

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

IN RE:)	Jointly Administered at:
)	Bankruptcy Case No. 17-22222-JAD
PITTSBURGH ATHLETIC ASSOCIATION, <i>et al.</i> ¹)	Bankruptcy Case Nos:
)	17-22222-JAD
Debtors.)	17-22223-JAD
)	Chapter 11
PITTSBURGH ATHLETIC ASSOCIATION, <i>et al.</i> ,)	The Honorable Jeffery A. Deller
)	Docket No. ____
Movants,)	Related to Docket Nos. 702, 717 & 724
v.)	Hearing Date: May 30, 2018
(NO RESPONDENT).)	Hearing Time: 10:00 a.m.
)	Response Deadline: May 23, 2018
)	

RESPONSE AND RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF PITTSBURGH ATHLETIC ASSOCIATION, ET AL., TO DEBTORS' [THIRD REVISED] JOINT PLAN OF REORGANIZATION DATED MARCH 16, 2018 (AS REVISED ON APRIL 22, 2018)

The Official Committee of Unsecured Creditors of Pittsburgh Athletic Association, *et al.* (the "Committee") hereby files this Response and Reservation of Rights to Debtors' [Third Revised] Amended Joint Plan of Reorganization Dated March 16, 2018 (*As Revised April 22, 2018*) (the "Response and Reservation of Rights"), respectfully representing as follows²:

¹ 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.

² Capitalized terms used in this Response and Reservation of Rights not otherwise defined shall have the meaning given to them in the Third Revised Amended Joint Plan (defined herein).

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 of the Debtor's Chapter 11 case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. The Debtors, Pittsburgh Athletic Association (the "PAA") and Pittsburgh Athletic Association Land Company (the "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-JAD.

4. On June 8, 2017, the Office of the United States Trustee appointed the Committee. [Docket No. 91].

5. On August 25, 2017, the Debtors filed their Motion to Extend Exclusivity (the "First Motion to Extend Exclusivity") [Docket No. 256].

6. On September 15, 2017, a Stipulation and Consent Order was entered [Docket No. 299] regarding the First Motion to Extend Exclusivity that: (1) extended the Debtors' exclusive right to file a plan of reorganization under Section 1121(b) of the Bankruptcy Code until December 26, 2017; and (2) extended the time to obtain acceptance of said plan of reorganization by each class of claims or interests impaired under the plan until February 26, 2018.

7. On December 22, 2017, the Debtors filed the Joint Plan of Reorganization Dated December 22, 2017 [Docket No. 418] (the “Joint Plan”) and the Joint Disclosure Statement to Accompany the Joint Plan of Reorganization Dated December 22, 2017 [Docket No. 419] (the “Joint Disclosure Statement”).

8. A hearing to consider approval of the Joint Disclosure Statement was scheduled for February 6, 2018 at 10:00 a.m. [Docket No. 429].

9. On January 30, 2018, the Committee and Oakland Fifth Avenue Hotel Associates, LP, (“OFAHA”) filed timely objections to the Joint Disclosure Statement [Docket Nos. 519 and 524].

10. On February 1, 2018 and February 8, 2018, the Internal Revenue Service and the Pennsylvania Department of Revenue filed Objections to the Confirmation of the Joint Plan respectively [Docket Nos. 529 and 542].

11. Considering the objections to the Joint Disclosure Statement and the Joint Plan, the Debtors filed a Motion to continue the hearing to consider approval of the Joint Disclosure Statement [Docket No. 533].

12. The Court entered an order rescheduling the hearing to consider approval of the Joint Disclosure Statement for February 20, 2018 at 10:00 a.m. [Docket No. 535]. The hearing to consider approval of the Joint Disclosure Statement was continued to March 13, 2018.

13. On January 26, 2018, the Debtors filed the Second Motion to Extend Exclusivity in which the Debtors seek to extend the exclusivity period by an additional forty-five (45) days to allow the Debtors solicit and obtain acceptances of the Joint Plan (the “Second Motion to Extend Exclusivity”).

14. On February 20, 2018, this Court, after notice and hearing, granted the Second Motion to Extend Exclusivity and entered an Order extending the Debtors' exclusive right to file a Plan of Reorganization and to obtain acceptance to April 12, 2018 (the "Second Extension Order") [Docket No. 553].

15. 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 (the "Amended Joint Plan") [Doc. No. 587], an Amended Joint Disclosure Statement to Accompany Joint Plan of Reorganization (the "Amended Joint D/S") [Doc. No. 588] and an Amended Joint Summary of Chapter 11 Plan of Reorganization (the "Amended Joint Plan Summary"). [Docket No. 589].

