

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

In re:  PITTSBURGH ATHLETIC ASSOCIATION, <i>et al.</i> <sup>1</sup> ,  <i>Debtors.</i>	Jointly Administered at: Bankruptcy No. 17-22222-JAD  Bankruptcy Nos: 17-22222-JAD, and 17-22223-JAD
<hr/> PITTSBURGH ATHLETIC ASSOCIATION, <i>et al.</i> ,  <i>Movants,</i>  v.  UNITE HERE LOCAL 57, AFL-CIO, CLC and REGION SIX OF THE NATIONAL LABOR RELATIONS BOARD,  <i>Respondents.</i>	Chapter 11  Hearing: Sept. 18, 2017, at 10 AM

**MOTION TO APPROVE COMPLIANCE STIPULATION PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

The Pittsburgh Athletic Association (“**PAA**”) and the Pittsburgh Athletic Association Land Company (“**PAA-LC**” and together with the **PAA** collectively, the “**Debtors**”) files this Motion To Approve Compliance Stipulation Pursuant To Federal Rule of Bankruptcy Procedure 9019 by and between the PAA, UNITE HERE LOCAL 57, AFL-CIO, CLC (the “**Union**”) and Region Six of the National Labor Relations Board (the “**Region Six**”), and in support thereof, avers as follows:

**JURISDICTION AND VENUE**

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

---

<sup>1</sup> The Debtors have the following cases 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.

4. The Statutory predicates for relief are Fed. R. Bankr. P. 9019(a).

### **BACKGROUND**

5. On May 30, 2017 (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code.

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

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

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

9. On May 25, 2016, the Region Six of the National Labor Relations Board ("**NLRB**") filed a Complaint and Notice of Hearing against the PAA, No. 06-CA-169088 (the "**Complaint**"). The Complaint alleges that the PAA failed to maintain health insurance for its Union employees in violation of Section 8(a)(1) and (5) of National Labor Relations Act (the "**Act**"), 29 U.S.C. § 151 et seq.

10. On August 29, 2016, the NLRB issued a decision and order ("**Board's Order**") granting the NLRB general counsel's motion for default judgment.

11. The NLRB has continued to prosecute the Complaint and Board's Order under the police and regulatory powers exception to the automatic stay triggered by PAA's filing its petition for bankruptcy relief pursuant to 11 U.S.C. § 362(b)(4).

12. On January 25, 2017, the PAA signed a stipulation waiving its rights under Section 10(e) and (f) of the Act to contest the appropriateness of the underlying Board Order,

and agreeing to proceed directly to a compliance hearing concerning the amount of back pay due under the terms of the Board's Order.

13. On March 29, 2017, the NLRB issued a Compliance Specification and Notice of Hearing and scheduled to begin on July 17, 2017, in Pittsburgh, Pennsylvania.

14. On April 21, 2017, the PAA filed an Answer to the Compliance Specification and Notice of Hearing.

15. The parties have engaged in negotiations and have reached an agreement which they believe will fully and finally resolve the Complaint and Board Order, and is in the best interest of the PAA's Estate (the "**Compliance Stipulation**").

#### **THE COMPLIANCE STIPULATION**

16. The principal terms of the Compliance Stipulation include the following:

- a. In lieu of further litigation and in full and complete resolution of all back pay and other monetary obligations arising from the approved Motion for Default Judgment, the PAA agrees that it owes \$6,184.20 (the "**Settlement Amount**") plus additional post-bankruptcy petition interest<sup>2</sup> in settlement of the back pay claim in this matter.
- b. The PAA agrees that it will not contest or object to the allowance of the Board's claims, as asserted on Attachment A of the Compliance Stipulation, however the PAA neither agrees nor disagrees as to the propriety or accuracy of any wage priority that may be claimed by the NLRB.

#### **RELIEF REQUESTED**

17. The PAA respectfully request that this Honorable Court enter an order approving the Compliance Stipulation as summarized above, and as attached in its entirety hereto as Exhibit "A" pursuant to Bankruptcy Rule 9019.

