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March 12, 2020

The Honorable Robert D. Drain
United States Bankruptcy Judge
United States Bankruptcy Court
for the Southern District of New York
300 Quarropas Street
White Plains, NY 10601-4140

RE: Case #19-22312, Windstream – Report of Crime (Extortion,
18 U.S.C. §§ 871-878) in Mediation and Alert Not to Facilitate
That Crime At April 3, 2020 Settlement Hearing

Dear Judge Drain:

I am reporting to the Court that Elliott Management Corporation (“Elliott”), one of the creditors of Windstream Holdings and Windstream Services (“Windstream”), has perpetrated the crime of attempted extortion (18 U.S.C. §§ 871-878) during the mediation of Windstream’s adversary case (#19-08279) with defendant Uniti Group, Inc. (“Uniti”) and is CONTINUING to perpetrate that felony by seeking the Court’s unwitting facilitation of that felony through the Court’s approval of the proposed Settlement at the April 3, 2020 hearing. As a shareholder of Uniti common stock (NASDAQ symbol “UNIT”), I am one of the many victims of that crime. I urge you to conduct an inquiry to verify my statements of facts and to take appropriate action to stop the on-going crime from being facilitated by the Court.

The recent extortion conviction of famed attorney Michael Avenatti (“Avenatti”) is reported in the February 16, 2020 New York Times article, “Michael Avenatti Is Convicted in Nike Extortion Trial,” which article can be accessed at the following link:

<https://www.nytimes.com/2020/02/14/us/michael-avenatti-nike-convicted.html>

In a case brought by the United States Attorney’s Office in Manhattan, a jury convicted Avenatti of attempted extortion by “trying to extort money from Nike in exchange for evidence he said he had of misconduct by company employees in the recruitment of college basketball players. He demanded that Nike hire him to conduct an internal investigation into its criminal exposure, prosecutors said, contending that he had alternatively requested \$22.5 million to buy his silence and resolve potential claims by a youthful basketball coach, whom he said he represented.” The threat was to tank Nike’s stock price.



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That article added the following:

“Geoffrey S. Berman, the United States attorney for the Southern District of New York, said in a statement on Friday. ‘While the defendant may have tried to hide behind legal terms and a suit and tie, the jury clearly saw the defendant’s scheme for what it was — an old fashioned shakedown.’”

Similarly, Elliott and representatives of Elliott have attempted to extort approximately \$155 million from Uniti while hiding behind legal terms and a suit and tie using the legal process of mediation overseen by the Court.

Elliott is a very powerful Windstream creditor, as documented in the Ad Hoc Committee of certain second lien holders’ January 15, 2020 “Fourth Amended Verified Statement Pursuant To Bankruptcy Rule 2019” (docket #1422), which can be accessed at the following link:

<http://www.kccllc.net/windstream/document/1922312200115000000000011>

Page 5 of that 6-page filing discloses that Elliott owns the following Windstream debt:

- \$531,164,289.11 – First Lien Term Loans
- \$249,904,413.54 – Revolving Credit facility Obligations
- \$355,462,000.00 – First Lien Notes
- \$450,060,000.00 – Second Lien Notes
- \$443,921,000.00 – Unsecured Notes

On information and belief, Elliot is reportedly a powerful institutional “predatory” investment company.

On information and belief during the last three months or so, Elliot has attempted to extort Uniti with threats of driving Uniti into bankruptcy by using its financial prowess to coerce Windstream into rejecting the ML, even if the Court were to decide that the Uniti Master Lease (“ML”) is a true “lease.”