16. On March 15, 2018, this Court entered an Order conditionally approving the Amended Joint D/S and setting certain deadlines scheduling a hearing on final approval of the Amended Joint D/S for April 17, 2018 (the "Order Conditionally Approving Amended Joint D/S") [Doc. No. 593]. The Court also scheduled a Confirmation Hearing on the Amended Joint Plan for April 17, 2018, at 10:00 a.m. (the "Confirmation Hearing"). *See* Doc. No. 593.

17. On March 16, 2018, the Debtors filed a revised Amended Joint Plan to address a scrivener's error. (the "Revised Amended Joint Plan") [Doc. No. 594]. This Court entered an Order on March 19, 2018, recognizing that the Revised Amended Joint Plan supersedes the Amended Joint Plan. [Docket. No. 600].

18. On March 29, 2018, the Debtors filed a Third Motion to Extend Exclusivity requesting that the Debtors' exclusive right to file a Plan of Reorganization and seek acceptance of the same be extended for thirty (30) days, or until May 12, 2018 (the "Third Motion to Extend Exclusivity") [Docket No. 630].

19. On April 2, 2018, this Court Re-Issued the Order conditionally approving the Amended Joint D/S and setting certain deadlines rescheduling the hearing on final approval of the Amended Joint D/S for April 24, 2018, including setting the date in which to object to the Amended Joint D/S and Revised Amended Joint Plan for April 17, 2018 (the “Re-Issued Order Conditionally Approving Amended Joint D/S”) [Doc. No. 638]. The Court also rescheduled the Confirmation Hearing on the Amended Joint Plan for April 24, 2018, at 10:00 a.m. (the “Rescheduled Confirmation Hearing”). *See* Doc. No. 638.

20. On April 10, 2018, this Court entered an Order granting the Third Motion to Extend Exclusivity through the completion of the hearing(s) on confirmation of the Revised Amended Joint Plan. [Docket No. 669].

21. 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*) (the “Second Revised Amended Joint Plan”) [Docket No. 673].

22. On April 15, 2018, the Debtors’ filed the Impaired Class Joint Amended Disclosure Statement to Accompany Amended Plan of Reorganization Dated March 13, 2018 (*as Revised on April 15, 2018*) (the “Revised Amended Joint D/S”) [Docket No. 674].

23. On April 15, 2018, the Debtors’ filed the Expedited Motion for Order (I) Conditionally Approving the Impaired Class Amended Disclosure Statement for Solicitation Purposes Only, (II) Approving the Form of Ballots, (III) Setting Balloting Deadline, and (IV) Continuing the April 24, 2018 Confirmation Hearing to May 8, 2018 (the “Motion to Approve Revised Amended D/S”) [Docket No. 675].

24. On April 16, 2018, this Court entered a Notice and Order Setting Hearing on an Expedited Basis setting a hearing on the Motion to Approve Revised Amended D/S for April 24,

2018 at 10:00 a.m. and setting the objection deadline for April 23, 2018 by Noon [Docket No. 677].

25. On April 16, 2018, the Debtors filed a Joint Motion Requesting Telephonic Status Conference for Clarification on Matters Set for Hearing on April 24, 2018, and Related Matters Pursuant to 11 U.S.C. §105(d) (the “Request for Status Conference”) [Docket No. 679].

26. On April 16, 2018, this Court entered an Order granting the Request for Status Conference scheduling a telephonic status conference for April 19, 2018 at 10:00 a.m. (the “Order Approving Request for Status Conference”) [Docket No. 680].

27. On April 17, 2018 the Pennsylvania Department of Revenue filed Objections to the confirmation of the Second Revised Amended Joint Plan [Docket No. 681].

28. On April 17, 2018, the Internal Revenue Service filed a Supplemental Objection to the confirmation of the Second Revised Amended Joint Plan [Docket No. 684].

29. On April 17, 2018, the Committee filed its Response and Reservation of Rights to confirmation of the Second Revised Amended Joint Plan [Docket No. 685].

30. On April 17, 2018, Oakland Fifth Avenue Hotel Associates, LP (“OFAHA”) filed its Objection to confirmation of the Second Amended Joint Plan [Docket No. 688].

31. On April 17, 2018, Irwin Kotovsky, Frank W. Gustine, Richard Velan, Yvonne L. Rose and Kay Merge (collectively “Members”) filed their Joint Motion to Extend Time for Filing Objections to the Confirmation of the Second Revised Amended Joint Plan (the “Motion to Extend Time to Object”) [Docket No. 689].

32. On April 18, 2018, this Court entered an Order granting the Motion to Extend Time to Object giving the Members until April 20, 2018 to file objections to the Second Revised Amended Joint Plan [Docket No. 693].

33. On April 19, 2018, this Court held a Status Conference.

34. On April 20, 2018, this Court entered an order continuing the Status Conference until April 24, 2018 at 10:00 a.m. [Docket No. 697].

