

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

**IN RE:**

**PITTSBURGH ATHLETIC  
ASSOCIATION, et al<sup>1</sup>,**

**Debtors,**

**IRWIN KOTOVSKY, FRANK  
W. GUSTINE, JR., RICHARD J.  
VELAN, YVONNE L. ROSE AND  
KAY MERGE,**

**Movants,**

**vs.**

**PITTSBURGH ATHLETIC  
ASSOCIATION, et al,**

**Respondent.**

**Jointly Administered at:  
Bankruptcy No. 17-22222-JAD**

**Bankruptcy Nos:  
17-22222-JAD, and  
17-22223-JAD**

**Document No.**

**Related to Doc. No. 724**

**Hearing Date and Time:**

**EXPEDITED JOINT MOTION TO RETRACT AND CORRECT THE APRIL 27, 2018  
SOLICITATION LETTER AND TO WHOM BALLOTS WERE SENT**

AND NOW, comes Irwin Kotovksy, Frank W. Gustine, Jr., Richard J. Velan, Yvonne L. Rose, and Kay Merge, by and through their undersigned counsel, and file the within Expedited Joint Motion to Retract and Correct the April 27, 2018 Solicitation Letter and to Whom Ballots Were Sent, stating as follows:

1. On April 24, 2018, this Honorable Court conducted a hearing regarding the Debtor's Revised Impaired Class Joint Amended Disclosure Statement to Accompany the Joint Plan of Reorganization Dated March 13, 2018 (as revised April

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

22, 2018) (“the Disclosure Statement”) (“the Disclosure Statement Hearing”) [Doc. No. 703].

**A. Unauthorized and Misleading Solicitation Letter**

2. During the Disclosure Statement Hearing there was significant discussion and argument regarding the tax effect of the proposed sale to Walnut Capital and whether or not the Disclosure Statement adequately explained that due to the potential tax consequences of the sale, Walnut PPA may not be required to provide the redevelopment amenities that are set forth in the Disclosure Statement and the Third Revised Amended Joint Plan of Reorganization Dated March 16, 2018 (as revised April 22, 2018) (“the Amended Plan”) [Doc Nos. 702 & 703].

3. Movants believe that this aspect of the Amended Plan—that the redevelopment amenities are contingent upon the tax consequences of the proposed sale—is the single most important issue of the Amended Plan with respect to members’ understanding of what will happen to the Pittsburgh Athletic Association (“PAA”) should the Debtors be incorrect respecting the tax consequences.

4. The Disclosure Statement, as originally proposed, failed to make said tax contingencies clear.

5. Ultimately, in order to make the tax contingency clear, counsel for Movants herein and the Debtors, and this Honorable Court, agreed during the Disclosure Statement Hearing that the following additional language 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 PPA will not be required to provide the ‘Redevelopment Amenities’ or full service banquet facilities.”

6. The “avoidance of doubt” language was added to the Disclosure Statement and now appears there, in bold, at page 22, in the section called “III. OVERVIEW OF THE AMENDED PLAN”.

7. With the addition of the “avoidance of doubt” language, the Disclosure Statement was conditionally approved by Order of Court dated April 25, 2018 [Doc. No. 724].

8. On April 27, 2018, the Board of Directors, through counsel for the Debtors, sent a package to the members of the PAA. The package included, *inter alia*, the Disclosure Statement, Amended Plan and a PAA Member Ballot for Accepting or Rejecting Debtors/ Amended Plan of Reorganization Dated March 13, 2018 (“the Ballot”) (collectively “the Solicitation Package”).

9. The very first piece of substantive information in the Solicitation Package is a **four (4) page** letter dated April 27, 2018, from the Board of Directors to the membership of the PAA (“the Solicitation Letter”). A true and correct copy of the Solicitation Letter is attached hereto as **Exhibit A**. The letter describes the Walnut PAA plan in extremely positive terms and does not mention the tax contingencies.

