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

IN RE:

PITTSBURGH ATHLETIC Jointly Administered at:

ASSOCIATION, et al¹, Bankruptcy No. 17-22222-JAD

Debtors, Bankruptcy Nos:

17-2222-JAD, and

PITTSBURGH ATHLETIC, 17-22223-JAD

ASSOCIATION et al,

Movant, Document No.

vs. Related to Doc. Nos. 630 & 631

IRWIN KOTOVSKY. Hearing Date and Time:

April 10, 2018 at 11:00 AM

OBJECTION OF IRWIN KOTOVKSY AND ALL OTHER SIMILARLY SITUATED MEMBERS OF THE PITTSBURGH ATHLETIC ASSOCIATION TO DEBTOR'S EXPEDITED THIRD MOTION TO EXTEND PLAN EXCLUSIVITY PURSUANT TO 11 U.S.C. §1121(d)

AND NOW, comes Irwin Kotovsky and all other similarly situated members of the Pittsburgh Athletic Association, by and through his Counsel, Robert O Lampl, John P. Lacher, David L. Fuchs and Ryan J. Cooney, and files the within **OBJECTION TO DEBTOR'S EXPEDITED THIRD MOTION TO EXTEND PLAN EXCLUSIVITY PURSUANT TO 11 U.S.C §1121(d)** as follows:

BACKGROUND

1. Irwin Kotovsky has been a member of the Pittsburgh Athletic Association (the "PAA", and, collectively with the Pittsburgh Athletic Association Land Company,

¹ 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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"the Debtors") since 2000.

- 2. Prior to the Board of Directors ("the Board") unauthorized reclassification of membership classes, which reclassification allegedly became effective January 1, 2018, Mr. Kotovsky was a Senior Member of the PAA. Pursuant to Article II, Section 18 of the PAA By-Laws, Senior Members have the right to vote on all matters. A true and correct copy of the PAA By-Laws are attached hereto as **Exhibit A**.
- 3. Additionally, Mr. Kotovsky has a pecuniary interest in the outcome of the within bankruptcy cases pursuant to the Pennsylvania Non-Profit Corporation Law, 15 Pa.C.S. §5975(c), which provides in relevant part that, "Any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed to the shareholders, if any, pro rata, or if there be no shareholders, among the members per capita." 15 Pa.C.S. §5975(c).
- 4. 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") [Doc. No. 589], (collectively with the Amended Plan and the Amended D/S, "the Amended Plan Documents").
- 5. On March 16, 2018, the Debtors filed a revised Amended Plan to address an alleged scrivener's error [Doc. No. 594].
- 6. The Amended Plan, *inter alia*, provides for a sale of the Debtor's real property to Walnut Capital, proposes the payment of 100% of allowed claims from the

sales proceeds, and contemplates a leaseback from Walnut Capital pursuant to which the Debtors will have access to limited athletic and social facilities. See Amended D/S and Exhibit A thereto – the Amended and Restated Agreement of Purchase and Sale.

- 7. On April 2, 2018, this Honorable Court entered a 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 Objection to Discharge Combined with Notice Thereof [Doc. No. 638].
- 8. Pursuant to the April 2, 2018 Order, a confirmation hearing on the Amended Joint Plan has been scheduled for April 24, 2018 at 10:00 AM.
- 9. As of now, the Debtors' exclusivity period is set to expire on April 12, 2017.
- 10. On March 29, 2018, the Debtors filed an Expedited Third Motion to Extend Plan Exclusivity Pursuant to 11 U.S.C. §1121(d) [Doc. No. 630] ("Motion to Extend Exclusivity").

OBJECTION

A. The Board lacks authority to pursue the Amended Plan:

- 11. Pursuant to Article 5 of the PAA By-Laws, the Board does not have the power to sell the Debtors' real property without a vote of the membership. See Exhibit A.
- 12. Despite this limit of power, the Board of Directors has proposed the Amended Plan which contemplates the sale of the Debtor's real property without first holding the required vote of the membership.

- 13. Regarding the Board's authority to pursue such a sale, the Amended D/S states that a special meeting of the members was held on August 20, 2017, during which, "a quorum of PAA's members overwhelmingly voted in favor or pursuing the redevelopment plan, which would focus on the sale of the Sale Assets and a partnership whereby PAA would retain an ownership interest in the Sale Assets." See Amended D/S at page 13.
- 14. This language and the Board's characterization of the August 20, 2017, meeting and vote is inaccurate.
- 15. Upon information and belief, the Board is mischaracterizing the events of August 20, 2017, because it knows that a significant portion of the membership of the PAA is dissatisfied with the currently proposed plan of reorganization and that the members would likely not approve a sale of the real property pursuant to the currently proposed plan.
- 16. According to Mr. Kotovsky, who was present at the August 20, 2017, meeting, the membership did not explicitly vote to approve the sale of the Debtors' real property. Instead, the membership merely voted to approve a concept under which the Board would continue pursue a partnership with a developer to be identified by HFF through a Request For Proposal ("RFP") process. It was further understood by Mr. Kotovsky, and he believes the membership in attendance, that there would be a subsequent vote regarding a plan once a developer had been identified and a reorganization plan formulated. However, no subsequent vote has ever taken place.
- 17. Notably, and in what now appears to be a contrived effort to manufacture authority for the proposed sale by keeping the substance and details of the August 20,

2017, preliminary vote under wraps, counsel for Mr. Kotovksy, Robert O Lampl, was physically prevented from entering the meeting² along with counsel for other members by Board member Blake Stanton.

- 18. Additionally, the preliminary vote itself was based on information displayed on a projector screen. No written information was distributed to members in hard copy, and post-meeting requests for copies of the information displayed on the projector screen were met with firm resistance by Debtors' counsel.
- 19. Most importantly, according to the Board's own characterization of the August 20, 2017, preliminary vote to approve the retention of HFF to oversee a RFP process, the members voted to pursue a concept under which "the PAA would retain an ownership interest in the assets" (emphasis added). See, Amended D/S at page 13.
- 20. On February 13, 2018, James Sheehan, President of the PAA, noticed a Special Meeting of the membership of the PAA on February 23, 2018.
- 21. In the Notice of the Special Meeting, Mr. Sheehan stated that the membership would vote "to amend the details of the purchase and sale agreement with Walnut Capital". See Notice of Special Meeting of the PAA, 2/13/18, attached as **Exhibit B**.
- 22. Upon information and belief, the February 13, 2018, Notice of Special Meeting is an acknowledgement that the Board needs to hold a vote of the Debtors' membership before it can sell the Debtors' real property.
- 23. Once again, in keeping with its common practice, the Board prevented representatives of members, including the undersigned from attending the February 23,

² Mr. Kotovsky, while a spry and agile 82 year-old active businessman, wished to have legal counsel with

2018, meeting. See 2/21/18 Email from J. Blask to R. Cooney, stating "You are not welcome to attend." attached as **Exhibit C**.

- 24. Despite the explicit statement regarding a vote in the February 13th Notice of Special Meeting, no vote of the membership approving the sale of the real property was held then or at any other time.
- 25. Despite never actually holding a vote to sell the Debtors' real property at the August 20, 2017 or February 23, 2018 meetings, or otherwise, the Board now seeks Court confirmation of the Amended Plan pursuant to which the Debtors' real property will be sold Walnut Capital. The proposed sale, according to the sales agreement, does not provide for the preservation of any ownership interests for Debtors in the real property.
- 26. Consequently, the proposed sale is in violation of the PAA By-Laws and an unwarranted expansion of the authority provided to the Board by the preliminary vote of the membership at the August 20, 2017, meeting to approve the RFP process led by HFF. This lack of authority means the Debtors lack the necessary approval, required by the PAA By-Laws and the Pennsylvania Non-Profit Law, to seek confirmation of the Amended Plan which underpins their Motion to Extend Exclusivity.

B. A more favorable plan exists:

27. The Pittsburgh Athletic Association Preservation Association (PAAPA) was founded in April 2017 as a non-profit organization and is comprised of former, current and future members of the PAA. Its stated goals include both the preservation of the PAA's assets as well as the preservation of the PAA's status as a social club.

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- 28. As PAAPA lost confidence in the Board and following the filing of the original Joint Chapter 11 Plan of Reorganization [Doc. No. 418] which also sought approval of a sale of the Debtor's real property to Walnut Capital, PAAPA retained O'Keefe Consulting ("O'Keefe") from Michigan to test the waters and pursue competent developers that might be interested in partnering with the PAA in a way that would preserve the PAA as a vibrant social and athletic association.
- 29. After a period of substantial effort, O'Keefe and representatives of PAAPA, including respondent Mr. Kotovsky, have engaged in a series of discussions and meetings with McKnight Realty Partners ("McKnight"). These discussions and meetings have culminated with McKnight's submission of a redevelopment proposal for the PAA property far superior to the Board's proposed sale to Walnut Capital. These discussions were necessary after McKnight's overtures were completely rebuffed by the existing Board.
- 30. According to a proposal from McKnight, to Mike Deighan, managing director of O'Keefe, McKnight will (a) offer a purchase price sufficient to pay all allowed secured, administrative and unsecured claims, (b) grant the PAA a 5% limited partnership interested in the entity that purchases the real property, (c) enter into a virtually no cost lease with the PAA for a significant amount of the redeveloped space including the Grille Room, several other rooms and prime first floor space and substantial athletic facilities including a pool, squash courts and fitness center, all of which will be managed by the PAA, and (d) provide either parking spaces or a valet program for PAA visitors. This last piece is very important, as the Oakland neighborhood is a very congested area with limited parking near the PAA building.

- 31. The renovations contemplated in McKnight's Proposal will be at the sole expense of McKnight—not the PAA, as appears to be the case in the competing Walnut Capital proposal.
- 32. Importantly, McKnight has agreed to waive due diligence, so as to advance this process as quickly as reasonably possible.
- 33. McKnight has further agreed, so as to permit the PAA to continue as an organization while the building is undergoing renovations, to allow PAA members access to fitness and health facilities located in the Grant Building and Oliver Building, both McKnight projects.
- 34. When compared to the Amended Plan and proposed Walnut Capital Sales Agreement as attached to the Amended D/S, it's evident that members fare considerably better under the McKnight Proposal.
- 35. Furthermore, as the allowed secured, administrative and unsecured claims will be paid in full under both the Amended Plan and McKnight Proposal, there are no impaired classes of claims entitled to vote and thus the interested parties most impacted by the decision of a developer are the members. Consequently, the decision should be left solely to the membership of the PAA.
- 36. And, as previously noted, this is Debtors' **third** motion to extend exclusivity.
- 37. Accordingly, Mr. Kotovsky and all other similarly situated members of the Pittsburgh Athletic Association submit that the Debtors' Expedited **Third** Motion for Extension of Plan Exclusivity should be denied and that McKnight be given the opportunity to file a competing plan of reorganization.