35. On April 22, 2018, the Debtors' filed their [Third Revised] Amended Joint Plan of Reorganization Dated March 16, 2018 (as revised April 22, 2018) (the "Third Revised Amended Joint Plan") [Docket No. 702].

36. On April 22, 2018, the Debtors fled their [Revised] Impaired Class Joint Amended Disclosure Statement to Accompany the Joint Plan of Reorganization Dated March 13, 2018 (as revised April 22, 2018) (the "April 22 Revised Impaired Class Joint D/S") [Docket No. 703].

37. On April 24, 2018 this Court conducted the continued Status Conference. At the continued Status Conference, the parties agreed, and this Court ordered, that certain amendments be made to the Revised Impaired Class Joint D/S to include additional disclosures regarding the impact any tax liability assessed on the transaction contemplated under the Third Revised Amended Joint Plan would have the continued existence of the Pittsburgh Athletic Association as a social and exercise club.

38. As a result, on April 24, 2018, the Debtors filed their [Revised] Impaired Class Joint Amended Disclosure Statement to Accompany the Joint Plan of Reorganization Dated March 13, 2018 (as revised April 24, 2018) (the "April 24 Revised Impaired Class Joint D/S") [Docket No. 717].

39. On April 25, 2018, this Court entered an Order, among other things, conditionally approving the April 24 Revised Impaired Class Joint D/S, setting May 23, 2018 as the deadline to file objections to confirmation of the Third Revised Amended Joint Plan and scheduled a hearing

to consider confirmation of the Third Revised Amended Joint Plan for May 30, 2018, at 10:00 a.m. (the “May 30th Confirmation Hearing”) [Docket No. 724].

COMMITTEE RESPONSE AND RESERVATION OF RIGHTS

40. As a preliminary statement, subject to the responses and reservations of rights below and the Debtors’ demonstration as to feasibility, the Committee does not generally object to final approval of the April 24 Revised Impaired Class Joint D/S and does not generally oppose confirmation of the Third Revised Amended Joint Plan.

41. However, the Committee sets forth the following reservations of rights and responses to the April 24 Revised Impaired Class Joint D/S and Third Revised Amended Joint Plan:

(a) Article XI, Section 11.1(c), of the Third Revised Amended Joint Plan provides as a condition to the effectiveness of the Revised Amended Joint Plan: “The Closing on sale of the Sale Assets (*and if necessary the sale of the Artwork*) shall have occurred and the Debtors shall have sufficient cash to pay all Allowed Claims as provided under the Amended Plan”.

The Committee submits that the condition to the effectiveness of the Third Revised Amended Joint Plan as stated above is not consistent with the Committee’s understanding and representations made to General Unsecured Creditors throughout the April 24 Revised Impaired Class Joint D/S and Third Revised Amended Joint Plan that their Allowed Claims would be paid 100% from the proceeds from the sale of the Sale Assets with the appropriate reserves being funded for Disputed General Unsecured Claims.

The Committee submits that any order confirming the Third Revised Amended Joint Plan should make clear that notwithstanding any plan language to the contrary, as a condition to the effectiveness of the Revised Amended Joint Plan, at Closing on the sale of the Sale Assets, the Debtors shall have received proceeds sufficient to pay 100% of the Allowed Claims of General Unsecured Creditors with the reserve being created/funded sufficient to pay any Disputed General Unsecured Claim in full when and if allowed. Further, the confirmation order should make clear that notwithstanding any language in the plan to the contrary, the liquidation, sale or other monetization of the Art Work should not be a condition to the effectiveness of the Third Revised Amended Joint Plan or a condition to the payment of 100% of the claims of General Unsecured Creditors or the funding of disputed reserves.

(b) As currently contemplated under Article IV, Section 4.9 of the Third Revised Amended Joint Plan, holders of Allowed General Unsecured Claims are neither impaired or entitled to vote and are to be paid in cash 100% of their Allowed Claim on the later of: (i) thirty (30) days after the Effective Date; or (ii) fifteen (15) days after the Class 9 Claim can be determined and, if necessary, allowed by order of the Court.

The Committee does not generally oppose this treatment. However, said unimpaired treatment is premised and conditioned upon various assumptions in the Feasibility Analysis attached to the April 24 Revised Impaired Class Joint D/S as Exhibit E, including but not limited to, certain assumptions and estimations of the allowed amount of administrative claims due on the Effective Date and the adequacy of a reserve of \$3.5 million for the potential payment of federal and state taxes to the extent the transaction with Walnut Capital results in taxable income to the Debtors.