18. Rule 9019 of the Federal Rules of Bankruptcy Procedure states in pertinent part that:

---

<sup>2</sup> Post-petition interest claimed is payable pursuant to 11 U.S.C. §726(a)(5) if the PAA is solvent at the close of the case. NLRB reserves the right to amend its Proof of Claim regarding Post-Petition interest.

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019.

19. The Third Circuit Court of Appeals recognizes a general policy in favor of settlements and compromises. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Thus, a bankruptcy court reviewing a proposed settlement should approve it when it is fair and equitable and in the best interests of the debtor's estate and creditors. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Marvel Entertainment Grp., Inc.*, 222 B.R. 243, 249 (D.Del. 1998); *In re Louise's Inc.*, 211 B.R. 798, 801 (D.Del. 1997).

20. In considering whether a proposed settlement is appropriate given the merits of the underlying dispute, a court should approve a settlement unless it "fall[s] below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (citation omitted); *American Reserve Corp.*, 841 F.2d 159, 161 (7<sup>th</sup> Cir. 1987).

21. Courts within the Third Circuit often consider the following four factors in determining whether a settlement is within the range of reasonableness and fair and equitable:

- a. The probability of success in the litigation;
- b. The difficulties to be encountered in collection;
- c. The complexity of the litigation and the expense and inconvenience, and delay necessarily attending it; and
- d. The paramount interest of the creditors.

*Marvel Entertainment*, 222 B.R. at 249; *Fry's Metals, Inc. v. Gibbons (In re RFE Industries, Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002); *Official Unsecured Creditors' Committee of*

*Pennsylvania Truck Lines, Inv. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.)*, 150 B.R. 595, 598 (E.D. Pa. 1992), *aff'd*, 8 F.3d 812 (3d Cir. 1993); *In re Grant Broadcasting of Philadelphia, Inc.*, 71 B.R. 390, 395 (Bankr. E.D. Pa. 1987).

22. The PAA believes that resolving the issues alleged in the Complaint and Board Order are in the best interest of the PAA and the PAA's creditors, and that the terms of the Compliance Stipulation are fair and reasonable.

23. The Third Circuit factors described above also favor approval of the Compliance Stipulation.

24. With respect to the probability of success in the litigation, the NLRB has already entered the Board Order which resulted in a judgment against the PAA and the monetary value of the Board Order will only be fully ascertained after costly litigation and the Compliance Stipulation resolves the trial that was set to take place on July 17, 2017.

25. The second factor is inapplicable to the PAA in this context as any resulting monetary claim is against the PAA.

26. With respect to the third factor, the litigation in this context is complex and specialized and would likely require the Debtor to engage special labor relations counsel to attend to these matters and the trial before the NLRB which would add another layer of administrative expense to the PAA.

27. Finally with regard to the fourth factor, the PAA is relieved of the continuing and costly expenses and fees being incurred in connection with defending the Complaint and Board Order and such a savings will provide value to the PAA's estate.

28. As set forth in paragraph 13 of the Compliance Stipulation, "[I]f the Bankruptcy Court rejects or otherwise does not approve this Compliance Stipulation, this Compliance

Stipulation will no longer be binding on the parties and will be of no legal consequence and the underlying compliance dispute will return to the Regional Director for further proceedings”.

29. Accordingly, the PAA believes that the Compliance Stipulation is well within the range of reasonableness. The Compliance Stipulation fully and finally resolves the issues contained in Complaint and Board Order.

30. For the foregoing reasons, the PAA submits that the Compliance Stipulation is in the best interest of the PAA and its creditors and respectfully request that this Court approve the Compliance Stipulation.

WHEREFORE the PAA respectfully request that this Honorable Court enter an order approving the Compliance Stipulation.

Dated: August 16, 2017

Respectfully Submitted,

TUCKER ARENSBERG, P.C.