- 38. Under 11 U.S.C. 1121(d), a bankruptcy court may increase the debtor's exclusivity period beyond the initial 120 days on request of a party in interest, for cause, after notice and a hearing. *In re Mid-State Raceway, Inc.*, 323 B.R. 63, 67 (Bankr. S.D.N.Y. 2005). Whether or not to grant an extension of exclusivity is a matter of discretion based on all facts and circumstances. *Id.* at 68. A bankruptcy court has broad discretion to determine what sufficient cause is in each individual case. *In re Sharon Steel Corp.*, 78 B.R. 762, 765 (Bankr. W.D.P.A. 1987).
- 39. While the "for cause" standard is situational, an extension of exclusivity should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory. See Continental Cas. Co. v. Burns & Roe Enters., 2005 U.S. Dist. LEXIS 26247 (D.N.J. 2005) (unpublished) citing S. Rep. No. 95-989, at 118 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5904, a copy of which is attached hereto as **Exhibit D**.
- 40. Here, the Debtors have not demonstrated sufficient cause to warrant their requested extension.
- 41. To the contrary, upon information and belief, the Board is aware that McKnight is interested in purchasing/redeveloping the PAA and has chosen not to engage in negotiations with McKnight despite McKnight's demonstrably better proposal.
- 42. Moreover, despite the clear requirement of the By-Laws, the Board has never placed the question of a sale to Walnut Capital before the board for a vote.
- 43. In fact, upon information and belief, there recently has been at least one resignation from the Board due to the Board's continued and unrelenting focus on

squash courts to the exclusion of all other club amenities and the Board's unwillingness to consider any offer other than the Walnut offer.³

- 44. Thus, Mr. Kotovsky is forced to question the Board's motives and conclude that the Debtors are attempting to use the requested extension as a tactical strategy so as to force the membership to accept the proposed sale to Walnut Capital. *Burns & Roe Enterprises*, 2005 U.S. Dist. LEXIS 26247.
- 45. For these reasons, and as the Board lacks the authority to pursue the Amended Plan as set forth above, McKnight should not only be given the opportunity to file a competing plan, but this Honorable Court should continue the confirmation hearing on the Amended Joint Plan until after the PAA's annual meeting, which per the By-Laws shall be held on the fourth (4) Monday of April of each year so that the membership can evaluate both plans and authorize the Board to move forward accordingly. See, Exhibit A.
- 46. Regarding eligibility to vote, Mr. Kotovsky will be bringing a Motion to Appoint an Examiner to investigate the activities of the Board and determine whether the Board has acted in a manner consistent with the By-Laws and will ask that the Court task said Examiner with determining which members are entitled to vote on the contemplated plans.
- 47. So as to not unnecessarily delay an already tortured process, if the Court denies the Debtors' extension of exclusivity, Mr. Kotovsky and other members will file a plan with the court that incorporates the McKnight proposal within 14 (fourteen) days.

³ Nevertheless, it should be noted that the McKnight Proposal provides singles and doubles squash courts at the PAA.

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WHEREFORE, Irwin Kotovsky and all other similarly situated members of the Pittsburgh Athletic Association respectfully request that this Honorable Court deny the Debtors' Third Motion to Extend Plan Exclusivity Pursuant to 11 U.S.C. §1121(d).

Dated: April 9, 2018 /s/Robert O Lampl

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IN RE:

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Movant, Document No.

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IRWIN KOTOVSKY. Hearing Date and Time:

April 10, 2018 at 11:00 AM

CERTIFICATE OF SERVICE

Robert O Lampl, John P. Lacher, David L. Fuchs and Ryan J. Cooney hereby certify, that on the <u>9th</u> day of April, 2018, a true and correct copy of the foregoing **OBJECTION TO DEBTOR'S EXPEDITED THIRD MOTION TO EXTEND PLAN EXCLUSIVITY PURSUANT TO 11 U.S.C §1121(d)** was served upon the following (*via electronic service*):

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⁴ 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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PITTSBURGH ATHLETIC ASSOCIATION

BY-LAWS

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PITTSBURGH ATHLETIC ASSOCIATION **BY-LAWS**

ARTICLE I

NAME AND PURPOSE

Section 1. The corporate name of this Association shall be the Pittsburgh Athletic Association.

Section 2. The purpose for which this corporation is formed is the maintenance of a club for athletic exercises and social enjoyments; in particular, affording an opportunity for such exercise and social intercourse among its members by providing athletic facilities, dining rooms, reading rooms, and a place where its members may meet for the above purpose.

ARTICLE II

MEMBERSHIP

Section 1. The membership of the Association shall be divided into the following classes, namely:

Life

Resident

Senior Member

Non-Resident

Non-Resident Senior

Intermediate

Associate

Clergy

Junior

Honorary Widow/Widower

Level I Business

Level II Business

LIMIT OF MEMBERS

Section 2. The Board of Directors shall have the power to establish, restrict, modify, and change the limits in the respective classes, but the total Membership shall not exceed 4,200 in number; not including Intermediate Members, Junior Members and Widow/Widower Members.

Section 3. No person shall be eligible to membership in any of the said classes unless he or she be within the age qualifications as set forth in these By-Laws, except that any person, regardless of age, may be admitted as a resident member upon approval of the Board of Directors.

ENTRANCE/TRANSFER FEES

Section 4. The Entrance Fee for all classes of members shall be as determined by the Board of Directors.

LIFE MEMBERSHIP

Section 5. Life Membership shall be transferable to a Resident Member only on the approval of the Board of Directors subject to the regular action of the Membership Committee, upon the payment of a Transfer Fee equal in amount to the Resident Initiation Fee in force at the time transfer is made; provided there be credited on such payment, the amount of any Initiation Fee already paid by the member, and such member shall be exempt from the payment of dues and assessments.

All Life Members in existence on November 24, 1967 will be entitled to one (1) transfer as set forth above, and, if and when said transfer takes effect, the new Certificate will be marked with the legend "This Certificate is Non-Transferable". However, the Life Member holding the new Certificate will have all the other privileges of Life Membership as set forth herein with the exception of transfer rights and rights incidental thereto.

No Life Memberships shall be issued, nor shall any be transferable, except as provided above. The Association has first opportunity to purchase Life Memberships which may be offered for sale.

RESIDENT MEMBERSHIP

Section 6. Resident Members are those residing, or those having a place of business within thirty-five (35) air miles of the Clubhouse.

SENIOR MEMBERSHIP

Section 7. A Senior Member is one who is retired has reached the age of sixty-five (65) and attained at least seven (7) years of membership with the Club shall be qualified for Senior membership. Regarding the required years of membership with the Club, it shall decrease by one (1) year for every year an applicant gains in age until the age of seventy-two (72). Upon attaining the age of seventy-two (72), there is no time requirement for membership at the Club.

INTERMEDIATE MEMBERSHIP

Section 8. Intermediate Membership shall be those between the ages of twenty-one (21) and thirty-five (35). In addition, there shall be sub-classifications within the Intermediate membership as follows:

Intermediate 1 – age 21 through 24 Intermediate 2 – age 25 through 29 Intermediate 3 – age 30 through 34

CLERGY MEMBERSHIP

Section 9. Clergy Members shall be those formally ordained and working solely in their respective religious denominations

NON-RESIDENT MEMBERSHIP

Section 10. Persons who do not reside, and have no place of business within thirty-five (35) air miles of the Clubhouse; if otherwise eligible, may be elected to Non-Resident Membership.

Any Non-Resident Member, who by reason of change of residence, or place of business, or otherwise shall become eligible to Resident Membership, shall be required to assume the status of a Resident Member, and shall thereupon pay the Initiation Fee and Dues for Resident Membership in force at the time transfer is made; provided that there shall be credited on such payment, the amount of any Initiation Fee already paid by the member.

NON-RESIDENT SENIOR

Section 11. A Non-Resident Member who has reached age sixty-five (65), having been a member of the Club for five (5) years, may make application to the Membership Committee for Senior Membership.

HONORARY MEMBERSHIP

Section 12. Honorary Membership may be conferred by a unanimous vote of the Board of Directors. No Initiation Fee or Dues shall be attached to such membership.

ASSOCIATE MEMBERSHIP

Section 13. No new Membership application shall be accepted for Associate Membership.

All Persons who are now Associate Member may remain in that category of membership for as long as they desire.

Any Associate Member may apply for transfer to Resident Member status without payment of any additional Entrance or Transfer Fees.

JUNIOR MEMBERSHIP

Section 14. Junior Membership shall be classified as follows:

Juniors, sons and daughters of members, from age nine (9) to twenty (20) years inclusive, shall pay no Entrance Fee, but shall pay dues as provided by the Board of Directors.

LEVEL I BUSINESS

Section 15. A Level I Business Membership shall be available for designated business representatives at an initiation cost of \$10,000.00. The Initiation Fee shall be paid within one (1) year and not afforded any other incentives and/or reductions available to individual members. Eight (8) separate account numbers would be issued to the designated business members. Each designee must be approved and pass the interviewing process. The monthly dues for each designee shall be equivalent to the dues for an individual member of equivalent age. The business would be permitted to re-designate its eight (8) members at the beginning of each year from the date of its initiation. Upon re-designation of business members by the employer, the former designated business member is eligible to continue club membership as an individual with no initiation fee.

LEVEL II BUSINESS

Section 16. A Level II Business Membership shall be available for designated business representative at an initiation cost of \$5,000.00. The Initiation Fee shall be paid within one (1) year and not afforded any other incentives and/or reductions available to individual members. Four (4) separate account numbers would be issued to the designated business members. Each designee must be approved and pass the interviewing process. The monthly dues for each designee shall be equivalent to the dues for an individual member of equivalent age. The business would be permitted to re-designate its four (4) members at the beginning of each year from the date of its initiation.

Upon re-designation of business members by the employer, the former designated business member is eligible to continue club membership as an individual with non initiation fee.

SPOUSE OF MEMBER

Section 17. Except for the right to vote, wives and husbands of members shall enjoy the same privileges as members but shall not be required to pay an Entrance Fee or Dues.

Upon the death of a Life, Resident, Resident-Retiree, Non-Resident or Non-Resident Retiree Member who has been a member in good standing immediately prior to his or her decease, his or her spouse may apply to the Membership Committee for a Widow/Widower Membership; and, if such application is approved by the Membership Committee, there shall be no Entrance Fee.

RIGHT TO VOTE

Section 18. All Members in good standing, except Junior Members, shall have the right to hold office and vote in all matters except Resident, Resident Retiree and Life Members may only vote on borrowing money and amendments affecting a change in the equity of the Association.

PAYMENT OF ENTRANCE FEE

Section 19. Any person who shall receive notice of his/her election; and shall not, within thirty (30) days after the sending of said notice, make payment of the Entrance Fee, shall forfeit all rights acquired by his/her election provided, however, that the Membership Committee, upon request may permit installment payments of Entrance Fees for a period not exceeding six months after election.

DUES PAYABLE

Section 20. The Annual Dues of Resident Members, Senior Members, Non-Resident Members, Intermediate Members, Associate Members and Clergy Members shall be determined by the Board of Directors, and approved by two thirds (2/3) of the Members present at the Annual Meeting or any Special Meeting called for that purpose, provided, however, that the Board of Directors can on their own authority and discretion raise the Annual Dues by an amount not in excess of five (5%) percent per year. Unless otherwise approved by the Board of Directors the Annual Dues and all applicable taxes thereto should be payable in equal monthly installments in advance.

The Annual Dues for Junior Membership and Widow/Widower Membership shall be as provided by the Board of Directors.

Members, when elected, shall pay the pro-rated portion of the dues, plus any applicable taxes in the period in which elected.

APPLICATION FOR MEMBERSHIP

Section 21. An applicant for membership shall be proposed by at least two (2) members of the Association who are Members in good standing, except Junior Members, and who shall state in writing the name and place of residence of the candidate and the class of membership for which he/she is proposed, together with such statements of whatever qualifications the Membership Committee may deem proper.

If the Committee, by unanimous consent, shall decide to receive the person proposed, it shall cause the applicant's name, residence, business or profession, and proposed class of membership with the names of the two (2) proposers to be posted on the bulletin board for a period of two (2) weeks. At the expiration of that period, the Committee may elect the applicant to be a member of the Association, provided that if there be one negative vote at such election, the applicant is rejected. No rejected applicant again be proposed within six (6) months.

ADDRESS OF MEMBERS

Section 22. If a member neglects to give any changed Post Office address or Office address, the member thereby consents that all notices, bills and other communications shall be mailed to his or her last known address, and he or she shall be deemed to have received the same.

TERMINATION OF MEMBERSHIP

Section 23. All resignations shall be made in writing, addressed to the Board of Directors, and shall be referred to the Membership Committee for action.

Section 24. If the dues or other indebtedness of any member of the Association shall remain unpaid for three (3) months, or more, and notice thereof has been given to the member or mailed to the member's last known address, the Board of Directors, on recommendation of the House Committee, may suspend the member until all indebtedness is paid, or may terminate his/her membership.

Section 25. On the resignation, death, or expulsion from the Association of any member, his/her membership, and all rights acquired under it, shall thereupon and thereby cease and be forever at an end, and any interest the member may have had in the property of the Association shall thereupon revert to and be vested in the Association, except Life Membership.

-4-REINSTATEMENT

Section 26. Previous Members who have resigned from membership while in good standing with the Association may subsequently apply for reinstatement to the Membership Committee and, if approved, shall pay a Reinstatement Fee as determined by the Board of Directors.

AMOUNT OF DUES

Section 27. The amount of Dues payable to the Club by all members except Life Members and Honorary Members, shall be as provided in these By-Laws.

