IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
	Case No. 21-10636 (JTD)
AeroCentury Corp., *et al.*,[1]	
Debtor.	**Hearing Date: July 14, 2021 @ 2:00 p.m.** **Obj. Deadline: July 7, 2021 @ 4:00 p.m.**

OBJECTION OF THE UNITED STATES TRUSTEE TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE COMBINED DISCLOSURE STATEMENT AND PLAN ON AN INTERIM BASIS FOR SOLICITATION PURPOSES ONLY; (II) ESTABLISHING SOLICITATION AND TABULATION PROCEDURES; (III) APPROVING THE FORM OF BALLOTS AND SOLICITATION MATERIALS; (IV) ESTABLISHING THE VOTING RECORD DATE; (V) FIXING THE DATE, TIME, AND PLACE FOR THE COMBINED HEARING AND THE DEADLINE FOR FILING OBJECTIONS THERETO; AND (VI) GRANTING RELATED RELIEF (D.I. 197)

Andrew R. Vara, United States Trustee for Regions Three and Nine ("U.S. Trustee"), files this Objection (the "Objection") to the Debtors' Motion For Entry Of An Order (I) Approving The Combined Disclosure Statement And Plan On An Interim Basis For Solicitation Purposes Only; (II) Establishing Solicitation And Tabulation Procedures; (III) Approving The Form Of Ballots And Solicitation Materials; (IV) Establishing The Voting Record Date; (V) Fixing The Date, Time, And Place For The Combined Hearing And The Deadline For Filing Objections Thereto; And (VI) Granting Related Relief (D.I. 197) (the "Motion"), and in support of that objection states as follows:

[1] The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors' mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

INTRODUCTION

1. The Debtors have filed a Combined Plan and Disclosure Statement that proposes two potential paths to the Debtors' emergence from bankruptcy: a Stand-Alone Plan and a Sponsored Plan.

2. Under the Stand-Alone Plan, the Debtors' remaining assets will be monetized, and interest holders will receive their pro-rata share of the Post-Effective Date Debtor Assets, after paying all creditors in full.

3. Under the Sponsored Plan, however, interest holders will not know what they receive until the Debtors file the Plan Sponsor Agreement (presumably in the Plan Supplement, filed seven (7) days prior to the Voting and Objection deadlines). The treatment may be (A) Cash, (B) Reinstatement of such Allowed Interests, (C) Reinstatement of such Allowed Interests subject to dilution, or (D) a combination of (A) though (C), as set forth in the Plan Sponsor Agreement.

4. The Plan Supplement, filed only seven calendar days before the Voting and Objection deadlines, will not be served on any party, including interest holders. Rather, it is simply filed with the Bankruptcy Court and, presumably, available on the Debtors' claims agent's website. In addition, the Debtors reserve "the right to amend documents contained in . . . the Plan Supplement."

5. The proposed Combined Plan and Disclosure Statement does not contain the most important information interest holders need to determine whether to vote to accept or reject the plan: what they will receive and when they will receive it. Filing, and not serving,

this critical information just seven days before the Voting and Objection deadline is insufficient notice to interest holders, the only impaired class.

JURISDICTION

6. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Motion and this Objection.

7. The U.S. Trustee is charged with overseeing the administration of Chapter 11 cases filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co.*, 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499 (6th Cir. 1990) ("As Congress has stated, the U.S. trustees are responsible for 'protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law").

8. Specifically, in accordance with 28 U.S.C. § 586(a)(3) and more specifically 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee is charged with the duties and obligations to supervise the administration of cases and trustees in Chapter 11 cases, monitoring plans and disclosure statements filed in Chapter 11 cases, and filing with the Court comments with respect to such plans and disclosure statements in connection with hearings under sections 1125 and 1128.

9. Under section 307 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), the United States Trustee has standing to be heard on the Motion and the issues raised in this Objection.

FACTUAL BACKGROUND

10. The Debtors filed a Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and Its Affiliated Debtors on June 22, 2021 (the "Combined Plan"), along with the Motion seeking conditional approval thereof.