10. The Debtors never disclosed that they intended to send a Solicitation Letter with the Solicitation Package.

11. Notably, on page 2 of the Solicitation Letter, the Board of Directors state:

“...the terms of the Redevelopment will result in a comprehensive amenity package with those certain features as approved by our members on August 20, 2017, including but not limited to:

- Exclusive use of the restored and updated Grille Room;

- Brand new, state of the art Fitness Center including locker rooms, spa, sauna, steam room, classrooms and other components not less than 14,000 square feet;
- Regulation single and double squash courts;
- Regulation 25 meter two-lane Lap Pool;
- Private office space for PAA of not less than 800 square feet; and
- Access to full service banquet facilities to be operated by a premium food
- And beverage vendor chosen by Walnut whereby Members will be able to rent the banquet spaces to host social events, club activities, weddings and private functions at reasonable rates.”

12. Shockingly, in light of the colloquy in court on April 24, 2018, this language in the Solicitation Letter regarding the “comprehensive amenity package” is not accompanied by any disclaimer stating that said “comprehensive amenity package” is **contingent** upon the Board’s tax analysis being correct. In other words, nowhere in the Solicitation Letter does it disclose that the amenity package is contingent upon the PAA not having to pay some or all of the taxes both the IRS and Pennsylvania Department of Revenue (“DOR”) assert will be due on the sale. Instead, the Solicitation Letter explicitly states that “the terms of the Redevelopment **will result in** a comprehensive amenity package” (emphasis added).

13. The “for the avoidance of doubt” disclaimer language was required for conditional approval of the Disclosure Statement. Movants believe that the same or similar disclaimer language must be a requirement in any literature explaining the Amended Plan and proposed sale—in particular a Solicitation Letter seeking votes in favor of the Amended Plan—and that the Board of Directors’ failure to include such language in the Solicitation Letter was intentionally misleading.

14. Additionally, Movants believe that the Solicitation Letter, without the aforementioned disclaimer, and especially given its placement at the beginning of the Solicitation Package, effectively obviates and/or neutralizes the disclaimer language that this Court required the Debtors add to the Disclosure Statement.

15. As a result, the Solicitation Letter will almost certainly improperly impact Members' votes regarding the Amended Plan.

16. Thus, the Movants submit that the Solicitation Letter should be retracted and a correction letter, which explicitly includes the aforementioned disclaimer language, be sent to all members of the PAA.

**B. Ballots Were Not Sent to All Pre-Bankruptcy Members of the PAA**

17. Counsel for the Movants were told by counsel for the Debtors that the Solicitation Package would be sent to all persons who had been members of the PAA prior to the date when Debtors filed their petitions for relief (the "Filing Date").

18. Counsel for the Debtors also told this Court at the April 24, 2018, Hearing that the Solicitation Package would be sent to all persons who had been members of the PAA prior to the Filing Date.

19. At the April 24, 2018 Hearing, counsel for the Debtors asked for and received permission to file under seal a list of the persons who had been members of the PAA prior to the Filing Date (the "Pre-Bankruptcy Membership List"). See Doc. No. 716.

20. Counsel for the Debtors never disclosed that Debtors did not intend to send the Solicitation Package to everyone listed on the Pre-Bankruptcy Membership List.

21. However, as Movants began to call members about the Solicitation Package, they quickly realized that not every person who had been a member prior to the Filing Date had received a Solicitation Package.

22. Upon inquiry, counsel for the Debtors disclosed for the first time that “many” members had allegedly “resigned” their membership during the pendency of the bankruptcy, and that the Solicitation Package had not been sent to everyone listed on the Pre-Bankruptcy Membership List.

23. Specifically, the Solicitation Package had not been sent to those members who have allegedly resigned from the PAA after the Filing Date.

24. A significant issue in this entire Bankruptcy Case has been whether the Board has acted with appropriate business judgment, properly exercised its fiduciary duties to the PAA and its Members, and acted appropriately respecting non-profit governance questions.

25. For example, the Board did not notice or, presumably, hold an annual meeting where a Board would have been elected, which the Bylaws mandate should have been held the last week of April 2018

26. Movants understand and appreciate that the Court has reserved these questions for the Confirmation Hearing. Nonetheless, the decision not to send the Solicitation Package to Members who allegedly resigned after the Filing Date is very troubling.