INACTIVE MEMBERSHIP

Section 28. An Inactive Membership Status will be available for minimum of one (1) year subject to the approval of the Membership Committee.

Section 29. Only Life and Resident Members in good standing shall have any right or title to, or interest in, the property and all other assets of the Association.

ATRTICLE III

INDEBTEDNESS

Section 1. As soon after the beginning of each month as may be practicable, a statement shall be sent to every member showing his/her indebtedness to the Club; which indebtedness shall be payable on, or before, the twentieth (20) day of the month in which the statement is rendered.

Section 2. The credit limit of any member shall be determined by the House Committee.

Section 3. Whenever the credit of a member has been exhausted, the member shall be denied further credit until such indebtedness is paid in full or credit is reinstated by the House Committee. Failure on the part of a member to pay any indebtedness within twenty (20) days after becoming due and payable shall subject the member to such penalties as the House Committee may impose, including having the member's name posted on the bulletin board in the Clubhouse for delinquency and his/her suspension from all privileges of the Club.

Section 4. When the Club facilities are rented, the amount, manner, and time of payment shall be determined by the House Committee.

Section 5. A member, introducing a guest shall be held responsible for that guest's indebtedness and conduct.

ARTICLE IV

ANNUAL MEETING

Section 1. The Annual Meeting of the Association shall be held in the Clubhouse on the fourth (4) Monday of April of each year, at a time set by the Board of Directors. Said meeting shall be for the purpose of hearing reports of the Officers and Directors, the report of the Judges of Election, and such other business as may be brought before it.

NOMINATIONS FOR DIRECTORS

Section 2. At all meetings of the Association, fifty (50) members shall constitute a quorum for the transaction of business.

Section 3. All elections for Directors shall be by ballot, and a plurality of votes cast shall be necessary to elect.

The House Committee shall recommend the names of at least twenty (20) members for the guidance of the Board. From these (20) names, a Committee to nominate Directors shall be elected by the Board of Directors at their January meeting. Such Committee shall be known as the Nominating Committee, and shall consist of five (5) Members (not Officers or Directors) of which three (3) shall constitute a quorum, and it shall nominate, in writing, nine (9) members – six (6) of whom shall be elected as herein provided to fill the Directorships which expire that year. Said nominations shall be submitted to the Secretary and House Committee, at least sixty (60) days before the Annual Meeting. Candidates may be nominated by petition signed by twenty-five (25) qualified voting members, submitted to the Secretary not later than fourteen (14) days after the report of the Nominating Committee.

Restrictions upon a nomination by the Nominating Committee shall be as follows:

- (A) No one who has been a Director for seven (7) years or longer shall be nominated, except after an interval of at least one (1) year.
- (B) Notwithstanding the said restrictions, any member who is President; or Vice President of the Association; or Vice Chairman of the House Committee, at that time, may be nominated for not more than one (1) additional three (3) year term.

BALLOTS

Section 4. Under instructions of the House Committee, the Secretary shall cause ballots to be printed, and a single ballot shall be mailed to each eligible voting Member. All ballots shall bear the names of the nine (9) members nominated by the Nominating Committee, and candidates nominated by petition, as set forth in Article IV, Section 3. Candidates for Director shall select their positions on the ballot by lot. Each Incumbent Director shall have the word "Incumbent" after his/her name on the ballot, and the ballot shall contain three (3) spaces for use by Members to write in votes for Directors not nominated by the Nominating Committee or by petition. Each ballot shall contain, also, the direction: "You are required to cast one (1) vote for each of the six (6) Directors." Each ballot also shall contain on the bottom, substantially, the following.

"INSTRUCTIONS"

"Do not sign or place any extraneous markings on the ballot. The marked ballot should be inserted in the unmarked envelope supplied, and this envelope sealed, placed in the return envelope, and signature and membership number to determine the eligibility of the voter to be written on the return-address line of the return stamped envelope: the ballots must be received in the mail, in the Clubhouse, before 12:00 Noon of the Wednesday preceding the Annual Meeting."

Except as otherwise set forth in these By-Laws, the form and structure of the ballot, and the regulation of the voting, shall be under the direction and supervision of the House Committee.

NOTICE OF MEETING

Section 5. At least fifteen (15), and not more than twenty (20) days before all meetings of the Association, the Secretary shall mail a notice thereof to each member eligible to vote at his last known address. The Notice of the Annual Meeting shall contain the names of the nine (9) members nominated by the Nominating Committee; with a brief statement of only their business and personal activities, and said notice shall have enclosed, therewith, a ballot for the election of Directors, in the form provided in Article IV, Section 4, hereof, together with an envelope for the return of the ballot to the Clubhouse. The notice shall also contain such other information as the House Committee deems advisable, and which is not inconsistent with the provisions of these By-Laws. Said return envelope shall be addressed: Judges of Election, c/o Pittsburgh Athletic Association, 4215 Fifth Avenue, Pittsburgh, Pennsylvania 15213, and shall contain on its upper corner, a blank line for the signature and membership number of the voter.

HOURS OF MEETING

Section 6. The hours of all meetings of the Association shall be fixed by the Board of Directors and notice thereof shall be posted by the Secretary in a conspicuous place in the Clubhouse for at least ten (10) days before the time assigned for them. If the Board of Directors does not fix the hours for the respective meetings of the Association, the meeting shall be held at six (6:00) o'clock PM.

ORDER OF BUSINESS

Section 7. The order of business at the Annual Meeting shall be as follows:

- 1. Reading of the Minutes of the Preceding Meeting.
- 2. Report of the Board of Directors.
- 3. Report of the Treasurer and Auditing Committee.
- 4. Report of the Secretary.
- 5. Report of the Judges of Election.
- 6. Any Further Business regularly before the Meeting.

SPECIAL MEETINGS

Section 8. Special Meetings of the Association may be called by the Board of Directors or upon the written request of fifty (50) members (none of whom are Directors) setting forth the purpose thereof; and notice of such meetings shall be posted in a conspicuous place in the Clubhouse at least ten (10) days before the time fixed for the same, announcing the matter intended to be acted upon, and no other business shall be transacted at such meetings. The Secretary shall send notice of the time and purpose of such meetings to each member at his/her last known address ten (10) days prior to the time of such Special Meetings.

Section 9. Voting by proxy at any meeting or election is prohibited, provided, however, that this Section shall not be construed to prevent voting by mail for the election of Directors.

Section 10. No stranger or visitor shall be present at any meetings except as authorized by the Board of Directors.

ELECTIONS

Section 11. The election of Directors, shall be held by ballot. The ballots shall be mailed to the Membership as provided in Article IV, Section 5, hereof. Only those ballots returned to the Clubhouse before 12:00 o'clock, Noon, of the Wednesday preceding the Annual Meeting, in the return envelope bearing the signature and membership number of the member voting shall be counted.

Three (3) Judges of Election shall be appointed by the Board of Directors at a meeting prior to the date of the election, and it shall be the duty of three (3) Judges, or any two (2) of them in the absence of the third (3rd), to receive the ballots and for that purpose to meet in the Clubhouse on the Wednesday before the Annual Meeting. At that Meeting they will open the unmarked envelopes and count the ballots, and then they will proceed to certify to the President the result thereof as soon as the same has been determined. Their Certificate or Report shall be in writing and duly signed and shall be accompanied by the ballots in a sealed package certified by the Judges. The Judges shall also certify the result of the election to the Secretary or the Presiding Officer at the Annual Meeting.

Section 12. If any two (2) or more candidates receive an identical vote, the winning candidate shall be decided by lot.

ARTICLE V

BOARD OF DIRECTORS

NUMBER - QUALIFICATION - ELECTION

Section 1. Each Director elected by the Membership shall hold office for three (3) years and until their successors are elected. The Board of Directors shall consist of twenty-four (24) members. Beginning in 1997 and continuing thereafter, the number of Directors to be elected each year shall be six (6) thereby, by attrition, reducing the size of the Board of Directors to eighteen (18). Subsequent to the Annual Election in 1999, the Board of Directors shall consist of eighteen (18) members. Vacancies on the Board of Directors which may have occurred shall be filled by the remaining members of the Board by a majority vote. The person elected to fill the vacancy shall hold office for the unexpired term of the Director who's office was vacated.

QUORUM

Section 2. Eight (8) members of the Board of Directors shall constitute a quorum for the transaction of business. A Director who has missed three (3) consecutive Stated Meetings of the Board of Directors, without cause, shall be removed as a Director; and a vacancy of the Board of Directors shall then exist.

ELECTION OF OFFICERS AND COMMITTEES

Section 3. The President, Vice President, Secretary, Assistant Secretary and Treasurer shall be the officers of the Club and shall be elected by a majority vote of the Board of Directors at its organizational meeting following the Annual Meeting.

TERMS OF OFFICE

Section 4. No person shall serve as President of the Association for more than two (2) successive elected terms.

Section 5. For two (2) years immediately after holding that office, any President shall be an Honorary Director, with all the power and authority of a Director and the right to vote at all Directors Meetings or at meetings of any Committees to which he or she has been appointed, except that he or she shall not be considered, or counted, in determining whether a quorum is present at any Directors' Meeting or Committee Meetings.

AUTHORITY

Section 6. The Board of Directors shall have the power to borrow money; to make and amend rules for its own government; and to fix and enforce penalties for violation thereof; and shall have power to decide all questions not governed by the Charter and By-Laws.

Section 7. The Board of Directors shall hold a Meeting the third (3rd) Monday of every month unless the Board of Directors, at its previous meeting, designates a different date and time for reason stated, such reason to be made part of the minutes; or, in the event of an emergency as declared by the President the Meeting shall be postponed until the following Monday, and prompt notification of the change shall be sent to all Members of the Board. Each Director shall be given notice of the change in date and time of the Board Meeting by the Assistant Secretary. The Meeting of the Board of Directors for the month of April shall be the same date as the Annual Meeting of the Association, immediately following said meeting.

Special Meetings of the Board may be called by the President or, in his absence, by the Vice President or by any three (3) Directors, but an effort shall be made to give at least forty-eight (48) hours notice of such Special Meeting to each Director.

Section 8. The Board of Directors shall require the bonding, in such manner and amount as the Board may determine, of all Officers and Employees of the Association who handle the funds or property of the Association.

Section 9. The Board of Directors shall, on or before the first (1st) day of December of each year, appoint an Audit Committee of three (3) members (not Directors or Officers) which shall examine and audit the Treasurer's accounts for the preceding Fiscal Year and report thereon, in writing, to the Board on or before the tenth (10) day of March.

Section 10. The Board of Directors shall submit at each Annual Meeting of the Association a General Report of the Affairs of the Association, a copy of the Treasurer's accounts, and the Report of the Auditing Committee.

LIMIT OF AUTHORITY

Section 11. Unless favorably acted upon by a meeting of the Membership of the Association, the Board of Directors shall not have power:

- To alien or encumber the real property of the Association, or to acquire by purchase, additional real property.
- (2). To expend the Association funds in any building, rebuilding, or other improvements of the real property of the Association or property occupied by the Association which will involve an outlay in excess of three hundred twenty-five thousand dollars (\$325,000). This shall not apply to inventory.

Section 12. Indemnification and Liability of Directors and Officers:

(1). PERSONAL LIABILITY OF DIRECTORS

A Director of the Association shall not be personally liable for monetary damages for any action taken, or any failure to take any action, as a Director, except to the extent that by law (including the Directors' Liability Act, 42 PA. C.S. #8361 et seq.) a Directors' liability for monetary damages may not be limited.

(2). INDEMNIFICATION

The Association shall indemnify any person who was, or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, including actions by or in the right of the Association, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is, or was, a Director or Officer of the Association, or is, or was, serving while a Director or Officer of the Association, at the request of the Association, as a Director, Officer, employee, agent, fiduciary, or other representative of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against expenses (including attorney's fees), judgments, fines, excise taxes, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permissible under Pennsylvania law.

(3). ADVANCEMENT OF EXPENSES

Reasonable expenses incurred by an Officer or Director of the Association in defending a civil or criminal action, suit, or proceeding described in (2) shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that the person is not entitled to be indemnified by the Association.

