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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Assigned to :
Honorable Chief Judge CARLA E. CRAIG

-----X
In re

NEW YORK CRANE & EQUIPMENT
CORP., *et al.*, Debtors

Chapter 11
Case No. 16-40043 (CEC)
(*Jointly Administered*)

-----X
In re: JAMES F. LOMMA

Case No. 16-40048 (CEC)

-----X
In re: J.F.LOMMA, INC.(NJ)

Case No. 16-40045 (CEC)

-----X
In re: J.F.LOMMA, INC.(DE)

Case No. 16-40044 (CEC)

-----X

STATEMENT & JOINDER OF UNSECURED CREDITOR, DEBTORS' AMENDED DISCLOSURE STATEMENT [DOC # 590] SUBMITTED FOR THE PURPOSE OF SOLICITING ACCEPTANCES TO DEBTORS' PATENTLY UNCONFIRMABLE AMENDED PLAN [DOC # 589] FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS [DOC # 671]; BY UNITED STATES STEEL CORPORATION [DOC # 647] ; AND, BY ZURICH AMERICAN INSURANCE COMPANY [DOC # 651] TOGETHER WITH ADDITIONAL OBJECTIONS

TO THE HONORABLE CARLA E. CRAIG,
CHIEF UNITED STATES BANKRUPTCY JUDGE :

Bernadette Panzella, P.C., is an unsecured Creditor of the above debtors in these jointly administered bankruptcy proceedings. I am the principal/owner of Bernadette Panzella, P.C..

With great respect for the extraordinary amount of time and judicial resources that have already been devoted to the Lomma Debtors' within bankruptcy proceedings, I shall not repeat here the objections to debtors' woefully inadequate and materially misleading amended disclosure statement [Doc # 590] as filed by the Committee's Counsel, by United States Steel Corporation and by Zurich American Insurance Company [Docs # 671; 647; 651] but rather, I join with said objections, which are incorporated herewith and made a part hereof and respectfully make additional/further objections as to Debtors' amended disclosure which was filed to solicit acceptances of the Debtors' patently unconfirmable plan, as follows:

(Attached hereto as EXHIBIT 1 and incorporated here with, is my Statement in Support of my Firm's Motion for an Order appointing a Trustee for debtor James F. Lomma, individually . Doc. # 505)

1. The main debtor is James F. Lomma. Debtors' statements alleging otherwise are demonstrably false. James F. Lomma was held 61% PERSONALLY liable for the deaths of Donald Christopher Leo and Ramadan Kurtaj who each suffered horrific pre-impact terror, pre-death terror and excruciating pain and suffering before succumbing to their mortal injuries. James F. Lomma's gross negligence was the cause of these two deaths, was the cause of serious personal injuries to others and \$20 Million in property damage when his 24 year old Kodiak tower crane fatally collapsed on May 30, 2008.

As the Trial Attorney for the Leo Estate, I have personal knowledge of Debtor/Defendant James F. Lomma's egregious conduct that warranted the Jurors' unanimous Verdict of gross negligence against James F. Lomma, personally, as well as his two defendant companies which he owns and controls, 100%.

I have personal knowledge as well as the Jurors' unanimous awards of punitive damages against James F. Lomma, personally and his two defendant/debtor companies. The Jurors heard testimony and saw real evidence of James F. Lomma defrauding the NYC Department of Buildings by his destruction of evidence and by his lies to the DOB, which is charged with protecting the Public and providing a safe environment for Workers.

The Jurors heard testimony about James F. Lomma's multiple suspicious insurance claims for damage to his cranes - claims supported by JR Bristow- who Lomma now seeks to evaluate his cranes and other equipment in these proceedings

The Jurors heard testimony that Lomma, unwilling to pay the fee of an engineer, tasked his mechanic to design the critical component of his Kodiak tower crane which ultimately failed, by combining multiple drawings and by making a template using a hammer to bang holes in a manila office folder.

The Jurors heard testimony at Trial that Lomma's own expert witness would NOT certify that the critical crane component that Lomma's mechanic designed met or exceeded the original manufacturer's specifications and safety factor- a DOB requirement.

The Jurors heard that it was Lomma, PERSONALLY, who certified this critical component - although Lomma is not an engineer.

Obviously, there is much more evidence against Lomma that the Jurors heard during the 119 Day Trial- the longest in New York State history - that led to the Juror' Verdicts and Awards including punitive damages against Lomma, personally.

