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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
Zucker Goldberg & Ackerman, LLC,	:	Case No. 15-24585(CMG)
Debtor.	:	Honorable Christine M. Gravelle

LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO THE DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR AND CREDITORS COMMITTEE JOINT PLAN OF ORDERLY LIQUIDATION

The Acting United States Trustee ("UST"), by and through his counsel, and in furtherance of his duties pursuant to 28 U.S.C. §586(a)(3) and (5), hereby asserts this limited objection to the Disclosure Statement In Support of Debtor and Creditors Committee Joint Plan of Orderly Liquidation (docket entry 782) (the "Disclosure Statement") for the following reasons:

BACKGROUND

1. On August 3, 2015, Zucker Goldberg & Ackerman, LLC, the Debtor, filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor has since remained in possession of its assets and management of its affairs pursuant to 11 U.S.C. §§ 1107 and 1108.

2. On or about August 12, 2015, the UST formed the Official Committee of Unsecured Creditors (see Notice filed at docket entry 78) (the "Committee").

3. On March 9, 2017, the Joint Plan of Orderly Liquidation Filed by the Debtor and the Official Committee of Unsecured Creditors (docket entry 781) (the "Plan") was filed. Accompanying the Plan, the Debtor and Committee also filed the Disclosure Statement.

4. Pursuant to 11 U.S.C. §586, the UST is obligated to oversee the administration of Chapter 11 cases. Under 11 U.S.C. §307, the UST has standing to be heard on any issue in any case or proceeding under the Bankruptcy Code. Such oversight is part of the UST's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.)*, 33 F.2d 294, 295-96 (3d Cir. 1994) (noting that the UST has "public interest standing" under 11 U.S.C. §307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the United States Trustee as a "watchdog").

LEGAL ANALYSIS

5. Pursuant to Section 1125(b) of the Bankruptcy Code, the Disclosure Statement must contain "adequate information" to allow parties to make an informed judgment about the Debtor's Plan. Section 1125(a)(1) defines "adequate information" as follows:

> "[A]dequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about

> the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

6. Full disclosure is a fundamental policy in the reorganization process. See Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3rd Cir. 1980), Cert. Denied, 109 S. Ct. 495 (1988) ("[W]e cannot overemphasize the Debtor's obligation to provide sufficient data to satisfy the code standard of adequate information."). See also In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) ("Given the necessity for adequate information in the Disclosure Statement and the paramount position Section 1125 occupies in the Chapter 11 process, there is little, if any, room for harmless error.").

7. When assessed against the standards outlined above, it is respectfully asserted that the Disclosure Statement as filed warrants certain edits and/or additions, as detailed below.

SPECIFIC OBJECTIONS TO THE DISCLOSURE STATEMENT[1]

Reference to Powers of Plan Administrator:

8. In reading the Disclosure Statement together with the accompanying Plan, it appears that the itemization of the Plan Administrator's powers/duties appears in the Plan (and is not restated in the Disclosure Statement). The empowering of the Plan Administrator is an important aspect of the proposal, and the extent of such powers should be referenced in the Disclosure

[1] Capitalized terms not otherwise defined shall have the meaning as ascribed in the Disclosure Statement and Plan.

Statement. It is respectfully suggested that a summary reference[2] to the Plan provision that details such powers (subsection 5.1.1, found on pages 22-24 of the Plan) should be included in the Disclosure Statement (possibly in the section "Appointment of Plan Administrator" on page 7 of the Disclosure Statement).

Reference to Potential Third Party Provider Recoveries For Class 3 Unsecured Claims:

9. The Plan provides that "each holder of an Allowed General Unsecured Claim shall receive a Pro Rata share of any Third Party Provider Recoveries." *See*, subsection 3.2.3 (b) of the Plan, pg. 20. The Plan further provides for a Third Party Provider Election Form. *See*, subsection 1.2.116 of the Plan, pg. 15. It does not appear that the description of treatment of unsecured creditors in the Disclosure Statement includes a discussion of this potential recovery. It is respectfully asserted that a brief introduction of the possibility of Third Party Provider Recoveries for unsecured creditors, as well the Third Party Provider Election Form process proposed in the Plan, should be outlined in in the Disclosure Statement (possibly in subsection IV.N. of the Disclosure Statement titled "Potential Trust Claims Against the Bankruptcy Estate" and/or in subsection V.B.3. of the Plan titled "Class 3 – General Unsecured Claims").

Obligation to Provide Notice of the Effective Date:

10. The Plan expressly provides that the Effective Date shall be the Business Date following the satisfaction of certain conditions outlined in the Plan. *See*, subsection 9.4 of the Plan, pg. 34. However, the documents do not appear to expressly require any party to file a notice of the occurrence of the Effective Date. The Effective Date is important in that it re-vests assets

[2] We recognize the effort to maintain a form of Disclosure Statement that reads in straight-forward terms, and is not overly long. Adding a summary reference to the Plan provision that details the Plan Administrator's powers is what is being suggested here.

in the reorganized debtor, and transforms the debtor-in-possession proceeding into a post-confirmation proceeding. It is respectfully asserted that some party (whether it be Debtor, Committee, or Plan Administrator) be expressly obligated to file a notice of occurrence of the Effective Date.

Commencement of Plan Administrator Powers:

11. Reading the documents together, there does not appear to be a clear statement as to when the Plan Administrator's powers commence. It is respectfully asserted that there should be a clear statement that the Plan Administrator's powers commence upon the occurrence of the Effective Date. Being that the Plan is the operative document post-confirmation, it is also respectfully asserted that such statement should be added into that document as well (possibly in the introductory paragraph under subsection 5.1.1. of the Plan titled "General Powers, Rights and Responsibilities of Plan Administrator").

Notice of Settlements and/or Compromises by Plan Administrator:

12. The Plan provides that the Plan Administrator shall have:

> the exclusive right, authority, and discretion to … settle, or compromise any and all such claims, rights, and causes of action without the consent or approval of … the Bankruptcy Court or any other court (subject to Notice to the Oversight Committee and counsel for the Debtor and the right of unpaid administrative claimants and creditors to object and bring issue before the Bankruptcy Court, as appropriate).

Plan, subsection 5.1.1, page 22. However, the documents do not provide for any notice procedure with respect to any settlement or compromise of any claim by the Plan Administrator. It is respectfully asserted that an obligation for the Plan Administrator to comply with some notice mechanism should be included in the Plan, and such notice process should be communicated in the

Disclosure Statement.

Reservation of Substantive Consolidation Remains Unclear:

13. Subsection 5.1.1(f) authorizes the Plan Administrator to "substantively consolidate one or more of the Ackerman Entities or other Related Parties with the Debtor, including 4ST." *Plan*, pg. 23. It remains unclear how substantive consolidation would take place post-confirmation, after assets re-vest in a reorganized entity. It is respectfully asserted that such contemplated action by the Plan Administrator should be explained in the Disclosure Statement[3].

WHEREFORE, it is respectfully requested that the Disclosure Statement not be approved for lack of adequate information as required under section 1125 of the Bankruptcy Code.

Respectfully submitted,

ANDREW R. VARA
ACTING UNITED STATES TRUSTEE

Dated: March 27, 2017

By: */s/ Peter J. D'Auria*
Trial Attorney

[3] We appreciate that the Court may determine certain issues raised herein to be matters more appropriately addressed in the context of a confirmation hearing. We raise issues here in an effort to be inclusive in a productive dialogue over the Disclosure Statement. In this vein, the UST reserves all rights at confirmation, including but not limited to responding to any and all proposed indemnity, exculpation, limitation of liability, and injunction provisions.