Hearing Date and Time: December 15, 2011 at 10:00 a.m. (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*	)	Case No. 10-24549 (RDD)
Debtors.	)	Jointly Administered

DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING: (A) THE ADEQUACY OF THE DEBTORS' DISCLOSURE STATEMENT; (B) THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS PROPOSED CHAPTER 11 PLAN; (C) THE FORM OF VARIOUS BALLOTS AND NOTICES IN CONNECTION THEREWITH; AND (D) THE SCHEDULING OF CERTAIN DATES WITH RESPECT THERETO

The Great Atlantic & Pacific Tea Company, Inc. ("***A&P***") and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"),[1] respectfully submit this omnibus

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Great Atlantic & Pacific Tea Company, Inc. (0974); 2008 Broadway, Inc. (0986); AAL (Continued…)

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reply (the "***Reply***") to the objections[2] filed to the *Debtors' Motion for Entry of an Order Approving: (A) the Adequacy of the Debtors' Disclosure Statement; (B) the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Chapter 11 Plan; (C) the Form of Various Ballots and Notices in Connection Therewith; and (D) the Scheduling of Certain Dates with Respect Thereto* [Docket No. 2929] (the "***Disclosure Statement Motion***"), and respectfully state as follows:[3]

Preliminary Statement

1. The Debtors respectfully request that the Court approve the Disclosure Statement and the solicitation procedures. Over the course of the last several weeks, the Debtors have worked closely with the Investors and their key constituents to build consensus around the Disclosure Statement and Plan, which were originally filed on November 14, 2011. These extensive negotiations resulted in two notable achievements.

Realty Corporation (3152); Adbrett Corporation (5661); Amsterdam Trucking Corporation (1165); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Bergen Street Pathmark, Inc. (1604); Best Cellars DC Inc. (2895); Best Cellars Inc. (9550); Best Cellars Licensing Corp. (2896); Best Cellars Massachusetts, Inc. (8624); Best Cellars VA Inc. (1720); Bev, Ltd. (9046); Borman's Inc. (9761); Bridge Stuart, Inc. (8652); Clay-Park Realty Co., Inc. (0902); Compass Foods, Inc. (0653); East Brunswick Stuart, LLC (9149); Farmer Jack's of Ohio, Inc. (5542); Food Basics, Inc.(1210); Gramatan Foodtown Corp. (5549); Grape Finds At DuPont, Inc. (9455); Grape Finds Licensing Corp. (7091); Greenlawn Land Development Corp. (7062); Hopelawn Property I, Inc. (6590); Kohl's Food Stores, Inc. (2508); Kwik Save Inc. (8636); Lancaster Pike Stuart, LLC (9158); LBRO Realty, Inc. (1125); Lo-Lo Discount Stores, Inc. (8662); Mac Dade Boulevard Stuart, LLC (9155); McLean Avenue Plaza Corp. (5227); Milik Service Company, LLC (0668); Montvale Holdings, Inc. (6664); North Jersey Properties, Inc. VI (6586); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); SEG Stores, Inc. (4940); Shopwell, Inc. (3304); Shopwell, Inc. (1281); Spring Lane Produce Corp. (5080); Super Fresh/Sav-A-Center, Inc. (0228); Super Fresh Food Markets, Inc. (2491); Super Market Service Corp. (5014); Super Plus Food Warehouse, Inc. (9532); Supermarkets Oil Company, Inc. (4367); The Food Emporium, Inc. (3242); The Old Wine Emporium of Westport, Inc. (0724); The South Dakota Great Atlantic & Pacific Tea Company, Inc (4647); Tradewell Foods of Conn., Inc. (5748); Upper Darby Stuart, LLC (9153); and Waldbaum, Inc. (8599). The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

[2] The 16 objections and the Debtors' specific responses to each are summarized in more detail on **Exhibit A** attached hereto (the "***Objection Chart***").

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them as set forth in the Disclosure Statement Motion, the Disclosure Statement, or the Plan, as applicable.

2. First, the Debtors finalized the terms of the Substantive Consolidation Settlement and the Trade Claims Cash Pool with the Investors and advisors to the Creditors' Committee, both of which were initially filed with the Court on December 11, 2011 and have since been updated.

3. Second, on December 12, 2011, the Debtors reached an agreement with holders of more than 78% in principal amount of the Debtors' outstanding Second Lien Notes regarding the allowed amount of the Second Lien Note Claims. Pursuant to that agreement, this substantial bloc of Second Lien Note holders will support the plan confirmation process and waive any right they may have had to a makewhole claim under the Second Lien Indenture. Coupled with the Court-approved Securities Purchase Agreements[4] under which holders of approximately 80% of the Debtors' Convertible Notes have agreed to support the Plan, the Second Lien Notes plan support agreement, which is subject to Court approval, favorably positions the Debtors' Plan for consensual confirmation.

