

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

**In Re: LOUISIANA CRANE &
CONSTRUCTION, LLC**

* **Case No. 16-50876**
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* **Chapter 11 Proceeding**
*
* **Judge Robert Summerhays**

**OBJECTION BY STERLING NATIONAL BANK TO THE
DEBTOR’S MOTION TO APPROVE ITS PROPOSED AMENDED DISCLOSURE
STATEMENT AND STERLING’S GENERAL OBJECTION TO
THE DEBTOR’S PROPOSED AMENDED PLAN OF REORGANIZATION**

Sterling National Bank (“Sterling”), secured creditor to Louisiana Crane & Construction, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), by its undersigned counsel, hereby submits the following objection (the “Objection”) to the Debtor’s Amended Disclosure Statement dated June 6, 2017 (the “Amended Disclosure Statement”) with respect to its proposed Amended Chapter 11 Plan of Reorganization dated June 6, 2017 (the “Amended Plan”) and as a general objection to the Amended Plan¹, and respectfully represents as follows:

STERLING’S OBJECTION

1. At the outset, Sterling wishes to state that it hopes that the issues raised herein can be consensually resolved to the mutual satisfaction of the parties.

¹Sterling is submitting this Objection as not only an objection to the Amended Disclosure Statement but also as a general objection to the Amended Plan because many of Sterling’s objections to the Amended Disclosure Statement and Amended Plan are duplicative of and/or necessarily correlate to one another although “Plan objections” are not yet due. In any event, whether or not the Debtor is allowed to even solicit the Amended Plan is dependent upon the Court first approving the Amended Disclosure Statement. Sterling expressly reserves its right to submit a further objection to the Amended Plan if and when the Amended Disclosure Statement (or some amended form thereof) is actually approved by the Court.

2. On April 20, 2017, Sterling filed its Objection to the Debtor's Motion (the "Motion") to approve its Disclosure Statement dated March 8, 2017 (the "Disclosure Statement") and as an initial objection to the Debtor's proposed Plan of Reorganization bearing the same date (the "Plan"). (See ECF Docket No. "531") (the "Initial Objection"). Annexed collectively hereto as **Exhibit "1"** is a true and complete copy of the Initial Objection which contains all of the Exhibits annexed thereto.

3. The nature and basis of Sterling's secured claim against the Debtor is set forth in detail in the Initial Objection and need not be repeated herein. As set forth in the Initial Objection, Sterling previously filed a Lift Stay Motion with the Court and thereafter, Sterling and the Debtor entered into a certain Stipulation which was so ordered by the Court on November 30, 2016 (the "Adequate Protection Stipulation"). (See Exhibit "B" to Initial Objection).

4. On May 2, 2017, this Court held a hearing on the Motion and directed the Debtor to file an amended Disclosure Statement on or before May 30th.² Any objections to same were required to be filed on or before June 6, 2017. (See ECF Docket No. "568" dated May 2, 2017).

5. Sterling's objections to the Amended Disclosure Statement and Amended Plan are set forth immediately below.

THE PROPOSED RELEASE OF THE GUARANTORS

6. For the reasons set forth in Sterling's Initial Objection, the Debtor still offers no real explanation in the Amended Disclosure Statement as to why the non-Debtor Guarantors of

²Although prior "Redlined" drafts of the Amended Disclosure Statement and Amended Plan were circulated by Debtor's counsel to Sterling's counsel (and counsel for other secured creditors and other parties in interest), the finalized versions of same were not actually filed by the Debtor with the Court until late in the day on June 6th, the same date that creditor's objections were due. As a result of the forgoing, the Debtor's counsel has advised that Sterling's counsel that it could file this Objection on June 7th.

certain of the Debtor's debts are being given the extraordinary benefit of an injunction which shields them from any lawsuits by the Debtor's creditors.

7. As noted in the Initial Objection, the Fifth Circuit Court has repeatedly held under §524 of the Bankruptcy Code that a plan of reorganization may only provide for, and the bankruptcy court may only determine, dischargeability of debts owed by debtor, not those owed by third parties. *See, e.g. Citizens Bank & Trust v. Case (In re Case)*, 937 F.2d 1014, 1025 (5th Cir. 1991).

8. In addition to its secured claim against the Debtor, Sterling has claims against various guarantors of the Debtor's debt which includes individual guarantors as well as limited liability company guarantors. (See Exhibit "D-4" to Amended Disclosure Statement which identifies some of the guarantors liable for the Debtor's debt to Sterling). The Amended Disclosure Statement defines "Guarantors" as certain individuals and limited liability companies identified therein. (See Amended Disclosure Statement, Page "6", Paragraph "37").

