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In re: : UNITED STATES BANKRUPTCY
: COURT FOR THE DISTRICT OF
: NEW JERSEY
RIH ACQUISITIONS NJ, LLC, et.. al., : HONORABLE GLORIA M. BURNS
: CASE NO. 13-34483 (GMB)
Debtors-in-Possession. : Chapter 11
: (Jointly Administered)

**LIMITED OBJECTION OF THE ACE COMPANIES
TO THE DEBTORS' JOINT PLAN OF LIQUIDATION**

ACE American Insurance Company and Westchester Fire Insurance Company and/or one or more of their affiliated companies (collectively, the "ACE Companies"), through their undersigned counsel, hereby object to the Debtors' Joint Plan of Liquidation (the "Plan")¹ as follows:

Background

1. The Debtors commenced these jointly administered bankruptcy cases by filing their respective Petitions on November 6, 2013 (the "Petition Date").
2. Before the Petition Date, the ACE Companies issued a number of insurance policies (the "Policies") to one or more of the Debtors.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.



3. Subject to their terms and conditions, the Policies provide coverage on a “claims made” basis for certain claims such as employer liability claims against Debtors’ officers and directors and certain environmental claims.

4. Some of the ACE Companies may have also entered into one or more agreements (collectively with the Policies, the “Agreements”) with one or more of the Debtors in connection with the Policies.

5. Under applicable non-bankruptcy law, the ACE Companies are entitled to enforce their rights (the “Contractual Rights”) and the insured’s reciprocal obligations (the “Contractual Obligations”) under the Agreements as conditions precedent to providing coverage, including, but not limited to:

(a) the right to control or associate in the defense, negotiation and settlement of any otherwise covered claims;

(b) the right to require the insured to cooperate in the defense of otherwise covered claims;

(c) the right to require the insured to preserve any rights of contribution, indemnity and subrogation;

(d) the right to assert set-off and/or recoupment against amounts recoverable under the Policies;

(e) the right to pay otherwise covered claims only as they become due as the result of a valid judgment or a settlement agreement entered into with the ACE Companies’ consent; and

(f) the right to require the satisfaction of any applicable deductible or self

insured retention or the exhaustion of any underlying coverage prior to submission of claims to the ACE Companies.

The Plan

6. Nothing in the Plan requires the Debtors or the Liquidation Trust, to comply with the continuing Contractual Obligations of the insured which are conditions to coverage under the Policies.

7. Moreover, the Plan contains a number of provisions that are inconsistent with Debtors' Contractual Obligations including, but not limited to:

(a) Section VI.2 (from and after the Effective Date, the Liquidation Trustee shall have *exclusive* authority to object to and settle Disputed Claims against the Debtors' Estates); and

(b) Section VI.3 (the Liquidating Trustee may utilize the Bankruptcy Code's estimation procedures to establish the maximum Allowed Amount of any Disputed Claim).

8. As a matter of applicable non-bankruptcy law, the Liquidation trustee's use of these provisions with respect to any claims covered by the Policies constitutes a violation of the insured's Contractual Obligations that may excuse the ACE Companies from any obligations to provide coverage. *See* 14 Couch on Ins. § 199:13 (2003).

9. However, the Plan expressly purports to reserve all of the Debtors' rights and Causes of Actions (which appears to include any causes of actions under the Agreements) and purports to retain rights under any policies that provide coverage to Debtors' directors and officers.. *See* Plan at § V.4 and VIII.1

Objection

10. The Debtors and/or the Liquidation Trustee, cannot retain the benefits of the Agreements without satisfying the continuing obligations of the insureds thereunder. A bankruptcy court cannot alter or enlarge an insurer's state law contractual obligations. *See In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091, 1099 (9th Cir. 1997) (“[T]he estate ha[s] no greater rights in property than those held by the debtor prior to bankruptcy.”); *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984), cert. denied, 469 U.S. 982 (1984) (the Bankruptcy Code is not intended to expand debtor's rights against others more than they exist at the commencement of the case). A debtor cannot assume the benefits of a contract (whether executory or non-executory) without assuming the corresponding burdens imposed upon the debtor. *AGV Productions, Inc. v. Metro-Goldwyn Mayer, Inc.*, 115 F. Supp. 2d 378 (S.D.N.Y. 2000) (holding that the Bankruptcy Code does not permit a debtor to assume and assign only a portion of a contract); *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 (4th Cir. 1995)(terms of non-executory contract binding); *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1153 (3d Cir. 1989)(debtors bound by arbitration clause in non-executory contract).

11. Stated another way, neither Debtors nor this Court can unilaterally rewrite the terms of the Agreements. *In re Ames Dept. Stores, Inc.*, 1995 WL 311764 (S.D.N.Y. May 18, 1995) (bankruptcy court does not have the authority to rewrite the terms of an insurance policy and impose requirements upon the insurer which were not part of the parties' bargains).

