

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

In re:
PITTSBURGH ATHLETIC
ASSOCIATION, *et al*¹
Debtors,

Jointly Administered at:
Case No. 17-22222-JAD

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

PITTSBURGH ATHLETIC ASSOCIATION
et al,

Chapter 11

Movant,

v.

Hearing: May 30, 2018 at 10:00 am

NO RESPONDENTS,

Responses Due: May 30, 2018 at 9:00
AM

Respondents.

**EXPEDITED MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) ALLOWING
THE LATE BALLOTS (II) DESIGNATING AND DISALLOWING THE BALLOTS IN
QUESTION AND (III) DESIGNATING AND DISALLOWING BALLOTS OF THE
RESIGNED MEMBERS AND FOR RELATED RELIEF PURSUANT TO
11 U.S.C. §§ 1125, 1126, AND 105(A) AND FED. R. BANKR. P. 3018.**

Pittsburgh Athletic Association (“PAA”) and Pittsburgh Athletic Association Land Company (“PAA-LC”, together with PAA, the “Debtors”) file this Expedited Motion of Debtors for entry of an Order (i) allowing the Late Ballots, (ii) designating and disallowing the Ballots in Question, and (iii) designating and disallowing the ballots of the Resigned Members and for related relief pursuant to 11 U.S.C. §§ 1125, 1126, and 105(a) and Fed. R. Bankr. P. 3018. The Debtors aver as follows:

¹ The Debtors have the following case 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.

LIMITED FACTUAL AND PROCEDURAL BACKGROUND

1. On May 30, 2017 (the “**Petition Date**”), Debtors each filed voluntary petitions under Chapter 11 of the Bankruptcy Code and are authorized to continue to operate their businesses and manage their properties pursuant to Section 1107(a) and Section 1108 of the Bankruptcy Code.

2. Debtor, PAA-LC, owns certain real property located at 4215 Fifth Avenue, Pittsburgh, Pennsylvania 15213, bearing tax parcel identification number 27-R-1358, and containing approximately 33,136 square feet of land (the “**Club Parcel**”).

3. In addition to the Club Parcel, Debtor, PAA-LC, also owns property located between Bigelow Boulevard and Lytton Avenue, Pittsburgh, Pennsylvania, with a street address of Bigelow Boulevard, Pittsburgh, Pennsylvania 15213, bearing a tax parcel identification number of 27-R-110, and containing approximately 23,685 square feet of land (the “**Hotel Premises**”, collectively with the Club Parcel, the “**Property**”).

4. No trustee or examiner has been appointed in these chapter 11 cases.

5. On June 8, 2017, the Office of the United States Trustee formed the Official Committee of Unsecured Creditors (the “**Committee**”).

6. The 341 Meeting of Creditors was held on August 22, 2017.

The Plan Process

7. On December 22, 2017, Debtors filed a Joint Chapter 11 Plan of Reorganization of Pittsburgh Athletic Association & Pittsburgh Athletic Association Land Company dated December 22, 2017 at [Doc. No. 418] (the “**Plan**”), a Joint Disclosure Statement to Accompany Joint Plan of Reorganization dated December 22, 2017, at [Doc. No. 419] (the “**D/S**”), and a

Joint Summary of Chapter 11 Plan of Reorganization dated December 22, 2017 [Doc. No. 420] (the “**Plan Summary**” and collectively with the Plan and D/S, the “**Plan Documents**”).

8. On December 28, 2017, the Court entered an Order scheduling a hearing on approval of the D/S for February 6, 2018 (the “**D/S Hearing**”). [Doc. No. 429].

9. 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 Plan**”) [Doc. No. 587], an Amended Joint Disclosure Statement to Accompany Joint Plan of Reorganization (the “**Amended D/S**”) [Doc. No. 588] and an Amended Joint Summary of Chapter 11 Plan of Reorganization (the “**Amended Plan Summary**,” collectively with the Amended Plan and the Amended D/S, the “**Amended Plan Documents**”)[Doc. No. 589].

10. On March 15, 2018, this Court entered an Order conditionally approving the Amended D/S and setting certain deadlines [Doc. No. 593]. The Court also scheduled a Confirmation Hearing on the Amended Plan for April 17, 2018 at 10:00 a.m. (the “**Confirmation Hearing**”). *See* Doc. No. 593.

