

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Case No. 08-53104

GREEKTOWN HOLDINGS, L.L.C., *et al.*,¹

In Proceedings Under
Chapter 11

Debtors.

Jointly Administered

Hon. Walter Shapero

**JOINT STATEMENT REGARDING STATUS OF
DISCOVERY ON PROPOSED PLANS OF REORGANIZATION**

RECITALS

A. On June 1, 2009, the above-captioned debtors (the “Debtors”) and Merrill Lynch Capital Corporation, as Administrative Agent for the Pre-petition Lenders and the DIP Lenders (the “MLCC,” and together with the Debtors, the “Plan Proponents”) filed the Joint Plans of Reorganization. On August 6, 2009, the Plan Proponents filed the First Amended Joint Plans of Reorganization. On August 26, 2009, the Plan Proponents filed the Second Amended Joint Plans of Reorganization (the “Plan”).

B. On August 11, 2009, Luna Greektown LLC (“Luna”) and Plainfield Asset Management LLC and its Affiliates (“Plainfield,” and together with Luna, the “Luna Plan Proponents”) filed their Joint Plans of Reorganization for the Debtors. On August 20, 2009 and August 26, 2009, the Luna Plan Proponents filed amended versions of their joint plans of reorganization. Finally, on August 28, 2009, the Luna Plan Proponents filed the Luna

¹ The Debtors’ bankruptcy cases are jointly administered with Greektown Holdings, L.L.C., Case No. 08-53104, Greektown Casino, L.L.C., Case No. 08-53106; Kewadin Greektown Casino, L.L.C., Case No. 08-53105; Monroe Partners, L.L.C., 08-53107; Greektown Holdings II, Inc., Case No. 08-53108; Contract Builders Corporation, Case No. 08-53110; Realty Equity Company Inc., Case No. 08-53112; and Trappers GC Partner, LLC, Case No. 08-53111.



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Greektown LLC and Plainfield Asset Management LLC and its Affiliates' Amended Joint Plans of Reorganization for the Debtors (the "Luna Plan").

C. On August 27, 2009, the Official Committee of Unsecured Creditors (the "Committee"), Deutsche Bank Trust Company Americas, as Indenture Trustee ("DBTCA"), and MFC Global Investment Management (U.S.), LLC ("MFC", collectively with the Committee and DBTCA the "Joint Movants"), filed a motion, pursuant to Rule 7026-3 of the Local Rules for the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"), for authorization to conduct discovery in connection with the Plan and the Luna Plan (the "Joint Movants' Discovery"), seeking both the production of documents (the "Joint Movants' Document Requests") and depositions of witnesses from the Plan Proponents, Conway MacKenzie & Dunleavy ("CMD"), the Fine Point Group ("FPG") and Moelis & Company ("Moelis") and the Luna Plan Proponents.

D. On September 1, 2009, the City of Detroit (the "City") filed its response to the Joint Movants' motion to conduct discovery in connection with the Plan and the Luna Plan, in which the City requested, among other things, that it be allowed to fully participate in the requested discovery, including, but not limited to, appearing at and participating in any and all depositions, requesting production of documents, and receiving copies of any and all requests for production of documents from any other party, any responses thereto, and any documents produced in response to such requests.

E. On September 8, 2009, the Debtors and MLCC each served discovery requests on the Committee, DBTCA and MFC, seeking answers to interrogatories, the production of documents and depositions pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable by Federal Rule of Bankruptcy Procedure 7030.

F. On September 11, 2009, MLCC served its responses to the Joint Movants' Document Requests.

G. On September 11, 2009, the Debtors, CMD, Moelis and FPG served their joint response to the Joint Movants' Document Requests.

H. On September 11, 2009, the City of Detroit served its Requests for Production of Documents on the Debtors, in which the City requested that the Debtors produce certain documents pursuant to Rule 34 of the Federal Rules of Civil Procedure made applicable by Rule 7034 of the Federal Rules of Bankruptcy Procedure (the "City's Document Requests").

I. On September 14, 2009, Plainfield and Luna each served responses to the Joint Movants' Document Requests.

J. The Bankruptcy Court has scheduled the hearing on confirmation of both the Plan and the Luna Plan to commence on Tuesday, November 3, 2009 (the "Confirmation Hearing").

K. On September 11, 2009, the Bankruptcy Court directed that the parties file a statement setting forth the areas of agreement and disagreement with regard to discovery in connection with the hearing on confirmation of both the Plan and the Luna Plan. This Joint Statement is submitted to fulfill that directive.