4. More recently, the Debtors have worked to resolve the 16 objections they received to the Disclosure Statement Motion in a consensual manner. As reflected in the Objection Chart, the Debtors have fully resolved nine of the objections and will continue to work to resolve the remaining objections prior to tomorrow's hearing. If the Debtors are unable to resolve the remaining objections in a consensual manner, the Debtors will request that the Court overrule those objections for the reasons set forth herein and in the Objection Chart.[5]

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[4] *See Order Authorizing the Debtors to (A) Enter into Certain Securities Purchase Agreements for a $490 Million New Capital Investment and (B) Pay Certain Fees in Connection Therewith, Each to Support Debtors' Plan of Reorganization* [Docket No. 2962] (the "***Securities Purchase Agreements***").

[5] The Debtors intend to file a revised Disclosure Statement and Plan as well as Solicitation Procedures and Ballots in advance of the hearing on the Disclosure Statement Motion. The revised Disclosure Statement and Plan that will reflect the resolutions achieved to date.

5. Of the seven unresolved objections,[6] only one—Ahold's objection[7]—raises disclosure issues that the Debtors do not anticipate resolving. Ahold—a competitor who holds highly contingent claims[8]—requests disclosures regarding the Debtors' Modified Collective Bargaining Agreements that are commercially sensitive and go beyond the level of information that a creditor would need in considering whether to vote in favor of the Plan. Indeed, this Court has already approved the Debtors' filing of these agreements under seal subject to the Debtors making them available to parties willing to enter into an appropriate confidentiality agreement. The Debtors provided Ahold with such a confidentiality agreement, but Ahold declined to enter into it and instead continues to insist that the Debtors disclose the sensitive terms of the Modified Collective Bargaining Agreements publicly. Accordingly, the Debtors believe that Ahold's request for additional disclosure on the terms of those agreements is inappropriate and inconsistent with the Court's prior rulings.

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6 Tanit Buday ("***Buday***") filed a pro-se objection to the Disclosure Statement Motion. *See Objections to the Adequacy of the Disclosure Statement, the Motion, and Entry of the Order Approving Mediation Procedures* [Docket No 3038]. However, the objection is actually an objection to the Debtors' personal injury claims resolution procedures approved by the Court and is not relevant for the purposes of the Disclosure Statement Hearing.

7 The Ahold objection was filed by Ahold U.S.A., Inc., Stop & Shop Supermarket Co. LLC and Giant Food LLC (collectively "***Ahold***").

8 Indeed, Ahold's four proofs of claims filed in these cases against each of the Debtors are so highly contingent that Ahold's standing as a creditor under section 1109 of the Bankruptcy Code is thin to the point of invisibility. Specifically, Ahold asserted two blanket claims against each of the Debtors for claims that may arise under leases that it or its affiliates have assigned to the Debtors or leases that the Debtors have assigned to Ahold or its affiliates—without identifying any known liabilities or even the leases in question. Ahold's affiliates, Giant Food LLC ("Giant") and the Stop & Shop Supermarket Company LLC ("Stop & Shop"), also asserted claims against each of the Debtors for any increased contributions Giant or Stop & Shop may be required to make under multi-employer pension plans as a result of the Debtors' withdrawal from such plans. However, Giant and Stop & Shop do not have standing to bring a direct claim against the Debtors for any increases in contributions that may result from Debtors' withdrawal from a multiemployer plan. In fact, ERISA only provides standing to the multiemployer plan itself to recover withdrawal liability, so any such claim would belong to the plan, not other contributing employers. See ERISA 4201(a), 29 USC 1381(a), which says: "If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability." (emphasis added). Giant's and Stop & Shop's assertion that it could have a claim against the Debtors for increases in contributions that result from the Debtors' withdrawal amounts to an end-run around ERISA's very specific enforcement and liability collection mechanisms, which the law does not allow.

6. The remaining five objections raise issues with the proposed Plan (*e.g.*, the scope of the release and exculpation provisions and the classification of the claims) that are not within the province of the Disclosure Statement Hearing on the adequacy of information to allow creditors to cast informed votes on the Plan. Of those five objections, three—objections by Rick Dudley ("***Dudley***"), Peter Glickenhaus ("***Glickenhaus***"), and Brian Seelinger ("***Seelinger***")—simply express dissatisfaction with the proposed treatment of shareholders (Dudley objection) and noteholders (the Glickenhaus and Seelinger objections) under the Plan and do not raise any specific objections to the Disclosure Statement. The remaining confirmation-related objections are from Grocery Haulers, Inc. ("***GHI***") and the City of New Haven Employees' Retirement System and Plumbers and Pipefitters Locals 502 and 633 Pension Trust Fund (the "***Securities Litigants***"). GHI complains about the Plan's claims classification scheme and, along with the Securities Litigants, raise issues with the release and exculpation provisions in the Plan.