(4). OTHER RIGHTS

The indemnification and advancement of expenses provided by, or pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification of advancement of expenses may be entitled under the Association's Charter, any insurance or other agreement, vote of members, or directors, or otherwise, both as to actions in their official capacity and as to actions in another capacity while holding an office, and shall continue as to a person who has ceased to be a Director or Officer, and shall inure to the benefit of the heirs, executors and administrators of such person.

(5). INSURANCE

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, or is or was serving at the request of the Association as Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of these By-Laws.

(6). <u>SECURITY FUND - INDEMNITY AGREEMENTS</u>

By action by the Board of Directors (notwithstanding their interest in the transaction) the Association may create and fund a trust fund, or fund of any nature, and may enter into agreements with the Officers and Directors, for the purpose of securing or insuring in any

manner its obligation to indemnify or advance expenses provided for this Article.

(7). MODIFICATION

The duties of the Association to indemnify and to advance expenses to a Director or Officer provided in this Article shall be in the nature of a contract between the Association and each such Director or Officer, and no amendment or repeal of any provision of this Article, and no amendment or termination of any trust or other fund created pursuant to (6), shall alter, to the detriment of such Director or Officer, the right of such person to the advance of expenses or indemnification related to claim based on an act or failure to act which took place prior to such amendment, repeal or termination.

ARTICLE VI

OFFICERS

Section 1. The Officers of the Association shall be a President, Vice President, Secretary, Assistant Secretary, and a Treasurer.

Section 2. THE PRESIDENT and in his absence, the Vice President, shall preside at the meetings of the Association and of the Board of Directors. If both are absent, the meeting shall elect its Presiding Officer. The President shall be ex-officio, a member of the House and Membership Committees, and shall perform such other duties as the Board of Directors may assign him.

Section 3. THE VICE PRESIDENT shall perform the duties of the President in case of his absence of disability, or in case the Office of the President shall become vacant. He shall be Chairman of the House Committee.

Section 4. THE SECRETARY shall give notice of all meetings of the Association and of the Board of Directors, and shall keep minutes of such meetings.

Section 5. THE TREASURER shall be charged with the collection and custody of the funds of the Association, and their disbursement, under the direction of the Executive and Finance Committee and the Board of Directors. He shall keep the funds of the Association in such depository or depositories as the Board of Directors may designate. He shall keep the accounts of the Association in books belonging to it and report thereon at the Annual Meeting of the Association. His books shall be open at all times to the inspection of any member of the Board of Directors.

Section 6. The Fiscal Year of the Association shall end on the thirty-first (31st) day of December, and as soon thereafter as practicable, and not later than the fifth(5th) day of March following, the Treasurer shall present to the Board of Directors a financial statement of the Fiscal Year ended on the preceding December thirty-first (31st). He shall perform such other duties as the Board of Directors may assign him. The Board of Directors may authorize the Executive and Finance Committee to employ such assistance as it may deem proper, at the expense of the Association. The Treasurer may be removed at any time by the Board of Directors.

Section 7. All checks shall be signed by the Treasurer and countersigned by the Auditor, or such Officer of the Association as the Board of Directors may, from time to time, direct.

ARTICLE VII

COMMITTEES

EXECUTIVE AND FINANCE COMMITTEE

Section 1. The Board of Directors shall appoint an Executive and Finance Committee from its Membership, consisting of at least seven (7) persons, including the President, Vice President, Secretary, and Treasurer, which shall be a part of the permanent Executive Organization of the Association and shall, in the interim between meetings of the Board of Directors, exercise all the powers of that body in accordance with

the general policy of the Association and the direction of the Board. Meetings of the Executive and Finance Committee shall be held on call of the President and any three (3) members of the Committee. All of the members of the Committee must be duly notified of meetings, and a majority of the Committee shall constitute a quorum. The Executive and Finance Committee shall keep due records of all meetings and actions of the Committee, and such records shall at all times be open to the inspection of any Director and shall be read at the following meeting of the Board of Directors.

This Committee shall be responsible for the financial affairs of the Club; have access to <u>all books</u>, records, papers, and accounts, and make such inspections, investigations and audits as may be deemed desirable. Its services may be requisitioned by the Directors or the Board at any time. It shall arrange for a proper audit of the Club's accounts to be made each year at such times as the Committee deems desirable.

HOUSE COMMITTEE

Section 2. The President with the approval of the Board of Directors shall appoint a House Committee which shall consist of the Vice President, who shall be the Chairman, and at least four (4) members of the Board of Directors. (A) The Chairman and two (2) other members, or (B) The President of the Association and two (2) other members, or (C) a majority of the appointed members shall constitute a quorum of the House Committee for the transaction of business. The House Committee shall meet at such times as may be agreed upon, but not less than once every month, and it shall be its duty, subject to the control of the Board of Directors, to order necessary purchases and sales; to fix and regulate all prices and charges; to engage and discharge all employees, including the Manager, who shall be responsible for the efficiency and discipline of all employees; to enforce preservation of order and obedience to the By-Laws and Rules; to receive complaints and redress grievances; and to give general superintendence to the Association.

A Member may be suspended or expelled for any delinquency in the payment of his indebtedness to the Association, or for violation of any By-Law, House Rule, or regulation, or for misconduct in the Clubhouse, or any act, matter, or thing prejudicial to the welfare, good order and character of the Association. The House Committee shall have the power of suspension. For misconduct in the Clubhouse, a member may be suspended by any member of the House Committee. A member can be expelled only upon recommendation of the House Committee, followed by approval of the recommendation and resolution of expulsion by the Board of Directors. A member during the period of his suspension, shall not appear in the Clubhouse except by permission of the Board of Directors, or of the House Committee, or of the President, or Vice President, Secretary, or Treasurer. He shall have no voting or other privileges, but shall be obligated to pay his dues and other charges, notwithstanding his suspension.

In the event of a recommendation for expulsion, one (1) month's advance notice thereof in writing, shall be given to the member; and thereupon, if in writing he demands it, he shall be informed of the charges against him and shall be given an opportunity to be heard by the Board in his defense.

The Club premises shall be under the management and control of the House Committee.

Minutes of the meeting of the House Committee shall be read at the next meeting of the Board of Directors.

MEMBERSHIP COMMITTEE

Section 3. The President, with the approval of the Board of Directors, shall appoint a Membership Committee consisting of at least five (5) members of the Board of Directors. Three (3) of the members shall constitute a quorum for the transaction of business.

The Membership Committee shall hold meetings at such times as it shall determine.

Special Meetings of the Committee may be called by its Chairman, or by any two (2) of its members, upon notice, personal or by letter, to be given each member of the Committee at least two (2) days before the time appointed for such meeting. It shall be the duty of the Membership Committee to decide upon the admission of new members into the Association.

COMMITTEE EXPENDITURES

Section 4. No Committee may spend any Association funds without the approval of the House Committee, and the House Committee is <u>not</u> permitted to approve any expenditures exceeding an amount to be fixed by the President and the Executive and Finance Committee each year, without the approval of the Board of Directors. This provision shall not apply to ordinary operating expenses of the Club.

ARTICLE VIII

COLORS AND EMBLEM

The Colors of the Association shall be Red and Gray.

The Emblem of the Association shall be the Head of Mercury.

ARTICLE IX

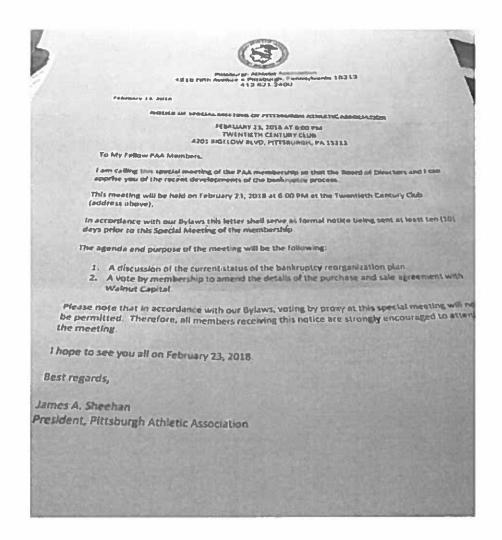
THE FOLLOWING DEVISE SHALL CONSTITUTE THE CORPORATE SEAL, viz:

"PITTSBURGH ATHLETIC ASSOCIATION INCORPORATED (SEAL)
DECEMBER 28, 1908"

ARTICLE X

ADMENDMENTS TO THE BY-LAWS

Amendments to the By-Laws may be made at the Annual Meeting or at a meeting called for the purpose by a two-thirds (2/3) vote of all the members present; provided that written notice of the proposed amendments shall be submitted to the Board of Directors and approved by a majority vote of all the members present at a Regular or Special Meeting of the Board; and provided further, that notice of the proposed amendments shall be given to all members by the Secretary and posted in a conspicuous place in the Clubhouse at least ten (10) days before the date of the meeting.



February 13, 2018

NOTICE OF SPECIAL MEETING OF PITTSBURGH ATHLETIC ASSOCIATION

FEBRUARY 23, 2018 AT 6:00PM TWENTIETH CENTURY CLUB 4201 BIGELOW BLVD, PITTSBURGH, PA 15213

To My Fellow PAA Members,

I am calling this special meeting of the PAA membership so that the Board of Directors and I can apprise you of the recent developments of the bankruptcy process.

This meeting will be held on February 23, 2018 at 6:00 PM at the Twentieth Century Club (address above).

In accordance with our Bylaws this letter shaw serve as formal notice being sent at least ten (10) days prior to this Special Meeting of the membership.

The agenda and purpose of the meeting will be the following:

- 1. A discussion of the current status of the bankruptcy reorganization plan.
- 2. A vote by membership to amend the details of the purchase and sale agreement with Walnut Capital.

Please note that in accordance with our Bylaws, voting by proxy at this special meeting will not be permitted. Therefore, all members receiving this notice are strongly encouraged to attend the meeting. I hope to see you all on February 23, 2018.

Best regards,

James A. Sheehan President, Pittsburgh Athletic Association

Ryan Cooney

From:

Gotaskie Jr., John R. < JGotaskie@foxrothschild.com>

Sent:

Monday, April 9, 2018 11:16 AM

To:

Ryan Cooney

Subject:

FW: Friday's PAA Special Meeting

John R. Gotaskie, Jr.
Partner
Fox Rothschild LLP
Pittsburgh, PA 15219
(412) 394-5528 - direct
JGotaskie@foxrothschild.com

-----Original Message-----

From: Blask, Jordan [mailto:jblask@tuckerlaw.com] Sent: Wednesday, February 21, 2018 6:06 PM To: Ryan Cooney <rcooney@lampllaw.com>

Cc: Stang, William <WStang@foxrothschild.com>; Gotaskie Jr., John R. <JGotaskie@foxrothschild.com>; Robert Lampl

<RLampl@lampllaw.com>; William Krieger <wkrieger@gleasonexperts.com>

Subject: [EXT] Re: Friday's PAA Special Meeting

You are not welcome to attend.

Jordan S. Blask, Esq. Tucker Arensberg, P.C. (412) 594-5597 (w) (412) 423-5797 (c)

On Feb 21, 2018, at 6:03 PM, Ryan Cooney <rcooney@lampllaw.com<mailto:rcooney@lampllaw.com>> wrote:

External Email: Use Caution When Opening Attachments or Links.

Jordan:

I represent Irwin Kotovksy. I plan on attending the meeting with Mr. Kotovsky. While you will probably assert that Mr. Kotovsky owes membership dues, Mr. Kotovsky has submitted documentation to Gleason clearly showing that any alleged delinquency is, at a minimum, in dispute. He has not received a response. Everyone, including the Debtor, will benefit from transparency.

Please confirm that we can both attend.

Thanks

This email contains information that may be confidential and/or privileged.

If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email.

Continental Casualty Co. v. Burns & Roe Enters. (In re Burns & Roe Enters.)

United States District Court for the District of New Jersey November 2, 2005, Decided; November 3, 2005, Filed Civil Action No. 05-2529 (KSH) and Civil Action No. 05-4125 (KSH)

Reporter

2005 U.S. Dist. LEXIS 26247 *

In re: BURNS AND ROE ENTERPRISES, INC. Debtor. CONTINENTAL CASUALTY COMPANY AMERICAN CASUALTY COMPANY, Appellants, vs. BURNS AND ROE ENTERPRISES, INC., Appellee.