27. All Members have continued to receive significant dues notices respecting a club building that has closed its doors and is no longer operating. Moreover, there

was great confusion respecting dues payments. Some of the Movants hereto have not been able to resolve disputes with the Debtors over dues.

28. It is likely many of the members who allegedly “resigned” faced similar problems and/or were unaware of the developments in the Bankruptcy Case. After all, no meetings of the PAA’s Members were held between August 2017 and mid-January 2018.

29. Importantly, if Debtors are wrong in their tax analysis, and less than \$2 million of the \$3.5 million of the tax escrow is available for clubhouse renovations, the lease from Walnut PAA becomes null and void, and whatever amount of the tax escrow remains is delivered to the Debtors.

30. Everyone on the Pre-Bankruptcy Membership List should have a say in what happens to the PAA, especially given that significant sums of money could wind up being delivered to the PAA if some, but not all, of the taxes claimed by the IRS and PA DOR are due on the sale.

31. Consequently, Movants request that the Debtors be ordered to immediately send the Solicitation Package to all persons listed on the Pre-Bankruptcy Membership List, and that the date for receipt of ballots be extended until 12:00 noon on May 29, 2018.

**REQUEST FOR EXPEDITED RELIEF**

32. In order to obtain a hearing on an expedited basis, a movant must show: (1) just cause to request consideration of the underlying matter on an expedited basis; (2) the specific harm the movant shall incur if a hearing is not granted on an expedited basis; and (3) that the need for an expedited hearing has not been caused by an lack of

due diligence on the part of the attorney or the attorney's client but has been brought about solely by circumstances beyond their control. See *W.D.Pa. LBR 9013-2(a)*.

33. Here, just cause for an expedited hearing exists as per this Honorable Court's April 25, 2018 Order, all ballots for the acceptance or rejection of the Amended Plan are currently due back by May 23, 2018. Without immediate relief as requested herein, Members will be casting votes regarding the Amended Plan based on misleading information and the fairness of the bankruptcy process will be jeopardized.

WHEREFORE, the Movants respectfully request that this Honorable Court enter an Order requiring that the Board of Directors immediately (A) send a letter to all Members of the PAA which (1) retracts the Solicitation Letter and (2) prominently informs the members of the "For the avoidance of doubt" disclaimer which this Court ordered added to the Disclosure Statement at page 22 and (B) send the Solicitation Package with the "For the avoidance of doubt" disclaimer but without the Solicitation Letter to all Members of the PAA appearing on the Pre-Bankruptcy Membership List. Furthermore, Movants request that, given these issues, Members be permitted to return their ballots up to 12:00 noon on Tuesday, May 29, 2018.



Respectfully Submitted,

Date: May 4, 2018

/s/ Robert O Lampl  
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17-22223-JAD**

**Document No.**

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**Hearing Date and Time:**

**CERTIFICATE OF SERVICE**

Robert O Lampl, John P. Lacher, David L. Fuchs and Ryan J. Cooney hereby certify, that on the 4<sup>th</sup> day of May, 2018, a true and correct copy of the foregoing Expedited Joint Motion to Retract and Correct the April 27, 2018 Solicitation Letter and to Whom Ballots were sent was served upon the following (*via electronic service*):

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<sup>2</sup> The Debtors have the following case pending Pittsburgh Athletic Association Bankruptcy No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Bankruptcy No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

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Dated: May 4, 2018

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Pittsburgh Athletic Association

4215 Fifth Avenue • Pittsburgh, Pennsylvania 15213

412.621.2400

**April 27, 2018**

Dear Fellow Members of the PAA:

On behalf of the entire Board of Directors (the “Board”), thank you for your commitment to the legacy of the PAA. We have some great news — we are approaching the final stretch of the Bankruptcy Court approving our reorganization, with one more formality necessary to obtain the Court’s “go ahead.” We encourage all members to support the PAA by participating in the balloting process explained below.