9. The Amended Disclosure Statement provides zero information, let alone, "adequate information," about the Guarantors, their relationship to or role with the Debtor and its business operations or why the Debtor's creditors should be enjoined from suing them. Nor does the Debtor offer any legal support or applicable case law in the Motion as to why non-Debtor guarantors are allowed to receive this benefit from the Plan.

10. Contrary to Debtor's counsel's assertions, this is both a "Disclosure Statement" and "Plan" objection. This objection relates to the Amended Disclosure Statement because there is no "adequate information" about the Guarantors, their relationship to or role with the Debtor and its business operations or why the Debtor's creditors should be enjoined from suing them.

11. The injunction against suits against the Guarantors is further objectionable because the Plan provides that even in the event of the Debtor's uncured Default under the Plan, a creditor still needs to obtain an Order from this Court authorizing it to sue the Guarantors. (See Amended Plan, Article X, Page "50"). This is respectfully another unnecessary obstacle which protects the non-Debtor Guarantors.

12. Finally, the language in the Plan is further objectionable because the stay of lawsuits against the Guarantors could result in Sterling's claims against the Guarantors ultimately being time barred at some later date by the applicable statute of limitations assuming that the Debtor's debt to Sterling is not paid in full. Needless to say, this result would be entirely inequitable. This possibility of claims against the Guarantors being time barred even discussed in the Amended Disclosure Statement.

**THE AMENDED DISCLOSURE STATEMENT STILL FAILS TO PROVIDE
ADEQUATE INFORMATION AS TO HOW THE AMENDED PLAN IS FEASIBLE**

13. Although the Amended Disclosure Statement provides Financial Projections (Exhibit "D-2" to Amended Disclosure Statement) (the "Financial Projections"), such Financial Projections still do not sufficiently explain how the Debtor expects to have sufficient funds to consummate and implement the Amended Plan.

14. The Debtor states in a general and conclusory manner that the Amended Plan will be funded by: "...(i) the Cash held by the Debtor on the Effective Date and (ii) the Reorganized Debtor's operations..." (See Amended Disclosure Statement, Page "51").

15. By way of example only, the Debtor indicates in its summary in the Financial Projections that its estimated opening cash balance for the month of June is the sum of \$1,000,000 (See Financial Projections, Page "7") but its current cash balance for the month

ending April 30, 2017 is the sum of only approximately \$224,000 based upon the Debtor's monthly operating report filed with the Court. (See ECF Docket #578, Debtor's Monthly Operating Report for April, 2017, "Cash Summary, Page "5"). In August, the Debtor is projected to have a cash balance of \$1,721,443.21. (See Financial Projections Page "7"). This is a significant cash shortfall and based upon the Debtor's earnings and income to date, it is entirely unclear how the Debtor expects to make up this difference. This is especially true given the fact that the Debtor's most recent Operating Report for April indicates that it had a net loss of \$56,215.90 for said month. (See ECF Docket #578, Debtor's Monthly Operating Report for April, 2017, Page "4").

16. The Financial Projections do contain a note stating that, "Opening Cash balance is calculated based upon assumed cash on hand and receivables on hand which can be converted into cash by either factoring or collections. At present we have unfactored receivables and WIP of \$1.3m" (See Financial Projections, Page "1").

17. However, no details are provided as to how much money factoring the unfactored receivables is expected to generate, what the projections are based upon or how all of this relates to the post-petition sum of \$1,982,498.62 which the Debtor already admittedly owes to its lender, Amegy Bank. (See Amended Disclosure Statement, Page "19").

18. It is also unclear what effect, if any, the Internal Revenue Service's (the "IRS") amended proof of claim against the Debtor in the aggregate sum of \$8,489,474.62 (of which the IRS has claimed that the amount of \$6,569,884.32 is entitled to priority) will have on the feasibility of the Amended Plan.

19. In conclusion and not even factoring in the IRS claim, the Debtor has still not

provided adequate information in the Amended Disclosure Statement which would indicate how the Amended Plan is actually feasible.

**THE LANGUAGE IN THE AMENDED PLAN CONCERNING THE SECURED
CREDITOR'S REMEDIES UPON AN EVENT OF DEFAULT
SHOULD BE MORE CLEAR**

20. As noted in the Initial Objection, the Adequate Protection Stipulation provides a procedural mechanism whereby upon the Debtor's default thereunder and its failure to cure such default after notice and a cure period, the automatic stay provided by Bankruptcy Code §362 will be automatically lifted without further notice and Sterling will be allowed to recover possession of the Crane (the Equipment subject of the parties' security agreement).

21. The Amended Plan indicates that, "To the extent a default occurs under the Plan, creditors will be able to exercise whatever rights and remedies they possess under applicable Bankruptcy and Non-Bankruptcy Law." (See Amended Plan, Paragraph "Y", Page "51").