Notice: [*1] NOT FOR PUBLICATION

Prior History: Chapter 11 Case No. 00-41610 RG

Disposition: Decisions of the bankruptcy court affirmed.

Core Terms

bankruptcy court, exclusivity, appellants', extensions, settlement, reorganization, parties, reorganization plan, progress, amended plan, negotiations, complexity of the case, legislative history, bankruptcy case, factors, abuse of discretion, accede, sufficient cause, termination, channeling, decisions, notice, motion hearing, confirmation, requests, solicit, courts, orders, affirmative evidence, good faith

Case Summary

Procedural Posture

Appellee debtor, which had filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey, had been granted 15 extensions under 11 U.S.C.S. § 1121(d) of the period of exclusivity in which to file and solicit acceptances of a reorganization plan. Appellant insurers sought review of the bankruptcy court's grant of the fourteenth and fifteenth motions for extension.

Overview

The debtor stated that its Chapter 11 filing resulted from asbestos-related personal injury complaints, coupled with the refusal by one of the insurers to defend or indemnify the debtor in asbestos lawsuits. The fourteenth extension of exclusivity was granted because of a delay in approving a settlement with another insurance carrier and in order to allow

the debtor to conform its plan to a decision of the United States Court of Appeals for the Third Circuit concerning use of channeling injunctions. The bankruptcy court found good cause for the fifteenth extension based on the size and complexity of the case, the debtor's good faith progress toward reorganization, and the absence of any showing that the debtor was seeking to pressure creditors. The district court found no abuse of discretion in the granting of the extensions based on those factors. The bankruptcy court could determine the size and complexity of the case without additional affirmative evidence, nor was additional evidence required as to the settlement. The bankruptcy court appropriately found that the requests for extensions did not breach the debtor's fiduciary duty as a debtor-in-possession.

Outcome

The bankruptcy court's orders were affirmed.

LexisNexis® Headnotes

Bankruptcy Law > ... > Judicial Review > Standards of Review > Abuse of Discretion

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

HNI[Standards of Review, Abuse of Discretion

A district court reviews a bankruptcy court's decision to extend a debtor's periods of exclusivity to file a reorganization plan for abuse of discretion. Abuse of discretion can lie in either the failure to apply the proper legal standard or to follow proper procedures in making the determination. Abuse of discretion can also be found if the bankruptcy court's decision was based on clearly erroneous findings of fact,

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Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

IIN2 Standards of Review, De Novo Standard of Review

Any legal interpretations of a bankruptcy court receive plenary review.

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

Bankruptcy Law > Procedural Matters > Judicial Review > Jurisdiction

IIN3 [Plans, Eligible Plan Proponents

A district court has jurisdiction to hear an appeal from an order of a bankruptcy court pursuant to 28 U.S.C.S. § 158(a)(2), which states that the district courts of the United States shall have jurisdiction to hear appeals from interlocutory orders and decrees issued under 11 U.S.C.S. § 1121(d) increasing or reducing the time periods referred to in 11 U.S.C.S. § 1121. 28 U.S.C.S. § 158(a)(2).

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

IIN4[Plans, Eligible Plan Proponents

The Bankruptcy Code allows a Chapter 11 debtor the exclusive right to file a reorganization plan for the first 120 days that the debtor is in bankruptcy. 11 U.S.C.S. § 1121(b). Under § 1121(d), a bankruptcy court may increase the debtor's exclusivity period beyond the initial 120 days on request of a party in interest "for cause," after notice and a hearing. Whether or not to grant an extension of exclusivity is a matter of discretion based on all facts and circumstances, but the discretion is limited by the requirement that cause be shown. However, a bankruptcy court has broad discretion to determine what is sufficient cause in each individual case.

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

IIN5[♣] Plans, Eligible Plan Proponents

Neither the Bankruptcy Code nor its legislative history defines "cause" for purposes of an extension of exclusivity under 11 U.S.C.S. § 1121(d). However, the examples given in the legislative history are instructive. Cause may be established by a showing of some promise of probable success. Cause might include an unusually large or an unusually small case, delay by the debtor or recalcitrance among creditors. Many courts have attempted to define "cause" in the context of an extension of the exclusivity period. A huge debtor with a complex financial structure generally constitutes cause for extending the exclusivity periods. A debtor's showing of progress in formulating a plan in the face of unusual procedural or substantive difficulties or developments in the case may establish the requisite "good cause" for extension of the exclusivity periods. Cause for an extension of exclusivity may be found where sheer mass, weight, volume and complication of the filings justify a shakedown period. Another factor that has been considered is whether progress is being made regarding acceptance of the

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

HN6[Plans, Eligible Plan Proponents

Both the legislative history and the courts have discussed when it is not appropriate to grant an extension of exclusivity under <u>11 U.S.C.S. § 1121(d)</u>. For example, an extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory. Extensions are impermissible if they are for the purpose of allowing the debtor to prolong reorganization while pressuring a creditor to accede to its point of view on an issue in dispute.

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

IIN7 Plans, Eligible Plan Proponents

See 11 U.S.C.S. § 1121(d).

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

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HN8[] Plans, Eligible Plan Proponents

The decision of whether or not to grant an extension of exclusivity is squarely within the discretion of a bankruptcy court, subject to a finding of cause. The legislative history of 11 U.S.C.S. § 1121(d) does not show that Congress disfavors repeated extensions of exclusivity, nor does it mention repeated extensions of exclusivity at all. Rather, the legislative history is clear that the point of exclusivity is to promote an environment in which the debtor's business may be rehabilitated and a consensual plan may be negotiated. Presumably, therefore, so long as exclusivity is extended upon the bankruptcy court's finding of cause and where the ultimate goals are to rehabilitate the debtor's business and negotiate a consensual plan of reorganization, congressional intent is satisfied. The legislative history shows that Congress disfavors "undue extensions" that result in excessively prolonged and costly delay, to the detriment of creditors. However, a bankruptcy court's finding of cause precludes such undue extensions, thereby preventing any excessive delays.

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

HN9[2 Plans, Eligible Plan Proponents

The period of debtor exclusivity to file a reorganization plan is designed to limit the delay that makes creditors the hostages of Chapter 11 debtors.

Bankruptcy Law > General Overview

IIN10[♣] Bankruptcy Law

The Bankruptcy Code is intended to create a relative balance of negotiating strength among debtor and creditor, not "among interested parties."

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

IINII ♣ Plans, Eligible Plan Proponents

Extensions of exclusivity under <u>11 U.S.C.S. § 1121(d)</u> should not be granted "routinely" or "cavalierly." However, where the exclusive period is insufficient because of extraneous

factors, exclusivity should be continued.

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

HN12 Plans, Eligible Plan Proponents

The legislative history surrounding <u>11 U.S.C.S. & 1121</u> indicates that Congress has enacted the limited exclusivity period to avoid imbalance in the bargaining leverage between a bankrupt debtor and its creditors.

Bankruptcy Law > Procedural Matters > Contested Matters

Bankruptcy Law > Procedural Matters > Adversary Proceedings > General Overview

HN13[♣] Procedural Matters, Contested Matters

Disputes within a bankruptcy case are divided into two types: adversarial proceedings and contested matters.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > General Overview

Evidence > Admissibility > Procedural Matters

IIN14 [₺] Procedural Matters, Adversary Proceedings

An adversarial proceeding within a bankruptcy case should be treated as "an independent litigation" and the bankruptcy court may not consider documents filed only in the underlying bankruptcy case unless they were also offered at the hearing.

Constitutional Law > ... > Fundamental
Rights > Procedural Due Process > Scope of Protection

Evidence > Admissibility > Procedural Matters

HN15[♣] Procedural Due Process, Scope of Protection

It is a fundamental concept of procedural due process that a party to litigation is entitled to have the evidence relied on by his opponent presented at the hearing of his case.

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Bankruptcy Law > Procedural Matters > Contested Matters

Evidence > Judicial Notice > Adjudicative Facts > General Overview

Bankruptcy Law > Procedural Matters > Adversary Proceedings > General Overview

11N16 Procedural Matters, Contested Matters

In a dispute within a bankruptcy case, a bankruptcy court cannot properly use documents filed only in the underlying bankruptcy case unless that use can be justified under the judicial notice doctrine. However the procedures governing contested matters are less formal than those governing adversarial proceedings. Therefore, a bankruptcy court's decision to consider the entire case file is justified under the judicial notice doctrine where the contested matter is sufficiently associated with the general administration of the debtor's estate.

Bankruptcy Law > Procedural Matters > Contested Matters

Bankruptcy Law > Procedural Matters > Adversary Proceedings > General Overview

Bankruptcy

Law > ... > Reorganizations > Plans > Eligible Plan Proponents

HN17 Procedural Matters, Contested Matters

An extension of a bankruptcy debtor's period of exclusivity to file a reorganization plan is a contested matter, not an adversarial proceeding.

Bankruptcy Law > Procedural Matters > General Overview

Evidence > Judicial Notice > Adjudicative Facts > General Overview

IIN18[₺] Bankruptcy Law, Procedural Matters

The existence of a settlement, as evidenced, inter alia, by an order approving the settlement, is the type of information about which a bankruptcy court is entitled to take judicial notice.

Bankruptcy Law > Procedural Matters > Judicial Review > General Overview

11N19 a Procedural Matters, Judicial Review

An issue in an bankruptcy appeal that is raised for the first time in an appellate brief will not be considered by a district court on appeal.

Bankruptcy Law > Procedural Matters > Judicial Review > General Overview

11N20[₺] Procedural Matters, Judicial Review

A district court acts as an appellate court when considering an appeal of an order of a bankruptcy court and may review both claims that were argued before the court below as well as issues that were ruled on by the court below.

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Judges: Katharine S. Hayden, U.S.D.J.

Opinion by: Katharine S. Hayden

Opinion

KATHARINE S. HAYDEN, U.S.D.J.

I. INTRODUCTION

Appellee-debtor Burns and Roe Enterprises, Inc. ("appellee" or "debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on December 4, 2000 and continues to operate the business as the debtor-in-possession. On April 11, 2005, U. S. Bankruptcy Judge Rosemary Gambardella granted debtor its fourteenth extension of exclusivity in which to file and solicit acceptances of a plan of reorganization pursuant to 11 U.S.C. § 1121(d) to May 16, 2005 and July 15, 2005, respectively. On June 29, 2005,

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Judge Gambardella granted debtor's fifteenth motion to extend the exclusivity periods to August 15, 2005 and October 15, 2005. Appellants [*2] Continental Casualty Company and American Casualty Company (collectively "CNA" or "appellants") appeal both orders. Appellants request that the Court reverse these two extension orders; enter an order providing that the debtor's exclusivity period for filing a plan of reorganization is terminated effective April 11, 2005 (alternatively June 29, 2005); prohibit debtor from requesting or receiving any other extensions of exclusivity; and provide other further relief as the Court deems just. For the reasons that follow, the decisions of the bankruptcy court are affirmed.

II. BACKGROUND

In its brief on the first appeal, the debtor states that "the Chapter 11 filing was precipitated by massive increases in asbestos-related personal injury complaints filed against [it], coupled with the refusal of [CNA] to defend or indemnify the Debtor in asbestos lawsuits, despite a 16-year history of contributing to defense and settlement costs." Appellee's Brief at 2, No. 05-2529 (July 7, 2005). Upon the filing of the bankruptcy, the United States Trustee appointed a Committee of Unsecured Creditors ("Creditors' Committee") and, as well, a Future Claims Representative ("FCR") to [*3] represent the present and future asbestos-related personal injury claimants. Pursuant to § 524(g) of the Bankruptcy Code, the debtor has set up a trust that will assume all present and future liabilities incurred by personal injury, wrongful death, or propertydamage actions caused by asbestos. Upon confirmation of a reorganization plan that includes a § 524(g) trust, a bankruptcy court issues a "channeling injunction" that prevents anyone from taking legal action against the debtor for claims that should be channeled to the trust. Both the trust and the channeling injunction must be included in the reorganization plan, and 75% of the class claimants who will be channeled to the trust (here, represented by the FCR) must vote in favor of the reorganization plan in order for the § 524(g) trust mechanism to be utilized. If approved, the combination of the trust and the channeling injunction allows a company to emerge intact from Chapter 11 bankruptcy essentially free from both present and future asbestos-related tort liability.