/s/Jordan S. Blask

Jordan S. Blask, Esq. (Pa. I.D. 308511)

Jillian Nolan Snider, Esq. (Pa. I.D. 202253)

1500 One PPG Place

Pittsburgh, PA 15222

Phone: (412) 566-1212

Fax: (412) 594-5619

[jblask@tuckerlaw.com](mailto:jblask@tuckerlaw.com)

[jsnider@tuckerlaw.com](mailto:jsnider@tuckerlaw.com)

*Counsel for the Debtors*

**Exhibit “A”**

UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX

PITTSBURGH ATHLETIC ASSOCIATION

and

CASE 06-CA-169088

UNITE HERE LOCAL 57, AFL-CIO, CLC

COMPLIANCE STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN Pittsburgh Athletic Association (Respondent); and UNITE HERE Local 57, AFL-CIO, CLC (Union); and Region Six of the National Labor Relations Board (Region Six), that:

1. On August 29, 2016, the National Labor Relations Board (the Board) issued a Decision and Order (Board's Order) in the above-captioned case granting the General Counsel's Motion for Default Judgment. The Board's Order directed Respondent to take certain affirmative actions including, *inter alia*, to restore and maintain the bargaining unit employees' health insurance as it previously existed and to make bargaining unit employees whole for any expenses resulting from the Respondent's failure to maintain health insurance.
2. On January 25, 2017, Respondent signed a stipulation waiving its rights under Section 10(e) and (f) of the National Labor Relations Act (the Act) to contest the appropriateness of the underlying Board Order, and agreeing to proceed directly to a compliance hearing concerning the amount of backpay due under the terms of the Board's Order.
3. On March 29, 2017, Region Six issued a Compliance Specification and Notice of Hearing. A hearing is currently scheduled to begin on July 17, 2017, in Pittsburgh, Pennsylvania. The Compliance Specification provided the formula used to calculate the backpay amounts and the amounts owed by Respondent to date. However, as Respondent had not yet restored the bargaining unit employees' health insurance as it previously existed, the Region noted that the backpay period would continue to accrue until such time as the health insurance was restored.



4. On April 21, 2017, Respondent filed an Answer to the Compliance Specification and Notice of Hearing.
5. On May 30, 2017, Respondent filed a voluntary petition for Chapter 11 bankruptcy relief with the United States Bankruptcy Court for the Western District of Pennsylvania (*In re Pittsburgh Athletic Association*, Bankruptcy No. 17-22222-JAD).
6. On May 30, 2017, Pittsburgh Athletic Association Land Company (PAA Land) filed a voluntary petition for Chapter 11 bankruptcy relief with the United States Bankruptcy Court for the Western District of Pennsylvania (*In re Pittsburgh Athletic Association Land Company*, Bankruptcy No. 17-22223-JAD).
7. On June 5, 2017, the United States Bankruptcy Court for the Western District of Pennsylvania approved a Motion for Joint Administration of the bankruptcy filings of the Respondent and PAA Land.
8. Region Six will file a Proof of Claim in the bankruptcy proceeding referenced in paragraphs 5-7, for the total amount of \$6,184.20. The Board will also claim, as a separate amount and with no priority for distribution, interest on the appropriate amounts as set forth in Attachment A, which accrued after the date of the filing of the bankruptcy petition.
9. In lieu of further litigation and in full and complete resolution of all backpay and other monetary obligations arising from the approved Motion for Default Judgment, Respondent agrees that it owes \$6,184.20 (the Settlement Amount), as set forth in Attachment A, plus additional post-bankruptcy petition interest as described above in paragraph 8, in settlement of the Region's backpay claim in this matter. While Respondent agrees that it will not contest or object to the allowance of the Board's claims, as asserted on Attachment A, Respondent neither agrees nor disagrees as to the propriety or accuracy of any wage priority that may be claimed by Region Six.<sup>1</sup>
10. This Compliance Stipulation settles the backpay amounts owed in Case 06-CA-169088. By approving this Stipulation, the Regional Director withdraws the Compliance


---

<sup>1</sup> Any check issued by the Bankruptcy Estate to pay the Agency's claim will be payable to the National Labor Relations Board.

Specification and Notice of Hearing previously issued, and Respondent withdraws its Answer filed in response.