7. The Debtors respectfully submit that it would be improper for the Court to consider these confirmation objections at the Disclosure Statement Hearing because the proposed Plan, which has tremendous support already from major creditors, has no fatal flaws that would warrant such objections' consideration at this stage.[9] Given the support for the Plan at this stage, the Debtors stand well poised for confirmation—contrary to the objections' assertions otherwise.

8. Accordingly, for these reasons and the reasons set forth below and in the Objection Chart, the Debtors respectfully submit that the Disclosure Statement meets every criterion for providing creditors with "adequate information" in compliance with section 1125 of

[9] *See In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) (finding that courts should only hear objections to a plan at a disclosure statement proceeding where the "plan is so fatally flawed that confirmation is impossible").

the Bankruptcy Code so that creditors can make an informed judgment about the Plan. Thus, the Debtors respectfully request that the Court approve the Disclosure Statement Motion so that they may commence solicitation.

Reply

I. The Disclosure Statement Meets the Applicable Standards for Approval Under Section 1125 of the Bankruptcy Code.

9. As set forth in the Disclosure Statement Motion, the Debtors believe that they have included in their Disclosure Statement all the information required for disclosure pursuant to section 1125 of the Bankruptcy Code. Indeed, in resolving the objections to the Disclosure Statement Motion, the Debtors believe that that they have gone above and beyond section 1125's disclosure requirements.

10. In construing section 1125 of the Bankruptcy Code, courts have articulated a number of categories of information that generally should be included in a disclosure statement.[10] As demonstrated in the table below and consistent with findings of courts in this and other districts, the Disclosure Statement contains those categories of information necessary for creditors to make an informed decision:

Information Category	Corresponding Disclosure Statement Provisions
• Events leading to the filing of a bankruptcy petition.	Article V

[10] *See In re Phoenix Petroleum*, 278 B.R. 385, 393 and n.6 (Bankr. E.D. Pa. 2006) (citing *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (N.D. Ga. 1984) and listing categories of information that should be included in a disclosure statement); *In re Source Enterprises, Inc.*, 06-11707 (AJG), 2007 WL 7144778 (Bankr. S.D.N.Y. July 31, 2007) (same); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (S.D. Ohio 1988) (same). Courts also acknowledge that disclosure of all of the information suggested in these cases is not always necessary. *See Phoenix Petroleum*, 278 B.R. at 393 ("[I]t is . . . well understood that certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case."); *see also Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *In re Galerie Des Monnaies of Geneva, Ltd.*, 55 B.R. 253, 259 (Bankr. S.D.N.Y. 1985) (same).

Information Category	Corresponding Disclosure Statement Provisions
• Description of the debtor's available assets and their value.	Article IV and Exhibit C
• Anticipated future of the debtor.	Exhibit C
• Source of information stated in the Disclosure Statement.	Sources of information are cited throughout
• Disclaimer indicating that no statement or information concerning the debtor or securities are authorized, other than those set forth in the disclosure statement.	Introduction
• Present condition of the debtor while in Chapter 11.	Article V
• Information regarding claims against the estate.	Articles II and VI and Exhibit A and Exhibit D
• Estimated return to creditors under a chapter 7 liquidation.	Articles II and VIII and Exhibit D
• Future management of the debtor.	Article VI and Exhibit A
• Chapter 11 plan or summary.	Article VI and Exhibit A
• Financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the chapter 11 plan.	Articles II, IV, IX and Exhibit C
• Information relevant to the risks posed to creditors under the Plan.	Article IX
• Tax consequences of the plan.	Article X
• Relationship of the debtor with its affiliates.	Article IV

11. As such, the Disclosure Statement provides creditors with "adequate information," as defined in section 1125(a)(1) of the Bankruptcy Code, to allow creditors to make an informed judgment as to whether or not to accept the Plan.

A. Ahold's Objection Should be Overruled Given the Nature of the Additional Disclosures Requested

12. As noted above, the modifications the Debtors have made to the Disclosure Statement over the last several days address most, if not all, disclosure related objections.

Ahold's request for additional disclosures, however, is overreaching because it relates to Ahold's request for disclosure of the confidential terms of the Debtors' Modified Collective Bargaining Agreements.[11]

13. This Court has already ruled that the terms of the Modified Collective Bargaining Agreements should remain confidential, subject to their being shared with parties who are willing to enter into reasonable confidentiality agreements.[12] In that vein, the Debtors have provided Ahold with a form confidentiality agreement. Ahold—one of the Debtors' main competitors and whose claims in these cases are questionable—however, has refused to sign the proffered confidentiality agreement and has not even attempted to negotiate any of the agreement's terms. Given this conduct, Ahold's insistence that the Debtors should make public confidential business terms regarding their Modified Collective Bargaining Agreements rings hollow.