The credibility of those threats is reflected in the December 16, 2019 “Limited Objection of the Ad Hoc Committee of Second Lien Noteholders to the Debtors’ Second Motion to Extend the Debtors’ Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof” (docket #1316), which can be accessed at the following link:

<http://www.kccllc.net/windstream/document/1922312191216000000000003>

In ¶ 5, Elliott and the second lien holders stated the following:

“5. While the Debtors contend that the requested extension is justified because the litigation against Uniti is a “gating item” that must be resolved before a plan of reorganization may be formulated, that is not true. The parties in interest do not have to await the conclusion of the Uniti trial (scheduled to commence in March) to begin negotiations with respect to a plan. Indeed, the parties could negotiate and file a plan **predicated on**, among other things, **the rejection of the Uniti master lease or the sale of the Debtors’ businesses**, neither of which require a resolution of such litigation.” (my emphasis)

That rejection and liquidation would necessarily force Uniti into bankruptcy because Windstream is the tenant of the majority of the ML property.

Furthermore, rejection of the ML and liquidation would not be prudent as revealed in Windstream CEO Tony Thomas’ February 25, 2019 Declaration (docket #0027), which can be accessed at the following link:

<http://www.kccllc.net/windstream/document/1922312190225000000000240>

In ¶ 5 at page 3 of that 75-page filing, CEO Thomas stated the following:

“5. Windstream did not arrive in chapter 11 due to operational failures and, currently, does not anticipate the need to restructure material operational obligations. Instead, as set forth in the First Day Motions, Windstream hopes and anticipates that its operations will continue uninterrupted and its employees will be able to continue to focus on providing best-in-class service to all of Windstream’s valued customers, in each case largely unaffected by these chapter 11 cases.”

As documented in the letter (docket \$1156), Windstream’s financial reporting reveals that Windstream is a profitable and even thriving business. Liquidation would not be prudent.

Elliott’s attempted extortion is reported by the law firm Faegre Drinker Biddle & Reath LLP, representing Contrarian Capital Management, in its Letter re: Proposed Settlement Filed by James H. Miller on Behalf of Contrarian Capital Management (docket #1541) (“Miller letter”) is at this link:

<http://www.kccllc.net/windstream/document/1922312200302000000000017>

Page 2 of the Miller letter states the following:

“Before delving into the substantive problems with the Proposed Settlement and the Proposed Plan, we think that it is important to underscore the procedural ones. In short, while the Proposed Settlement purports to be a settlement between the Windstream Debtors, on the one hand, and Uniti Group Inc.

(together with its affiliates, “Uniti”), on the other, we believe that the Windstream Debtors played no more than a minor role in negotiations. Instead, the Windstream Debtors appear to have largely abdicated their responsibility to a select group of creditors, the Backstop Parties (as defined in the PSA), who, as one might expect, have sought to maximize their own recoveries rather than maximize the value of the estate for all creditors. To take but one example discussed at further length below, we believe that a key part of both the Proposed Settlement and by extension, the Proposed Plan, is the sale of Uniti stock at a substantially below market price (the “Uniti Stock Sale”). Leaving aside the significant substantive shortcomings of the Uniti Stock Sale, we note that the construct appears to have been formulated without the Debtors’ presence, let alone consent. Rather, on information and belief, it came about during direct negotiations between one of the Backstop Parties and Uniti that the Debtors did not attend and may not have even known about.

In other words, Elliott was alone with Uniti during the attempted extortion without the presence of Windstream and the other parties.

Page 2 of the Miller letter continues as follows:

“While the Uniti Stock Sale is, perhaps not surprisingly, cloaked in secrecy—a fact that in our view raises substantial disclosure questions for both Uniti and the Debtors—we believe that it amounts to at least a \$150 million transfer of value to a small cabal of creditors (the “Advantaged Parties”) consisting of some or all of the Backstop Parties. Specifically, on information and belief, Uniti will be selling approximately 38.6 million shares to the Advantaged Parties at \$6.33 per share, which is \$4.00 per share below where Uniti’s stock closed on March 2, 2020 and \$13.65 below where it closed on February 15, 2019, immediately prior to the decision of the District Court for the Southern District of New York that the April 2015 spin-off giving rise to Uniti was a prohibited sale-leaseback. Measured based on the former price, the Uniti Stock Sale would result in a gain for the Advantaged Parties of approximately \$154.4 million, and measured based on the latter, it would produce a windfall of approximately \$527.4 million.”