11. On March 16, 2018, the Debtors filed a revised Amended Plan to address a scrivener’s error. [Doc. No. 594].

12. On March 19, 2018, the Court entered an Order indicating that the revised Amended Plan “supersedes the Amended Joint Plan of Reorganization dated March 13, 2018.” *See* Doc. No. 600.

13. On March 29, 2018, Debtors’ filed their Third Motion to Extend the Exclusivity Period under Section 1121 of the Bankruptcy Code, seeking an extension of exclusivity from April 12, 2018 to May, 2018 (“**Third Exclusivity Motion**”). [Doc. No. 630].

14. On April 2, 2018, the Court entered the Re-Issued Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, Fixing Time for Hearing on Plan Confirmation, and Setting Last Day for Filing a Complaint Objecting to Discharge Combined with Notice Thereof (the “**Objection Deadline**”), [Doc. No. 638], setting a deadline for serving of ballots accepting or rejecting the plan of April 17, 2018 and re-scheduling the hearing on confirmation of the Amended Plan for April 24, 2018 (the “**Confirmation Hearing**”).

15. On April 9, 2018, the Respondents filed an Objection to the Debtors’ Third Exclusivity Motion raising various “kitchen sink” and spurious arguments. *See* Document No. 659 (*and various joinders thereto*).

16. On April 10, 2018, the Court held a hearing on Debtors’ Third Exclusivity Motion and Objections thereto [Doc. No. 630] (the “**April 10th Hearing**”). During the April 10th Hearing, the Court indicated that the PAA Members may be considered impaired under the Amended Plan. The Court further stated that, should the PAA Members be considered impaired, they may be entitled to vote to accept or reject the Amended Plan. The Court reserved decision on this matter for the Confirmation Hearing.

17. In light of the Court’s comments during the April 10th Hearing, and to ensure all impaired and potentially impaired classes have had the opportunity to vote to accept the Amended Plan, rather than proceeding with the April 24, 2018 Confirmation Hearing, Debtors filed a Motion for Approval of Impaired Class Disclosure Statement and Ballot and requested a continuance of the Confirmation Hearing to May 8, 2018 (“**Solicitation Motion**”). [Doc. No. 675].

18. On April 15, 2018, the Debtors filed a Second Revised Amended Joint Chapter 11 Plan of Reorganization of Pittsburgh Athletic Association & Pittsburgh Athletic Association Land Company dated March 13, 2018, as Revised March 16, 2018 and April 15, 2018 (the “Second Revised Amended Plan”) [Doc. No. 673], an Impaired Class Amended Joint Disclosure Statement to Accompany Joint Plan of Reorganization (the “Impaired Class Amended D/S”, together with the Second Revised Amended Plan the “Impaired Class Plan Documents”) [Doc. No. 674].

19. As the Second Revised Amended Plan was filed for limited purposes to address comments made by the objection members and the Court at the April 10th Hearing, and to reflect the treatment of Classes 2 and 3 after the Debtors and those creditors had reached agreements in that regard.

20. Specifically, the Impaired Class Plan Documents provide for the following changes: (1) OFAHA is an impaired class under Class 2; (2) the Blanche Trust is an impaired class under Class 3; and (3) out of an abundance of caution and to prevent issues at the Confirmation Hearing, PAA Members have been Classified in Class 11 and were provided a Ballot.

21. In the Solicitation Motion filed on April 15, 2018, the Debtors Requested approval of their Impaired Class Disclosure Statement and Ballots and noted that “these documents will be sent along with a Cover Letter from the President of the Debtors’ Board summarizing the Debtors’ due diligence process and other marketing materials, to OFAHA, the Blanche Trust and the PAA Members.” See Document No. 675 at ¶ 47. (“emphasis added”).

22. On April 16, 2018, the Debtors filed a Motion to File the PAA Member List under seal, in order to protect the personal information of the PAA Members (the “**Motion to Seal**”). See Document No. 676.

23. On April 16, 2018, the Court entered Scheduling Orders on the Solicitation Motion and the Motion to Seal setting hearings for April 24, 2018 and response deadlines to both motions for April 23, 2018 at 12:00 PM. *See* Document Nos. 677 and 678.

24. All parties were served with the Solicitation Motion and the Motion to Seal on April 15, 2016, through the Court's CM/ECF System, and by Electronic Mail. These Motions were also served by First Class U.S. Mail on April 17, 2018. *See* Document No. 687.