DISCOVERY STATUS

1. Discovery Schedule. The parties agree to the following discovery schedule, subject to the specific exceptions set forth below with respect to certain parties:

(a) Objections, if any, to Joint Movants' Document Requests due on or before September 11, 2009.

(b) Objections, if any, to the City's Document Requests due on or before September 25, 2009.

(c) Documents in response to the Joint Movants' Document Requests to be produced by the Plan Proponents and the Luna Plan Proponents on a rolling basis, commencing no later than September 14, 2009, and to be substantially completed on September 21, 2009 for non-electronic documents and by October 2, 2009 for electronic documents. The City has requested that it receive copies of all documents produced in response to the Joint Movants' Document Requests.

(d) Plan Proponents to serve discovery requests on or before September 8, 2009.

(e) Plan Proponents to disclose witnesses, fact and expert, on or before Friday, September 18, 2009, with brief description of subject of testimony.

(f) Objections, if any, to the Plan Proponents discovery requests due on or before September 21, 2009.

(g) Joint Movants to disclose witnesses, fact and expert, on or before Friday, September 25, 2009, with brief description of subject of testimony.

(h) Documents to be produced by the Joint Movants on or before October 2, 2009.

(i) Fact witness depositions to commence on October 5, 2009 and to continue day by day until complete.

(j) Plan Proponents' expert witness reports to be produced on or before October 2, 2009.

(k) Joint Movants' expert witness reports to be produced on or before October 16, 2009.

(l) All parties to disclose any rebuttal witnesses on or before October 19, 2009, with a brief description of subject of testimony and all bases or identification of witness as a rebuttal witness. Each party to this Stipulation reserves the right to challenge a rebuttal witness on the basis that the testimony to be provided by such witness is not rebuttal testimony.

(m) Expert witness depositions to commence on October 19, 2009 and to continue day by day until complete.

(n) Parties to identify all hearing exhibits by October 29, 2009, other than exhibits to be used for cross-examination and impeachment.

(o) The Parties request that the Bankruptcy Court schedule a pre-trial conference in connection with the Confirmation Hearing the week of October 26, 2009.

The parties agree that each of the deadlines set forth above can be adjourned to a date that is mutually acceptable without the need to obtain leave of the Bankruptcy Court.

2. MLCC. The Committee and DBTCA and MLCC agreed to modify the Committee's and DBTCA's Document Requests directed towards MLCC. Consistent with an agreement reached with the Committee and DBTCA, MLCC will produce responsive, non-privileged documents that were created or received on or after May 1, 2008.

3. Luna Plan Proponents. The Joint Movants and the Luna Plan Proponents have agreed to modify the Joint Movants' Document Requests. The parties agreed that the Luna Plan Proponents will produce all relevant, non-privileged documents that are in their possession, custody or control related to (a) any liquidation analysis or valuation relied upon by the Luna Plan Proponents in the development of the Luna Plan, (b) the Projections (as defined in the Joint Movants' Document Requests), and (c) any efforts to obtain Exit Financing and the terms of the Exit Financing, as defined in the Luna Plan. The

Luna Plan Proponents will also produce documents that were generated on or after the Petition Date related to any and all bids that they made to the Debtors to purchase the Debtors' businesses.

The Joint Movants and the Luna Plan Proponents have also agreed that the Luna Plan Proponents will disclose the names of their fact witnesses by September 25, 2009, with brief descriptions of subject of testimony.

The Joint Movants and the Luna Plan Proponents have also agreed that the Luna Plan Proponents will disclose the names of their expert witnesses by September 28, 2009, with brief descriptions of subject of testimony, and produce any expert witness reports on or before on October 5, 2009.

4. The Debtors. There is substantial agreement as to the scope of the Debtors' production. Debtors have served objections to the Joint Movants' discovery requests and without waiving them have begun to produce hard copy documents. There are currently no disputes regarding the Debtors' hard copy document production, but the Joint Movants and the Debtors reserve all rights and defenses with respect to such production. With regard to electronically stored information ("ESI"), no agreement has been reached among the Joint Movants, the City and the Debtors.

