

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

	x	
	:	
In re	:	Chapter 11
	:	
JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i> ,	:	Case No. 16-21142 (RDB)
	:	<i>Jointly administered</i>
Debtors	:	
	x	

**JD HOLDINGS L.L.C.'S OBJECTION TO CLAIM
OF AMERICAN HEART ASSOCIATION, INC.**

JD Holdings, L.L.C. ("JD Holdings"), pursuant to 11 U.S.C. § 502(a) and (b) and Rule 3007(a) of the Fed. R. Bankr. P., submits this objection (the "Objection") to the proof of claim numbered 554 (the "Claim"),¹ filed by American Heart Association, Inc. (the "AHA") in the above-captioned, jointly-administered Chapter 11 cases. In support of the Objection, JD Holdings respectfully states as follows:

BACKGROUND

The Claim seeks \$500,000, purportedly based on a sixteen-year-old charitable pledge. *See* Ex. A at 2. Attached to the claim is a May 24, 2002 letter from John Q. Hammons to the Director of Donor Relations for the AHA chapter located in St. Louis, Missouri (the "Letter"). The Letter purports to confirm an oral understanding that at some point in the future, Hammons would pay \$500,000 to the Missouri Division of the AHA "over time and that the obligation will survive and be paid by" the Hammons estate (the "Pledge"). Hammons purportedly signed the letter in both his personal capacity and as trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as Amended and Restated. In the Letter, Hammons wrote that "[w]ithin a short time," he would supply a "schedule over which payments would be made." Upon

¹ A copy of the Claim is attached hereto as Exhibit A.

information and belief, Hammons never provided that schedule. The Claim seeks the entire amount of the Pledge, suggesting that no portion of the Pledge has been paid to the AHA to date, and there is no indication that AHA has taken any action in reliance on the Pledge in the sixteen years since it was made.

ARGUMENT

I. The Pledge is a revocable, non-binding offer and not an enforceable contract.

The Pledge is a mere offer to the AHA and is not binding. Under Missouri law a charitable pledge “is considered as a mere offer until the beneficiary has accepted it or has acted on the faith thereof so that his conduct implies an acceptance, and until such acceptance the promisor generally has the right to revoke the subscription.” *Missouri Wesleyan Coll. v. Shulte*, 346 Mo. 628, 639, 142 S.W.2d 644, 651 (1940) (citation omitted). A pledge “is but the promise of the donor to pay money in the future. . . . Such a note, treated purely as a gratuitous promise, cannot be enforced, either in law or in equity.” *Scottish Rite Temple Ass'n of Kansas City v. Luck singer*, 231 Mo. App. 486, 101 S.W.2d 511, 513 (1937) (citation omitted). While a pledge can be converted into an enforceable contract if the recipient shows it took action or incurred expenses based on the pledge, *see id.*, the Claim offers no indication that either scenario has occurred. Indeed, the AHA has conceded in a probate filing that, as of November 25, 2014, no payments have been made related to the Pledge. *See* AHA Petition for Accounting, attached hereto at Exhibit B, ¶ 3. Given that sixteen years have passed since the Pledge was made, and that the Claim offers no indication of reliance on the Pledge, it is reasonable to infer that none was taken. Accordingly, the Pledge is nothing more than a revocable offer, and absent evidence to the contrary cannot form the basis for a claim.

II. The Pledge lacks the material terms of an agreement and as such is not enforceable.

The Pledge lacks material terms of an agreement, including consideration and is unduly indefinite because of the failure to include all material terms, including the referenced payment schedule. As such, under Missouri law, it is unenforceable. *See Soybean Merch. Council v. AgBorn Genetics, LLC*, 534 S.W.3d 822, 832 (Mo. Ct. App. 2017) (“[T]he terms of agreement must be sufficiently definite to enable the court to give it an exact meaning”) (finding contract unenforceable where terms were not definite because of failure to incorporate payment rate provision) (citation and internal quotation marks omitted); *Fedynich v. Massood*, 342 S.W.3d 887, 891 (Mo. Ct. App. 2011) (“No contract is formed where the terms of the agreement are unduly uncertain or indefinite”) (contract unenforceable where terms “were too vague and incomplete to achieve the undisputed intent of both parties”) (citation omitted). As such, the Claim should be disallowed.

III. Even if the Pledge is enforceable, the Claim is barred by the applicable statute of limitations.

Even if the Pledge constitutes an enforceable contract, the Claim should be barred by Missouri’s statute of limitations. In Missouri, claims for breach of contract must be brought within five years, and claims brought upon any writing for the payment of money must be brought within ten years. *See* Mo. Ann. Stat. §§ 516.120; 516.110. Since the Pledge was made in 2002—sixteen years ago—any action brought to enforce the pledge on either ground would now be time-barred, and as such the Claim should be disallowed.

CONCLUSION

For the foregoing reasons, the Claim should be disallowed.