None of these facts were provided in the debtors' amended disclosure statement. Rather, the debtors chose to present only Debtors' positions on the appeals of the Leo & Kurtaj Wrongful Death Verdicts and Awards, specifically including punitive damages. Such one-sided views of the appeals fails to provide essential information to Creditors, warranting denial of approval of Debtors' amended disclosure.

2. There are no “managers” making decisions for debtors- there is only James F. Lomma making ALL the decisions. Debtors misleading references to debtors’ alleged “managers” is patently false. It is very telling that there are no certifications , declarations or affidavits from debtors’ retained financial advisors , from debtors’ accountants, from debtors sometime comptroller, from debtor’s corporate counsel, included in debtors’ amended disclosure statement . Rather, there are only the bald assertions of debtors’ sole “manager”, James F. Lomma. It is Lomma who provides his personal evaluations for his vast real estate empire and for his various crane enterprises. The omission of professional financial analysis and evaluations warrants denial of approval of Debtors’ amended disclosure.

3. Lomma’s bankruptcy attorneys cannot be the “ disbursing agent” under any circumstances and for many reasons including multiple conflicts of interest. Lomma was told back in March 2016 that he should have his own attorneys in these proceedings - just as he has for his appeals - because there are “ conflicts” between Lomma and his debtor companies.

Usually, such conflicts counsel are retained to protect the person who has the apparent conflict. However, here, conflicts counsel is required to protect the Creditors. Otherwise, Lomma will be calling himself and his three adult children to see if JLJD will pay him back the \$20 Million in loans JLJD owes to him- personally.

Lomma will also be calling himself to see if JFL Leasing, a company he owns 100% will pay him back the \$4 Million that company owes to him -personally . Lomma will be making a lot of calls, including to his daughter to find out if JK Cranes- which is a d/b/a operating under yet another 100% Lomma owned and controlled entity, will be pay Lomma back the \$400K loan it owes to him -personally .

And, of course , Lomma will be calling himself up at JLJD on behalf of JF Lomma Inc. and NY Crane & Equipment Corp., to collect the \$4-15 Million these two debtors paid to JLJD in excess rent charges under a master lease Lomma negotiated with himself, by agreeing with himself as to the amount of crane rental/ crane assignment fees charged. Will Lomma sue himself to clawback these overcharges?

Will Lomma sue himself and his adult children if they don't pay back the multi-million dollar loans owed to him ?

And, what about Frank Kearney? Will Lomma sue his 40 year business partner? If Lomma does sue Kearney - who will represent Lomma and who will represent Kearney ?

Lomma's in- house corporate counsel, Chris Ericksson, is an associate at the law firm of Randy Pierce. Randy Pierce filed a notice of claim on behalf of Kearney against Lomma in these proceedings for millions of dollars . Randy Pierce lists among his clients JF Lomma, Inc., and New York Crane & Equipment Corp. Randy Pierce also lists O.J. Truck Wash as one of his clients. O. J. Truck Wash holds a mortgage on a Lomma/Kearney property. This mortgage was "arranged" with O.J. Truck Wash by Kearney. The owner of O. J. Truck Wash is Kearney's nephew.

There is more. Kearney just paid himself \$ 455K from a Lomma /Kearney real estate company, South Kearney Associates.

Not one of these conflicts was even mentioned, much less fully disclosed in debtors' amended disclosure statement, warranting denial of approval of Debtors' amended disclosure.

4. Frank Kearney CANNOT have any right to VOTE on the " debtors' amended plan.. But, it is Lomma's "plan" to have his insider be the proverbial "ringer" and vote in favor of Lomma's patently unconfirmable plan

5. Debtors' amended plan does not explain, much less justify, the post-petition purchase of \$ 21 Million in new cranes while at the same time reporting a utilization rate of 30%-40% of cranes in Lomma's inventory. With so many cranes idle why buy new cranes? The answer is simple, to convert debtors' liquid assets into illiquid assets- cranes which must then be sold to pay Creditors.

Furthermore, during the Civil Trial Lomma testified that he had 380 cranes - not 212 as he alleges here - Lomma also testified to a much higher utilization rate. What happened to those 168 missing cranes ? What happened to Lomma's utilization rate?

Debtors' amended disclosure statement fails to address any of these critically important issues and the 168 cranes that are MIA, warranting denial of approval of Debtors' amended disclosure statement.

