

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

In re:

Piccadilly Restaurants, LLC, *et al.*,

Debtors.

Case No. 12-51127

(Joint Administration)¹

Chapter 11

Judge Robert Summerhays

**ATALAYA ADMINISTRATIVE LLC'S RESPONSE TO YUCAIPA
CORPORATE INITIATIVES FUND I, L.P.'S DISCLOSURE STATEMENT OBJECTION**

Atalaya Administrative LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), and Atalaya Special Opportunities Fund (Cayman) IV, LP (Tranche B) (collectively, "Atalaya") respond to the disclosure statement objection filed by Yucaipa Corporate Initiatives Fund I, L.P. as follows:

Introduction

1. After more than a year of bankruptcy proceedings, the secured and unsecured creditors in these cases have reached agreement on a consensual plan of reorganization and now seek approval of their disclosure statement. Yucaipa maintained plan exclusivity for that year through its control of the Debtors, but was unable to propose a plan that had any creditor support. Tellingly, the *only* objection to the present disclosure statement was filed by Yucaipa, and that objection is largely a premature confirmation objection.

2. Indeed, given the nature of Yucaipa's arguments, it is doubtful that any amount of information included within a disclosure statement would affect Yucaipa's decision regarding the

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

proposed plan. Nevertheless, as detailed below, the Plan Proponents have agreed to modify, and/or have highlighted specific provisions of the disclosure statement that resolve all of Yucaipa's true disclosure statement objections. Specifically, the Plan Proponents:

- Have provided financial projections and a liquidation analysis (prior to Yucaipa's objection being filed);
- Have agreed to include language in the disclosure statement setting forth Yucaipa's position regarding valuation and confirmability;
- Have agreed to modify the disclosure statement to provide further information regarding the rationale for settlement of the adversary pending between the Plan Proponents; and
- Have agreed to describe Yucaipa's contentions regarding Atalaya's secured claims.

For the reasons set forth below, the disclosure statement should be approved and these cases should move to confirmation.

Background

3. On September 11, 2012 (the "Petition Date") Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LLC (collectively, the "Debtors") filed for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On October 23, 2012, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee").

4. The Debtors are currently controlled by Yucaipa Corporate Initiatives Fund I, L.P., who holds 100% of the ownership interests in debtor Piccadilly Investments, LLC.

Piccadilly Investments in turn owns 100% of the equity in the other two debtors, Piccadilly Restaurants, LLC and Piccadilly Food Service, LLC. Within this Motion, the term “Yucaipa” shall refer, collectively, to Yucaipa Corporate Initiatives Fund I, L.P. and all of its affiliates (including, without limitation, California Management Associates, LLC).

A. Yucaipa’s plan confirmation efforts

5. Following two extensions of the exclusive period during which the Debtors could propose and confirm a plan of reorganization, the Debtors and Yucaipa filed a proposed joint chapter 11 plan of reorganization (such plan, the “Yucaipa Plan”) on July 8, 2013. On the date that the Yucaipa Plan was submitted, the exclusive periods during which the Debtors were entitled to solicit acceptances of the Yucaipa Plan extended through September 9, 2013 (the “Exclusivity Deadline”). Shortly before the September 10, 2013 expiration of exclusivity, the Debtors and Yucaipa withdrew the Yucaipa Plan.

B. The Plan Proponents’ proposed chapter 11 plan and Disclosure Statement

6. Following the expiration of the Debtors’ plan exclusivity period, Atalaya and the Committee (together the “Plan Proponents”) proposed their *Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC and Piccadilly Food Service, LLC, Proposed by Atalaya Administrative, LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), Atalaya Special Opportunities Fund (Cayman) IV, LP (Tranche B) and the Official Committee of Unsecured Creditors, Dated September 27, 2013* (the “Joint Plan,” ECF No. 1123). A central tenet of the Joint Plan is the agreement by the Debtors’ sole secured creditor and largest creditor, Atalaya, to convert a material amount of its outstanding secured debt into equity in the reorganized Debtors. A hearing to consider approval of the Plan

Proponents' disclosure statement accompanying the Joint Plan (the "Disclosure Statement," ECF No. 1124) is set for October 29, 2013.

