

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	Jointly Administered at:
	)	Case No. 17-22222-JAD
	)	
PITTSBURGH ATHLETIC ASSOCIATION, <i>et al</i> <sup>1</sup> ,	)	Bankruptcy Case Nos:
	)	17-22222-JAD, and
	)	17-22223-JAD
Debtors.	)	
	)	Chapter 11
PITTSBURGH ATHLETIC ASSOCIATION, <i>et al.</i> ,	)	
	)	Hearing Date and Time:
Movants,	)	May 8, 2018 at 10:00 a.m.
	)	
v.	)	Response Deadline: May 8, 2018
	)	at 9:00 a.m.
	)	
IRWIN KOTOVSKY, FRANK W.	)	
GUSTINE, JR., RICHARD J. VELAN,	)	
YVONNE L. ROSE, KAY MERGE,	)	
CHARLES PRINGLE, LOVEY	)	Related Docket Nos.753,754 & 759
KREITZER, GERALD KRUPP, RICK	)	
EVANS, ROBERT SEMETHY, JR., DR.	)	
PETER BOWER, DR. LILA	)	Docket No. _____
PENCHANSKY, PITTSBURGH	)	
ATHLETIC ASSOCIATION	)	
PRESERVATION ASSOCIATION,	)	
	)	
Respondents.	)	

**COMMITTEE RESPONSE AND RESERVATION OF RIGHTS TO EXPEDITED  
MOTION FOR CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY  
PURSUANT TO 11 U.S.C. § 326 AND FOR VIOLATION OF PLAN EXCLUSIVITY  
PURSUANT TO 11 U.S.C. §§ 1121 AND 1125**

The Official Committee of Unsecured Creditors of Pittsburgh Athletic Association, *et al*,  
(the “Committee”) hereby files this Response and Reservation of Rights (the “Response and

<sup>1</sup> The Debtors have the following cases pending: Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

Reservation of Rights”) to the Expedited Motion for Contempt for Violation of the Automatic Stay Pursuant to 11 U.S.C. § 362 and for Violation of Plan Exclusivity Pursuant to 11 U.S.C. §§ 1121 and 1125 [Doc. No. 753] (the “Expedited Motion for Violation of Stay and Exclusivity”), respectfully representing as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

3. The Debtors, Pittsburgh Athletic Association (“PAA”) and Pittsburgh Athletic Association Land Company (“PAACL”, and together with the PAA, the “Debtors”), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, (the “Bankruptcy Code”) on May 30, 2017 (the “Petition Date”) in the United States Bankruptcy Court for the Western District of Pennsylvania at the above-captioned case numbers (the “Bankruptcy Cases”). The Bankruptcy Cases are jointly administered at Bankruptcy Case No. 17-22222.
4. On June 8, 2018, the Office of the United States Trustee appointed the Committee [Docket No. 91].
5. On March 13, 2018, the Debtors filed an Amended Joint Chapter 11 Plan of Reorganization of Pittsburgh Athletic Association & Pittsburgh Athletic Association Land Company dated March 13, 2018 [Docket No. 587] (the “Amended Joint Plan”) and the Amended Joint

Disclosure Statement to Accompany Joint Plan of Reorganization [Doc. No. 588] (the “Amended Joint Disclosure Statement”).

6. On March 15, 2018, the Court entered an Order conditionally approving the Amended Joint Disclosure Statement, setting certain deadlines, and scheduling a hearing on final approval of the Amended Joint Disclosure Statement for April 17, 2018 at 10:00 a.m. [Doc. No. 593]. The Court also scheduled a Confirmation Hearing on the Amended Joint Plan for April 27, 2018 at 10:00 a.m.
7. On March 16, 2018, the Debtors filed a revised Amended Joint Plan to address a scrivener’s error [Doc. No. 594] (the “Revised Amended Joint Plan”). On March 19, 2018, the Court entered an Order recognizing that the Revised Amended Joint Plan supersedes the Amended Joint Plan. [Doc. No. 600].
8. On March 29, 2018, the Debtors filed their Third Motion to Extend the Exclusivity Period [Doc. No. 630] (the “Third Exclusivity Motion”) under Section 1121 of the Bankruptcy Code seeking an extension of exclusivity period for thirty days.
9. On April 2, 2018, the Court re-issued the Order conditionally approving the Amended Joint Disclosure Statement. setting certain deadlines, and rescheduling the hearing on final approval of the Amended Joint Disclosure Statement, including setting the date in which to object to the Amended Joint Disclosure Statement and Revised Amended Joint Plan for April 17, 2018 [Docket No. 638]. The Court also rescheduled the Confirmation Hearing on the Revised Amended Joint Plan for April 24, 2018 at 10:00 a.m.
10. An objection by several PAA members was filed to the Third Exclusivity Motion. At the hearing on the Third Exclusivity Motion, the Court indicated that PAA members may be impaired. Considering the Court’s statements, the Debtors filed a Motion for Approval of

Impaired Class Disclosure Statement and Ballot and requested a continuance of the Confirmation Hearing.

