

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:	§	
	§	CASE NO. 17-40947
	§	
HAHN HOTELS OF	§	CHAPTER 11
SULPHUR SPRINGS, LLC et al.	§	
	§	Jointly Administered
<i>Debtors.</i>	§	

**OBJECTION BY TEXAS BANK AND TRUST COMPANY  
TO DISCLOSURE STATEMENT**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

COMES NOW, Texas Bank and Trust (“TBT”) making these objections to the Disclosure Statement (the “Disclosure”) (Doc. 247) filed by Hahn Hotels of Sulphur Springs, LLC, et al., Debtor-in-Possession (“Debtors”) in the above styled and numbered jointly administered case.

1. To protect those entitled to vote to accept or reject a proposed plan, the Bankruptcy Code requires that the plan proponent furnish information adequate to enable a hypothetical reasonable investor, typical of the holders of claims or interests of the relevant class, to make an informed judgment about the plan. 7 COLLIER ON BANKRUPTCY, ¶ 1125.02.

2. The definition of “adequate information” in §1125(a)(1) requires that a disclosure statement include information in sufficiently reasonable detail. Adequacy is determined on a case-by-case basis. Courts have fashioned different lists of information to be included in an adequate disclosure statement. *In re U.S. Brass Corp.*, 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996) lists these nineteen (19) categories of information:

1. The events which led to the filing of a bankruptcy petition;
2. The description of available assets and their value;
3. The anticipated future of the company;

4. The source of information stated in the Disclosure Statement;
5. A disclaimer;
6. The present condition of the debtor while in Chapter 11;
7. The scheduled claims;
8. The estimated return to creditors under a Chapter 7 liquidation;
9. The accounting method utilized to produce financial information and the name of the accountants responsible for such information;
10. The future management of the debtor;
11. The Chapter 11 plan or a summary thereof;
12. The estimated administrative expenses, including attorneys' fees and accountants' fees;
13. The collectability of accounts receivable;
14. Financial information, data, valuations or projections relevant to the creditor's decision to accept or reject the Chapter 11 plan;
15. Information relevant to the risks posed to creditors under the plan;
16. The actual or projected realizable value from recovery of preferential or otherwise voidable transfers;
17. Litigation likely to arise in a non-bankruptcy context;
18. Tax attributes of the debtor; and
19. The relationship of the debtor with the affiliates.

*See also, In re Metro Craft Pub. Services, Inc. 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984).*

3. In addition to the above list, other courts require an adequate disclosure of the effect of the absolute priority rule (11 U.S.C. § 1129(b)(2)(B)(ii)) on each class of unsecured claims paid less than one hundred percent (100%). *See, e.g., In re O'Leary, 183 B.R. 338, 342 (Bankr. D. Mass. 1995).*

4. TBT objects to the Disclosure for its failure to contain adequate information.

#### THE CHAPTER 11 PLAN OR A SUMMARY THEREOF

5. The Joint Chapter 11 Plan of Reorganization of Hahn Hotels of Sulphur Springs, LLC and its Debtor Affiliates filed on November 1, 2017 (the "Plan") (Doc. 234) lacks specificity. The lack of specificity leads to a lack of adequate disclosure. The means by which the Debtors will pay their creditors, (Secured Claims<sup>1</sup> in particular) is not clearly disclosed. What *is* disclosed is a list of each Debtor's options. For instance, the Disclosure states Hahn

---

<sup>1</sup> If a capitalized phrase is not separately defined in this Objection, its meaning is the same given to it in the Plan.

Hotels, LLC (“HH”) intends to retain and operate the Hawthorn (*See*, Disclosure, pg. 26, ¶ 11). However, the Disclosure is not worded or presented as a definitive election. Also, the Plan itself includes no declaration of HH’s intent to retain Hawthorn. According to the Plan, HH may elect one of several options at any point in time between Confirmation and the Effective Date. (Plan, pg. 35, § 3.5.10). Those options include: selling Hawthorn; refinancing TBT’s claim; paying TBT’s claim on terms similar to the claim’s pre-petition terms; or transferring the Hawthorn to TBT in satisfaction of the bank’s full claim. That is not a disclosure of what the Debtors will do, it is a disclosure of what the Debtors may choose to do before the Plan’s Effective Date. Further still, each alternative requires a unique disclosure. A post-Effective Date payout requires an analysis of future income and expenses through the amortization period. A sale requires an analysis of the costs of sale and an estimate of what remains, if any, for distribution to the parent company. A transfer of collateral to TBT in satisfaction of the debt requires an analysis of whether or not the property to be transferred is the “indubitable equivalent” of TBT’s claims. The lack of specificity not only means the Plan fails to comply with 11 U.S.C. §1122(a)(3), it means that at the stage of disclosure, adequate information is not provided.