Further, the Debtors' Third Revised Amended Joint Plan provides that the main source, if not the only source, of funding to pay the obligations under the Third Revised Amended Joint Plan, including payment of 100% of General Unsecured Claims, are the proceeds derived from the private sale of the Sale Assets to Walnut Capital. Accordingly, the Committee submits it is imperative that the Debtors and Walnut Capital demonstrate at the May 30th Confirmation Hearing to the satisfaction of this Court that the Debtors will in fact have sufficient funds from the sale of the Sale Assets to honor its obligations under the Third Revised Amended Joint Plan, particularly regarding the treatment of General Unsecured Creditors. Anything short of demonstrating to this Court's satisfaction that the Debtors will have sufficient funds from the sale of the Sale Assets to pay 100% of Allowed General Unsecured Claims (and to set up sufficient reserves for Disputed General Unsecured Claims) results in the impairment of such Claims. As such, holders of such Claims are impaired and should be entitled to vote on their treatment and the Third Revised Amended Joint Plan generally.

The Committee submits that absent a showing by the Debtors and Walnut Capital at the May 30th Confirmation Hearing that a closing with Walnut Capital will produce proceeds sufficient to pay 100% of Allowed General Unsecured Claims (and to set up sufficient reserves for Disputed General Unsecured Claims), this Court should not confirm the Third Revised Amended Joint Plan as it is not feasible.

(c) Article VII, Section 7.3, contemplates the liquidation of the Art Work, and the proceeds derived therefrom, as a means by which to pay the Allowed Claims of General Unsecured Creditors. As stated in Paragraph 41(a), it is the Committee's belief and understanding that the basis upon which the Debtors have elected to treat the Claims of General Unsecured Creditors as not impaired under the Third Revised Amended Joint Plan is the unconditional assurance and representation of the Debtors (as represented and demonstrated to creditors in the April 24 Revised Impaired Class Joint D/S and Feasibility

Analysis attached thereto as Exhibit E) that the Allowed Claims of General Unsecured Creditors will be paid in cash 100% of their Allowed Claims from the proceeds derived from the private sale of the Sale Assets to Walnut Capital (with sufficient funds being available to set up the reserve for Disputed General Unsecured Claims). Again, to the extent the Debtors and Walnut Capital are unable to demonstrate that 100% of the Claims of General Unsecured Creditors will be paid from the proceeds of the sale of Sale Assets (as represented to Creditors in the April 24 Revised Impaired Class Joint D/S), this Court should not confirm the Third Revised Amended Joint Plan as holders of such Claims are impaired and entitled to vote on the Third Revised Amended Joint Plan.

(d) The Committee submits that any order confirming the Third Revised Amended Joint Plan should provide that notwithstanding any language in the Third Revised Amended Joint Plan to the contrary, no assets shall vest in the Debtors and/or Reorganized Debtors free and clear of liens and Claims and no class of interest (including members) shall retain any property or value under the Third Revised Amended Joint Plan until such time as the Allowed Claims of General Unsecured Creditors are paid in full and/or the appropriate reserves are created/funded sufficient to pay any Disputed General Unsecured Claim in full when and if allowed.

(e) Further, to the extent the Debtors are not able to demonstrate to this Court that payment in cash of 100% of the Allowed Claims of General Unsecured Creditors and the funding of disputed reserves for Disputed General Unsecured Claims as contemplated under the Third Revised Amended Joint Plan is feasible, any retention of property or value by the lower priority interest holders, if any, (including members), under the Third Revised Amended Joint Plan violates the absolute priority rule, and, thus, the Third Revised Amended Joint Plan should not be confirmed.

42. The Committee reserves all rights to be heard and comment upon any proposed confirmation order and any proposed findings of fact or conclusions of law when and if presented to this Court.

43. The Committee reserves its rights to be present and to be heard on these, and other matters, at the May 30th Confirmation Hearing, or any other hearing on final approval of the April 24 Revised Impaired Class Joint D/S (as may be amended or revised) and confirmation of the Third Revised Amended Joint Plan (as may be amended or revised).

WHEREFORE, the Committee respectfully requests that this Response and Reservation of Rights be made a part of the record at the May 30th Confirmation Hearing or any other hearing on final approval of April 24 Revised Impaired Class Joint D/S (as may be amended or revised) and confirmation of the Third Revised Amended Joint Plan (as may be amended or revised).

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

Dated: May 23, 2018

By: /s/ John M. Steiner

David W. Lampl, Esquire

PA I.D. No. 28900

John M. Steiner, Esquire

PA ID No. 79390

Leech Tishman Fuscaldo & Lampl, LLC

525 William Penn Place, 28th Floor

Pittsburgh, PA 15219

Telephone: 412.261.1600

Facsimile: 412.227.5551

dlampl@leechtishman.com

jsteiner@leechtishman.com