25. On April 19, 2018, the Court held a telephonic status conference on the Solicitation Motion and the Motion to Seal, during which no issues were raised regarding the proposed cover letter to be included in the Debtors' solicitation packet.

26. No Objections to either the Solicitation Motion or the Motion to Seal were filed by any party including the Respondents. *See* Docket *generally*.

27. On April 22, 2018, the Debtor filed a Third Revised Amended Plan, as revised April 22, 2018, and a Revised Impaired Class Amended Disclosure Statement, *See* Document Nos. 702 and 703, to accommodate concerns raised by various parties and the Court during the April 19th Telephone Conference.

28. On April 24, 2018, the Court held an Omnibus Hearing including on the Solicitation Motion, the Motion to Seal, and approval of the Revised Impaired Class Disclosure Statement. During that hearing the Court addressed issues and substance of the Disclosure Statement, including information regarding the potential tax liabilities that may be incurred through the proposed sale of the Debtors' property. The Court read into the record the sections of the Impaired Class Disclosure Statement that contained adequate disclosures of these tax issues and directed the Debtor to include similar disclosures in the "Overview of the Plan" section of the Impaired Class Disclosure Statement.

29. Subsequent to the April 24th hearing, the Court entered an Order granting the Motion to Seal. *See* Document No. 716, and the Debtors filed the PAA Member List under seal at Document No. 740.

30. On April 24, 2018, the Debtors filed a second revised Impaired Class Disclosure Statement at Document No. 717 in accordance with the Court's direction from the April 24th Hearing.

31. On April 25, 2018, the Court entered an Order approving the Impaired Class Disclosure Statement as revised April 24, 2018 and setting a hearing on Confirmation of the Amended Plan for May 30, 2018 with a Balloting deadline and Plan Objection deadline of May 23, 2018. *See* Document No. 724.

32. Thereafter, the Debtors served all 199 members listed on the PAA Member List with the Court approved Impaired Class Disclosure Statement and Amended Plan along with Ballots the following items (together the "**Solicitation Packet**"):

- A Cover letter from the Board;
- A Ballot with return envelope;
- A Cover letter from Walnut Capital and Slides from the presentation shown to the PAA Members at the Special Meeting held on April 20, 2018;
- A Letter from HFF detailing the Sale Process.

33. On May 2, 2018, the Debtors began to receive Ballots returned from the Impaired Classes under the Amended Plan including Class 2 OFAHA, which has accepted the Amended Plan; Class 3 the Blanche Trust, which has accepted the Plan; and various PAA Members.

34. On May 4, 2018, the objecting members filed a Motion for Retraction of the cover letter sent by the Debtors' Board of Directors to its members as part of the Debtors' Solicitation Packet. (“**Objecting Members' Motion**”).

35. Also on May 4, 2018, the Debtors file a Motion for Contempt for Violation of the Automatic Stay and Violation of the Exclusivity Period (“**Contempt Motion**”). *See* Document No. 753.

36. The Court held a hearing on the Contempt Motion and the Objecting Members' Motion on May 8, 2018.

37. During the May 8th hearing, the Objecting members complained that the ballots for the Amend Plan were not served on all former PAA Member who had voluntarily resigned their membership with the PAA on or after the Petition Date (“**Resigned Members**”).

38. In response the Court questioned how a person that voluntarily resigned and gave up his or her rights associated with PAA Membership, could have any interest in the Amended Plan and/or be entitled to vote on the Amended Plan.

39. On May 9, 2018, the Court entered an Order directing “any parties or their counsel who are further soliciting votes, whether they be in favor or against the Plan, are Ordered to deliver a copy of this Order and shall direct the prospective voter's attention to the Disclosure Statement previously approved by the Court.” *See* Document No. 780, ¶ 3.

40. The Court also directed the Debtor to “serve a copy of the Order upon all parties in interest in this case. The Debtors are also directed to including in their mailing all Members of the PAA as of the petition date.” *See* Document No. 780, ¶ 1.

41. Notwithstanding the directive to serve the May 9th Order on the Resigned Members, and notwithstanding the Court's question on how the Resigned Members had any

interest in the Amended Plan or could be entitled to vote, the Court indicated that “adequacy of services, however, is a matter left for consideration at Plan Confirmation. See Document No. 780, n. 2.

42. Thereafter the Debtors served the May 9th Order on all parties in interest in the cases, including the 199 members on the PAA Member List.

43. The Debtors also served the Solicitation Packet and the May 9th Order on 93 former PAA Members who had voluntarily resigned their membership on or after the Petition Date.

