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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§ Chapter 11
TPP ACQUISITION, INC., d/b/a The Picture §
People, § Case No. 16-33437-HDH-11
§
Debtor. §

**MONROE CAPITAL MANAGEMENT ADVISORS, LLC’S STATEMENT
CONCERNING DEBTOR’S EXPEDITED MOTION FOR ENTRY OF AN
ORDER (I) SCHEDULING COMBINED HEARING ON APPROVAL OF
DISCLOSURE STATEMENT AND CONFIRMATION OF PLAN OF
LIQUIDATION, (II) CONDITIONALLY APPROVING DISCLOSURE
STATEMENT, (III) ESTABLISHING PROCEDURES FOR SOLICITATION AND
TABULATION OF VOTES ON PLAN AND (IV) APPROVING RELATED MATTERS**

MONROE CAPITAL MANAGEMENT ADVISORS, LLC, in its capacity as agent under the Debtor’s (defined below) pre-petition senior secured credit facility and post-petition secured debtor-in-possession credit facility (collectively with Monroe Capital Corporation and Monroe Capital Partners Fund, LP, “Monroe”), hereby submits its Statement concerning the “*Debtor’s Expedited Motion For Entry Of An Order (I) Scheduling Combined Hearing On Approval Of Disclosure Statement And*



Confirmation Of Plan Of Liquidation, (II) Conditionally Approving Disclosure Statement, (III) Establishing Procedures For Solicitation And Tabulation Of Votes On Plan And (IV) Approving Related Matters”, dated January 27, 2017 [Docket No. 446] (the “Solicitation Motion”) observing certain fundamental flaws currently present in the Plan (as defined below) that render it unconfirmable absent modifications, and requesting such other and further relief as may be just and appropriate in the circumstances.

FACTS

A. Background

1. On September 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. On September 13, 2016, an official committee of unsecured creditors (the “Committee”) was appointed in this Chapter 11 case.

3. The Debtor continues in possession of its property and continues to operate and manage its business as debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. Sale of Debtor’s Assets

4. On November 2, 2016 this Court conducted a contested hearing in connection with the Debtor’s motion seeking authorization to sell substantially all of its assets to TPP Operating, Inc., as designee (“Purchaser”), pursuant to the terms and provisions of a certain Amended and Restated Asset Purchase Agreement, dated as of September 29, 2016, between and among the Debtor, as seller, and Monroe Capital Partners Fund LP and Monroe Capital Corporation (and/or one or more other designees) (the “Purchase Agreement”).

5. On November 3, 2016, this Court entered its “*Order Granting the Debtor’s Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of an Order Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests and Granting Related Relief*” [Docket No. 355] (the “Sale Order”), inter alia, authorizing and approving Debtor’s sale of the Acquired Assets (as defined in the Purchase

Agreement) to Purchaser upon the terms and conditions set forth in the Purchase Agreement and Sale Order, respectively.

6. Effective as of November 8, 2016, the sale transaction provided for by the Purchase Agreement and Sale Order, respectively, closed.

C. Committee Adversary Complaint Against Monroe and Others

7. On December 9, 2016, the Committee commenced an adversary proceeding, Adv. Proc. No. 16-03161 (the "Committee Action"), against Monroe and others by filing a 72 page Complaint, with 291 numbered paragraphs and 28 Claims [Docket No. 1].

8. Pursuant to the "*Defendants' Motion To Dismiss Claims 1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23 And 26 Of The Complaint, With Prejudice*", dated January 23, 2017 (the "Dismissal Motion") [Docket Nos. 15, 16, and 17], Monroe and the other defendants in the Committee Action have sought a dismissal of various of the Committee's claims asserted in the Committee Action. A hearing in connection with the Dismissal Motion is presently scheduled for March 20, 2017.

D. Proposed Joint Liquidating Plan and Disclosure Statement

9. On February 1, 2017, the Debtor and the Committee (collectively, the "Plan Proponents") jointly filed their proposed: (a) "*Debtor's and Official Committee of Unsecured Creditors' Joint Plan of Liquidation for TPP Acquisition, Inc. d/b/a The Picture People Under Chapter 11 of the United States Bankruptcy Code*" (the "Plan") and (b) "*Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Debtor's and Official Committee of Unsecured Creditors' Joint Plan of Liquidation for TPP Acquisition, Inc. d/b/a The Picture People Under Chapter 11 of the United States Bankruptcy Code*" (the "Disclosure Statement").