11. On April 10, 2018, the Court entered an order on the Third Exclusivity Motion extending the Debtors' exclusivity until the conclusion of the confirmation hearings on the Debtors' pending plan [Doc. No. 669].
12. On April 15, 2018, the Debtors filed the [Second Revised] Amended Joint Plan of Reorganization Dated March 13, 2018 (as Revised on March 16, 2018 and April 15, 2018 [Docket No. 673] (the "Second Revised Amended Joint Plan") and the Impaired Class Amended Joint Disclosure Statement to Accompany Joint Plan of Reorganization [Doc. No. 674] (the "Impaired Class Amended Joint Disclosure Statement").
13. On April 22, 2018, the Debtors filed a [Third Revised] Amended Joint Plan of Reorganization Dated March 16, 2018 (as revised April 22, 2018) [Doc. No. 702] ("Third Revised Amended Joint Plan"), as revised April 22, 2018, and a [Revised] Impaired Class Amended Joint Disclosure Statement (as revised April 22, 2018) [Doc. No. 703] (the "Revised Impaired Class Amended Disclosure Statement").
14. On April 24, 2018, a hearing was held on the Revised Impaired Class Amended Disclosure Statement (the "Disclosure Statement Hearing"), whereby it was agreed that the following language (the "Disclosure Statement Disclaimer") would be added to the Disclosure Statement:

For the avoidance of doubt, should the Board be wrong respecting the tax effect of the sale, Walnut PAA will not be required to provide the 'Redevelopment Amenities' or full-service banquet facilities (the "Disclosure Statement Disclaimer").
15. On April 24, 2018, the Debtors filed a [Revised] Impaired Class Joint Disclosure Statement to Accompany the Joint Plan of Reorganization Dated March 13, 2018 (as revised April

24, 2018) [Doc. No. 717] (the “April 24, 2018 Joint Disclosure Statement”) that included the Disclosure Statement Disclaimer.

16. On April 25, 2018, the Court entered an order conditionally approving the April 24, 2018 Joint Disclosure Statement and set a hearing on Confirmation on the Third Revised Amended Joint Plan for May 30, 2018 with a Balloting Deadline and Plan Objection deadline of May 23, 2018.

17. On May 4, 2018, the Expedited Motion for Violation of Stay and Exclusivity was filed. In its motion the Debtors assert that an email (attached to the Expedited Motion for Violation of Stay and Exclusivity as Exhibit A) sent by the Respondents *and other concerned PAA Members* (Emphasis added) and other activities of the Respondents are: (i) attempts to exercise control over the Debtors’ assets in violation of the provisions of the automatic stay under Section 362 of the Bankruptcy Code; (ii) a *sub rosa* attempt to gain support and acceptance for an alternative plan for which there has been no disclosure statement approved by this Court in violation of Section 1125(b) of the Bankruptcy Code; and/or (iii) in violation of the exclusivity provisions of Section 1121 of the Bankruptcy Code. The Debtors seek, among other things, an order determining that various PAA members are in violation of the automatic stay, engaged in improper solicitation under Section 1125(b) of the Bankruptcy Code and in violation of the Debtors’ exclusivity period (as extended by this Court) under Section 1121 of the Bankruptcy Code.

#### **RESPONSE AND RESERVATION OF RIGHTS**

18. Given the timing of the filing of the Expedited Motion for Violation of Stay and Exclusivity and the corresponding response date, counsel for the Committee was not able to organize

a meeting of the Committee members to review, discuss and formulate a formal response to the same.

19. Counsel for the Committee does reiterate, however, the Committee's position espoused at Disclosure Statement Hearing: (i) the Committee supports the current Third Revised Amended Joint Plan (assuming its unimpaired status and 100% distribution to holders of allowed general unsecured claims remains intact under such plan); and (ii) the Committee would like to avoid further delay and expense and proceed with confirmation proceedings on the Third Revised Amended Joint Plan in accordance with applicable Bankruptcy Code sections and Bankruptcy Rules on May 30, 2018.

20. Counsel for the Committee notes that there has been only one disclosure statement approved by this court, which disclosure statement relates to the Third Revised Amended Joint Plan. Pursuant order of this Court (entered after notice and hearing), the Debtors remain in their exclusivity period as provided under Section 1121 of the Bankruptcy Code. Counsel for the Committee submits that any attempts at soliciting acceptances or rejections of a plan from a holder of a claim or interest to which there is no disclosure statement approved by this Court should not be permitted in accordance with the plain meaning of the provisions of Section 1125(b) of the Bankruptcy Code, which states:

(b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. §1125(b).

Any efforts to solicit acceptances and rejections of a plan in violation of Section 1125(b) and in violation of the Debtors' exclusivity period under Section 1121 should cease and desist.

21. Further any efforts to possess and/or control assets of these estates in violation of Section 362 of the Bankruptcy Code by way of non-debtors marketing and offering to sell assets of these estates should cease and desist.

22. The Committee reserves its rights to appear and be heard and to assert its position on the Expedited Solicitation Motion at the time of the hearing on the Expedited Solicitation Motion.

WHEREFORE, the Committee respectfully requests that this Response and Reservation of Rights be made a part of the record and the Committee be permitted to appear and be heard at the hearing on the Expedited Motion for Violation of Stay and Exclusivity.

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

Dated: May 8, 2018

By: /s/ John M. Steiner

John M. Steiner, Esquire

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