44. The Debtors conducted an information meeting and cocktail party for PAA Members on May 15, 2018 during which copies of the May 9th Order were circulated.

45. Thereafter, on May 17, 2018, PAAPA and the Objecting Members conducted a meeting discussing alternative plans to the current pending Amended Plan which, as of the date of this Motion, is the only Plan and viable option for the PAA to continue in operation.

The Late Ballots

46. The Debtor received the following ballots (“**Late Ballots**”) after the Balloting Deadline, and seeks to have these ballots allowed:

- Ballot of Kenneth Linamen - Official Yellow Ballot accepting the Plan was received on May 23, 2018 at 6:22 PM by hand delivery to Debtors’ Counsel by Mr. Linemen, a member of the Debtors’ Board. Mr. Lineman explained he thought he had mailed the Ballot in but inadvertently got missed in the mail. A true and correct copy of the Linamen Ballot is attached as “**Exhibit A**”.

- Ballot of John Anderson - Official Yellow Ballot accepting the Plan was received on May 24, 2018, but was postmarked May 23, 2018. A true and correct copy of the Anderson Ballot is attached as **“Exhibit B”**

The Ballots in Question

47. The Balloting Deadline ran on May 23, 2018.

48. In addition to the ballots received by the Resigned Members, which the Debtors seek to have designated and disallowed by way of this Motion, the Debtors also received several ballots of questionable validity (**“Ballots in Question”**) as follows:

- Ballot of Reed Lafferty - Official Yellow Ballot received May 2, 2018 accepting the Plan, new photo copied white ballot received May 23, 2018. A true and correct copy of the Lafferty Ballots are attached as **“Exhibit C”**.
- Ballot of Kevin Ashley - Official Yellow Ballot received May 16, 2018 accepting the Plan, new photo copied white ballot received on May 23, 2018 in an envelope from Albert Zangrilli (which also contained another questionable ballot as set forth below). A true and correct copy of the Ashley Ballots are attached as **“Exhibit D”**.
- Ballot of Andrew McSwigan - Official Ballot accepting the Plan received by hand delivery to Debtors’ Counsel at the May 15th Member Meeting, recorded on May 16, 2018 - new photo copied ballot rejecting the plan received by hand delivery by Yvonne Rose to Debtor’s counsel, Signatures and personal information appear different on both ballots and there is a personal note to Yvonne Rose on the

envelope. A true and correct copy of the McSwigan Ballots are attached as “**Exhibit E**”.

- Ballot of Resigned Member Raymond Fitzsimmons - Official Pink Ballot accepting the Plan received on May 14, 2018 - New photo copied White Ballot rejecting the Plan received on May 23, 2018 included in envelop from Albert Zangrilli.² A true and correct copy of the Fitzsimmons Ballots are attached as “**Exhibit F**”.

RELIEF REQUESTED

49. The Debtors file the within Motion seeking to have the Court enter an Order (i) allowing the Late Ballots, (ii) designating and disallowing the Ballots in Question and (iii) designating and disallowing the ballots of the Resigned Members.

(i) The Late Ballots should be Allowed

50. Bankruptcy Rule 3018: provides that “A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017.” Fed. R. Bankr. P. 3018(a).

51. Although the Late Ballots were not submitted prior to the expiration of the May 23rd Balloting Deadline, courts typically allow late ballots on account of excusable neglect by the balloting party.

52. “The concept of ‘excusable neglect’ is most often associated with the allowance of late-filed proofs of claim, but courts properly have applied the concept in deeming late ballots timely received.” *In re Hills Stores Co.*, 167 B.R. 348, 351–52 (Bankr. S.D.N.Y. 1994) (citing *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1314 (8th Cir.1987); *In re Richard*

² To the extent the Resigned Member ballots are allowed, the Debtor seeks to designate and disallow Raymond Fitzsimmons’ ballots due to the suspect nature of their submission.

Buick, Inc., 126 B.R. 840, 849–50 (Bankr.E.D.Pa.1991); *Paul*, 101 B.R. 228; *In re Trails' End Lodge, Inc.*, 54 B.R. 898, 902 (Bankr.D.Vt.1985).\

53. In reviewing whether to allow a late submission due to excusable neglect courts should consider: “(1) the danger of prejudice, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.” *Doe v. 9197-5904 Quebec, Inc.*, 17-2216, 2018 WL 1341544, at *2 (3d Cir. Mar. 15, 2018) (citing *Pioneer Investment Services v. Brunswisk Assoc.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993); *See In re Ekstrom*, 08-07750-SSC, 2010 WL 1254893, at *16 (Bankr. D. Ariz. Mar. 23, 2010) (applying excusable neglect standard to determination of whether to allow late ballot).