14. Moreover, the specific terms of the Debtors' Modified Collective Bargaining Agreements are simply not within the ambit of information needed for creditors to cast an informed vote on the Plan. Indeed, the Debtors' financial projections, attached to the Disclosure Statement as Exhibit C, take into account the impact of the Modified Collective Bargaining Agreements on the company's financial performance. The savings from the Modified Collective Bargaining Agreements have no bearing on creditor recoveries as the $40 million cash pot offered under the Plan is a static number that is being funded by the Investors. Finally, the

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11 *See Order Authorizing and Approving Motion of the Debtors for Authority to Enter into Modifications to Certain Collective Barganing Agreements with the United Food & Commercial Workers, International and 13 Local UFCW Affiliates* [Docket No. 3007].

12 *See Order Authorizing the Debtors to File Certain Labor Term Sheets Under Seal* [Docket No. 3008].

Union Protections Term Sheet that is part of the Plan and Disclosure Statement fully discloses the protections and consideration the Debtors' unions are receiving pursuant to Plan.

II. None of the "Confirmation" Objections Should be Considered in the Context of the Disclosure Statement Hearing

15. As noted above, five of the unresolved objections raise issues relating to Plan confirmation. These objections are not appropriate in the context of the Disclosure Statement Hearing and should not be heard at this time.

16. Courts in several jurisdictions have made clear on numerous occasions that plan confirmation objections should not be heard in the context of a disclosure statement hearing unless the "plan is so fatally flawed that confirmation is impossible."[13] That is hardly the case here. None of the objections to the Debtors' Disclosure Statement describe anything that approximates a fatal flaw in the Plan and, for that reason, should be overruled. Indeed, the Dudley, Glickenhaus and Seelinger objections simply complain about the Plan's treatment of holders of claims and interests. As a result, their objections should be overruled. The objections of GHI and the Securities' Litigants should fare no better. The following paragraphs respond briefly to the GHI and Securities Litigants' specific "confirmation" objections.[14]

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13 *See In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) (noting that courts should only hear confirmation issues at a disclosure statement hearing "if the described plan is fatally flawed so that confirmation would not be possible"); *In re Clift Holdings LLC*, No. 03-41984 (BRL), Transcript of Proceedings, at 24, (Bankr. S.D.N.Y. Aug. 18, 2004) (when presented with confirmation objections at the disclosure statement hearing, the court noted that ". . . all of the objections that I have heard today are not truly objections to disclosure but may be, and only may be, strategic objections that go to the level of confirmation issues, which I don't have before me. What I do have before me is disclosure under section 1125.").

14 The Debtors reserve the right to respond to each of these objections at the Confirmation Hearing.

A. The Debtors Properly Classified Claims in the Plan.

17. GHI accuses the Debtors of gerrymandering in connection with the Plan's classification of unsecured claims.[15] The Debtors believe the Plan is consistent with applicable law in the Second Circuit on classification of claims and will establish at the confirmation hearing that they have a rational basis for separately classifying unsecured claims with substantively different rights from each other—e.g., classifying bond claims with a unique set of rights separate from the class of general unsecured creditors and, pursuant to the terms of the Substantive Consolidation Settlement provided in the Plan, separately classifying creditors that may have rights against more than one debtor entity.[16] Indeed, the Second Circuit has recognized that under section 1122 of the Bankruptcy Code, debtors have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so,

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[15] In their objection, GHI relies on *Boston Post Road L.P. v. FDIC (In re Boston Post Road, L.P.)*, 21 F.3d 477, 483 (2d Cir. 1994) to support their argument that the Debtors have impermissibly gerrymandered their unsecured creditors. That case is distinguishable however because it was decided in connection with a plan confirmation hearing, not in connection with a disclosure statement hearing. Moreover, the debtor in that case was attempting to gerrymander votes so that its largest unsecured creditor—the FDIC holding an unsecured claim—had no voting voice in the proposed plan. That is hardly the case in the Debtors' Plan, which is supported by the holders of more than 78% of its Second Lien Notes and holders of approximately 80% of its Convertible Notes.

[16] *See Boston Post Road L.P. v. FDIC (In re Boston Post Road, L.P.)*, 21 F.3d 477, 483 (2d Cir. 1994) (finding that courts cannot prohibit separate classification of substantially similar claims); *Frito-Lay, Inc., v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956-57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis; separate classification based on bankruptcy court-approved settlement); *In re 500 Fifth Ave. Assocs.*, 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (Although discretion is not unlimited, "the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case . . . ."); *Drexel*, 138 B.R. at 757 ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together . . . ."); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177-78 (Bankr. S.D.N.Y. 1989) ("a debtor may place claimants of the same rank in different classes and thereby provide different treatment for each respective class"); *see also In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex. Aug. 31, 2007) ("the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan.").

including where members of a class possess different legal rights[17] and where there are good business reasons for separate classification.[18] Here, under the Plan, unsecured creditors are separately classified because of differing legal rights and factual business reasons.