A. Joint Movants' Proposal: With regard to ESI, the Joint Movants request that the Debtors undertake the following:

- 1) Email of a core group of no more than 10 individuals that have been involved in the formulation or conduct of any of the:
 - a. Plan
 - b. Preliminary Valuation
 - c. Liquidation Analysis

- d. Valuation and Prior Iterations
 - e. Projections and Prior Iterations
 - f. Sale Efforts
 - g. Exit Financing
- 2) Joint Movants will provide search terms for Debtors personnel to use to gather and produce emails pertaining to the topics listed in section 4. A. 1. above.²
- 3) Debtors will produce documents and information in hard copy format, but would not be responsible for producing emails, relating to the following topics:
- a. Current Assets and Liabilities
 - b. Non-core assets
 - c. Cash on hand
 - d. Secured Lenders' current and projected claims
 - e. Calculation of Administrative Claims
 - f. Intercompany claims
 - g. Amount of claims within each class in Plan
 - h. Current operating performance
- 4) The time period to be searched will begin on May 1, 2008.
- 5) The initial production will not include email attachments.

Particular email attachments identified by the Joint Movants will be produced upon request.

² Search terms were provided by the Joint Movants to the Debtors on Wednesday, September 16, 2009. Such search terms are attached hereto as Exhibit A.

- 6) Production is subject to agreed confidentiality terms.
- 7) Joint Movants reserve the right to seek additional material after the Debtors' initial search and production. The Debtors reserve the right to object to Joint Movants' request for additional material and to request that the Court determine whether the initial production was sufficient and any further search justified.

Primary Disagreements: The Joint Movants provided a list of search terms on Wednesday, September 16, 2009. The Debtors responded by stating that the search terms were unreasonable. Accordingly, there is no agreement between the Joint Movants and the Debtors regarding search terms. In addition, the Debtors propose that only a single search of the email folders of the personnel listed in section 4. B. 1. above be conducted and that the production of the results of such search will satisfy the Debtors' obligations to search and produce ESI. The Joint Movants believe that the Debtors' position is unreasonable, and contend that, at this time, the Joint Movants have no way of determining whether the initial production of ESI will be adequate. The Joint Movants reserve their rights to request additional ESI, if necessary, and the Debtors should have an opportunity to object to any such request and, if necessary, have the Bankruptcy Court determine whether additional searches and productions are justified. The Joint Movants and the Debtors also disagree on the time period to be searched.

B. Debtors' Proposal: With regard to ESI, the Debtors propose to undertake the following:

- 1) Email folders (inbox, sent items, deleted items, and outbox) for the following individuals would be searched: Cliff Vallier, Jason Pasko, Greg Khatchatrian, Bill Williams, Alan Kerridge.
- 2) Debtors' position is that Joint Movants have not provided reasonable search terms as requested and because of the time that elapsed since the Debtors proposed that reasonable search terms be provided by Joint Movants, Debtors have now undertaken searches of the above individuals' emails using the following search terms:
 - a. Plan
 - b. Valuation (which would capture all references to Preliminary Valuation as well)
 - c. Liquidation Analysis
 - d. Projections
 - e. Sale Efforts
 - f. Exit Financing
- 3) Subject to the objections to the Joint Movants' discovery requests previously served, Debtors will continue their rolling production of information relating to (but would not be responsible for producing emails on) the following topics:
 - a. Current Assets and Liabilities
 - b. Non-core assets
 - c. Cash on hand
 - d. Secured Lenders' current and projected claims

- e. Calculation of Admin Claims
 - f. Intercompany claims
 - g. Amount of claims within each class in Plan
 - h. Current operating performance
- 4) The time period to be searched will begin in October, 2008.
 - 5) The initial production will not include email attachments.

Particular email attachments identified by the Joint Movants will be provided upon request, within reason.
 - 6) Production is subject to agreed confidentiality terms.
 - 7) Debtors do not waive any rights regarding seeking reimbursement or cost shifting for costs, fees, or time required to gather, filter, and produce emails.
 - 8) Greentown will not be required to use outside vendors, which should eliminate any vendor registration and licensure concerns which might otherwise exist.
 - 9) Upon performance of one search using the search terms set forth above and production of the responsive non-privileged and non-attorney work product documents discovered in such search, Debtors' obligation to search and produce ESI is complete.

5. CMD. There is partial agreement as to the scope of the CMD production. CMD has joined in Debtors' objections to the Joint Movants' discovery requests and without waiving those objections has begun to produce hard copy documents. There are currently no disputes regarding CMD's hard copy document production, but the Joint

Movants and CMD reserve all rights and defenses with respect to such production. With regard to ESI, no agreement has been reached among the Joint Movants and CMD.