11. This Compliance Stipulation, along with its Attachment A, shall constitute the entire agreement between the parties concerning the backpay issue, there being no other agreement of any kind, verbal or otherwise, that varies, alters or adds to it.
12. If the Charging Party fails or refuses to become a party to this Compliance Stipulation and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the Compliance Stipulation and decline to reissue the Compliance Specification in this matter. If that occurs, this Stipulation shall be between the Respondent and the undersigned Regional Director. In that case, the Charging Party may request review of the Regional Director's decision to approve the Stipulation. If the General Counsel denies the request for review, the Charging Party may appeal said denial to the Board. If the Board does not sustain the Regional Director's approval, this Stipulation will be of no legal consequence and the underlying compliance dispute will return to the Regional Director for further proceedings.
13. Bankruptcy Counsel for the Respondent agrees to submit this Compliance Stipulation for approval to the Bankruptcy Court within two weeks of notification by the Region that the Stipulation has been approved by the Regional Director and/or that the General Counsel and/or Board has sustained the Regional Director's approval over the Charging Party's appeal. If the Bankruptcy Court rejects or otherwise does not approve this Compliance Stipulation, this Compliance Stipulation will no longer be binding on the parties and will be of no legal consequence and the underlying compliance dispute will return to the Regional Director for further proceedings.

**PITTSBURGH ATHLETIC ASSOCIATION**

By:  JAMES A. SHEEHAN, PRES.

Date: 7.11.2017

**UNITE HERE LOCAL 57 AFL-CIO, CLC**

By: 

Date: 7-13-2017

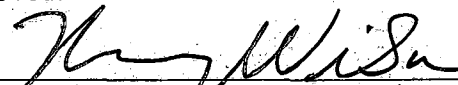
Recommended:

By:   
Compliance Officer

Date: 7/12/17

National Labor Relations Board

Approved:

By:   
Regional Director, Region Six  
National Labor Relations Board

Date: 7/12/17

**Attachment A**  
**Compliance Stipulation**  
**Pittsburgh Athletic Association**  
**Case 06-CA-169088**

	Principle Claims	Interest Earned on all Claims <sup>2</sup>
Discriminatee		
John Frey	\$759.03	\$24.00
Alla Madorsky	\$2,062.00	\$11.00
John Scott	\$2,145.07	\$7.00
Mark Volk	\$1,167.10	\$9.00
<b>Totals</b>	\$6,133.20	\$51.00
<b>Grand Total</b>	\$6,184.20	

---

<sup>2</sup> The Respondent owes the claimants an undetermined amount of post-petition interest accruing from backpay claimed in Attachment A. Post-petition interest claimed is payable pursuant to 11 U.S.C. §726(a)(5) if the Respondent is solvent at the close of the case. The Region reserves the right to amend its Proof of Claim regarding Post-Petition interest.

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

In re:

PITTSBURGH ATHLETIC ASSOCIATION, *et*  
*al.*<sup>3</sup>,  
*Debtors.*

PITTSBURGH ATHLETIC ASSOCIATION, *et*  
*al.*,  
*Movants,*  
v.

UNITE HERE LOCAL 57, AFL-CIO, CLC and  
REGION SIX OF THE NATIONAL LABOR  
RELATIONS BOARD,  
*Respondents.*

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

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

Chapter 11

Doc. No. \_\_\_\_\_

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of the Motion To Approve Compliance Stipulation Pursuant To Federal Rule of Bankruptcy Procedure 9019 (the “Motion”), it is hereby ORDERED ADJUDGED and DECREED that the Motion is **GRANTED** and that the Compliance Stipulation attached to the Motion as Exhibit “A” is **APPROVED**. In accordance with the Compliance Stipulation, Region Six of the National Labor Relations Board shall have an unsecured claim in the amount \$6,184.20 in the PAA’s case and the PAA neither agrees nor disagrees as to the propriety or accuracy of any wage priority that may be claimed by Region Six of the National Labor Relations Board.

\_\_\_\_\_  
**JEFFERY A. DELLER**  
**Chief U.S. Bankruptcy Judge**

<sup>3</sup> The Debtors have the following cases 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.