7. On October 18, 2013, the Plan Proponents filed Exhibits C, and D to the Disclosure Statement (ECF No. 1164). Exhibit C contains detailed financial projections in support of the Joint Plan, including cash flow forecasts, income statements and balance sheets through 2016, as well explanatory notes related to those financial projections. Exhibit D contains a liquidation analysis which demonstrates that the Joint Plan provides a far greater recovery to creditors than a chapter 7 liquidation.

C. Yucaipa's objection to the Disclosure Statement

8. On October 18, 2013, Yucaipa filed the only objection to the Disclosure Statement. Yucaipa's objection raises primarily confirmation issues that relate to the Plan Proponents' treatment of Yucaipa's equity interest under the Joint Plan. Specifically, Yucaipa's objections are as follows:

- Financial projections and a liquidation analysis were not included in the Disclosure Statement;
- The Disclosure Statement does not include a "valuation" related to Atalaya's debt to equity conversion and cancellation of Yucaipa's equity interests; and
- The Disclosure Statement does not adequately describe Atalaya's liens and the settlement of the adversary proceeding filed by the Committee against Atalaya challenging, in part, those liens.

9. Yucaipa's objection also asserts that somehow the Joint Plan is unconfirmable as a result of the elimination of Yucaipa's equity interests, and therefore the Disclosure Statement should not be approved. For the reasons set forth herein, Yucaipa's objection has no merit.

Response

10. There is no disagreement regarding the standard for approval of a disclosure statement. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement provide "adequate information" regarding the proposed reorganization, which is sufficient to enable parties in interest solicited to vote on such plan to make an informed decision regarding their vote. *See In re United Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996). It is well settled that determination of what constitutes "adequate information" is a matter of discretion for the bankruptcy court. *See In re Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988)("The determination of what is adequate information is subjective and made on a case by case basis . . . [and is] within the discretion of the bankruptcy court." [emphasis added]). Here, the Disclosure Statement provides more than adequate information to allow parties to make an informed decision regarding accepting or rejecting the Joint Plan, and the Court is well within its discretion in approving the Disclosure Statement.

A. Yucaipa lacks standing to object to the Disclosure Statement

11. As an initial matter, Yucaipa lacks standing to raise a disclosure statement objection here. Because Yucaipa's equity interest will be cancelled under the Joint Plan, Yucaipa will be deemed to have rejected the Joint Plan. Accordingly, no amount of additional information in the Disclosure Statement will "affect its class" or change Yucaipa's vote. *See In re Scioto Valley Mortgage Company*, 88 B.R. 168, 171 (Bankr. S.D. Ohio 1988)("a creditor only

has standing to object to the adequacy of a disclosure statement as to its own class and not as to the adequacy of the statement as it affects another class").

12. Further, the weight of Yucaipa's objection must be measured against its obvious motivation in the case - - to delay confirmation of any plan that Yucaipa does not support. Yucaipa withdrew its plan after it was clear no creditors supported its failed reorganization efforts. Faced with a plan now that recognizes the economic reality of these cases, Yucaipa's goal is not to improve the Disclosure Statement, but rather to delay the confirmation process. As a result, Yucaipa's objections should be properly addressed at confirmation, not a disclosure statement hearing. As one court noted in rejecting an equity holder's objection to a disclosure statement:

As equity interests junior to the creditors, and given only a remote chance for any distribution under the pending Joint Plan, . . . the court has to "take with a grain of salt" the typical myriad of objections to a disclosure statement . . . [t]he statutory provision in § 1125(a) was amended to make it clear that an disclosure statement does not need to discuss competing or alternative plans . . . [which] eliminates the use of plan/disclosure statement hearing for . . ."strategic objections" . . . designed primarily to delay and hobble the first party to put a plan before the court.

In re Waterville Timeshare Group, 67 B.R. 412 (Bankr. D. N.H. 1986)(disclosure statement approved).