6. So materially misleading is the debtors' disclosure statement with regard to Lomma's toy - his 2014 Pilates luxury jet plane, that we still do not know if this plane has a Part 135 authorization . But, we do know that Lomma lied to the Court and to his Creditors for months about not paying for the insurance for his plane. Lomma only admitted recently that he does pay for this insurance. Of course, he never disclosed other expenses for his plane including a \$30,000.00 management expense. Lommas omissions and lies warrant denial of approval of Debtors' amended disclosure.

7. Lomma's 341 is not yet completed. Each time he appears, a new asset is admitted - *albeit* following denial by Lomma which is then followed by confrontation with a document. This is a basis for denying approval of debtor's amended disclosure statement.

8. Kearney's 2004 examination is not completed either. This is a basis for denying approval of debtors' amended disclosure statement .

9. Lomma has failed to produce the original of a purported " note" between him and Kearney which gives rise to the false claim by Kearney for millions of dollars. The original of this note must be subjected to testing by an expert. This is a basis for denying approval of debtors' amended disclosure statement .

10. Lomma's accountants, Gilmore Gilmore & Graham have not yet submitted to a 2004 examination. This is a basis for denying approval of debtors' amended disclosure statement.

11. Class 2 claimants are not identified and no amount is provided; this is a basis for denial of approval of Debtors' amended disclosure.

12. A referenced " release" of Jennifer Gabel Lomma is not attached to debtors' amended disclosure statement and thus cannot be evaluated. This is a basis for denial of approval of Debtors' amended disclosure.

13. No commitment for financing from any financial institution is included in the debtors' amended disclosure statement warranting the summary denial of approval of debtors' amended disclosure statement.

14. Debtors' amended disclosure statement is materially misleading, warranting summary denial of approval of debtors' amended disclosure statement.

15. Debtors have failed to establish feasibility of debtors' so called amended plan, requiring summary denial of approval of debtors' amended disclosure statement

16. The Objections filed by counsel for committee of secured creditors states the following about the extremely troubling conduct of debtor James F. Lomma during the one year since he voluntarily filed for Chapter 11 Bankruptcy, as follows:

- Lomma voluntarily assumed numerous reporting and disclosure obligations as a debtor in this Court , but during the past year he has demonstrated an unwillingness to perform any of those duties or to comply with Court Orders (at page 4);
- Debtors' long history of concealment and disclosure failures (at page 4);
- The Debtors have been, and remain, secret, dilatory, and defiant. (at page 11);
- ... The Debtors' dishonesty and refusal to fully disclose their assets and financial affairs . (at page 12) ;
- Lomma ... Directed that millions of dollars flow from the Debtors' estates to insiders and family members is plainly subject to conflicts of interest that prevent him from being an **honest broker** (at page 30, emphasis added.

Through section 1104(a)(1) of the Bankruptcy Code, Congress has mandated that a Chapter 11 debtor-in-possession, who acts as a fiduciary of the bankrupt estate, **be an honest broker**, See, *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985) (“[T]he willingness of courts to leave debtors in possession ‘is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee’”).

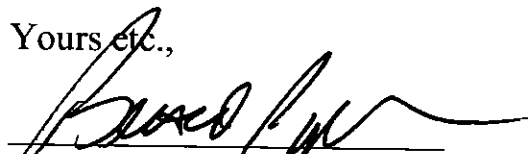
When a debtor in possession, its management, or its professionals have **exhibited in inability or unwillingness to comply with their basic fiduciary duties**, there is but one remedy established by Congress to supplant management while allowing the case to remain in Chapter 11: the appointment of a Trustee pursuant to 11 U.S.C. § 1104(a). See *V. Savino Oil*, 99 B.R. At 526 (“And if the debtor-in-possession defaults in this respect, [s]ection 1104(a)(1) [of the Bankruptcy Code] commands that stewardship of the reorganization effort must be turned over to an independent trustee.”).

Debtor James F. Lomma is not an “ honest broker” and never will be.

WHEREFORE, it is respectfully requested that this Court enter an Order directing the appointment of a Chapter 11 Trustee for debtor James F. Lomma, or in the alternative, converting the case to one under Chapter 7, or grant such other relief as the Court deems just, fair, and equitable.

Dated: January 5, 2017
New York, New York

Yours etc.,



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To:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which automatically provides email notification to the attorneys of record in the above captioned action (s).

Dated: January 5, 2017
New York, New York

Yours etc,



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