#### AVAILABLE ASSETS AND THEIR VALUE

6. The Disclosure does not adequately describe the available assets and their current values. In particular:
  - a) Exhibit C to the Disclosure includes a “Liquidation Analysis” for each Debtor. The description of assets for Hahn Investments, LLC is not adequate. That Debtor owns at least thirteen (13) different real estate assets, each of which is encumbered by one (1) or more liens to different creditors. Those assets should be separately listed and valued and the liens against them separately disclosed.
  - b) Exhibit C to the Disclosure includes a “Liquidation Analysis” of Hahn Investments, LLC, but it does not adequately describe the estimated non-liquidation value of that Debtor’s interests in five (5) other Debtors and in Hahn Hotels of Bentonville, LLC. Although Exhibit C includes a statement of the

“unaudited book value” of Hahn Investments, LLC’s stake in its subsidiary limited liability companies, there is no comparison of those “book values” to the estimated values of the subsidiaries elsewhere included in the same Exhibit C.

- c) The Disclosure does not include a description of the type(s), amount(s), or collectability of each Debtor’s claims against each of the other Debtors, against Hahn Hotels of Bentonville, LLC, or against Dante and Melissa Hahn.

#### ABSOLUTE PRIORITY RULE

7. The Disclosure fails to reveal the terms, impact and significance of the absolute priority rule embodied in 11 U.S.C. § 1129(b)(2)(B)(ii). In light of *In re 203 North LaSalle Street Partnership*, 119 S. Ct. 1411 (May 3, 1999), the significance of the absolute priority rule on the Plan cannot be underestimated. The pre-petition equity interest holders of each Debtor have the sole and exclusive opportunity under the Plan to retain their respective equity interests without providing, in turn, for the full one hundred percent (100%) payment of all unsecured claims. To the extent the Debtors rely on a “new value exception” or “new value corollary,” the Disclosure should not only describe the consideration given for the retained equity interests, but it should also include a description of how that amount was determined.

#### LIQUIDATION ANALYSIS

8. The Disclosure’s liquidation analysis for the parent company, Hahn Investments, LLC, adjusts the value of that Debtor’s interest in its subsidiaries to “0%” in each instance. The Disclosure does not explain the basis for this significant adjustment. The adjustment is relevant because one or more of the subsidiaries (including HHSS) appear to be solvent.

#### FINANCIAL INFORMATION, DATA, VALUATIONS OR PROJECTIONS

9. The Disclosure does not include pre-petition historical income and expense information for each Debtor.

10. The Disclosure does not include projected income and expense information for each Debtor beyond 2018.

11. The Disclosure does not include a description of the projected impact, if any, the sale or liquidation of assets by one (1) Debtor will or may have on that Debtor, and/or on the other Debtors. For instance, HHSS may sell the La Quinta. After the sale of HHSS's principal asset, what amount (if any) will be distributed to Hahn Investments, LLC, the sole member of HHSS?

12. The Disclosure does not include adequate information regarding any proposed sale of City Center or the Hawthorn. Will the franchise agreement under which the property flies the Hawthorn Suites flag be assumed or rejected? If assumed, how will the franchisor's cure claim be paid and when? If rejected, what impact will rejection have on the value of the hotel? What offers have been received for the purchase of either property? Are there any prospects for a sale at this time? What are the proposed terms of any sale?

#### ESTIMATED ADMINISTRATIVE EXPENSES

13. The Disclosure does not include adequate information regarding administrative expenses. For instance:

- a) It contains no estimate of Professional Claims as of Confirmation or as of the Effective Date;
- b) It contains no estimate of the Intercompany Administrative Claims as of Confirmation or as of the Effective Date; and
- c) It contains no estimate of potential Administrative Claims under 11 U.S.C. § 507(b) that are or could be asserted by a Secured Creditor damaged by the post-petition diminution in the value of its collateral (including cash collateral).