Because the only two extensions at issue in these appeals are the fourteenth and fifteenth, the details of the early background of the [*4] Chapter 11 case will not be addressed. On December 15, 2003, debtor filed its first amended Plan of Reorganization as well as a Disclosure Statement, and was under a deadline of February 13, 2004 to solicit acceptances to its Plan. Due in part to the numerous

objections filed to both the Plan and the Disclosure Statement, including objections by appellants, the bankruptcy court extended debtor's solicitation deadline numerous times. The bankruptcy court approved the Disclosure Statement on June 4, 2004 after two amendments, but did not approve the Plan of Reorganization pending discovery and hearings on the objections. At a status conference on November 18, 2004 debtor informed the bankruptcy court that it had reached a settlement with one of its insurance carriers, Hartford Accident and Indemnity Company ("Hartford"), under which Hartford would pay the bankruptcy estate \$ 62.5 million to fund the 8524(g) trust for asbestos claimants. If approved, the Hartford settlement would necessitate changes to the thenfiled Plan of Reorganization. On December 6, 2004, debtor filed a motion for approval of the settlement to which appellants objected. The court overruled the appellants' objections [*5] to the settlement and directed the parties to agree on the form of the orders. The court also granted debtor the thirteenth extension of its period of exclusivity to file and solicit acceptances of its Plan to March 15, 2005 and May 15, 2005, respectively. Because the parties were unable to agree on their own to the form of orders approving the Hartford settlement, the bankruptcy court drafted and entered the approval order on February 17, 2005.

At this point, however, debtor was compelled to draft substantial changes to its Plan in order to comply with the decision in In re Combustion Engineering, Inc., 391 F.3d 190 (3d Cir. 2004), which was issued on December 2, 2004. There the Third Circuit held that a channeling injunction could not be used to shield non-debtor affiliates against independent asbestos-related claims, and it invalidated a reorganization plan with a channeling injunction that had the effect of "extending bankruptcy relief to two non-debtor companies outside of bankruptcy." Id. at 237. Believing this ruling would preclude approval of its then-existing Plan, debtor began making changes. Because of the need to change the Plan as well [*6] as the delay in the approval of the Hartford settlement, debtor requested another extension. The bankruptcy court held a hearing on April 11, 2005, at which both the Creditors' Committee and the FCR supported the extension motion. The bankruptcy court granted debtor the extensions to May 16, 2005 and July 15, 2005 for the filing and solicitation of acceptances of its Plan. This was the fourteenth extension granted to debtor, and is the subject of appellants' first appeal to this Court, # 05-2529.

In granting that extension, the bankruptcy court held that debtor had presented sufficient cause to justify extending its period of exclusivity because, first, the Hartford settlement was a significant step in the reorganization in that it would allow the debtor to file a plan in which the trust for future asbestos claimants would be funded by \$ 62.5 million.

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Transcript of Hearing 62:6-14, In Re Burns & Roe Enter., Inc., No. 00-41610 (Bankr. D. N.J., April 11, 2005). Second, negotiations were taking place with both the Creditors' Committee and the FCR regarding distribution of the trust proceeds, which the bankruptcy court deemed to be evidence of debtor's good faith progress toward reorganization. [*7] Id. 62:15-19. The bankruptcy court also found that the size and the complexity of the case as well as the need to comply with the Third Circuit decision in Combustion Engineering contributed to sufficient cause to grant debtor's request for extension. Id. 63:10-20. The bankruptcy court found that the debtor was making significant progress in its reorganization and would continue to make progress going forward. Id. 63:16-20. It also found that there were unresolved contingencies that would have a substantial effect on the debtor's Plan if they were resolved. Id. 64:1-5. Finally, the bankruptcy court did not find any evidence that the debtor was seeking the extension of time in order to pressure creditors to accede to reorganization demands. Id. 63:1-4.

Before the appeal of the fourteenth extension was decided, debtor moved for another extension of its exclusivity period. The bankruptcy court heard this motion on June 29, 2005, and granted debtor's request for extension of exclusivity and solicitation of acceptances to August 15 and October 15, 2005, respectively. This was the fifteenth extension granted to debtor, and is the subject of appellants' second appeal [*8] to this Court, # 05-4125. In granting this extension, the bankruptcy court found that the record supported cause for the extension because of the size and complexity of the case, the good faith progress towards reorganization, and the bankruptcy court's belief that the debtor was not seeking extension of exclusivity to pressure creditors to accede to reorganization demands. Transcript of Motion Hearing 48:5-25, In Re Burns & Roe Enter., Inc., No. 00-41610 (Bankr. D. N.J., June 29, 2005). In addition, the bankruptcy court found that the resolution of the unresolved contingencies was "under way." Id. 49:5-11. The bankruptcy court also noted that both the Creditors' Committee and the FCR again supported the extension. Id. 48:25-49:4. Finally, the bankruptcy court stated that it was "satisfied that there has not been the type of prejudice to [the appellants] to tip the balance in favor of ending exclusivity today." Id. 49:15-21. The bankruptcy court declined to declare that this was debtor's final extension, but cautioned the debtor that it would "take that request into consideration" if necessary at a later date. Id. 50:1-11.

III. STANDARD OF REVIEW

[*9] <u>HNI</u> This Court reviews a bankruptcy court's decision to extend debtor's periods of exclusivity for abuse of discretion. <u>In re Hoffinger Indus.</u>, <u>Inc.</u>, 292 B.R. 639, 642 (B.A.P. 8th Cir. 2003). See also <u>In re Geriatrics Nursing</u>

Home, Inc., 187 B.R. 128, 131 (D. N.J. 1995). Abuse of discretion can lie in either the failure to "apply the proper legal standard or to follow proper procedures in making the determination." Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253, 257 (3d Cir. 1995). Abuse of discretion can also be found if the bankruptcy court's decision was based on clearly erroneous findings of fact. Resyn Corp. v. United States. 851 F.2d 660, 664 (3d Cir. 1988). HN2 1 Any legal interpretations of the bankruptcy court receive plenary review. In re Engel, 124 F.3d 567, 571 (3d Cir. 1997).

IV. JURISDICTION

IIN3 1 This Court has jurisdiction to hear an appeal from an order of the bankruptcy court pursuant to 28 U.S.C.A. § 158(a)(2), which states that "the district courts of the United States shall have jurisdiction to hear appeals . . . from interlocutory orders and decrees [*10] issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title " 28 U.S.C.A. § 158(a)(2). See also In re White Beauty View, Inc., 841 F.2d 524, 527 (3d Cir, 1988).

V. DISCUSSION

A. Extensions of Exclusivity Under the Bankruptcy Code - What is "Cause"?

IINA 1 The Bankruptcy Code allows a Chapter 11 debtor the exclusive right to file a reorganization plan for the first 120 days that the debtor is in bankruptcy. II U.S.C. § 1121(b). Under § 1121(d), a bankruptcy court may increase the debtor's exclusivity period beyond the initial 120 days on request of a party in interest "for cause," after notice and a hearing. Whether or not to grant an extension of exclusivity "is a matter of discretion based on all facts and circumstances," In re Mid-State Raceway, Inc. 323 B.R. 63, 68 (Bankr. N.D.N.Y. 2005), but the discretion "is limited by the requirement that cause be shown" In re Perkins, 71 B.R. 294, 298 (W.D. Tenn 1987). However, a bankruptcy court has "broad discretion to determine what is sufficient cause [*11] in each individual case." In re Sharon Steel Corp., 78 B.R. 762, 765 (Bankr. W.D. Pa. 1987).

HN5 Neither the Bankruptcy Code nor its legislative history defines "cause." However, the examples given in the legislative history are instructive. According to the Senate Report, cause may be established by "a showing of some promise of probable success." S. Rep. No. 95-989, at 118 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5904. The

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House stated that "cause might include an unusually large or an unusually small case, delay by the debtor or recalcitrance among creditors." H.R. Rep. No. 95-595, at 406 (1977), as reprinted in 1978 U.S.C.C.A.N. 5787, 6362. Many courts have attempted to define "cause" in the context of an extension of the exclusivity period. A "huge debtor with a complex financial structure generally constitute[s] cause for extending the exclusivity periods." In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D. N.Y. 1987), "[A] debtor's showing of progress in formulating a plan in the face of . . . unusual procedural or substantive difficulties or developments in the case may . . . establish the requisite "good cause" for extension [*12] of the exclusivity periods." In re Nicolet. Inc., 80 B.R. 733, 742 (Bankr. E.D. Pa. 1987), Cause for an extension of exclusivity may be found where "sheer mass, weight, volume and complication of the [] filings . . . justify a shakedown period." In re Manville Forest Prod.Corp., 31 B.R. 991, 994-995 (S.D.N.Y. 1983). Another factor that has been considered is whether progress is being made regarding acceptance of the plan. In re Crescent Mfg. Co., 122 B.R. 979. 982 (Bankr. N.D. Ohio 1990).

HN6 → Both the legislative history and the courts have also discussed when it is not appropriate to grant an extension. For example, "an extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory." S. Rep. No. 95-989, at 118 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5904. "Extensions are impermissible if they are for the purpose of allowing the debtor to prolong reorganization while pressuring a creditor to accede to its point of view on an issue in dispute." Matter of Lake in the Woods, 10 B.R. 338, 345-346 (D.C. Mich. 1981).

B. APPELLANTS' [*13] FIRST ARGUMENT: § 1121(d) disfavors repeated extensions of debtor's period of exclusivity.

Appellants first argue that the legislative history of \$\frac{\mathcal{S} \ 1/2/(d)}{2}\$ shows that Congress disfavors repeated extensions of debtor's exclusivity. They contend that setting limits on a debtor's exclusivity period is meant to balance the negotiating strength between parties and expedite the reorganization process. Appellants' Brief at 5-6, No. 05-2529 (June 10, 2005). They argue that the allowable bases for cause decrease over time, and that extensions should not be routinely or cavalierly granted. Id. at 6-7. Appellants also state that since the 2005 amendments to the Bankruptcy Code provide additional limitations on the debtor's exclusivity periods, Congress has shown its disapproval of "cavalier extensions by the courts." Id. at 8, citing to The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, PL 109-8, April 20, 2005, 119 Stat 23.

In opposition, appellee argues that the decision of whether or not to extend the debtor's period of exclusivity is entrusted to the discretion of the bankruptcy court. Appellee Brief at 9, No. 05-2529 (July 7, 2005). Congressional intent, [*14] appellee asserts, is best discerned by the statutory language of § 1121(d), which reads, in pertinent part, IIN7[*] "the court may for cause reduce or increase" the exclusivity period of the debtor. Id. As further evidence of the discretionary standard, appellee notes that an order of the bankruptcy court that extends the period of exclusivity will only be set aside if this Court finds an abuse of discretion. Id.

HN8[1] The decision of whether or not to grant an extension of exclusivity is squarely within the discretion of the bankruptcy court, subject to a finding of cause. See discussion supra Part V.A. See also In re Mid-State Raceway, Inc., 323 B.R. 63 (Bankr, N.D. N.Y. 2005); In re Sharon Steel Corp., 78 B.R. 762 (Bankr. W.D. Pa. 1987); In re Perkins, 71 B.R. 294 (W.D. Tenn. 1987). Contrary to appellants' assertion, the legislative history of § 1121(d) does not show that Congress disfavors repeated extensions of exclusivity, nor does it mention repeated extensions of exclusivity at all. Rather, the legislative history is clear that the point of exclusivity is "to promote an environment in which the debtor's business may [*15] be rehabilitated and a consensual plan may be negotiated." H.R. Rep. No. 103-835, at 36 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340, 3344. Presumably, therefore, so long as exclusivity is extended upon the bankruptcy court's finding of cause and where the ultimate goals are to rehabilitate the debtor's business and negotiate a consensual plan of reorganization, congressional intent is satisfied. The Court notes that the legislative history shows that Congress disfavors "undue extension[s]" that result in "excessively prolonged and costly delay, to the detriment of creditors." Id. (emphasis added). However, a bankruptcy court's finding of cause precludes such undue extensions, thereby preventing any excessive delays. Therefore, this Court finds that the bankruptcy court did not abuse its discretion when weighing appellants' objections in light of the legislative history and purpose of § 1121(d).