54. As to the first two *Pioneer* factors there is no danger of prejudice and the length of the delay was minimal and the impact on the judicial proceedings is also minimal as the Late Ballots were received within one and two days of the Balloting Deadline, prior to the deadline for the Debtors to submit the Summary of Ballots and prior to the hearing on Confirmation of the Plan.

55. The reason for the Late Ballots being received shortly after the Balloting Deadline was not within the control of the Debtors and was likely caused by inadvertent mistakes by the Balloting members given the multitude of paper encompassed in the solicitation of votes in this case. Indeed, the Ballot of Mr. Linamen was received just hours after the 5:00 PM Balloting Deadline by hand delivery after he apparently realized the Ballot had not been mailed. The Ballot of Mr. Anderson was actually post-marked on the May 23rd Balloting Deadline. Accordingly, the Late Ballots appear to have been untimely submitted to the Debtors by mere mistake.

56. Finally, the Debtors have proceeded in good faith in timely serving all ballots and instructing them when and how to submit their ballots. The Debtors filed this Motion shortly before completing the Ballot tabulation to obtain approval of including the Late Ballots.

57. Accordingly, the Late Ballots should be allowed as the factors for excusable neglect are satisfied.

(ii) The Ballots in Question Should be Designated and Disallowed

58. The Ballots in Question should be designated and disallowed pursuant to section 1126(e) of the Bankruptcy Code and Fed. R. Bankr. P. 3018.

59. In this case all of the Ballots in Question constituted changes in the votes of the individuals submitting those ballots.

60. Bankruptcy Rule 3018 provides that: “[f]or cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection.” *See* Fed. R. Bankr. P. 3018(a).

61. Here, the Ballots submitted by Mr. Lafferty (Exhibit C), Mr. Ashley (Exhibit D), Mr. McSwigan (Exhibit E) and Mr. Fitzsimmons (Exhibit F) were received by the Debtor without any Motion filed by these individuals seeking to withdraw or change their votes or any communication to the Debtor indicating they wanted to change their votes. Therefore, the Ballots in Question should be disallowed and not counted. *See In re Piece Goods Shops Co., L.P.*, 188 B.R. 778, 795 (Bankr. M.D.N.C. 1995) (holding that when no party has sought court permission to change ballots on chapter 11 plan, the changed ballots should not be counted).

62. Furthermore, the second ballots of Mr. Ashley and Mr. Fitzsimmons did not even come from them directly, but were submitted in an envelope from Albert Zangrilli, another PAA Member who rejected the Plan. The second ballot of Mr. McSwigan, was hand delivered by

Yvonne Rose, and the writing was in purple ink with different signatures and personal information.

63. Section 1126 of the Bankruptcy Code provides that “on request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.” 11 U.S.C.A. § 1126(e).

64. Here, notwithstanding that the Ballots in Question do not follow the procedure for changing a vote, the circumstances surrounding their submissions demonstrate that they were not solicited or procured in “good faith”.

65. The Debtors sent a solicitation packet to each of the individuals who purportedly submitted the Ballots in Question which included a color coded ballot and a self-addressed return envelope. Each of the individuals timely submitted their Official Ballots in the accompanying return envelope. Then on the day of the balloting deadline, the Debtors received the Ballots in Question on what appear to be photo copies of the Official Ballots without any word from the individuals submitting the ballots. These Ballots in Question were sent/delivered by third parties, Albert Zangrilli and Yvonne Rose, who do not represent these individuals.³ Furthermore, as to Mr. McSwigan’s second ballot, the handwriting and signature does not resemble that of his Official Ballot and is written in purple ink with a questionable note to Ms. Rose.

³ Bankruptcy Rule 3018 also provides: “[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c).

66. These Ballots in Question were received by the Debtors without any communication from the individuals of their intention to change their votes, much less a motion with notice and a hearing, as is required by the Bankruptcy Rules.

67. In addition to these suspect circumstances, the Ballots in Question were submitted by parties associated with the objecting members, who have hotly contested the entire Plan Process and the entire bankruptcy case for that Matter.