10. Pursuant to the Solicitation Motion, the Plan Proponents jointly seek varying forms of relief, including: (a) scheduling a combined hearing (a "Combined Hearing") on confirmation of the Plan; (b) conditionally approving the Disclosure Statement pending the Combined Hearing; (c) approving the form and manner of notice of the Combined Hearing, (d) establishing procedures for the solicitation and

tabulation of votes to accept or reject the Plan; and (e) approving certain additional procedures associated with the Plan confirmation process (collectively, the “Solicitation Procedures”).

**STATEMENT CONCERNING THE PLAN AND
RELATED PROPOSED SOLICITATION PROCEDURES**

11. As a threshold matter, Monroe does not object to the Court’s grant of the Plan Proponents’ request for the establishment of the date, time and place of a Combined Hearing, or with regard to the proposed Solicitation Procedures *per se*.

12. Monroe instead files this Statement to alert the Court, the Plan Proponents, and other interested parties to what it has identified as certain fundamental defects in the Plan (and by extension, the Disclosure Statement), which Monroe believes render the Plan unconfirmable in its current form. Monroe submits that given these defects, proceeding toward confirmation absent the requested modifications would constitute a waste of the Estate’s limited assets.

A. Defective Treatment of Class 1 Claims

13. Under the Plan as proposed, the so-called “Senior Secured Lender Allowed Claims”¹ held by Monroe are classified in Class 1, and are denominated as unimpaired and therefore not entitled to vote to accept or reject the Plan. More specifically, the Plan provides the following treatment of the Monroe Class 1 Claims:

“Pursuant to the TPP Sale Order, the closing of the TPP Sale was deemed a novation of and extinguished any Claim that the Senior Secured Lenders or any of their respective successors and assigns had or may have against the Debtor or the Estate with respect to the DIP Financing Obligations or the Pre-Petition Financing Obligations (each as defined in the TPP Sale Order) in excess of any valid “Credit Bid” (as defined in the TPP Sale Order). The treatment of the Claims of the Senior Secured Lenders’ or any of their respective successors and assigns as provided in the TPP Sale Order is reaffirmed pursuant to this Plan. As more fully provided in Article V, upon payment in full of all unpaid Allowed Claims identified in the DIP Budget up to the amounts identified in the DIP Budget, the Debtor or Liquidation Trustee, as applicable, shall, subject to the Committee’s or Liquidation Trustee’s right (if any) to challenge such obligation under the DIP Order, or the TPP Sale Order, or applicable law (including recoupment or setoff) based on claims or Rights of Action accruing

¹ Section 118 of the Plan defines “Senior Secured Lender Allowed Claims” as “All Claims held by the Senior Secured Lenders against the Debtor or its Estate Pursuant to the DIP Order, the DIP Credit Agreement, and the Prepetition Loan Documents.” Section 117 of the Plan defines “Senior Secured Lenders” as “The DIP Agent and DIP Lenders.”

after the entry of the DIP Order or TPP Sale Order, as applicable, promptly transfer any remaining cash held in the Wind-Down Reserve, if any, to the Senior Secured Lenders. The Senior Secured Lenders shall receive no further Distribution under the Plan, and shall have no further Claim, right, Lien or interest in any of the Remaining Assets. Nothing in this Article IV.A shall alter or affect any Rights of Action against the Senior Secured Lenders, the Pre-Petition Secured Lenders, the Purchaser, or any of their respective affiliates, successors, or assigns.”

14. First, the Plan’s proposed treatment of the Monroe Class 1 Claims is fatally flawed because it impermissibly attempts to modify the Sale Order in a manner that is prejudicial to Monroe - and without Monroe’s consent. More specifically, Paragraph 20 of the Sale Order provides, in relevant part, that “[a]t the end of the period covered by the Wind-Down Reserve, the remaining undisbursed balance of the Wind-Down Reserve shall be returned to the DIP Lenders for application to the DIP Obligations.” This clause, which was heavily negotiated among the Debtor, the Committee and Monroe, contemplates an unconditional requirement on Debtor’s part to return unused Wind-Down Reserve monies to Monroe. Upon information and belief, Monroe understands that there may be significant excess Wind-Down Reserve monies due Monroe.