B. Financial projections were filed in advance of Yucaipa's objection

13. Yucaipa's first objection asserts that the Disclosure Statement does not have appropriate disclosures regarding financial projections and a liquidation analysis. As noted, the Plan Proponents filed detailed financial projections and a liquidation analysis -- prior to Yucaipa's objection being filed -- thereby mooting this objection.

C. Valuation is not required in a Disclosure Statement

14. Yucaipa asserts next that the Disclosure Statement does not contain "valuation information" to support Atalaya's conversion of debt to equity and the cancellation of Yucaipa's equity.

15. In the first place, the financial projections and liquidation analysis provided by the Plan Proponents contain more than sufficient information to allow Yucaipa to assess value here. Yucaipa is a sophisticated investor and current owner of the Debtors. Indeed, Yucaipa has access to as much or more financial information regarding the Debtors than either of the Plan Proponents. Yucaipa has all of the information it needs to make its own valuation assessment and establish whatever case it feels appropriate regarding confirmation of the Joint Plan.

16. Moreover, while valuation will be relevant to confirmation of the Joint Plan, to require the Plan Proponents to establish evidence of valuation in a disclosure statement would effectively require the Plan Proponents to establish, in advance, their case for "cram down" of Yucaipa's claim. That is not what is contemplated by the Bankruptcy Code. In fact, the text of the Code is clear:

The court may approve a disclosure statement *without a valuation of the debtor or an appraisal of the debtor's assets.*

11 U.S.C. § 1125(b)[emphasis added]. *See In re The Stanley Hotel, Inc.* 13 B.R. 926, 930 (Bankr. D. Colo. 1981)(court cites 1125(b), holding that disclosure statement information does not need to rise to the level of a prospectus or registration statement); *In re El Comandante Management Company, LLC*, 2006 WL 3903593 (Bankr. D. Puerto Rico 2006)(court approves disclosure statement, noting that because it has been obvious since the beginning of the debtor's bankruptcy case that there is no equity in the debtor's assets, "the proposed plan will unquestionably pay

creditors more than they would receive under a Chapter 7 liquidation. Moreover, the court may approve a disclosure statement without a valuation of debtor's assets").

17. Nevertheless, in an effort to resolve this objection, the Plan Proponents have agreed to include the following language in Section X, A., 2 of the Disclosure Statement:

The Plan Proponents believe that there is no value in the Debtors' property above the amount of the projected Allowed Claims pending against the Debtors, and therefore the Joint Plan provides for a cancellation of existing equity interests. Yucaipa, the majority equity holder in PI, contends that significant equity value exists in the Debtors' property above the amount of the projected Allowed Claims pending against the Debtors. Yucaipa has indicated that it will object to the Joint Plan because it provides no recovery to equity holders. Yucaipa contends that it will provide evidence at the Confirmation Hearing in opposition to the Joint Plan that supports Yucaipa's valuation contention. The Plan Proponents likewise intend to provide evidence at the Confirmation Hearing to support confirmation of the Joint Plan. There is a risk that the Joint Plan will not be approved if the Bankruptcy Court finds that Yucaipa's valuation evidence is credible.

With this change, creditors evaluating the Joint Plan will be apprised of the risks associated with the expected contested confirmation hearing.

D. Settlement of adversary and Atalaya's liens are sufficiently described

18. Yucaipa next asserts that the Disclosure Statement does not adequately describe the potential value conferred on the estate by resolution of an adversary proceeding filed by the Committee against Atalaya (the "Atalaya Adversary"), which will be settled by virtue of confirmation of the Joint Plan. Yucaipa also argues that the Debtors' alleged dispute regarding the outstanding letter of credit balance and certain fees and interest owed to Atalaya are somehow issues that need further disclosure. But these arguments have no merit.