68. It is also unclear and unknown whether these proposed changes in votes were procured by the objecting members, Yvonne Rose and Albert Zangrilli, in accordance with the Court's May 9th Order and what solicitation and disclosures were given to these individual if prior to their purported desire to change their vote. Indeed, the envelope from Mr. McSwigan's second ballot, hand delivered to the Debtor by Yvonne Rose, indicates a potential solicitation that may not have been in compliance with the Court's May 9th Order, with the writing "For Yvonne Rose, enjoyed our phone talk, thank you for all that you have done for the PAA". Thus clearly indicating that if the second ballot of Mr. McSwigan is valid, it was procured through some solicitation by Ms. Rose.

69. The contents of Ms. Rose's solicitation are unknown and of particular consequence given that the proposed alternative offeror, McKnight Realty Partners has withdrawn its joinder to the Objection to Confirmation and all offers submitted to date.

70. In light of the foregoing, the Debtor seeks to have the Ballots in Question designated and disallowed pursuant to Bankruptcy Rule 3018 and section 1126(e) of the Bankruptcy Code.

(iii)The Resigned Member's Ballots should be disallowed.

71. The Resigned Members have all knowingly and voluntarily tendered resignations and relinquished their interests and rights as PAA Members. The PAA Bylaws only entitle PAA Members to the use and enjoyment of the social and athletic services provided by PAA, and do not provide the members with any pecuniary interest in the club.

72. In fact, during the May 8th hearing, the Court intimated and questioned whether the Resigned Members could even vote on the Amended Plan because they voluntarily gave up their interest and rights attenuated with PAA Membership.

73. Fed. R. Bankr. P. 3018 provides that “an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3018.

74. Here, all the Resigned Members voluntarily resigned their membership in the PAA and gave up their rights prior to the Court’s Order approving the Impaired Class Disclosure Statement on April 25, 2018. Therefore, none of the Resigned Members were holders of any interest in the PAA or the Debtors’ bankruptcy estates on April 25, 2018, and therefore none of the Resigned Members are entitled to vote on the Amended Plan.

75. Furthermore, even in a hypothetical liquidation of the Club, which is highly unlikely and not even contemplated by the Debtors, its Board, and even the objecting members, whose very goal is to preserve the continued operation of the club, the Resigned Members would not be entitled to any distribution. *See In re Reserve Golf Club of Pawleys Island, LLC*, 428 B.R.

678, 685 (Bankr. D.S.C. 2010) (finding that resigned members who voluntarily extinguished their rights, were not entitled to object to Chapter 11 plan).

REQUEST FOR EXPEDITED RELIEF

76. 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; an (3) the need for an expedited hearing has not been caused by any 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).

77. In the instant case, just cause exists for the Court to hold an expedited hearing on this the Motion as a obtaining a determination on the Motion under the normal notice period would cause Debtors to incur irreparable harm. The Debtors are on the precipice of confirmation hearing on the Amended Plan, and the relief sought in the Motion is integral to confirmation and denying expedited relief could severely hindering the reorganization process resulting in a complete waste of the expenditures incurred by the Debtors in proceeding to this point.

78. The need for expedited relief was not caused by the Debtors, but is the result of the May 23rd Balloting Deadline and the need for the relief sought in this Motion arose thereafter.

79. WHEREFORE, for the above stated reasons, Debtors respectfully request this Honorable Court enter an Order (i) allowing the Late Ballots; (ii) designating and disallowing the Ballots in Question; and (iii) designating and disallowing the Resigned Members Ballots.

Respectfully Submitted,

TUCKER ARENSBERG, P.C.

DATED: May 25, 2018

/s/ Jordan S. Blask

Jordan S. Blask, Esquire

PA ID No. 308511

Matthew J. Burne, Esquire

PA ID No. 318444

Sloane B. O'Donnell, Esquire

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Exhibit "A" - Kenneth Linamen Ballot

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

MAY 23 2018
6:22 pm

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 22, 2018)**

Debtors, Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, filed a Joint Amended Plan of Reorganization dated March 13, 2018 (the "Amended Plan") for the Debtors in these jointly administered cases. The Court has approved the Impaired Class Joint Amended Disclosure Statement with respect to the Amended Plan (the "Impaired Class Amended D/S"). The Impaired Class Amended D/S provides information to assist you in deciding how to vote your ballot. If you do not have a D/S, you may obtain a copy from *Tucker Arensberg, P.C., Attn: Jordan Blask, Esq., 1500 One PPG Place, tel: 412-566-1212/fax: 412-594-5619; email: jblask@tuckerlaw.com.* Court approval of the D/S does not indicate approval of the Amended Plan by the Court.