11. The Combined Plan consists of a "toggle between (i) the Sponsored Plan, which, pursuant to the terms of the Plan Sponsor Agreement, the Debtors and the Plan Sponsor will agree to a restructuring of the Debtors' business that will be implemented through the Sponsored Plan, and (ii) the Stand-Alone Plan, whereby the Debtors' remaining Assets will vest in the Post-Effective Date Debtors and be monetized by the Plan Administrator." Plan, at p. 2.

12. The Plan Sponsor is not identified, and the Debtors will toggle to the Sponsored Plan only if a Plan Sponsor Agreement is executed at any time up to seven (7) days prior to the Voting Deadline. *Id.*

13. The treatment accorded to interest holders under the Sponsored Plan is not disclosed. Rather, the Plan states, "Under the Sponsored Plan, such Distribution Proceeds shall

also include any consideration set forth in the Plan Sponsor Agreement," (Plan at ¶ 1.44), and, "Under the Sponsored Plan, all Holders of Allowed Interests shall receive either (A) Cash, (B) Reinstatement of such Allowed Interests, (C) Reinstatement of such Allowed Interests subject to dilution, or (D) a combination of (A) though (C), as set forth in the Plan Sponsor Agreement." Plan, at ¶ 2.1, p. 17.

14. Section 5.3 of the Plan states that, "while the Sponsored Plan must provide a **greater recovery to Holders of Allowed Claims** as compared to the Stand-Alone Plan, the Debtors can make no other assurances with respect to recoveries under the Sponsored Plan at this time." Emphasis added. The Plan does not appear to require that the Sponsored Plan provide a greater recovery to Interest Holders, the only impaired class under the Plan.

15. In addition, under the Plan, the following parties are deemed to grant "consensual" releases to third parties: "(a) all Holders of Claims and Interests that are Unimpaired, (b) all Holders of Claims and Interests who vote to accept the Plan, (c) all Holders of Claims and Interests who vote to reject the Plan and who do not submit a Release Opt-Out Election; and (d) all Holders of Claims and Interests that are entitled to vote to accept the Plan, but do not timely return a Ballot on the Voting Deadline containing a Release Opt-Out Election, and with respect to each of the foregoing, their Related Parties." Plan at ¶ 1.98. Unimpaired creditors apparently are not provided the ability to opt out of these releases.

OBJECTION

The Combined Plan Does Not Contain Adequate Information

16. Section 1125 of the Bankruptcy Code provides that a disclosure statement must contain "adequate information" describing a confirmable plan. 11 U.S.C. § 1125; *see also,*

In re Quigley Co., 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007). The Bankruptcy Code defines "adequate information" as:

> 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 reasonable investor of the relevant class to make an informed judgment about the plan*** . . . .

11 U.S.C. § 1125(a)(1) (emphasis added); *see also, Momentum Mfg. Corp. v. Employee Creditors Comm.* (*In re Momentum Mfg. Corp.),* 25 F.3d 1132, 1136 (2d Cir. 1994*); Kunica v. St. Jean Fin., Inc.,* 233 B.R. 46, 54 (S.D.N.Y. 1999).

17. The disclosure statement requirement of section 1125 of the Bankruptcy Code is "crucial to the effective functioning of the federal bankruptcy system[;] . . . the importance of full and honest disclosure cannot be overstated." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) (citing *Oneida Motor Freight, Inc. v. United Jersey Bank* (*In re Oneida Motor Freight, Inc.*), 848 F.2d 414 (3d Cir. 1988)).

18. The "adequate information" requirement is designed to help parties in their negotiations with Debtors over the plan. *See Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94 (3d Cir. 1988). Section 1129(a)(2) conditions confirmation upon compliance with applicable Code provisions. The disclosure requirement of section 1125 is one of those provisions. *See* 11 U.S.C. 1129(a)(2); *In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000).