15. In contrast to the clear directive in Paragraph 20 of the Sale Order, Article IV, Section A of the Plan attempts to restrict and condition the Debtor’s previously negotiated and agreed return of excess Wind-Down Reserve monies by making any such return “subject to the Committee’s or Liquidation Trustee’s right (if any) to challenge such obligation under the DIP Order, or the TPP Sale Order, or applicable law (including recoupment or setoff) based on claims or Rights of Action accruing after the entry of the DIP Order or TPP Sale Order, as applicable”. As the Court was well aware at the time it entered the Sale Order, the prospect of post-closing litigation between the Committee (or a successor thereto) and Monroe was clear, such that if the Committee desired to reserve the right to challenge the return of the excess Wind-Down Reserve monies based on the matters at issue in the Committee Action, or otherwise, such reservation needed to be preserved in the Sale Order, and not in a subsequently proposed Plan provision where Monroe’s rights are entirely disenfranchised. The new restriction provided for in the Plan is in direct contravention of the express provisions of the Sale Order, and thus renders the Plan unconfirmable.

16. Second, the Plan's proposed treatment of the Monroe Class 1 Claims is also problematic because it attempts to effectuate an absolute release of any and all claims held by Monroe that are not related to either the DIP Financing Obligations or the Pre-Petition Financing Obligations (each as defined in the Sale Order), which are the only claims Monroe agreed to compromise in the context of the Purchase Agreement and Sale Order, respectively.

17. In this regard, Article IV, Section A of the Plan attempts to unilaterally waive and/or release claims that Monroe may have by providing "[t]he Senior Secured Lenders shall receive no further Distribution under the Plan, and shall have no further Claim, right, Lien or interest in any of the Remaining Assets." By this clause, the Plan Proponents go well beyond the limited claims waiver contained in the Purchase Agreement and/or Sale Order, which addressed claims arising in respect of the DIP Financing Obligations or the Pre-Petition Financing Obligations only.

18. As this Court is all too aware, from the outset of the case Monroe has consistently stated its belief that no legitimate claims exist against it in respect of its pre-petition and/or post-petition relationship with the Debtor. Most recently, by the Motion to Dismiss, Monroe has made it clear that it believes all of the Committee's claims in the Committee Action are entirely without merit, and that a substantial portion of the 28 claims are not supported by applicable law, and/or otherwise without support in fact, and therefore should be dismissed. In this regard, Monroe's position is that much, if not all, of the Committee's activities vis-a-vis Monroe to date, including, but not limited to, the Committee Action, has been entirely frivolous and driven by bad faith.² These wrongful actions may give rise to affirmative claims by Monroe against the Committee, its members and its professionals (and by extension, the Liquidating Trust and any appointed Liquidating Trustee appointed therein), which claims Monroe most assuredly has not agreed to waive.

² The Committee previously has consistently and continuously made unfounded allegations without good grounds and without evidence to support those allegations (sometimes directly contrary to the evidence and the contentions of witnesses with knowledge of the facts), all under the guise of the Committee's "duty to investigate." These and other improper actions unilaterally taken by the Committee have harmed Monroe as well as the Debtor's business purchased by TPP Operating Inc.

19. While the Plan Proponents have taken steps to expressly preserve their rights to continue pursuit of “Rights of Action against the Senior Secured Lenders, the Pre-Petition Secured Lenders, the Purchaser, or any of their respective affiliates, successors, or assigns” - a reservation that Monroe does not take issue with – Monroe does take issue, and opposes, any effort by the Plan Proponents to (a) foreclose claims that Monroe may have against the Debtor, its Estate, the Committee, its members and/or its professionals (and by extension, the Liquidating Trust and any appointed Liquidating Trustee appointed therein) outside of the DIP Financing Obligations or the Pre-Petition Financing Obligations and (b) preclude Monroe from receiving any distribution under the Plan should it later assert and prevail in any such claims. To the extent the Plan forecloses Monroe’s rights in this regard, the Plan is fatally flawed and unconfirmable.