You should review the Impaired Class Amended D/S and Amended Plan before you vote. You may wish to seek legal advice concerning the Amended Plan and your classification and treatment under the Amended Plan. Your interest is as a Member of the Pittsburgh Athletic Association. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a **Class 11 Membership Interest in the Pittsburgh Athletic Association.**

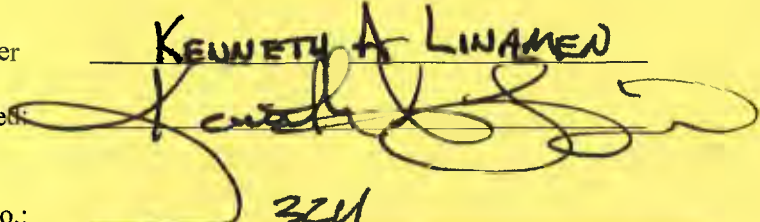
The undersigned hereby (check appropriate block):

ACCEPTS or **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member

KENNETH A LINAMEN

Signed:



PAA Member No.:

321

Address:



Exhibit "B" - Anderson Ballot

MAY 24 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

Jointly Administered at:
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Bankruptcy Nos:
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(as revised April 22, 2018)**

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You should review the Impaired Class Amended D/S and Amended Plan before you vote. You may wish to seek legal advice concerning the Amended Plan and your classification and treatment under the Amended Plan. Your interest is as a Member of the Pittsburgh Athletic Association. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a **Class 11 Membership Interest in the Pittsburgh Athletic Association.**

The undersigned hereby (check appropriate block):

ACCEPTS or **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member: SHEILA ANDERSON
Signed: *Sheila Anderson*

PAA Member No.: 0079

Address: 

Exhibit "C" - Reed Lafferty Ballot

MAY 2 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 22, 2018)**

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If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a Class 11 Membership Interest in the **Pittsburgh Athletic Association.**

The undersigned hereby (check appropriate block):

[] **ACCEPTS** or [] **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member: Reed LaHerty

Signed: Reed LaHerty

PAA Member No.: 3036

Address: 3617 Colmar Street
Pittsburgh PA 15213

MAY 23 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 22, 2018)**

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If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a Class 11 Membership Interest in the Pittsburgh Athletic Association.

The undersigned hereby (check appropriate block):

[] ACCEPTS or [] REJECTS the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member:

Signed:

PAA Member No.:

Address:

Reed Lattery
Reed Lattery
3036



Exhibit "D" - Ashley Ballot

MAY 16 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 22, 2018)**

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If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a Class 11 Membership Interest in the Pittsburgh Athletic Association.

The undersigned hereby (check appropriate block):

ACCEPTS or **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member:

KEVIN D. ASHLEY

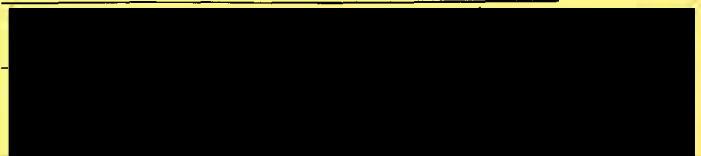
Signed:

Kevin D Ashley

PAA Member No

134

Address



MAY 23 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

Jointly Administered at:

Bankruptcy No. 17-22222-JAD

Bankruptcy Nos:

17-22222-JAD, and

17-22223-JAD

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 22, 2018)**

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If the Amended Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

The undersigned, a Member, is the holder of a **Class 11 Membership Interest in the Pittsburgh Athletic Association.**

The undersigned hereby (check appropriate block):

ACCEPTS or REJECTS the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member: Kevin D. Ashley

Signed: *Kevin D. Ashley*

PAA Member No.: 134

Address: 

Exhibit "E" - Andrew McSwigan Ballot

MAY 1 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
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(as revised April 22, 2018)**

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The undersigned hereby (check appropriate block):

ACCEPTS or **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018.