A. Joint Movants' Proposal: With regard to ESI, the Joint Movants request that CMD undertake the following:

1) Email of a core group of no more than 5 individuals (Charles Moore, Alex Calderone, Kevin Berry, Tammy Berry, and Matt Davidson) that have been involved in the formulation or conduct of any of the:

- a. Plan
- b. Preliminary Valuation
- c. Liquidation Analysis
- d. Valuation and Prior Iterations
- e. Projections and Prior Iterations
- f. Sale Efforts
- g. Exit Financing

2) Joint Movants would provide search terms³ for CMD to use to gather and produce emails pertaining to the topics listed in section 5. A. 1. above.

3) CMD will produce documents and information in hard copy format, but would not be responsible for producing emails, relating to the following topics:

- a. Current Assets and Liabilities

³ The Joint Movants propose that CMD use the same search terms that have been provided to the Debtors, which are listed on Exhibit A hereto.

- b. Non-core assets
 - c. Cash on hand
 - d. Secured Lenders' current and projected claims
 - e. Calculation of Administrative Claims
 - f. Intercompany claims
 - g. Amount of claims within each class in Plan
 - h. Current operating performance
- 4) The time period to be searched will begin in October 2008.
- 5) The initial production will not include email attachments. Particular email attachments identified by the Joint Movants will be provided upon request.
- 6) Production is subject to agreed confidentiality terms.
- 7) Joint Movants reserve the right to seek additional material after the CMD's initial search and production. CMD reserves the right to object to Joint Movants' request for additional material and to request that the Court determine whether the initial production was sufficient and any further search justified.

Primary Disagreement: The Joint Movants provided a list of search terms on Wednesday, September 16, 2009. The Debtors responded by stating, on behalf of themselves and CMD, that the search terms were unreasonable. As such, there is no agreement between the Joint Movants and CMD regarding search terms. In addition, the Debtors, on behalf of CMD, propose that only a single search of the email folders of the personnel listed in section 4. B. 1. above be conducted and that the production of the results of such search will

satisfy the Debtors' obligations to search and produce ESI. The Joint Movants believe that the Debtors' position is unreasonable, and contend that, at this time, the Joint Movants have no way of determining whether the initial production of ESI will be adequate. The Joint Movants must reserve their rights to request additional ESI, if necessary, and that CMD should have an opportunity to object to any such request and, if necessary, have the Bankruptcy Court determine whether additional searches and productions are justified. The Joint Movants and CMD also disagree on the time period to be searched.

B. CMD's Proposal: With regard to ESI, CMD proposes to undertake the following:

- 1) Email folders (inbox, sent items, deleted items, and outbox) for the following 5 individuals would be searched: Charles Moore, Alex Calderon, Kevin Berry, Tammy Berry, and Matt Davidson.
- 2) Joint Movants would provide reasonable search terms for CMD to use to gather and produce emails pertaining to the following topics (as they pertain to the Greektown bankruptcy case):
 - a. Plan
 - b. Preliminary Valuation
 - c. Liquidation Analysis
 - d. Valuation and Prior Iterations
 - e. Projections and Prior Iterations
 - f. Sale Efforts

- g. Exit Financing
- 3) CMD will produce information relating to, but would not be responsible for producing emails pertaining to the following topics:
 - a. Current Assets and Liabilities
 - b. Non-core assets
 - c. Cash on hand
 - d. Secured Lenders' current and projected claims
 - e. Calculation of Administrative Claims
 - f. Intercompany claims
 - g. Amount of claims within each class in Plan
 - h. Current operating performance
- 4) The time period to be searched will begin in October, 2008.
- 5) The initial production will not include email attachments.
Particular email attachments identified by the Joint Movants will be provided upon request, within reason.
- 6) Production is subject to agreed confidentiality terms.
- 7) CMD does not waive any rights regarding seeking reimbursement or cost shifting for costs and time required to gather, filter, and produce emails.
- 8) CMD will not be bound to use search terms but may use them for guidance in its discretion.

6. Moelis. Moelis has joined in Debtors' objections to the Joint Movants' discovery requests and without waiving those objections intends to produce certain hard

copy documents. There are currently no disputes regarding Moelis' hard copy document production, but the Joint Movants and Moelis reserve all rights and defenses with respect to such production. With regard to ESI, no agreement has been reached among the Joint Movants and Moelis.