As the Miller letter points out, “There is no legal basis for such a windfall. Among other problems, the Uniti Stock Sale lacks adequate consideration.” The “small cabal of creditors” (including Elliott) will be purchasing Uniti stock at a substantial discount, not merely for insufficient consideration, but for no consideration at all.

Now, the Court should know that selling Uniti stock at ANY discount is uncharacteristic of Uniti. Uniti ALWAYS sells its stock at a PREMIUM (above \$19.50 per share) so that the issuance of Uniti shares is ANTIDILUTIVE – meaning the net result will generate more Adjusted Funds From Operations (“AFFO”) so that the AFFO PER SHARE remains the same or actually increases.

Illustrating how this works are the data for the Uniti 2018 fiscal year extracted from the March 18, 2019 SEC Form 10-K, which can be accessed at the following link:

<https://investor.uniti.com/node/9081/html>

In 2018, UNIT issued 5.5 million UNIT shares under the At the Market (“ATM”) Program at between \$19.5 and \$21 per share (after the Aurelius litigation had dampened UNIT share price to a level below \$30). (See page 49.) As a result of issuing new shares (primarily under the ATM program), UNIT outstanding shares increased from 174,852,000 shares as of December 31, 2017 to 180,536,000 shares as of December 31, 2018. (See page 58.) Annual AFFO increased from \$424,824,000 as of December 31, 2017 to \$443,755,000 as of December 31, 2018. (See page 29.) The ANNUAL AFFO PER SHARE remained the same - \$2.51 as of December 31, 2017 to \$2.51 as of December 31, 2018. (See page 29.) So, by increasing the size of the pie, the value of the shares in that pie was NOT diluted.

Clearly, selling the equivalent of 20% of Uniti’s outstanding shares is devastatingly uncharacteristic of the antidilutive manner in which Uniti had previously raised capital by issuing Uniti shares.

So, what was the motivation for such a drastic departure of issuing Uniti shares to raise capital?

Miller incorrectly theorizes that the motivation behind the windfall stock deal was to buy votes for Windstream’s Chapter 11 plan, but that’s not the reason because, once Windstream assumes the new lease, Uniti could care less about Windstream’s Chapter 11 plan. The REAL MOTIVATION was to stave off Elliott’s threat to plunge Uniti into bankruptcy. Elliott scared Uniti to gift the “small cabal of creditors” \$155 million with the threat of forcing Uniti into bankruptcy – much worse than Michael Avenatti’s scaring Nike to gift him \$22.5 million with the threat of tanking Nike’s stock price with disclosures of improprieties. Elliott’s tactics, while couched in legal terms in a Court-sponsored mediation, are no better than the Mafia threatening labor strikes if the legitimate businesses don’t hand over millions of dollars to the Mafia.

11 U.S.C. § 1129 (“Confirmation of Plan”) can be accessed at the following link:

<https://www.law.cornell.edu/uscode/text/11/1129>

11 U.S.C. § 1129 states in relevant part the following”

“(a) The court shall confirm a plan only if all of the following requirements are met:

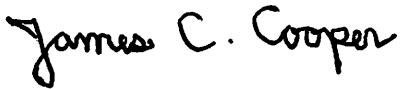
....

(3) The plan has been proposed in good faith and not by any means forbidden by law.”

That portion of the Settlement and Plan of Uniti selling to Elliott and his “small cabal of creditors” the equivalent of 20% of Uniti’s common stock for \$6.33 per share constitutes “fruits of the crime” of attempted extortion, which Elliott hopes the Court will approve at the April 3, 2020 hearing. Please, don’t let Elliot and his “crew” get away with that crime.

I urge you to conduct an inquiry to verify my statements of facts and to take appropriate action to stop the on-going crime from being facilitated by the Court.

Sincerely

A handwritten signature in black ink that reads "James C. Cooper". The signature is written in a cursive, slightly slanted style.

JAMES C. COOPER