

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

<b>IN RE:</b>	)	
	)	
<b>PITTSBURGH ATHLETIC,</b>	)	<b>Jointly Administered at:</b>
<b>ASSOCIATION, <i>et al</i><sup>1</sup></b>	)	<b>Case No. 17-22222-JAD</b>
	)	<b>Bankruptcy Case Nos:</b>
<b>Debtors.</b>	)	<b>17-22222-JAD, and</b>
	)	<b>17-22223-JAD</b>
	)	
	)	<b>Chapter 11</b>
	)	
	)	<b>Doc. No.</b>
	)	
	)	<b>Related to Doc. No. 750 and 753</b>

---

**ORDER**

On April 24, 2018, this Court conducted a hearing on the adequacy of the Debtors' Disclosure Statement (ECF No. 703), wherein it directed certain changes to the Disclosure Statement. Thereafter, the Debtors filed their April 24, 2018 *Joint Disclosure Statement* (ECF NO. 717, the "Disclosure Statement"), which was conditionally approved by this Court (ECF No. 724). Thereafter, the Debtors commenced the solicitation of votes with respect to their Amended Chapter 11 Plan (ECF No. 702, the "Plan"). Shortly thereafter, disputes arose with respect to the solicitation of votes by both the Debtors and various alleged members of the Pittsburgh Athletic Association (the "PAA") with respect to the Plan.

---

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

On May 4, 2018 the Court received *Expedited Joint Motion to Retract and Correct the April 27, 2018 Solicitation Letter and to Whom Ballots Were Sent*, filed by Irwin Kotovsky, et al., (ECF No. 750, “Member Motion”), and on May 5, 2018, the Court received the Debtors’ *Expedited Motion for Contempt for Violation of the Automatic Stay Pursuant to 11 U.S.C. § 362 and for Violation of Plan Exclusivity pursuant to 11 U.S.C. § 1121 and 1125* (“Debtors’ Motion,” and collectively with the Member Motion, the “Solicitation Motions”).

The crux of the Member Motion is their concern that a Board of Directors letter included in the Debtors’ Solicitation was erroneous as it failed to address the “risk” regarding the completion of the Redevelopment Amenities under the Debtors’ Plan. See ECF No. 750, Ex A, “Directors’ Letter.”<sup>2</sup> This risk was the subject of the April 24, 2018 hearing on the adequacy of the Disclosure Statement, which resulted in the Court requiring the Debtors to add specific language to the Disclosure Statement regarding the “risk.” Such language was added, in bold, to the Disclosure Statement as set forth below:

**For the avoidance of doubt, should the Debtors be wrong respecting the tax effect of the sale, Walnut PAA will not be required to provide all or some of the Redevelopment Amenities or the full service banquet facilities.**

See ECF No. 717 p. 22.

Certain PAA Member’s perceived the Directors’ Letter to be misleading, and hence they filed the Member Motion, and circulated a counter-letter addressing

---

<sup>2</sup> The Member Motion also raised concerns about the extent to which “Members” were served with the Debtors’ solicitation materials. The adequacy of service, however, is a matter left for consideration at Plan confirmation.

the risk (the “Member Counter Statement”). The Member Counterstatement also urged a “no vote” with respect to the Plan.

In the course of urging a “no vote,” the Member Counterstatement also mistakenly or erroneously stated that a member “no vote” automatically meant that the Debtors’ Plan (supported by the Walnut Capital transaction) would be off the table. This statement is incorrect because if the class of Member interests does not support the existing Plan, the Debtors could conceivably appear in court and argue for “cram down” confirmation of the Plan if at least one class of impaired claimants accepts the Plan. The Member Counterstatement also contained a spreadsheet that contained misstatements about the status of amenities provided for PAA members under the proposed Plan. As such, the Debtors took issue with the erroneous information circulated and requested that the Member Counterstatement be retracted or that some other relief be ordered.

On May 8, 2018, the Court conducted a hearing on the Solicitation Motions. As stated on the record, the Court believes that the Directors’ Letter included in the Debtors’ Solicitation, which is directed to the “Members of the PAA” and focuses on the “Redevelopment Amenities,” fails to fully inform the members of the risks associated with completing the “Redevelopment Amenities,” and therefore does not fully state the fullest range of possibilities contemplated by the Plan. However, the Court believes that the Counterstatement provides balance to the Directors’ Letter, even though the Counterstatement also provides some mistaken and erroneous information as well. Nonetheless, some relief is warranted to even out the situation and to provide perspective to the competing

solicitations. Further relief is also warranted to remind parties-in-interest that there can be consequences if intentionally misleading information is circulated to procure votes in the course of plan confirmation.

**THEREFORE, IT IS HEREBY ORDERED:**

1. The Debtors are directed to serve a copy of this Order upon all parties in interest in this case. The Debtors are also directed to include in their mailing all Members of the PAA as of the petition date. The Debtors shall file a certificate of service within five (5) days hereof.

2. All parties soliciting votes against, or in favor of, the Plan are prohibited from further disseminating any information which is false or misleading. Failure to adhere to this admonition shall result in the imposition of sanctions, including without limitation, designating or disallowing ballots cast with respect to the Plan, or imposing such other sanctions as may be appropriate under the circumstances.

3. Any parties or their counsel who are further soliciting votes, whether they be in favor of or against the Plan, are hereby **ORDERED** to deliver a copy of this Order and shall direct the prospective voter's attention to the Disclosure Statement previously approved by the Court. The parties and their counsel shall also stress that the prospective voter should fully read the Disclosure Statement, as such document the "floor" of material information necessary for an informed creditor or interest holder to make an informed decision to accept or reject the Plan.

4. Except as set forth above, each of the Solicitation Motions are denied without prejudice. The parties shall govern themselves accordingly.

BY THE COURT:

Dated: May 8, 2018



Jeffery A. Deller  
Chief United States Bankruptcy Judge

cc: Case Administrator to Serve:

Jordan S. Blask, Esq.  
Thomas J. Michael, Sr., Esq.  
Ryan James Cooney, Esq.  
Robert O Lampl, Esq.  
Norma Hildenbrand, Esq.  
David W. Lampl, Esq.  
John M. Steiner, Esq.  
Claudia Davidson, Esq.  
John Gotaskie, Esq.

FILED  
5/8/18 2:39 pm  
CLERK  
U.S. BANKRUPTCY  
COURT - WDPA