B. The Plan’s Exculpatory Provisions are Overbroad

20. Article IX, Section E of the Plan proposes to grant a comprehensive exculpation blanket covering, among others, the Debtor’s Chief Restructuring Officer and Winter Harbor, the Committee and its individual members, and all of the Estate’s professionals, from and against: any act, action taken, transaction, omission, action not taken, or other event occurring before the commencement of the Chapter 11 Case or during the course of the Chapter 11 Case (including through the Effective Date), in any way relating to (a) the Chapter 11 Case, (b) the Plan, (c) the DIP Credit Agreement, (d) the Debtor’s business, (e) the decision to file a bankruptcy petition on behalf of the Debtor, (f) the winddown and operation of the Debtor during the Chapter 11 Case, (g) the administration of the Chapter 11 Case, (h) the negotiation and implementation of the Plan, (i) confirmation of the Plan, (j) consummation of the Plan (including all Distributions hereunder), (k) the administration of the Plan, and (l) the property to be distributed under the Plan (except as to rights, obligations, duties, and claims established under the plan). *See* Plan, Article IX, Section E.

21. Article IX, Section E of the Plan similarly provides for a comprehensive waiver and release of any claims related to the foregoing matters:

“ANY AND ALL CLAIMS, CAUSES OF ACTIONS, RIGHTS, OR ANY LIABILITIES DESCRIBED ABOVE HELD BY ANY PERSON OR PARTY IN INTEREST AGAINST THE FOREGOING PARTIES LISTED IN SUBSECTIONS (I) AND (II) ABOVE ARE FULLY WAIVED, BARRED, RELEASED, AND DISCHARGED IN ALL RESPECTS (EXCEPT AS TO RIGHTS, OBLIGATIONS, DUTIES, AND CLAIMS ESTABLISHED UNDER THE PLAN).”³

22. Similarly, Article V, Sections 7 and 8 of the Plan provide for comparable comprehensive exculpation coverage, including a sweeping injunction, for the yet-to-be designated Liquidation Trustee, as well as the not yet identified members of the Liquidation Trust Committee.

23. As noted above, Monroe believes that the Committee’s actions during the case, including with respect to the Committee Action, may give rise to affirmative claims by Monroe against the Committee, its members and its professionals (and by extension, the Liquidating Trust and any appointed Liquidating Trustee appointed therein, assuming it takes up the Committee’s mantle in pursuing the Committee Action post-Effective Date), which claims Monroe has not agreed to waive. The Plan Proponents’ attempt to foreclose Monroe from asserting and later prosecuting such claims, or raising such claims as defenses and/or counterclaims in the Committee Action or otherwise, and/or asserting any independent rights of action held by Monroe against anyone other than the Debtor (including for these purposes, the Committee, its members and its professionals (and by extension, the Liquidating Trust and any appointed Liquidating Trustee appointed therein, among others), renders the Plan’s exculpation and injunction provisions entirely inappropriate and prejudicial to Monroe. The Plan’s grant to these parties of comprehensive releases is wholly impermissible absent Monroe’s express consent, which consent shall not be forthcoming.

24. For these reasons, Monroe believes the Plan contains certain fundamental flaws that render it unconfirmable absent modifications that (a) conform the treatment of Class 1 to the specific claim waivers and reservations incorporated in the Purchase Agreement and Sale Order, respectively, and

³ Monroe acknowledges that the Plan provide for a limited carveout from the foregoing exculpation and release for “any act or omission determined by a Final Order to have constituted willful misconduct, gross negligence, intentional fraud, or criminal conduct.” See Plan, Article IX, Section E. However, this limited carveout does not render the unilateral foreclosure of third parties’ rights and claims, including those rights and claims belonging to Monroe, any less offensive and unenforceable.

(b) preserve Monroe's right to assert and prosecute any and all affirmative claims, defenses, setoffs, etc. it may have against the Debtor, its Estate, the Committee, its members and its professionals (and by extension, the Liquidating Trust and any appointed Liquidating Trustee appointed therein), excluding only those claims dealt with by the Purchase Agreement and Sale Order – i.e., limited to those claims arising from the DIP Financing Obligations or the Pre-Petition Financing Obligations.

25. Monroe reserves any and all right to assert such other and additional objections to, inter alia, approval of the Disclosure Statement and confirmation of the Plan and to supplement this Statement, in its discretion.

Dated: February 12, 2017

Respectfully submitted,

/s/ Rebecca Lynn Petereit

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CERTIFICATE OF SERVICE

I certify that on February 12, 2017, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas, which gives notice to all counsel of record.

/s/ Rebecca L. Petereit

One of Counsel

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