### FUTURE MANAGEMENT OF THE DEBTORS

14. The Disclosure states “Mr. Hahn will be compensated through a base salary apportioned to each Reorganized Debtor in accordance with his role as President and Manager of each such Reorganized Debtor.” (Disclosure, pg. 50, ¶ 4.11). However, no description of the amount of that salary is given beyond 2018. The Disclosure also fails to explain why retention of Mr. Hahn as manager of each Reorganized Debtor is in the best interests of each Debtor’s estate and its creditors.

### INFORMATION RELEVANT TO RISKS POSED TO CREDITORS UNDER THE PLAN

15. The Disclosure does not adequately describe the risks associated with the Plan’s provisions for interest (or the lack of interest) on Allowed Secured Claims during the period of time between the Petition Date and the Effective Date (“Pendency Interest”). The Plan provides that fully Secured Creditors will not be paid Pendency Interest and attorneys’ fees except “to the extent such amounts are Allowed by order of the Bankruptcy Court.” (Plan §1.2.100, definition of “Secured Claim”). In other words, if a motion under §506(b) is not timely filed then even a fully Secured Claim will not receive Pendency Interest or attorneys’ fees. This risk to Secured Creditors should not be buried in one (1) of a hundred and twenty-three (123) defined terms found in the Plan. It should be clearly stated as a risk in the Disclosure. But also, the Disclosure includes no information regarding the impact the allowance of Pendency Interest on over \$23,000,000.00 in Secured Claims will have on feasibility. Both risks should be adequately disclosed.

16. The Plan states “[t]he Reorganized Debtors shall be jointly and severally liable for Allowed Professional Claims.” (Plan, pg. 22, §2.3.5). This liability is a risk that should be adequately disclosed. The justification, if any, for joint and several liability should also be

disclosed. For instance, would HH's liability for Allowed Professional Claims incurred in all other cases impact HH's ability to perform under the terms of its Plan? What is the estimated amount of that liability? How will those Allowed Professional Claims be paid by HH, particularly since administrative expense claims must be paid soon after Confirmation? Would the failure of one Debtor to pay its professional fees materially impact the ability of another Debtor to perform under the Plan?

OTHER OBJECTIONS TO THE DISCLOSURE STATEMENT

17. Other creditors may file objections to the Disclosure. TBT reserves the right to urge, rely on and to present any and all other objections to the Disclosure made by any other party-in-interest.

18. The Disclosure Statement also fails to describe the consideration the equity holders will pay at confirmation to retain their interests. Last, the Disclosure Statement fails to adequately describe the Effective Date to advise TBT when the Effective Date will occur.

WHEREFORE, PREMISES CONSIDERED, TBT respectfully requests that approval of the Disclosure Statement be denied or, in the alternative, that adequate revisions and additions to the Disclosure Statement be required as a condition to approval.

Dated: December 11, 2017

Respectfully submitted,

POTTER MINTON  
A Professional Corporation

By: /s/ John F. Bufe

John F. Bufe  
State Bar No. 03316930  
[johnbufe@potterminton.com](mailto:johnbufe@potterminton.com)  
110 N. College, Suite 500  
Tyler, Texas 75702  
T 903.597.8311  
F 903.593.0846

*Attorneys for Texas Bank and Trust Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2017, the foregoing was filed in the above-captioned case with the Clerk of Court using the CM/ECF system, which will then send notification of such filing to all registered users in this case. I further certify that a copy of the foregoing will be sent by electronic mail and first-class mail, postage prepaid, to the following:

Judith Weaver Ross  
Jessica Leigh Voyce Lewis  
Rachael L. Smiley  
Eric Soderlund  
The Law Offices of Judith W. Ross  
Plaza of the Americas  
700 N. Pearl St., Suite 1610  
Dallas, TX 75201  
Email: [judith.ross@judithwross.com](mailto:judith.ross@judithwross.com)  
[jessica.lewis@judithwross.com](mailto:jessica.lewis@judithwross.com)  
[rachel.smiley@judithwross.com](mailto:rachel.smiley@judithwross.com)  
[eric.soderlund@judithwross.com](mailto:eric.soderlund@judithwross.com)

Timothy W. O'Neal  
Office of the U.S. Trustee  
110 N. College Avenue, Suite 300  
Tyler, TX 75702  
Email: [timothy.w.o'neal@usdoj.gov](mailto:timothy.w.o'neal@usdoj.gov)

*/s/ John F. Bufo*

\_\_\_\_\_  
JOHN F. BUFE