19. To be approved, a disclosure statement must include sufficient information to apprise interest holders of the risks and financial consequences of the proposed plan. *See In re McLean Indus.,* 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) ("substantial financial information

with respect to the ramifications of any proposed plan will have to be provided to, and digested by, the creditors and other parties in interest in order to arrive at an informed decision concerning the acceptance or rejection of a proposed plan"); *In re Duratech Indus.,* 241 B.R. 291, 298 (Bankr. E.D.N.Y.), *aff'd,* 241 B.R. 283 (E.D.N.Y. 1999)(the purpose of the disclosure statement is to give creditors enough information so that they can make an informed choice of whether to approve or reject the debtor's plan).

20. Section 1125 of the Bankruptcy Code is geared towards more disclosure rather than less. *See In re Crowthers McCall Pattern, Inc.,* 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The "adequate information" requirement merely establishes a floor, and not a ceiling for disclosure to voting parties. *In re Adelphia Commc'ns Corp.,* 352 B.R. 592, 596 (Bankr. S.D.N.Y. 2006) (citing *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, at 100 (3d Cir. 1988).

21. "Adequate information" under section 1125 is "determined by the facts and circumstances of each case." *See Oneida*, 848 F.2d at 417 (citing H.R. Rep. No. 595, 97th Cong., 2d Sess. 266 (1977)).

22. A disclosure statement must inform the average interest holder what it is going to get and when, and what contingencies there are that might intervene. *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). Although the adequacy of the disclosure is determined on a case-by-case basis, "it is important for these average investors/general unsecured creditors that the Disclosure Statement contain simple and clear language delineating the consequences of the plan on their claims and the possible Code alternatives so that they can intelligently accept or reject the Plan." *In re Copy Crafters Quickprint, Inc.,* 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988).

23. The Combined Plan fails to provide "adequate information" sufficient to meet the requirements of Section 1125 of the Bankruptcy Code.

24. The Combined Plan fails to provide the most basic information that an interest holder needs to determine whether to vote for or against the Combined Plan: what it will receive and when it will receive it if the Debtors' toggle to the Sponsored Plan. They do not know if they will receive a cash payment, and if so, how much. Will it be more or less than the proposed distribution under the Stand-Alone Plan? How was the amount determined? When will the payment be made? They do not know if they will be retaining their equity, and if so, if it will be diluted. If it is diluted, will they receive a cash payment as well? If not, is the value of the diluted shares at least equal to the amount of cash they would receive under the Stand-Alone Plan? Will there be restrictions on the equity? The proposal to provide this information simply by filing the Plan Sponsor Agreement – subject to amendments and modifications – seven days before the Voting and Objection deadline, does not remedy this hole in the information provided to interest holders. Preferably, the Debtors should be required to file a plan only after the terms thereof have been determined and can be disclosed to parties in interest. At a minimum, the Debtors should be required to file *and serve* the Plan Supplement, with the Plan Sponsor Agreement, and provide a minimum of 28 days' notice for interest holders to review the proposal prior to voting on the Combined Plan.

25. The proposed Confirmation Notice is also insufficient to inform holders of unimpaired claims that they will be providing "consensual releases." The Notice does not clearly and explicitly highlight such releases. In addition, the Combined Plan does not provide a mechanism for such holders to opt out of the releases, or inform the holders how to do so.

26. The Confirmation Notice and Ballots insufficiently highlight the proposed "consensual" releases granted by interest holders, and do not sufficiently highlight the need for non-voting interest holders to return an opt out ballot or be deemed to grant the releases. While the U.S. Trustee reserves for confirmation an objection based on "consent" being deemed through silence, and also reserves for confirmation the need for a rejecting holder to *also* check an opt out box, the notices themselves should be clear. The "consensual" third party releases, and the means for opting out of the releases, needs to be prominent, highlighted and written so that an average investor will understand.

27. The U.S. Trustee reserves all objections to final approval and confirmation of the Combined Plan.

WHEREFORE, the United States requests that this Court deny the Motion, and require adequate information be included in the Combined Plan, the Confirmation Notice and the Ballots, and grant such other relief as this Court deems appropriate, fair and just.

Dated: July 7, 2021
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS THREE AND NINE

By: */s/ Linda J. Casey*
Linda J. Casey, Esquire
Trial Attorney
United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
(302) 573-6491
(302) 573-6497 (Fax)
Linda.Casey@usdoj.gov