12. In recognition of the foregoing principles, Courts in this Circuit have held that, in order to be confirmable, a plan of reorganization must be “insurance neutral.” *See In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2005). To address the above-described

issues, the ACE Companies propose adding the following language to the Confirmation Order:

Notwithstanding any other term or provision in the Plan or this Order, nothing in the Plan or this Order (i) will prejudice any of the rights, claims or defenses of Debtors' insurers ("Insurers") under any insurance policies under which Debtors seek coverage (the "Policies") and any agreements related to the Policies (together with the Policies, the "Insurance Agreements"); (ii) will modify any of the terms, conditions, limitations and/or exclusions contained in the Insurance Agreements which shall remain in full force and effect; (iii) shall be deemed to create any insurance coverage that does not otherwise exist, if at all, under the terms of the Insurance Agreements, or create any right of action against the Insurers that does not otherwise exist under applicable non-bankruptcy law; (iv) shall be deemed to prejudice any of the Insurers' rights and/or defenses in any pending or subsequent litigation in which the Insurers or Debtors may seek any declaration regarding the nature and/or extent of any insurance coverage under the Insurance Agreements; (v) shall be deemed to alter the continuing duties and obligations of any insured under the Insurance Agreements; or (vi) shall be construed as an acknowledgement that the Insurance Agreements cover or otherwise apply to any claims or that any claims are eligible for payment under any of the Insurance Agreements.

13. The inclusion of this provision in the Confirmation Order would resolve the ACE Companies' Objection by ensuring the Plan is truly insurance neutral, and prevent potential future disputes concerning the Plan's impact (if any) on the Agreements.

Reservation of Rights

14. The ACE Companies expressly reserve the right to assert claims for any presently unliquidated amounts for any obligations due and owing under the Agreements. The ACE Companies reserve, and do not waive, all of their rights, remedies, defenses, limitations and/or exclusions in connection with the Agreements and/or applicable law. The ACE Companies further reserve all rights to assert any and all such rights, remedies, defenses, limitations and/or exclusions in any appropriate manner or forum whatsoever (including without limitation

arbitration, the United States District Court, or any state court). Nothing contained in this Objection shall be deemed to expand any coverage that may otherwise be available under any insurance policies or agreements, or any rights to payment under any settlements.

15. The ACE Companies further reserve all of their rights to raise the issues contained in this Objection and any other related issues in any procedurally-appropriate contested matter and/or adversary proceeding including, without limitation, a separate adversary proceeding requesting any appropriate declaratory and/or injunctive relief with respect to any rights under the Agreements and applicable law that may be adversely affected by confirmation of the Plan.

16. The ACE Companies further reserve all of their rights to object to any claim for coverage under the Agreements and/or any claim for payment under any settlement agreements, and/or to seek declaratory and/or injunctive relief to the extent that treatment of their rights under the Agreements and/or confirmation of the Plan violates any terms or conditions of the Agreements and/or settlements or gives rise to any defenses on behalf of the ACE Companies.

17. Nothing in this Objection shall be construed as an acknowledgment that any of the Agreements covers or otherwise applies to any claims, losses or damages on account of any Claims or otherwise, or that any such claims or causes of action are eligible for payment.

18. The ACE Companies reserve the right to seek an adjudication that Debtors have waived or forfeited any available coverage under the Agreements.

19. Finally, the ACE Companies reserve their right to amend, modify or supplement this Objection in response to, or as a result of, any discovery being conducted in connection with confirmation of the Plan and/or any submission in connection with the Plan or this Chapter 11

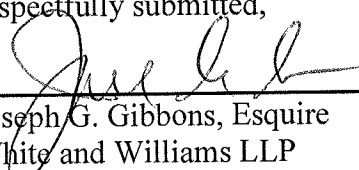
Case filed by any party-in-interest, including without limitation any Plan Supplement. The ACE Companies also reserve the right to adopt any other objections to confirmation of the Plan filed by any other party.

Conclusion

For the reasons set forth above, without the inclusion of specific language in the Confirmation Order reserving all of the ACE Companies' contractual and other rights under the Agreements, the Plan could be construed in a way that impermissibly modifies the ACE Companies' rights and cannot be confirmed.

Dated: April 7, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

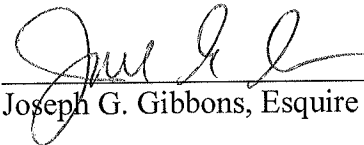
The undersigned hereby certifies that a copy of the foregoing Limited Objection of the ACE Companies to the Debtors' Joint Plan of Liquidation was served upon all parties via electronic notification and upon the following via First Class mail:

United States Trustee for the
District of New Jersey
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Dated: April 7, 2014



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