18. For example, the holders of the Convertible Notes Claims, the 9.125% Senior Note Claims and the Quarterly Interest Bond Claims enjoy unique legal rights and contractual relationships pursuant to their respective note and bond indentures. Indeed, the separate classification of complex debt instrument claims (and particularly convertible notes claims) from general unsecured claims is routine in chapter 11 plans approved in this and other districts.[19] Moreover, Trade Claims are separately classified because the Debtors seek to maintain positive ongoing business relationships with the holders of such claims and the holders of such claims have business concerns distinct from other claim holders voting on the Plan. Additionally, the Union Claims are separately classified because their Plan treatment is solely governed by the

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17 *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 714, 715 (Bankr. S.D.N.Y. 1992) (separate classification of similar classes was rational where members of each class "own[ed] distinct securities and possess[ed] different legal rights"); *see also Heritage*, 375 B.R. at 299 n.86 (finding that if creditors had different legal rights under equitable subordination, then separate classification would be appropriate); *Mirant Corp.*, 2007 WL 1258932, at *7 (permitting separate classification because holders of claims had different legal interests in the debtor's estate); *In re Kaiser Aluminum Corp.*, No. 02-10429, 2006 WL 616243, at *5 (Bankr. D. Del. Feb. 6, 2006) (permitting classification scheme after consideration of creditors' legal rights).

18 *See In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996) (finding that debtor must have a legitimate business reason supported by credible proof to justify separate classification of unsecured claims); *Bally Total Fitness*, 2007 WL 2779438, at *3 (same); *In re Avia Energy Dev., L.L.C.*, No. 05-39339, 2007 WL 2238039, at *2 (Bankr. N.D. Tex. Aug. 2, 2007) (permitting separate classification based on valid business, factual, and legal reasons).

19 *See, e.g., In re Calpine Corp.*, No. 05-60200 (Bankr. S.D.N.Y. Dec. 19, 2007) (order confirming chapter 11 plan separately classifying convertible unsecured notes claims from general unsecured claims); *In re Tower Automotive, Inc.*, No. 05-10578 (Bankr. S.D.N.Y. July 12, 2007) (same); *In re Global Crossing Ltd.*, No. 02-40188 (Bankr. S.D.N.Y. Dec. 26, 2002) (order confirming chapter 11 plan separately classifying unsecured notes claims from general unsecured claims); *see also In re Coram Healthcare Corp.*, 315 B.R. 321, 350-51 (Bankr. D. Del. 2004) (finding noteholders represented "a voting interest that is sufficiently distinct from the trade creditors to merit a separate voice in this reorganization case").

Union Settlement Agreements—importantly, those holders will not receive a distribution from the Unsecured Creditor Cash Pool.[20]

19. In sum, valid business, factual, and legal reasons exist for classifying separately the various classes of claims created under the Plan. Additionally, each of the claims or interests in each particular class is substantially similar to the other claims or interests in such class. Accordingly, the Plan is not patently unconfirmable on the basis of improper classification of claims and GHI's Disclosure Statement objections should be overruled.

B. The Release Provisions in the Plan are Narrowly Tailored and Appropriate

20. Both the objection on behalf of the Securities Litigants and the GHI objection allege that the release provisions proposed under Article VIII of the Plan are unduly broad and/or do not comport with case law addressing the applicable standards for the granting of releases. Again, although such issues should be addressed at the Confirmation Hearing, the Debtors submit that the proposed releases set forth in the Plan are appropriate and consistent with applicable law. First, the Debtors are granting releases, which is within their discretion to do so. Second, the Plan only grants consensual Third-Party Releases. The Debtors have added language to the Disclosure Statement and ballots to clarify that the proposed Third-Party Releases are justified because such releases are being provided to parties who have played an integral role in the Debtors' restructuring efforts and, most importantly, are ***consensual***. As set forth in the Plan and Disclosure Statement, only those holders of claims or interests that

[20] *See In re U.S. Truck Co., Inc.*, 800 F.2d 581, 587 (6th Cir. 1986) (affirming a lower court decision allowing separate classification of union claims from other impaired creditors and noting that courts have "broad discretion to determine proper classification according to the factual circumstances of each individual case"); *see also In re Charter Communications*, 419 B.R. 221, 264-65 (Bankr. S.D.N.Y. 2009) *appeal dismissed*, 449 B.R. 14 (S.D.N.Y. 2011) ("The [p]lan's separate classification appears appropriate given the disparate legal rights and payment expectations of the [noteholders] and the [unsecured creditors].").

affirmatively vote in favor of the Plan are bound by the Third-Party Release.[21] As a result, the result the releases in the Plan satisfy the standard provided under the Second Circuit's decision in *Metromedia.*[22]

C. Injunction and Exculpation Provisions are Appropriate

21. The Securities Litigants' objection further alleges that the injunction and exculpation provisions render the Plan unconfirmable because they, among other things, restrict the objecting parties' ability to pursue the Securities Litigation.

22. The Plan injunction is necessary to effectuate the release provisions of the Plan and to protect the reorganized company from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the reorganized entity to effectively fulfill its responsibilities to maximize value for all creditors of the estates as contemplated in the Plan. The injunction is narrowly tailored to achieve its purpose and similar injunctions have been approved by courts in other chapter 11 cases.[23] Therefore, the Debtors are confident that they will be able to show that the proposed Plan injunctions should be approved at the confirmation hearing.

