript*, pg. 29.[2] Given the scale of the credit facility in these cases, the unlikely need of some or most of the Debtors to borrow against this facility, and the Debtors' admission that nearly ¾ of the facility will never be needed, any "unused line fee" is excessive, unreasonable, and tantamount to a hidden increase in the interest rate that the Lenders are receiving from the origination of this credit facility. As currently drafted, this "unused line fee" can bestow upon the Lenders a maximum of $500,000.00 *per month*, and based upon the Debtors' projections, the Lenders should receive approximately $375,000.00 *per month*. This fee should be disallowed, or severely limited.

22. The events of default in the DIP Documents must be modified significantly to reflect the facts and circumstances of these cases. First, the DIP Documents provide for a default upon any modification to the DIP Documents. *DIP Agreement*, pg. 54-57. As evidenced by the Interim DIP Order, these documents have already been modified from the original form. This modification, and any subsequent modifications to the DIP Documents particularly with respect to those ordered by this Court, should not give rise to an event of default.

23. The DIP Documents also provide for an event of default if this Court enters an Order appointing an examiner with "enlarged powers." *Id.* Given the specter of self-dealing and abuse in these cases, the Equity Committee may seek all available remedies, including this Court's appointment of an independent, unbiased examiner to review, *inter alia*, the Debtors' assets, liabilities and actions to ensure that the maximum value is realized by all creditor and

[2] This projection by the Debtors' counsel was offered in response to this Court's concern that the entire credit facility was made immediately available on the first day of these cases. *First Day Transcript*, pp 27-29. This discussion, however, never addressed the additional "unused line fee" that the Debtors would incur as a result of the immediate availability of the entire credit facility.

equity constituencies. The appointment of any such examiner—which would be mandated by the clear, unambiguous language of the Bankruptcy Code—should not give rise to an event of default on the DIP Documents. Therefore, the events of default should be modified to clearly allow for the appointment of any such examiner.

24. Finally, the default events must be revised to allow the Debtors a reasonable opportunity to "cure" any default that occurs as a direct result of the Debtors' actions, inactions or conduct in these cases.

25. Paragraph 17 of the Interim DIP Order provides that the terms of the Interim DIP Order shall govern in the event that a subsequent, conflicting Order is entered by this Court. *Interim DIP Order*, pg. 18. This provision is simply impractical and would require a motion for relief from the provisions of the Interim DIP Order to allow for the entry of any conflicting terms in subsequent Orders approving the DIP Documents or granting other relief in these cases. All parties in interest are fully-informed with regard to the terms and provisions of the Interim DIP Order. In the event that a subsequent Order of this Court will conflict with the Interim DIP Order, an interested party will have the opportunity to object and present the apparent conflict to this Court. Accordingly, any conflicts with subsequently entered Orders of this Court should be resolved in favor of the subsequent Order.

B. Objections to the Cash Collateral Documents

26. Many of the issues discussed above with regard to the DIP Motion are also germane to Equity Committee's objections to the Cash Collateral Documents. Accordingly, the Equity Committee asserts the following objections to the Cash Collateral Documents:

27. Most importantly, the Cash Collateral Documents, as currently drafted, provide for essentially a cross-collateralization of the assets of all Debtors in these cases—*i.e.*, TAC

Noteholders are afforded replacement liens in the TCH Debtors' assets and vice versa. *See generally, Interim Cash Collateral Orders*. While the replacement liens are junior in priority to the pre-petition liens, this security arrangement still unnecessarily provides a broader collateral base for each group of Pre-Petition Lenders.

28. Cross-collateralization in any form, subordinate or otherwise, is wholly inappropriate. The Pre-Petition Lenders are, in their individual capacities, (i) secured only by specific collateral, (the TAC Noteholders are secured by the Trump Taj Mahal and Trump Plaza while the TCH Noteholders are secured by Trump Marina, Trump Indiana and Trump 29); (ii) not subject to any cross defaults should a default occur in the other's collateral base, (iii) not putting in "new money", and (iv) receiving disparate treatment in these cases based upon the Debtors' current view of which group is oversecured or undersecured in their respective collateral bases.

29. Given these factors, and the fact that in cases like these, where the possibility exists that one or more of the Debtor entities may be liquidated while a reorganization occurs around a different sub-set of Debtors, it is imperative that the collateral bases remain as separate and distinct as they were before the filing and not unnecessarily entangled in a potential web of subordinate liens.

30. The rationale advanced by the Debtors, that this is somehow bargained for adequate protection subject to, and permitted by, the Debtors' business judgment falls woefully short of passing the straight face test under the circumstances. Particularly so, in light of the Debtors having agreed to provide the ultimate form of adequate protection in these cases – payment of every single professional hired to protect the interests of the Pre-Petition Lenders – a decision vociferously defended at the last hearing before this Court as a remedy which would

ensure that neither the TAC Noteholders nor the TCH Noteholders would suffer any diminution of value because of the outstanding counsel each lender would receive.

31. Stated simply, while the Debtors may ask this Court to believe that they may give whatever form of adequate protection they may conceive, the Equity Committee respectfully suggests otherwise, particularly when the ultimate outcome of these cases may hinge on whether these Debtors can or should reorganize around something less than the current structure contemplated by the Debtors.

32. Should this Court disagree, the Cash Collateral Documents also exclude a provision that allows for the unwinding of the cross-collateralized liens in the event that the Pre-Petition Lenders' liens are successfully challenged—as mandated by the General Order *General Order*, pp. 4-5. The Equity Committee leaves the Debtors to their burden of demonstrating the elements for cross-collateralization set forth in the General Order. *Id.* If the Debtors are able to demonstrate that cross-collateralization is appropriate as set forth in the Cash Collateral Documents, the Cash Collateral Order must contain the limitations mandated by the General Order, including a provision that allows for the unwinding of the cross-collateralized liens.

33. The termination events in the Cash Collateral Documents must also be modified to reflect the facts and circumstances of these cases. *Interim Cash Collateral Order*, pp. 28-31 First, the Cash Collateral Documents provide for a default upon any modification to the Cash Collateral Stipulation that is not otherwise consented to by the Pre-Petition Lenders. *Id.* Obviously, this provision must be revised, unless the Pre-Petition Lenders provide their unqualified approval of all of the revisions and modifications sought in this Objection. The Cash Collateral Documents also provide for an event of default if this Court enters an Order

appointing an examiner with "enlarged powers." *Id.* As noted above, this provision must be clarified and/or eliminated.

34. The Equity Committee reserves the right to supplement this Objection and leaves the Debtors to their burden of proof regarding the propriety of the relief sought in the Motions, the arm's-length nature of the terms and conditions of the DIP Documents and the Cash Collateral Documents, and the benefit to these estates and their creditors derived from the Motions. The Equity Committee also reserves the right to conduct discovery necessary to fully evaluate the issues set forth in this Objection.

WHEREFORE, the Equity Committee respectfully requests that the Court condition the entry of an Order approving the Motions as set forth herein and grant such other and further relief as is just and proper.

Dated: December 31, 2004
Morristown, New Jersey

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General Information

Court	United States Bankruptcy Court for the District of New Jersey; United States Bankruptcy Court for the District of New Jersey
Docket Number	1:04-bk-46898
Status	Closed