19. In the first place, the Plan Proponents believe the fact that Atalaya has agreed to turn over proceeds of the BP Tort Claim to unsecured creditors, and has agreed to convert

\$9 million of secured debt to equity in order to facilitate payment to unsecured creditors, is more than sufficient justification for settlement of the very limited lien challenges in the Atalaya Adversary. That being the case, the Plan Proponents will amend the Disclosure Statement by adding the following additional information in Section IV of the Disclosure Statement:

S. Settlement and Compromise of Atalaya Adversary Proceeding

In the Atalaya Adversary Proceeding, the Committee alleges that: (i) Atalaya does not have a perfected security interest in the Debtors' commercial tort claims, because they were not described with particularity; (ii) Atalaya does not have a perfected security interest in the Debtors' insurance policies because such policies prohibit assignment absent consent of the insurer; (iii) the Liens and security interests in the Debtors' deposit accounts were invalid and/or unperfected as of the Petition Date; (iv) any obligation due under the L/C is not secured by the Debtors' property; and (v) the Committee is entitled to an accounting and a determination of the amount of Atalaya's Secured Claim. Atalaya believes that these allegations are meritless and has denied all such allegations in its answer to the Atalaya Adversary Proceeding complaint.

Nevertheless, in an attempt to resolve such allegations in the most efficient and expedient manner possible, the Joint Plan incorporates a global compromise and settlement of the Atalaya Adversary Proceeding pursuant to Bankruptcy Rule 9019 that will maximize the recoveries of holders of General Unsecured Claims. Specifically, under the Joint Plan, all proceeds of the BP Tort Claim are to be used to satisfy General Unsecured Claims, payments of more than \$6,000,000 will be made with respect to General Unsecured Claims, and Atalaya will convert more than \$9,000,000 of its prepetition secured claims into equity in the Reorganized Debtors. The Plan Proponents believe that such compromise terms will provide General Unsecured Creditors with recoveries that exceed the highest recovery that General Unsecured Creditors would realize even if the Committee successfully established each of the allegations raised in the Atalaya Adversary Proceeding. In short, settlement of the Atalaya Adversary Proceeding pursuant to the Joint Plan is in the best interests of the Estates.

As set forth above, pursuant to the terms of the compromise and settlement incorporated into the Joint Plan, on the Effective Date, the Atalaya Adversary Proceeding shall be dismissed, with prejudice, with the rights, Liens, security interests and indebtedness at issue in the

Atalaya Adversary Proceeding to be adjudicated as provided in the Joint Plan.

For all of the foregoing reasons, the global settlement of the Atalaya Adversary Proceeding incorporated within the Joint Plan is well within range of reasonable potential outcomes of that proceeding, and satisfies the applicable standard for approval of bankruptcy settlements.

20. In any event, resolution of the Atalaya Adversary would have no impact on Yucaipa's position as an equityholder of the Debtors. The Committee's lien challenge in the Atalaya Adversary is limited, and even if the Committee were successful, Atalaya would still maintain a lien on substantially all of the Debtors' assets and would be still be entitled to payment ahead of Yucaipa on all of its outstanding claims.

21. Yucaipa also contends that the Disclosure Statement should more adequately describe the Debtors' "dispute" over Atalaya's secured claim as it relates to the outstanding letter of credit balance and certain interest and fees. First, there is no "dispute" over the letter of credit or interest and fees outside of the Atalaya Adversary. The Debtors filed no adversary proceeding or other action to dispute any claims of Atalaya. But even if the Debtors had raised such a dispute, the fact that Atalaya is converting \$9 million of debt to equity under the Joint Plan more than offsets any alleged dispute.

22. However, in order to resolve Yucaipa's objection, the Plan Proponents have agreed add the following language to the Disclosure Statement in section III, D.:

Yucaipa contends that the Debtors cannot reconcile approximately \$990,000 of asserted interest and fees included in Atalaya's Secured Claim, and that Atalaya's Secured Claim also includes \$2,920,000 on account of the undrawn L/C, which is not cash collateralized. In addition, American Home Assurance Company, et al. (collectively, "AIG") by its claim filed on March 15, 2013, claim No. 394, asserts to the extent that AIG holds any cash or other collateral, as security for AIG's claim, regardless of whether

such cash or collateral is property of the Debtors' estates, AIG holds a secured claim and/or a right of setoff and AIG reserves any right to collect against the same by recoupment and/or setoff. Atalaya contends that Debtors have not disputed Atalaya's Secured Claims, and instead have acknowledged the validity of the Atalaya Secured Claims subject only to the Creditors' Committee's right to challenge Atalaya's Secured Claims. While the Creditors' Committee did initiate a challenge of the Atalaya Secured Claims in the Atalaya Adversary Proceeding, the Atalaya Adversary Proceeding will be settled and dismissed pursuant to the Joint Plan.