22. Presumably, this means that the automatic stay will be lifted without further Order of the Court or notice but the language should be clearer. It is respectfully submitted that upon an uncured event of default under the Amended Plan, Sterling should not have to seek an Order from the Court to lift the stay to recover the Crane, as it was not required to so under the Adequate Protection Stipulation, which was So Ordered by this Court. If the Debtor's intent is that upon an uncured event of default under the Amended Plan, the secured creditors should not have to seek stay relief, language should be added to the Amended Plan to clarify same.

CONCLUSION

23. In conclusion, because the Amended Disclosure Statement does not contain adequate information necessary for creditors to make an informed judgment about the Amended

Plan, Sterling respectfully requests that the Court sustain its foregoing Objection to the Amended Disclosure Statement and its general objection to the Amended Plan.

WHEREFORE, it is respectfully requested that the Court sustain Sterling's Objection to as set forth above, together with such other and further relief the Court finds just, proper and equitable.

Respectfully submitted,

BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corporation)

By: /s/ B. Slattery Johnson, Jr.
B. Slattery Johnson, Jr., LA Bar #31486

P. O. Drawer 1126 (71163)
333 Texas Street, Suite 700 (71101)
Shreveport, Louisiana
318/221-6858
Fax: 318/227-2967

PLATZER, SWERGOLD, LEVINE,
GOLDBERG, KATZ & JASLOW, LLP
Henry G. Swergold, Esq.
Mitchell L. Kaplan, Esq.
475 Park Avenue South, 18th Floor
New York, New York 10016
212/593-3000

ATTORNEYS FOR
STERLING NATIONAL BANK

UNITED STATES BANKRUPTCY COURT
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CERTIFICATE

I hereby certify that on June 7, 2017, I electronically filed the foregoing Objection by Sterling National Bank to the Debtor's Motion to Approve its Proposed Amended Disclosure Statement and Sterling's General Objection to the Debtor's Proposed Amended Plan of Reorganization and attachments thereto with the Clerk of this Court using the CM/ECF electronic filing system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system at the email address registered with the court:

Richard A. Aguilar on behalf of Creditor Wells Fargo Equipment Finance, Inc.
raguilar@mcglinchey.com, aparnell@mcglinchey.com

H. Kent Aguillard on behalf of Creditor Citizens Bank, Ville Platte, Louisiana
kaguillard@yhalaw.com, gneumeyer@yhalaw.com

David J. Ayo on behalf of Creditor Triple R. Brothers d/b/a Ritter Forest Products
davidayo@allengooch.com

Alicia M. Bendana on behalf of Creditor Wabash National Corporation
abendana@lshah.com

Julia E. Blewer on behalf of Creditor Nations Fund I, L.L.C.
jblewer@djslawfirm.com, ijohnson@djslawfirm.com; jcarter1@djslawfirm.com

Florence Bonaccorso-Saenz on behalf of Creditor Louisiana Department of Revenue
Florence.Saenz@la.gov

Greta M. Brouphy on behalf of Attorney Heller Draper Patrick Horn & Dabney LLC
gbrouphy@hellerdraper.com

Brandon A. Brown on behalf of Creditor De Lage Landen Financial Services, Inc.
bbrown@stewartrobbins.com, kheard@stewartrobbins.com

Deirdre Carey Brown on behalf of Creditor Enterprise Product Partners, L.P.
brown@hooverslovacek.com; brown.hslp@gmail.com; skerrett@hooverslovacek.com

Mark J. Chaney, III on behalf of Creditor Wells Fargo Equipment Finance, Inc.
mchaney@mcglinchey.com, aparnell@mcglinchey.com

Scott R. Cheatham on behalf of Creditor Mack Financial Services
scott.cheatham@arlaw.com, Vicki.Owens@arlaw.com

Leslie A. Collins on behalf of Debtor Louisiana Crane & Construction, L.L.C.
lcollins@hellerdraper.com

Michael A. Crawford on behalf of Debtor Louisiana Crane & Construction, L.L.C.
mike.crawford@taylorporter.com, Cindy.hughes@taylorporter.com

Harold L. Domingue, Jr. on behalf of Creditor Daniel Saldana
hdomingue@bellsouth.net

Douglas S. Draper on behalf of Debtor Louisiana Crane & Construction, L.L.C.
ddraper@hellerdraper.com, kfritscher@hellerdraper.com;lcollins@hellerdraper.com

Brett P. Furr on behalf of Debtor Louisiana Crane & Construction, L.L.C.
brett.furr@taylorporter.com, karla.dietz@taylorporter.com

Patrick S. Garrity on behalf of Creditor Committee Official Committee of Unsecured Creditors
pgarrity@steffeslaw.com, pgarrity@ecf.courtdrive.com;schassaing@steffeslaw.com