23. Moreover, the scopes of the exculpation provisions in the Plan are appropriately limited to the exculpated parties' participation in the restructuring cases and has no effect on liability that results from gross negligence or willful misconduct. In any event, although the

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21 A "Releasing Party" is defined in the Plan in relevant part as "each holder of a Claim voting to accept the Plan." *See* Art. I A. P. 121 Plan.

22 *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005) ("Nondebtor releases may be tolerated if the affected creditor consents.").

23 *See, e.g.*, *In re DJK Residential LLC*, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. May 7, 2008); *In re Calpine Corp.* ("Calpine") Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 19, 2007); *In re Bally Total Fitness of Greater New York, Inc.*, Case No. 07-12395, 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) (finding that the exculpation, release, and injunction provisions appropriate because they were fair and equitable, necessary to successful reorganization, and integral to the plan).

objecting parties' concerns are misguided, they are more appropriately addressed at the confirmation hearing and should not affect the approval of the Disclosure Statement Motion.

24. The Debtors continue to have discussions with the Securities Litigants regarding language to be added to the Disclosure Statement and hope to resolve their objection consensually.

Conclusion

25. For all the foregoing reasons, the Debtors respectfully submit that the Objections should be overruled (to the extent that the objecting parties do not acknowledge that their objections are resolved at the hearing on the Disclosure Statement Motion) and that the Disclosure Statement Motion should be approved, as the Disclosure Statement clearly satisfies the requirements of section 1125 of the Bankruptcy Code.

New York, New York
Dated: December 14, 2011

/s/ Ray C. Schrock

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Exhibit A

Objection Chart

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., et al., Case No. 10-24549 (RDD)[1]

STATUS CHART OF RESPONSES TO THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE [2]

RESOLVED OBJECTIONS

#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
1	MWS Capital LLC ("***MWS***")	2976	1. **Confirmation**. MWS, on behalf of itself and certain minority Convertible Noteholders object to being excluded from participating with the Investors in the New Money Commitment. ¶¶ 2, 4.[3] 2. **Confirmation**. MWS asks the Court to separately classify the minority Convertible Noteholders apart from the other Convertible Noteholders.	**Resolved**. MWS has agreed to withdraw its objection to the Disclosure Statement Motion while reserving its rights to object to confirmation of the Plan.
2	Closter-Grocery, LLC, *et al*.; (collectively, "***Closter-Grocery***")	2983	1. **Adequate Information**. The Disclosure Statement allegedly lacks adequate information regarding the following: (a) Effect of the Plan on previously assumed leases. ¶¶ 7–8. (b) Effect of the Plan and Confirmation Order on previously filed Cure objections. ¶ 9. (c) The assignment of Executory Contracts and Unexpired Leases. ¶ 10. 2. **Patently Unconfirmable**. The Plan is allegedly patently unconfirmable because of the following: (a) Anti-assignment provisions in Executory Contracts and/or	**Resolved**. Closter-Grocery's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding Unexpired Leases.

[1] The Debtors will update this Chart of Responses to include specific references to the Disclosure Statement and sections of the Reply that address each objection prior to the hearing on the Disclosure Statement.

[2] Capitalized terms used but not defined herein shall be given the meanings ascribed to them in the Reply, Disclosure Statement Motion, Disclosure Statement, and Plan, as applicable.

[3] All paragraph citations in the "Basis of Objection" column refer to paragraphs in the applicable Objection.

RESOLVED OBJECTIONS				
#	**PARTY**	**DOCKET NO(S).**	**BASIS OF OBJECTION**	**RESPONSE TO OBJECTION**
			Unexpired Leases cannot be invalidated. ¶ 11. (b) Elimination of Landlord's recoupment rights. ¶ 12.	
3	Grays Ferry Partners, LP ("***Grays Ferry***")	2991	1. **Adequate Information**. The Disclosure Statement allegedly provides insufficient information relating to the assignment of Unassumed Leases. ¶ 3. 2. **Confirmation**. Anti-assignment provisions in Executory Contracts and/or Unexpired Leases cannot be invalidated. ¶ 4. 3. **Joinder:** Joining the Disclosure Statement objections of Closter-Grocery.	**Resolved**. Gray's Ferry's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding Unexpired Leases.
4	South-Whit Shopping Center Associates ("***South-Whit***")	3009	1. **Adequate Information**. The Disclosure Statement allegedly provides insufficient information relating to the assignment of Unassumed Leases. ¶ 3. 2. **Confirmation**. Anti-assignment provisions in Executory Contracts and/or Unexpired Leases cannot be invalidated. ¶ 4. 3. **Joinder**. Joining the Disclosure Statement objections of Closter-Grocery.	**Resolved**. South-Whit's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding Unexpired Leases.
5	Connecticut General Life Insurance Company ("***CIGNA***")	2989	1. **Adequate Information**. The Disclosure Statement allegedly provides insufficient information relating to the treatment of the Executory Contracts. ¶¶ 10–12. 2. **Confirmation**. CIGNA objects to the Plan to the extent it permits the Debtors to assume an Executory Contract before the Confirmation Date even though the Cure Objection Deadline is after the Confirmation Date. ¶¶ 13–15	**Resolved**. CIGNA's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding Executory Contracts.