Print or Type Name of Member:

ANDREW M. SORICAN

Signed:

Andrew M. Sorican

PAA Member No.:

3639

Address:

[Redacted Address]

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

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

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



**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
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The undersigned hereby (check appropriate block):

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Print or Type Name of Member:

ANDREW S. McSWIGAN
Andrew S. McSwigan

Signed:

PAA Member No.:

3639

Address:



*Please
NOTE:*

RESEND MY BALLOT OF TUESDAY MAY 15, 2018

Exhibit "F" - Ballots of Reymond Fitzsimmons

MAY 14 2018

MAY 14 2018

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA**

In re:

PITTSBURGH ATHLETIC ASSOCIATION,
PITTSBURGH ATHLETIC ASSOCIATION
LAND COMPANY,

Debtors.

Jointly Administered at:
Bankruptcy No 17-22222-JAD

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

**CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING
DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018**
(as revised April 22, 2018)

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The undersigned hereby (check appropriate block):

[] **ACCEPTS** or [] **REJECTS** the Joint Amended Plan of Reorganization of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, dated March 13, 2018 as revised April 22, 2018

Print or Type Name of Member:

RAYMOND P. FITZSIMMONS

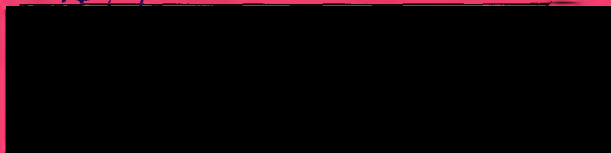
Signed:

Raymond P. Fitzsimmons

PAA Member No.:

1674

Address:



JORDAN
THIS BALLOT RESCINDS
MY PREVIOUS VOTE OF
ACCEPTANCE OF THE
JOINT AMENDED PLAN OF
REORGANIZATION. MY
VOTE IS TO REJECT THE
PLAN. R Fitzsimmons

MAY 23 2018

In re:

PITTSBURGH
PITTSBURGH
LAND COMPANY

PITTSBURGH
ATHLETIC ASSOCIATION

dated: 5/23/2018
22222-JAD

CLASS 11 - PAA MEMBER BALLOT FOR ACCEPTING OR REJECTING DEBTORS' AMENDED PLAN OF REORGANIZATION DATED MARCH 13, 2018 (as revised April 22, 2018)

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The undersigned hereby (check appropriate block):

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Print or Type Name of Member:

RAYMOND P. FITZSIMMONS

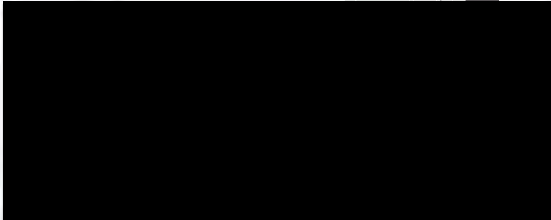
Signed:

Raymond P. Fitzsimmons

PAA Member No.:

1674

Address:



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

In re:
PITTSBURGH ATHLETIC
ASSOCIATION, *et al*¹
Debtors,

Jointly Administered at:
Case No. 17-22222-JAD

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

PITTSBURGH ATHLETIC ASSOCIATION
et al,

Chapter 11

Movant,

Related to Doc. No.

v.

NO RESPONDENTS,

Respondents.

ORDER

AND NOW this _____ day of _____, **2018** upon consideration of the Motion of Pittsburgh Athletic Association (“**PAA**”) and Pittsburgh Athletic Association Land Company (“**PAA-LC**”, together with PAA, the “**Debtors**”) for entry of an Order (i) allowing the Late Ballots, (ii) designating and disallowing the Ballots in Question, and (iii) designating and disallowing the ballots of the Resigned Members and for related relief pursuant to 11 U.S.C. §§ 1125, 1126, and 105(a) and Fed. R. Bankr. P. 3018 (“**Motion**”²), and after notice and a hearing and consideration of all responses and objections to the Motion, it is hereby **ORDERED, ADJUDGED** and **DECREED**, that:

(1) The Late Ballots are allowed and shall be counted in the tabulation of the votes for Class 11 of the Amended Plan.

¹ The Debtors have the following case 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 All Capitalized Terms shall have the meanings ascribed to them in the Motion.

(2) The Ballots in Question are designated and disallowed and shall not be included in the tabulation of votes for Class 11 under the Amended Plan.

(3) The ballots submitted by the Resigned Members of the PAA are designated and disallowed and shall not be included in the tabulation of votes in Class 11 under the Amended Plan.

JEFFREY A. DELLER
Chief U.S. Bankruptcy Judge