A. Joint Movants' Proposal: With regard to ESI, the Joint Movants request that Moelis undertake the following:

- 1) Email of a core group of no more than 5 individuals that have been involved in the formulation or conduct of any of the:
 - a. Plan
 - b. Preliminary Valuation
 - c. Liquidation Analysis
 - d. Valuation and Prior Iterations
 - e. Projections and Prior Iterations
 - f. Sale Efforts
 - g. Exit Financing
- 2) Joint Movants would provide search terms⁴ for Moelis to use to gather and produce emails pertaining to the topics listed in section 5. A. 1. above.
- 3) Moelis will produce documents and information in hard copy format, but would not be responsible for producing emails, relating to the following topics:
 - a. Current Assets and Liabilities

⁴ The Joint Movants propose that Moelis use the same search terms that have been provided to the Debtors, which are listed on Exhibit A hereto.

- b. Non-core assets
 - c. Cash on hand
 - d. Secured Lenders' current and projected claims
 - e. Calculation of Administrative Claims
 - f. Intercompany claims
 - g. Amount of claims within each class in Plan
 - h. Current operating performance
- 4) The time period to be searched will begin in May 2008.
- 5) The initial production will not include email attachments. Particular email attachments identified by the Joint Movants will be produced upon request.
- 6) Production is subject to agreed confidentiality terms.
- 7) Joint Movants reserve the right to seek additional material after the Debtors' initial search and production. Moelis reserves the right to object to Joint Movants' request for additional material and to request that the Court determine whether the initial production was sufficient and any further search justified.

B. Moelis' Proposal: With regard to ESI, Moelis proposes to produce non-privileged, non-attorney work product emails using the following search terms (as they pertain to the Greektown bankruptcy case):

- a. Plan
- b. Valuation
- c. Preliminary Valuation
- d. Liquidation Analysis

- e. Projections
- f. Sale Efforts
- g. Exit Financing.

7. Fine Point Group. With regard to FPG, no agreement has been reached among the Joint Movants and FPG.

A. Joint Movants' Proposal: With regard to FPG, the Joint Movants request that FPG undertake the following:

- 1) Produce all emails responsive to Joint Movants' Document Requests for 3 individuals: Randall Fine, Chris Colwell, and Amanda Totaro.
- 2) The time period to be searched will begin on June 1, 2009.
- 3) The initial production of e-mail will not include email attachments. Particular email attachments identified by the Joint Movants will be produced upon request.
- 4) FPG must produce all responsive, non-privileged documents stored in hard copy format.

Primary Disagreements: Joint Movants do not believe that the volume of documents, that FPG has indicated that a search of the email folders of the individuals listed in section 7. A. 1. above for all of the topics listed in the Joint Movants' discovery requests would yield, would be burdensome to review. Therefore, it is not necessary to narrow the scope or to propose search terms.

B. FPG's Proposal: With regard to ESI, FPG agrees with items (1) – (3) of the Joint Movants' proposal. As to item (4), FPG will produce the

responsive and non-privileged documents in electronic format, which FPG understands is acceptable to the Joint Movants.

Primary Disagreements: FPG disagrees with the Joint Movants' position regarding the burden presented by the document requests as drafted. Although FPG appreciates and agrees with the limitation of the responsive period to June 1, 2009 forward, the requests as drafted provide little guidance as to the documents the Joint Movants actually seek. Further, even limiting the inquiry to FPG emails containing the word "Greektown" yields around 6,000 emails since June 1, 2009. Although the Joint Movants did not explicitly state this in their above proposal, FPG understands based on prior interactions with counsel that the Joint Movants agree that the inquiry is further narrowed to emails containing the word "Greektown."

To reduce the burden associated with reviewing and producing the emails, FPG sought to work with the Joint Movants to develop search terms with which to review FPG's potentially responsive emails. FPG even offered to conduct further searches if the Joint Movants later determined that an initial search term-based review did not yield all responsive documents. Joint Movants refused this proposal and further refused to even provide FPG with a better description of the topics for which it seeks responsive documents (even though a general discussion of such topics occurred in Court following the September 11 hearing). The Joint Movants were only willing to describe some of the topics that do NOT interest them, such as emails related to the casino buffet or valet service, for example. This is not particularly helpful to FPG in narrowing its review.

FPG has therefore undertaken a review of its emails for the responsive period and will produce nonprivileged emails based on FPG's best understanding of what the Joint Movants consider responsive to the broadly stated document requests. Because the Joint Movants were unwilling to provide substantive guidance in this area, FPG suggests that the Court should not entertain any potential future complaints from the Joint Movants regarding the sufficiency of FPG's production.

FPG does not stipulate to September 11, 2009 as the deadline for responses to the Joint Movants' Document Requests. However, FPG expects to serve responses and specific objections, along with a document production, by or shortly following the hearing on September 21, 2009.

Dated: September 17, 2009

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