**Next, the Board cordially invites you to an informational cocktail party with hors’d oeuvres on May 15, 2018 at 6:00p.m. at the Twentieth Century Club. An invitation is enclosed and all members are welcome and encouraged to attend. During this event, any questions about the materials included with this letter will be answered by the Board and our consultants. If there are specific questions you would like answered before voting on the reorganization we encourage you to ask them at the party.**

You may recall that a Special Membership Meeting was called on August 20, 2017, during which the membership voted in favor of terms for a plan of redevelopment of the clubhouse (the “Redevelopment”). With around 70 members present, the members voted overwhelmingly in favor of the Redevelopment. After the August 20th meeting, the Board entered into negotiations with qualified developers in order to consummate the Redevelopment — the result is the bankruptcy Plan of Reorganization included with this letter (the “Plan”).

Prior to the August 20th meeting and thereafter, your Board has worked tirelessly and has remained committed to getting the best deal for the members — reviewing all qualified offers from potential partners. Working with our Court approved and independent real estate advisor, Holliday Foglio Fowler, LP (“HFF”), the Board unanimously selected Walnut Capital Acquisitions (“Walnut”) as the highest and best redevelopment partner for the PAA. Walnut has enthusiastically supported our reorganization and has shown that they will be a proactive and congruent partner as we embark upon the next stages of this process to position the club with the best and most sustainable amenities for the future. Enclosed with this

**EXHIBIT A**

mailing is a cover letter and comprehensive graphic presentation from Walnut entitled "PAA Rejuvenation" that has been shared with the Board and PAA's consultant, Troon Club Management.

Importantly, the terms of the Redevelopment will result in a comprehensive amenity package with those certain features as approved by our members on August 20, 2017 including but not limited to:

- Exclusive use of the restored and updated Grille Room;
- Brand new, state of the art Fitness Center including locker rooms, spa, sauna, steam room, classrooms and other components not less than 14,000 square feet;
- Regulation single and double squash courts;
- Regulation 25 meter two-lane Lap Pool;
- Private office space for PAA of not less than 800 square feet; and
- Access to full service banquet facilities to be operated by a premium food and beverage vendor chosen by Walnut whereby Members will be able to rent the banquet spaces to host social events, club activities, weddings and private functions at reasonable rates.

In addition, your Board wants to make clear that no PAA member or Board member is involved in the Redevelopment with Walnut assuring no conflicts of interest exist.

Each component of the Redevelopment has been incorporated into the Plan. Furthermore, as explained throughout the Plan, Walnut has also worked with the PAA to provide a solution to manage any potential tax liabilities that may be assessed due to the sale, so as to ensure that our reorganization will be feasible.

We are confident that we will be able to confirm the Plan, but before we do so, we must present each member with a ballot to cast a vote on the Plan. In light of the changes to the building and amenities available, your interests as PAA members may possibly be "impaired", as defined in the legal parlance of the U.S. Bankruptcy Code. In layman's terms, "impaired" means that PAA Members' interests have changed, which was to be expected given the financial straits our club was in prior to the Bankruptcy filing.

To be more specific, membership interests have been classified in Class 11 of the Plan as an impaired class. Being a member of an impaired class means that you are getting something different than what you had before the bankruptcy case was filed. By way of some examples: the PAA, as it goes through this rightsizing, will occupy a smaller footprint in the clubhouse; fitness facilities and locker rooms are going to change location in the building; food service will be different; and some offerings may be replaced by new features.

Accordingly, to proceed with the Redevelopment, the PAA's members will have to "weigh in" on the final details as proposed in the Plan. *Your Board strongly recommends that membership vote to accept the Plan.* Without membership support of the Plan, your Board believes that the club will face a number of risks with unfavorable outcomes, including loss of control of the Redevelopment, further delay in the bankruptcy process (depleting our remaining resources), or even the dissolution of PAA ending of the club's existence.