RESOLVED OBJECTIONS				
#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
6	West Milford Shopping Plaza, LLC, Hike Enterprises, and Tamara Enterprises LLC ("***West Milford***")	2999	1. **Adequate Information.** West Milford seeks clarification on the effect of the Plan on previously assumed Unexpired Leases. ¶ 4. 2. **Adequate Information.** West Milford seeks clarification on whether anti-assignment provisions in Unexpired Leases can be invalidated. ¶ 5.	**Resolved**. West Milford's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding Unexpired Leases.
7	Local 863 I.B.T. Pension Plan ("***Local 863***")	3000	**Adequate Information**. The Disclosure Statement allegedly lacks adequate information regarding the Debtors' intention regarding the Pathmark Pension Plan. ¶ 1, 5, 7, 8.	**Resolved**. Local 863's objection is consensually resolved by inclusion of additional language in the Disclosure Statement regarding the Pathmark Pension Plan.
8	Jesco Co. ("***Jesco***")	2988	**Adequate Information**. The Disclosure Statement allegedly lacks adequate information regarding the ability of the Debtors to pay disputed Cure amounts. ¶¶ 6–7.	**Resolved**. Jesco's objection is consensually resolved by inclusion of proposed language in the Disclosure Statement and has been formally withdrawn [Docket No. 3036].
9	Mount Clemens Investment Group, LLC ("***Mount Clemens***")	2998	1. **Adequate Information**. The Disclosure Statement allegedly lacks adequate information regarding: (a) Creditor recoveries. ¶¶ 11–18. (b) Whether the Debtors satisfy the best interest of test of section 1129(a)(7). ¶ 27. 2. **Confirmation**. The Disclosure Statement is allegedly patently unconfirmable because: (a) The Substantive Consolidation Settlement renders the Plan unconfirmable. (b) Classification of General Unsecured Claims pursuant to the Plan is improper gerrymandering and renders the Plan unconfirmable. ¶¶ 21–28.	**Resolved**. Mount Clemens' objection is resolved for the purposes of the Disclosure Statement Hearing while reserving their rights to object to Plan confirmation. 1. Debtors' General Response. The Disclosure Statement contains adequate information with respect to treatment of all Claims and Interests. The Debtors have nevertheless (a) amended the Disclosure Statement, as applicable, to address the objection and/or (b) responded to the objection in the Reply. (a) The Debtors have amended the Disclosure Statement to provide additional information regarding claim recoveries. (b) The "best interests" test is a confirmation issue and should not be considered at this time. 2. The Debtors' General Response. The Plan is not patently unconfirmable and these are confirmation issues.

RESOLVED OBJECTIONS				
#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
				(a) This is a confirmation issue not properly before the Bankruptcy Court at this time. At confirmation, the Debtors will establish that the Substantive Consolidation Settlement should be approved pursuant to Bankruptcy Rule 9019. (b) This is a confirmation issue not properly before the Bankruptcy Court at this time. Furthermore, the separate classification of the claims by the Debtors is not gerrymandering because legitimate reasons for the classification exist.

UNRESOLVED OBJECTIONS				
#	**PARTY**	**DOCKET NO(S).**	**BASIS OF OBJECTION**	**RESPONSE TO OBJECTION**
1	Ahold U.S.A., Inc., Stop & Shop Supermarket Co. LLC and Giant Food LLC ("***Ahold***")	2981	**Adequate Information**. The Disclosure Statement allegedly lacks adequate information regarding: (a) The estimated range of claims, including Union Claims, and associated recoveries. ¶ 8. (b) Terms of the CBA Amendments and their effect on the Debtors' future performance. ¶ 9-10. (c) The proposed treatment of Multiemployer Pension Plans and Claims. ¶ 11–13.	**Adequate Information**. The Debtors have (a) amended the Disclosure Statement, as applicable, to address the objection and/or (b) responded to the objection in the Reply. (a) The Debtors have amended the Disclosure Statement to provide additional information on estimate claims ranges and recoveries and have attached the Union Protection Term Sheet as **Exhibit B** to the Plan. (b) The Financial Projections in **Exhibit C** to the Disclosure Statement already reflect the savings from the labor union concessions. Furthermore, the Court previously ruled that Ahold could review the amended CBA agreements pursuant to a confidentiality agreement, which Ahold subsequently declined to sign. (c) The Debtors have amended the Disclosure Statement to provide additional information regarding Multiemployer Pension Plans.