Jon Ann Giblin on behalf of Creditor EverBank Commercial Finance, Inc.
jgiblin@mcglinchey.com

Jan Marie Hayden on behalf of Creditor Caterpillar Financial Services Corporation
jhayden@bakerdonelson.com, gmitchell@bakerdonelson.com

Iberiabank
ryanc@onebane.com

B. Slattery Johnson, Jr. on behalf of Creditor Sterling National Bank
sjohnson@bwor.com, kangevine@bwor.com

Benjamin W. Kadden on behalf of Creditor People's United Equipment Finance Corp.
bkadden@lawla.com, mnguyen@lawla.com

Heather A. LaSalle on behalf of Creditor Wells Fargo Equipment Finance, Inc.
hlasalle@mcglinchey.com

John M. Landis on behalf of Creditor Banc of America Leasing & Capital, LLC
jlandis@stonepigman.com, boneil@stonepigman.com

Michael E. Landis on behalf of Creditor Atascosa County
mlandis@gamb.law

J. Eric Lockridge on behalf of Creditor Central Bank of St. Louis
eric.lockridge@keanmiller.com, Brenda.seneca@keanmiller.com

Armistead M. Long on behalf of Creditor Amegy Bank Business Credit
along@gamb.law, sroberts@gamb.law

Gail Bowen McCulloch on behalf of U.S. Trustee Office
gail.mcculloch@usdoj.gov

Robert E. McKnight, Jr., on behalf of Defendant Tech Con Trenching, Inc.
mcknightr@lawmgk.com, remcknightjr@gmail.com

Patricia B. McMurray on behalf of Creditor Blue Cross Blue Shield of Louisiana
pmmcurray@bakerdonelson.com, mgilmore@bakerdonelson.com

Barry W. Miller on behalf of Debtor Louisiana Crane & Construction, L.L.C.
bmiller@hellerdraper.com, rterrebonne@hellerdraper.com;kfritscher@hellerdraper.com

Stephen C. Polito on behalf of Creditor JD Bank
scpolito@ssvcs.com, pgsmith@ssvcs.com

Steven T. Ramos on behalf of Creditor Joseph Earl Toups
sramos@andrus-boudreaux.com

Ryan James Richmond on behalf of Creditor De Lage Landen Financial Services, Inc.
richmond@stewartrobbins.com, kheard@stewartrobbins.com

William S. Robbins on behalf of Creditor De Lage Landen Financial Services, Inc.
wrobbins@stewartrobbins.com, jdelage@stewartrobbins.com;kheard@stewartrobbins.com

Lacey Elizabeth Rochester on behalf of Creditor Caterpillar Financial Services Corporation
lrchester@bakerdonelson.com

David S. Rubin on behalf of Creditor Siemens Financial Services, LLC
drubin@kswb.com

Craig A. Ryan on behalf of Creditor Iberiabank
ryanc@onebane.com, hollierj@onebane.com;surrenac@onebane.com

Gerald H. Schiff on behalf of Creditor Amegy Bank Business Credit
gschiff@gordonarata.com, sroberts@gordonarata.com

William E. Steffes on behalf of Creditor Committee Official Committee of Unsecured Creditors
bsteffes@steffeslaw.com, akujawa@steffeslaw.com;bsteffes@ecf.courtdrive.com

Earl F. Sundmaker on behalf of Creditor Mercedes-Benz Financial Services USA LLC
treys@sundmakerfirm.com

Office of U. S. Trustee
USTPRegion05.SH.ECF@usdoj.gov

Michael D. Warner on behalf of Creditor Nations Fund I, L.L.C.
mwarner@coleschotz.com, jbienstock@coleschotz.com;klabrada@coleschotz.com

Stephen D. Wheelis on behalf of Creditor Apeck Aggregate Supply, LLC
steve@wheelis-rozanski.com

Stephen L. Williamson on behalf of Creditor Atascosa County
swilliamson@monbar.com, mokeefe@monbar.com

Patrick H. Willis on behalf of Creditor Caterpillar Financial Services Corporation
pwillis@bakerdonelson.com

Joseph S. Woodley on behalf of Creditor Julio C. Pena Laballe
jwoodley@padwbc.com, mlawless@padwbc.com

Gerald C. deLaunay on behalf of Interested Party Reley Moneaux
delaunay@plddo.com

and on the debtor, Louisiana Crane & Construction, LLC, 1045 HWY 190 West, Eunice,
Louisiana, 70535, by placing same in the United States mail properly addressed, with sufficient
postage affixed, this 7th day of June, 2017.

/s/ B. Slattery Johnson, Jr.

Of Counsel