Appellants point to In re Timbers of Inwood Forest Association. I.td., 808 F.2d 363 (5th Cir., 1987) (en banc), aff'd United Sav. Asso. v. Timbers of Inwood Forest Associates. I.td., 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d. 740 (1988), for the proposition [*16] that the period of debtor exclusivity was "meant to free parties from their role as debtor's hostages and, thereby, to expedite the reorganization process." Appellants' Brief at 5-6, No. 05-2529 (June 10, 2005). The Court finds that appellants' reliance on Timbers of Inwood Forest is misplaced. That court did not state that the period of debtor exclusivity was "meant to free parties from their role as debtor's hostages," as appellants state. Instead,

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the Fifth Circuit stated in <u>Timbers</u> that <u>HN9[1]</u> the period of debtor exclusivity "was designed . . . to limit the delay that makes *creditors* the hostages of Chapter 11 debtors." <u>Timbers</u>. 808 F.2d at 372 (emphasis added).

Appellants state that "courts have recognized that the Bankruptcy Code was intended to create a relative balance of negotiating strength' among interested parties." Appellants' Br. at 6, No. 05-2529 (June 10, 2005), relying on In re Lake in the Woods, 10 B.R. 338 (E.D. Mich. 1981). But this mischaracterizes the holding in Lake in the Woods. In that case, the court stated that \(\frac{IIN10}{2} \) the Code was intended to create "a relative balance of negotiating strength among debtor and creditor, [*17] " not, as appellants state, "among interested parties." Lake in the Woods. 10 B.R. at 343. Appellants are not creditors of this debtor, but non-creditor insurance carriers who issued policies to the debtor. The Creditors' Committee supports the debtor's request for an extension in the exclusivity period, as does the FCR. Presumably, therefore, neither the creditors nor the future claimants are being held hostage by these extensions in the debtor's exclusivity period. Furthermore, as the bankruptcy court pointed out, there remains some dispute as to whether appellants are even "parties in interest" such that they are entitled to make the present objections or submit competing reorganization plans. Tr. of Hr'g 61:7-13 (Bankr. D. N.J. April 11, 2005).

Appellants cite In re McLean Industries, Inc., 87 B.R. 830, 834 (Bankr, S.D.N.Y. 1987) for its observation that <u>HN11[</u> extensions of exclusivity should not be granted "routinely" or "cavalierly." Appellants' Br. at 6, No. 05-2529 (June 10, 2005). In context, however, while the court made that warning, it also stated that "where the exclusive period is insufficient because of extraneous factors, exclusivity [*18] should be continued." McLean Industries, Inc., 87 B.R. at 834 (emphasis added). In the case before this Court, the bankruptcy court found numerous extraneous factors provided sufficient cause to extend the debtor's periods of exclusivity and made findings to that effect. In granting the extension that is the subject of the first appeal, the bankruptcy court found the following reasons contributed to a finding of cause. First, the debtor was making good faith progress toward reorganization, as evidenced by the Hartford settlement and the ongoing negotiations between the debtor, the Creditor's Committee, and the FCR. Tr. of Hr'g 62:6-19 (Bankr. D. N.J., April 11, 2005). Second, the debtor had to change its Plan to comply with the Third Circuit decision in Combustion Engineering. Id. 63:10-20. Third, the size and complexity of the case, in combination with other factors, warranted the extension. Id. 63:10-20. Fourth, the bankruptcy court deemed that the debtor would continue to make progress toward reorganization. ld. 63:16-20. Fifth, the existence of

unresolved contingencies that would have a substantial effect on the debtor's Plan if they were resolved. [*19] Id. 64:1-5. Finally, the bankruptcy court did not find any evidence that the debtor was seeking the extension of time in order to pressure creditors to accede to reorganization demands. Id. 63:1-4. In granting the extension that is the subject of the second appeal, the bankruptcy court found the following reasons contributed to a finding of cause. First, the size and complexity of the case, in combination with other factors, warranted the extension. Tr. of Mot. Hr'g 47:22-48:2 (Bankr. D. N.J., June 29, 2005). Second, the debtor's good faith progress towards reorganization justified an extension. Id. 48:5-21. Third, the bankruptcy court deemed that the debtor was not seeking extension of exclusivity to pressure creditors to accede to reorganization demands. Id. 48:5-25. Fourth, the resolution of the unresolved contingencies was "under way." ld. 49:5-11. Fifth, both the Creditors' Committee and the FCR again supported the extension. Id. 48:25-49:4. Finally, the bankruptcy court stated that it was "satisfied that there has not been the type of prejudice to [the appellants] to tip the balance in favor of ending exclusivity today." Id. 49:15-21. This Court [*20] easily finds that the bankruptcy court's assessments were neither routine nor cavalier. There was no abuse of discretion.

Although appellants argued that the 2005 amendments to the Bankruptcy Code show that Congress disapproves of "cavalier extensions by the courts," the bankruptcy court noted that appellants conceded that those amendments do not impact this case. Tr. of Mot. Hr'g 45:10-18 (Bankr. D. N.J. June 29, 2005).

The Court also notes that appellants argued at the motion hearings that the extension of the debtor's exclusivity was inconsistent with the legislative intent of the Bankruptcy Code. As discussed above, <u>HN12[*]</u> the legislative history surrounding <u>\$\sigma\text{1121}\text{}\text{indicates}\$ that Congress enacted the limited exclusivity period to avoid imbalance in the bargaining leverage between a bankrupt debtor and its creditors. The bankruptcy court considered this issue in its decision by pointing out that both the Creditors' Committee and the FCR support the extension of exclusivity, Tr. of Hr'g 64:19-23 (Bankr. D. N.J., April 11, 2005), and by pointing out that there was no substantiation to appellants' allegation that the debtor sought this extension of time to pressure creditors to accede [*21] to reorganization demands. <u>Id.</u> 62:6-19.</u>

In one of their reply briefs, appellants offer new support for their argument that because under § 1121(d) non-creditor parties in interest are entitled to request a reduction in or termination of the debtor's period of exclusivity, Congress also intended the bankruptcy courts to balance the interests of such non-creditors when passing on that request. Appellants'

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Reply Br. at 5-6, No. 05-2529 (July 21, 2005). However, neither case that appellants cite supports this proposition. Appellants take a portion of Jones v. Liberty Mutual Ins. Co. (In re Wallace & Gale Co.), 385 F.3d 820, 829 (4th Cir. 2004), completely out of context in arguing that non-creditor parties have rights nearly equal to those of creditors on the issue of extending exclusivity. In that case, the court was addressing the interpretation of insurance contracts in a bankruptcy estate. In discussing whether to apply state or federal law, the court stated: "the property interests involved here are the rights of the insurance companies to have their obligations for payment ascertained," and it went on to find that state law applied. This observation has nothing to do with the issue at hand. [*22] Similarly, the decision in <u>In re</u> Lehigh Valley Professional Sports Club. Inc., 2000 Bankr. LENIS 237, 11-12 (Bankr. D. Pa. 2000), which discussed the differences between old Chapter XI and new Chapter 11, talks about the "competing interests which Congress sought to balance" in the new legislation, but not in a manner that argument. The opinion defines supports appellants' "competing interests" as those of debtor and creditors, and nothing in the opinion suggests that Congress intended that bankruptcy courts balance the interests of non-creditors when passing on a debtor's request for extension of exclusivity.

Based on the foregoing, this Court does not find an abuse of discretion in the bankruptcy court's determinations. Having so concluded, the Court is constrained to point out the unhelpful way in which appellants presented their arguments to the contrary. In their brief, they state that "the bases for 'cause' to extend exclusivity decrease over time," and cite six cases in a long footnote, none of which stands for the stated proposition. Appellants' Br. at 7, No. 05-2529 (June 10, 2005). Appellants then state that "the justifications for other parties to be allowed [*23] to file competing plans increase and must be balanced with other factors," id., and cite two cases in a footnote, neither of which supports appellants' position. Id. 2000 Bankr. LEXIS 237 at 7 n.5. In fact, the first case cited, <u>In</u> re Service Merchandise Co., 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000), does not give, as appellants claim, a list of nine factors used in determining cause to extend exclusivity. Rather, that case presents a discussion of factors used to determine whether the court should grant an extension of time to assume or reject a lease under § 364(d)(4) of the Bankruptev Code, which is irrelevant to the present inquiry. Further, this list of factors does not include "existence of good faith and time case pending," contrary to appellants' express assertion. Appellants' Br. at 7, n.5, No. 05-2529 (June 10, 2005).

C. APPELLANTS' SECOND ARGUMENT: The bankruptcy court failed to determine debtor's motion was

both procedurally and substantively deficient.

Appellants argue that debtor's motions were procedurally deficient because the debtor did not provide proper affirmative record evidence to support its requests, and because the bankruptcy [*24] court mistakenly relied upon evidence outside the record to find cause. Appellants' Brief at 10-13, No. 05-2529 (June 10, 2005). Appellants also argue that the debtor's motions were substantively deficient because debtor did not provide sufficient cause for the extensions granted, Id. 2000 Bankr. LENIS 237 at 13-19. The gravaman of appellants' procedural argument is that the bankruptcy court erroneously relied on mere "allegations" by the debtor to decide whether or not cause existed, "most notably" the size and complexity of the case and debtor's efforts to obtain the Hartford settlement. Appellants contend that the bankruptcy court's review of the motion for extension of exclusivity should have been limited to the materials submitted in the motion, and that due process requires that other parties have notice and opportunity to respond to any other materials considered by the bankruptcy court, Appellants particularly take exception to what they assert is a lack of affirmative evidence that the size and complexity of the bankruptcy case support the requested extensions and to a lack of affirmative evidence showing that the debtor has been making efforts to obtain the settlement with Hartford insurance. [*25] In support of their argument, appellants rely on In re Parker Street Florist & Garden Center, Inc., 31 B.R. 206 (Bankr. D. Ma. 1983), In re Nicolet, Inc., 80 B.R. 733 (Bankr. F.D. Pa. 1987), and Mulvaney v. Rush, 487 F.2d 684 (3d_Cir. 1973). In opposition, appellee argues that the bankruptcy court may take judicial notice of certain adjudicative facts, including the size and complexity of the bankruptcy case before it and the existence of the settlement with Hartford insurance.

IIN13 To Disputes within a bankruptcy case are divided into two types: adversarial proceedings and contested matters. In In re Aughenbaugh. 125 F.2d 887 (3d Cir. 1942), the Third Circuit held that **IIN14** [] an adversarial proceeding within a bankruptcy case should be treated as "an independent litigation" and the bankruptcy court may not consider documents filed only in the underlying bankruptcy case unless they were also offered at the hearing. Id. at 889. The court reasoned that HN15[] it was a "fundamental concept of procedural due process that a party to litigation is entitled to have the evidence relied on by his opponent presented at the hearing [*26] of his case." Id. More recently, in In re Indian Palms Associates Ltd. v. California Federal Bank, 61 F.3d 197 (3d Cir. 1995), the Third Circuit applied the Aughenbaugh rule and stated that HN16 1 the bankruptcy court "cannot properly use documents filed only in the underlying bankruptcy case unless that use can be justified

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under the judicial notice doctrine." <u>Id. at 204</u>. However the court noted the procedures governing contested matters are less formal than those governing adversarial proceedings. <u>Id. at 204 n.11</u>. Therefore, the court found that the lower court's decision to consider the entire case file was justified under the judicial notice doctrine because "the contested matter [was] sufficiently associated with the general administration of the debtor's estate." <u>Id. at 204</u>.

IIN17 An extension of a debtor's period of exclusivity is a contested matter, not an adversarial proceeding. See, e.g., In re Dow Corning Corp., 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997). As such, the Aughenhaugh rule as modified by Indian Palms is the proper framework to apply to the case at bar. The two specific [*27] exceptions that appellants make to the lack of affirmative evidence are the allegations of the size and complexity of the bankruptcy case and that the debtor has been making efforts to obtain a settlement with Hartford insurance. The proper inquiry is whether these matters were sufficiently associated with the general administration of the bankruptcy to justify the bankruptcy court's notice of them without the express introduction of affirmative evidence at the motion hearings.