Included with this letter is a packet comprised of the following documents:

- (1) A golden colored ballot for each member to cast a vote to accept or reject the Plan;
- (2) A self-addressed stamped envelope to submit your completed ballot;
- (3) A cover letter from Walnut and copy of Walnut's presentation entitled "PAA Rejuvenation" (the "Walnut Materials") featuring their proposed renovations;
- (4) A cover letter from HFF detailing the process we went through when selecting our redevelopment partner;
- (5) A copy of the Bankruptcy Court Order setting the deadline to vote on the Plan and setting the time for hearing on confirmation of the Plan;
- (6) A copy of the Court approved Impaired Class Amended Disclosure Statement, (the "Disclosure Statement") and the Plan, to aid you in your decision. The Disclosure Statement also has exhibits that further support the Plan.

We urge you to carefully read the Disclosure Statement and Plan. We know that many members have been unable to attend our meetings over the last few months so we wanted to give each of you a chance to review the Walnut Materials which were presented to the membership during a special meeting we held a few weeks ago.

We are aware that some outside groups are working with a very small minority of our members who may have approached you about "alternatives plans" that promise to deliver to membership better terms, more space, or more money. It is important to note that such an "alternative plan", while appealing on its face may not be feasible or sustainable for the club's operation into the future. In light of this, your Board has reviewed every offer made through the analysis of bids process, with the assistance of HFF, as well as those made thereafter. On April 22, 2018, your Board again voted unanimously in favor of maintaining course with Walnut to assure a sustainable Redevelopment is consummated and completed.

While we all wish we could maintain more of the clubhouse for the benefit of PAA members, but it is not realistic or sustainable if we truly want to see the club successfully reorganize and continue to operate. At the time of the bankruptcy filing, the club had amassed over \$8 million dollars in debt and the deferred maintenance costs to the clubhouse



would have likely exceeded \$20 million dollars. The Plan process allows PAA to: (i) remain in our clubhouse, (ii) have first class athletic and social facilities consistent with our mission as stated in our Bylaws; (iii) continue to offer an exclusive food and beverage program in the wonderful Grille Room; (iv) have access to event and banquet facilities within the PAA without the associated expenses and liabilities of operating a kitchen and those banquet spaces; (v) continued ownership of our Artwork; (vi) preserve the significant architectural features of the clubhouse; and (vii) emerge out of Bankruptcy having eliminated the club's outstanding debt.

Although there are more details to work out, to move forward with the Redevelopment outlined above we need **your help**. We need **your vote for approval of the Plan**. Please carefully review the attached documents and feel free to reach out to any members of your Board with questions. Then please cast your vote, according to the instructions on page 5 of the Disclosure Statement, and mail it using the enclosed prepaid self-addressed envelope *no later than May 18<sup>th</sup> to ensure it is received and counted by the May 23<sup>rd</sup> Ballot Deadline*.

Thank you again for your continued support and commitment and for your consideration of these matters. We hope to see each of you at the party on May 15<sup>th</sup>!

Cordially,

Your Board of Directors

**IN THE UNITED STATES BANKRUPTCY COURT  
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**Hearing Date and Time:**

**ORDER OF COURT**

Upon consideration of the foregoing Expedited Joint Motion to Retract and Correct the April 27, 2018 Solicitation Letter and to Whom Ballots Were Sent (the "Motion"), it is hereby **ORDERED, ADJUDGED** and **DECREEED** that the Debtor shall immediately:

(A) send a letter to all Members of the PAA which (1) retracts the Solicitation Letter,<sup>2</sup> (2) prominently informs the Members of the "For the avoidance of doubt" disclaimer respecting the "Redevelopment Amenities" which this Court ordered added to the Disclosure Statement at page 22 at the Hearing on April 24, 2018, and (3) informs all

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

<sup>2</sup> Any capitalized term in this Order shall have the meaning ascribed to it in the Motion.

Members, including those on the Pre-Bankruptcy Membership List, that they may return their ballots until 12 noon on Tuesday, May 29, 2018, and

(B) send the Solicitation Package with the “For the avoidance of doubt” disclaimer but without the Solicitation Letter to all Members of the PAA appearing on the Pre-Bankruptcy Membership List.

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey A. Deller  
Chief Judge, United States Bankruptcy Court