23. Finally, Yucaipa argues that the Disclosure Statement should include a "calculation" of post-petition interest for Atalaya's claims. Providing such a calculation will have no impact on creditor votes on the plan, as Atalaya's accrued interest will become principal amounts in the restructured notes, and principal payments are not scheduled to be made until unsecured creditors are paid in full. That said, Atalaya will provide Yucaipa with such calculation in accordance with discovery exchanged between the parties in advance of the confirmation hearing.

E. Confirmation objections not appropriate in Disclosure Statement context

24. Yucaipa then argues that the Joint Plan is "patently unconfirmable" and should not be distributed to creditors because Atalaya is receiving more than 100% of its claim under the Joint Plan. That argument misstates both the facts and applicable law.

25. First, Yucaipa's calculation of Atalaya's claims is incorrect. Atalaya filed a claim in an amount not *less* than \$28.1 million. That claim, of course, was as of the petition date, and therefore did not include post-petition interest and fees. When accrued unpaid interest is added to Atalaya's claim, the pre-petition debt is approximately \$32.3 million. In addition, the Joint Plan provides that the outstanding DIP financing claim of \$3 million will be converted to the Term B Note. Accordingly, the total amount of Atalaya debt under the Joint Plan is approximately \$35.3 million, not \$28.1 million as alleged by Yucaipa.

26. In exchange for more than \$35 million in secured claims, Atalaya has agreed to convert approximately \$9 million to equity, and has agreed to payment of interest only on its remaining debt until unsecured creditors are paid in full. Such treatment could hardly be described as inequitable.

27. Second, Yucaipa's allegation that Atalaya has improperly included the undrawn letter of credit balance of \$2.9 million in the Term A Note ignores the language of the Joint Plan (as described in the Disclosure Statement), which clearly states:

provided, however, that the aggregate principal amount of the Term A Note shall be reduced by any corresponding reduction in the existing letter of credit balance.

Disclosure Statement, IV, B, 2, (a)., page 36.

28. Finally, Yucaipa's argument that the Disclosure Statement should not be approved because it describes a plan that is unconfirmable simply misstates the law. Courts are clear that confirmation objections are not appropriately addressed in the context of approval of a disclosure statement. *See In re United Brass Corp.*, 194 B.R. 420, 427-28 (Bankr. E.D. Tex. 1996)(approving disclosure statement over objections that plan was not feasible because such objection was properly addressed in the context of confirmation.). It is only the rare circumstance where a court could justify withholding approval of a disclosure statement on the basis of unconfirmability of a plan. In order to be considered a fatal defect to a plan, such defect "must concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing." *Monroe Well Service, Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987). In other words, alleged unconfirmability as a disclosure objection should only be considered if a plan is fatally flawed on its face.

29. Here, Yucaipa merely argues that, according to its view of the material facts, there is equity value in the Debtors. The Plan Proponents obviously dispute those material facts, and

will demonstrate at the confirmation hearing that there is no equity value in these Debtors. Upon establishing that fact, the Joint Plan certainly is confirmable over the objection of Yucaipa. Accordingly, Yucaipa's argument that the Joint Plan is not fair and equitable is precisely the type of objection that is properly reserved for confirmation.

WHEREFORE, Atalaya respectfully requests that the Court deny Yucaipa's objection, enter an order approving the Disclosure Statement and grant Atalaya such other and further relief as is just and equitable.

Dated: October 28, 2013

Respectfully Submitted,

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