This Court easily finds that inasmuch as the bankruptcy court has been handling the administration of this case since December 4, 2000, it is able to make a reliable determination about the size and complexity without additional affirmative evidence. In addition, appellants were aware of debtor's reliance on the size and complexity of the bankruptcy case as part of its showings of cause. Counsel for appellants stated that debtor offered both the complexity of the case and the Hartford settlement as part of its "cause" offering in the previous motion for extension of exclusivity. The Court also notes the following statements in appellants' brief: "Debtor's oft-repeated claim that the size and complexity of this [*28] case justifies a further extension of exclusivity no longer has merit . . . " and "this case has been pending for over four years, and any issues regarding its size or complexity have long been known by all parties." Appellants' Br. at 14, No. 05-2529 (June 10, 2005) (emphasis added). The records of both motion hearings demonstrate that counsel for appellants strenuously argued against the bankruptcy court finding that the case was sufficiently large and complex to justify an extension, belying any suggestion that appellants were denied an opportunity to respond. That the bankruptcy was large and complex was not a stray piece of random evidence buried in a copious case file about which appellants were taken by surprise. The bankruptcy court did not abuse its discretion by relying upon the size and complexity of the case in making its decisions to grant the motions.

Appellants were also well aware of the existence of the

Hartford settlement as well as its details, as evidenced by their objection to debtor's December 6, 2004 motion for approval of the settlement, which took place prior to the orders on appeal. In the motion hearings, counsel for appellants urged the bankruptcy court [*29] to reject the proposition that the Hartford settlement provided additional cause to extend debtor's exclusivity. Again, there was no evidentiary surprise sprung upon the appellants. Furthermore, HN18 [] the existence of the Hartford settlement, as evidenced, inter alia, by an order approving the settlement, is the type of information about which the bankruptcy court was entitled to take judicial notice. See, e.g., In re Indian Palms Associates, 61 F.3d at 205. Once the bankruptcy court approved the Hartford settlement (prior to the orders appealed herein), the existence of the Hartford settlement was not seriously in dispute and the bankruptcy court did not abuse its discretion by relying upon it.

Turning to the specific cases appellants rely on, as the bankruptcy court noted, Parker Street Florist, 31 B.R. 206, is distinguishable. Tr. of Hr'g 61:23-63:9 (Bankr. D. N.J. April 11, 2005). That ruling turned on the fact that the only cause alleged by the debtor was its desire to "prevent a small creditor from interfering with its reorganization and proposal of a plan," Parker Street Florist. 31 B.R. at 207, not as appellants suggest [*30] in their brief, the lack of evidence proffered to support the debtor's alleged cause, Appellants' Brief at 10, No. 05-2529 (June 10, 2005). The decision rejected the cause itself, not the insufficiency of evidentiary support for the cause. Nicolet, 80 B.R. 733, can also be distinguished. There, the debtor offered the entire bankruptcy file "without any selectivity" into evidence on the day of the hearing. That court found that this offering was "out of step with the underlying . . . due process" rationale of Aughenbaugh because it deprived the opponents of a meaningful chance to examine the evidence and respond. Nicolet., 80 B.R. at 743. In contrast, appellants were aware of and meaningfully responded to the evidence in question.

As a final note, appellants' reliance on an isolated sentence from the Third Circuit's decision in <u>Mulvanev v. Rush.</u> 487 <u>F.2d 684</u>, that "statement[s] by counsel unless stipulated to, are not evidence and cannot be considered as such," is inapposite. <u>Mulvaney</u> was an appeal from a grant of habeas corpus on the grounds of double jeopardy. The Third Circuit reversed because the district court made [*31] a decision concerning the substance of the underlying trials without reviewing the record of the underlying trials, relying instead on statements by counsel. The context of particular phrase quoted by the appellants was the <u>Mulvaney</u> appellant's attempt to use briefs as evidence by sending them to the court as exhibits. "Perhaps the appellant is of the view that statements in briefs are evidence and the record may be

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supplemented in this way. As stated above, statement (sic) by counsel, unless stipulated to, are not evidence and cannot be considered as such." <u>Mulvaney v. Rush. 487 F.2d at 687</u>. The court went on to hold that "it was inappropriate to find error in a presumptively valid state court proceeding by this procedure." <u>Id.</u> Both its context and its analysis make the <u>Mulvaney</u> quotation of no consequence to the issues at bar, and raise questions about the methods appellants use in doing their research.

Under the rubric of both <u>Aughenbaugh</u> and <u>Indian Palms</u>, this Court finds no abuse of discretion in the bankruptcy court's decisions to consider these limited matters from the underlying bankruptcy case and rejects appellants' position that they [*32] were evidentially out of bounds.

Appellants also argue that the bankruptcy court abused its discretion by finding cause to extend the debtor's period of exclusivity because, they claim, in fact the case is not large, the case is not complex, the case involves limited issues, and litigation regarding the insurance policies does not constitute cause. Alternatively, appellants argue that size and complexity alone do not constitute cause. In opposition, appellee argues that debtor has demonstrated sufficient cause to extend exclusivity because of the large size and complexity of the case, because the debtor is not using the extension to pressure creditors into accepting less beneficial terms (as evidenced by the fact that both the Creditors' Committee and the FCR support the extension motion), because the debtor is making progress toward reorganization, and because the debtor is paying its bills as they become due. The bankruptcy court found that the following reasons supported its decisions to grant debtors the extensions of their periods of exclusivity: (1) the good faith progress that the debtor has made toward reorganization based in part on the Hartford settlement; (2) the [*33] existence of negotiations with other insurers; (3) the agreement of the Creditors' Committee and the FCR; (4) the lack of evidence that the extensions were for the purpose of pressuring creditors to accede; (5) the size and complexity of the case; (6) the Third Circuit opinion in Combustion Engineering that required debtor to rework its Plan; (7) the multiple settlements that the bankruptcy court approved; (8) the existence of unresolved contingencies; and (9) the need to resolve claims that would have a substantial effect on the Plan and the trust fund. Tr. of Hr'g 62-64 (Bankr. D. N.J. April 11, 2005). The bankruptcy court did not consider size and complexity alone to be sufficient cause, nor the existence of negotiations with insurers, but found that the above factors, taken as a whole, were sufficient cause to grant the extensions. The bankruptcy court supported its decisions with reasoned and appropriate facts and findings, and did not abuse its discretion.

D. APPELLANTS' THIRD ARGUMENT: Equity requires termination of exclusivity

Appellants argue that this Court should decide, as a matter of equity, to terminate debtor's period of exclusivity because the debtor's [*34] actions are for an improper purpose, namely to gain leverage over other parties, and that such purpose is a breach of the debtor's duties as debtor-in possession. Appellants' Br. at 19-22, No. 05-2529 (June 10, 2005). Appellants also argue that termination of the debtor's exclusivity will not prejudice the debtor nor any other party. Id. at 23-24. Appellee did not directly address this argument in its brief.

While appellants cite law review articles that flesh out the duties of a debtor-in-possession as well as cases that indicate that the debtor has a duty to file a plan of reorganization, they do not provide any support for their argument that requests for extensions of exclusivity constitute breach of those duties. Even assuming, *arguendo*, that the requests for extensions constitute such breach, appellants do not support their argument that the bankruptcy court should have denied the requests on that basis. The bankruptcy court addressed this argument and appropriately did not find that the requests for extensions constituted breaches of the fiduciary duty of a debtor-in-possession. Tr. of Hr'g 64:11-18 (Bankr. D. N.J. April 11, 2005). This Court does not find any abuse [*35] of discretion in the bankruptcy court's determinations.

Within their argument that the debtor breached its duty as debtor-in-possession, appellants argue that the debtor should forfeit its right to seek an extension of exclusivity because debtor has proposed a "new-value" Plan based on the analysis in *In re Situation Management Systems*. 252 B.R. 859 (Bankr. Mass. 2000). This Court finds nothing in the record to show that appellants raised this argument below. Appellants also argue here for the first time that termination of the debtor's exclusivity will not prejudice the debtor nor any other party. Neither of these arguments will be addressed. *HN19* [1] An issue in an bankruptcy appeal that is raised for the first time in an appellate brief will not be considered by the district court on appeal. *Butler Consumer Discount Co. v. Cain.* 50 B.R. 388. 390 (D.C. Pa. 1985). See also *In re Bona.* 124 B.R. 11. 16 (S.D.N.Y. 1991).

E. APPELLANTS' FOURTH ARGUMENT: Debtor's second amended Plan favors debtor's parent at the expense of debtor's insurers.

In this argument, which is only raised in the second appeal, appellants argue that the debtor should [*36] not have been

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granted extensions of its periods of exclusivity because debtor's second amended Plan favors debtor's owner at the expense of debtor's insurers, including appellants. Specifically, appellants argue that Trust Distribution Procedures ("TDP's") in the second amended Plan were negotiated without input from appellants and do not adhere to the legal requirements under the Bankruptcy Code. Appellants ask this Court to terminate debtor's exclusivity so that appellants' competing plan of reorganization can be considered contemporaneously with that of the debtor in order to make the most efficient use of the debtor's and the bankruptcy court's resources. Appellants argue that continued exclusivity allows the debtor to pressure its insurers, including appellants, to accede to TDP's that are inconsistent with the Code and applicable law. In opposition, appellee argues that since it did not file a second amended Plan until August 15, 2005, almost two months after the motion hearing, the bankruptcy court could not have rejected the motion for extension on the grounds that the second amended Plan was not confirmable.

At the hearing, the bankruptcy court stated that the debtor had [*37] not filed an amended Plan as of that date. Tr. of Mot. Hr'g 42:5-6 (Bankr. D. N.J. June 29, 2005). Since the bankruptcy court could not address the matter of legality of a plan's TDP's nor confirmability of a plan that had not yet been filed, the bankruptcy court did not address appellants' arguments concerning the second amended Plan. HN20[1 This Court acts as an appellate court when considering an appeal of an order of the bankruptcy court, In re Grand Union Co., 200 B.R. 101, 106 (D. Del. 1996), and may review both claims that were argued before the court below as well as issues that were ruled on by the court below, Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 90 (2d Cir. 2004). Since the issue of the confirmability of the second amended Plan was neither argued before nor ruled on by the bankruptcy court, this Court will not review this issue. Assuming, arguendo, that appellants have standing to argue against confirmation of debtor's Plan, appellants will have the opportunity make their arguments against the second amended Plan at a subsequent plan confirmation hearing

VI. CONCLUSION

It hardly needs noting that the bankruptcy court [*38] is in a much better position than this Court to decide whether the debtor has requested these last two extensions for impermissible purposes, and the legal standard of abuse of discretion reflects this. Moreover, Judge Gambardella backed up her decisions on these extensions with reasoned conclusions based on facts well known to the appellants. This Court does not find an abuse of discretion and the decisions of

the bankruptcy court are affirmed. An appropriate order will be entered.

Dated: November 2, 2005

Katharine S. Hayden, U.S.D.J.

ORDER

KATHARINE S. HAYDEN, U.S.D.J.

THIS MATTER having come before the Court; the Court having considered the written submissions by the parties, and for good cause shown and for the reasons more fully set forth in the opinion filed herewith,

It is on this 2nd of November, 2005;

ORDERED that the decision of the bankruptcy court is affirmed.

Katharine S. Hayden, U.S.D.J.

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

Jointly Administered at:

17-22223-JAD

Bankruptcy No. 17-22222-JAD

П	N	R	F	•

PITTSBURGH ATHLETIC ASSOCIATION, et al,

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

PITTSBURGH ATHLETIC, ASSOCIATION et al,

Movant, Document No.

vs. Related to Doc. Nos. 630 & 631

IRWIN KOTOVSKY.

Hearing Date and Time:
April 10, 2018 at 11:00 AM

ORDER OF COURT

Upon consideration of the Debtors' Expedited Third Motion to Extend Plan Exclusivity Pursuant to 11 U.S.C. §1121(d) and the Objection thereto, it is hereby ORDERED, ADJUDGED and DECREED that the Motion is DENIED.

Date:	
	Jeffrey A. Deller
	Chief Judge, United States Bankruptcy Court