UNRESOLVED OBJECTIONS				
#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
2	Grocery Haulers, Inc. ("***GHI***")	2994	**Adequate Information**. The Disclosure Statement lacks adequate information regarding: (a) The Debtors' intent regarding the Pathmark Pension Plan. ¶¶ 8-11 (b) The releases and exculpations provided pursuant to the Plan. ¶¶ 12–16.	**Adequate Information**. The Debtors have (a) amended the Disclosure Statement with language regarding the Plan's treatment of the Pathmark pension Plan resolving GHI's adequate information objection to the Disclosure Statement. (a) The Debtors have amended the Disclosure Statement to provide additional disclosures with respect to the Debtors' assumption of the Pathmark Pension Plan. (b) The Debtors have amended the Disclosure Statement to provide additional disclosures with respect to the releases and exculpations provided pursuant to the Plan. Nonetheless, the Disclosure Statement otherwise contains adequate information on releases and exculpations.
			Patently Unconfirmable. The classification of unsecured claims pursuant to the Plan is improper gerrymandering and is not confirmable. ¶¶ 21–28.	**Patently Unconfirmable**. This is a confirmation issue not properly before the Bankruptcy Court at this time. Furthermore, the separate classification of the claims by the Debtors is not gerrymandering because legitimate reasons exist for the proposed classification system.
3	City of New Haven Employees' Retirement System and Plumbers and Pipefitters Locals 502 and 633 Pension Trust Fund (who	2985	**Adequate Information**. Disclosure Statement lacks adequate information regarding: (a) The commencement of the Securities Litigation. ¶ 7 (b) The effect of the third-party release, injunction, exculpation and discharge provisions pursuant to the Plan on the objectors' ability to pursue the Securities Litigation and recover from the Debtors' D&O insurance policies. ¶¶ 17, 19,	**Adequate Information**. The Debtors have (a) amended the Disclosure Statement, as applicable, to address the objection and/or (b) responded to the objection in the Reply. (a) The Debtors have amended the Disclosure Statement to describe the Securities Litigation. (b) The Debtors have amended the Disclosure Statement to provide further information regarding the third-party release, injunction, exculpation and discharge provisions

UNRESOLVED OBJECTIONS				
#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
	purchased securities in A&P between July 23, 2009 and December 10, 2010, "***Securities Litigants***" or, in describing lawsuit, the "***Securities Litigation***")		22. (c) The terms and details of the Debtors' D&O insurance policies. ¶¶ 21-22. (d) The Debtors' intention to preserve their records or documents. ¶ 28. **Adequate Information**. The Ballots lack adequate information regarding the third-party release. ¶ 7 **Confirmation**. The Plan is unconfirmable to the extent the third-party release, injunction, exculpation and discharge provisions pursuant to the Plan restrict the objectors' ability to pursue the Securities Litigation and recover from the Debtors' D&O insurance.	as well as their effect on the Securities Litigation and the Debtors' D&O insurance policies. (c) The Securities Litigants are attempting to bypass the applicable discovery process and obtain information that is not relevant to the approval of the Disclosure Statement. With respect to objections regarding assumption of the D&O Insurance Policies, the Debtors will file their list of assumed executory contracts one week before the Plan Objection Deadline. (d) The Debtors have amended the Disclosure Statement to explain that nothing in the Plan will affect any otherwise applicable law requiring the maintenance of books and records with respect to the Securities Litigation. **Adequate Information**. The Debtors have amended the Ballots to include the third-party release section of the Plan and to explain that the third-party release is consensual **Confirmation**. These are Plan confirmation issues and therefore are not properly before the Bankruptcy Court at this time. Furthermore, at confirmation, the Debtors will establish that the releases, injunction and exculpation provisions in the Plan are narrowly tailored and appropriate.
4	Ricky Dudley ("***Dudley***")	2960 (Letter)	**Confirmation**. Dudley disagrees with proposed treatment/recovery pursuant to the Plan for equity holders.	**Confirmation**. This is a confirmation issue.
5	Peter Glickenhaus of Raymond James Financial Services ("***Glickenhaus***")	2979 (Letter)	**Confirmation**. Glickenhaus disagrees with proposed treatment/recovery pursuant to the Plan for certain noteholders.	**Confirmation**. This is a confirmation issue.
6	Brian Seelinger ("***Seelinger***")	2982 (Letter)	**Confirmation**. Seelinger disagrees with proposed treatment/recovery	**Confirmation**. This is a confirmation issue.

UNRESOLVED OBJECTIONS				
#	PARTY	DOCKET NO(S).	BASIS OF OBJECTION	RESPONSE TO OBJECTION
			pursuant to the Plan for certain noteholders.	
7	Tanit Buday ("***Buday***")	3038	Not an objection to the Disclosure Statement. Buday requests that the Bankruptcy Court modify the personal injury claimant mediation procedures.	This objection is not applicable to the Disclosure Statement.