Dated: May 7, 2018
Kansas City, Missouri

OF COUNSEL:

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Fax: (213) 629-5063
mshinderman@milbank.com

EXHIBIT A

Fill in this information to identify the case:Debtor 1 The Revocable Trust of John Q. Hammons dtd DecemberDebtor 2 28, 1989 as Amended and Restated (16-21140)
(Spouse, if filing)

United States Bankruptcy Court for the: District of Kansas

Case number 16-21142**Official Form 410****Proof of Claim**

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	American Heart Association, Inc. Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Phillip K. Johnson Name 2345 Grand Boulevard, Suite 2200 Number Street Kansas City MO 64108 City State ZIP Code Contact phone 816-292-2000 Contact email pjohnson@lathropgpage.com	Where should payments to the creditor be sent? (if different) Andrew Fussner Name PO Box 22035 Number Street St. Petersburg FL 33742 City State ZIP Code Contact phone 800-275-0448 x8050 Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 500,000.00 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Charitable Pledge

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	Amount entitled to priority \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(6).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$600,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

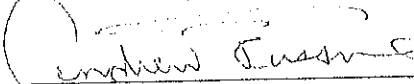
- ☒ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12-23-2016
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Andrew Fussner
First name Middle name Last name

Title Vice President of Estate Settlement

Company American Heart Association, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address PO Box 22035
Number Street

St. Petersburg FL 33742
City State ZIP Code

Contact phone 800-275-0448 x8050 Email _____

**ATTACHMENT TO PROOF OF CLAIM OF
AMERICAN HEART ASSOCIATION, INC.**

1. **Name of Debtor:** The Revocable Trust of John Q. Hammons dated December 28, 1989 as Amended and Restated.

2. **Statement of Amount Due:** As of the Petition date the amount due was:

- a. Principal: \$500,000.00
- b. Total: \$500,000.00
- c. Plus any allowable interest, costs and fees on account of the charitable pledge.

3. **Exhibits to Proof of Claim:** The following exhibits are attached and incorporated by reference to this Proof of Claim:

<u>Exhibit Number</u>	<u>Loan Document</u>
A	Charitable Pledge Letter dated May 24, 2002

4. **Brief Description of Claim:** Charitable pledge of \$500,000.00.

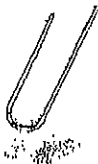
5. **Reservation of Rights:** Claimant expressly reserves all claims, rights, powers and privileges under the loan documents including, without limitation, the following:

- a. The right to alter, amend, supplement, modify or withdraw this Proof of Claim at any time;
- b. The right to assert other claims against the debtor and its bankruptcy estate, including but not limited to claims under 11 U.S.C. § 503(a) and (b), and § 507(b);
- c. The right to add post-petition interest, fees, expenses, charges and other amounts due under the loan documents pursuant to 11 U.S.C. § 506(b); and
- d. The right to assert, file and collect the deficiency balance, if any, under this Proof of Claim if the value of the collateral is less than the amount of the indebtedness to Claimant.

6. **No Waiver or Release:** By filing this Proof of Claim, Claimant does not intend to waive or release any of the following rights which are expressly reserved:

- a. Any lack of venue or jurisdiction by the Court over this case or any adversary action, contested matter, or other proceeding in this case;

- b. Any right to a jury trial in any adversary action, contested matter or other proceeding in this case;
- c. Any right to *de novo* review of any adversary action, contested matter, or other proceeding in this case;
- d. Any right to contest, deny or defend any claims asserted by the debtor or any party in interest against Claimant in this case or in any adversary action, contested matter, or other proceeding in this case;
- e. Any right to withdrawal of the reference in this case or any adversary action, contested matter, or other proceeding in this case; and
- f. Any other rights, claims, actions, defenses, setoff or recoupment against the debtor or any party in interest in this case or in any adversary action, contested matter, or other proceeding in this case.



John Q. Hammons
INDUSTRIES

VIA FACSIMILE
(314) 367-8605

May 24, 2002

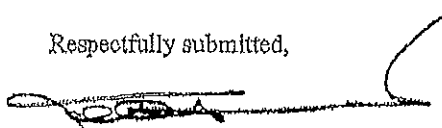
Mr. Ron Oyer
Director of Donor Relations
American Heart Association
4643 Lindell Boulevard
St. Louis, MO 63108-3723

Dear Mr. Oyer:

This letter will confirm our verbal understanding that I agreed to pay the American Heart Association -- Missouri Division a total of \$500,000.

This letter will further confirm that this amount will be paid over time and that the obligation will survive and be paid by my estate. Within a short time, I will communicate to you and tell you the schedule over which payments will be made.


Respectfully submitted,



John Q. Hammons

Trust

John Q. Hammons, Trustee, Under Trust Agreement
Dated December 28, 1989, As Amended and Restated



John Q. Hammons, Trustee

cc Jacquie Dowdy
Debbie Shantz

THREE HUNDRED
JOHN Q. HAMMONS PKWY.
SUITE NINE HUNDRED
SPRINGFIELD, MISSOURI 65806
417-864-4300 FAX 661-8900



District of Kansas Claims Register

16-21142 John Q. Hammons Fall 2006, LLC

Judge: Robert D. Berger

Chapter: 11

Office: Kansas City

Last Date to file claims: 12/23/2016

Trustee:

Last Date to file (Govt):

Creditor: (8632574)
American Heart Association, Inc.
c/o Phillip K. Johnson
Lathrop & Gage LLC
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108

Claim No: 554
Original Filed
Date: 12/23/2016
Original Entered
Date: 12/23/2016

Status:
Filed by: CR
Entered by: Danny Ray Nelson
Modified:

Amount claimed: \$500000.00

History:

<u>Details</u>	<u>554-</u>	12/23/2016	Claim #554 filed by American Heart Association, Inc., Amount claimed: \$500000.00 (Nelson, Danny)
	<u>1</u>		

Description: (554-1) Charitable Pledge

Remarks:

Claims Register Summary

Case Name: John Q. Hammons Fall 2006, LLC

Case Number: 16-21142

Chapter: 11

Date Filed: 06/26/2016

Total Number Of Claims: 1

Total Amount Claimed*	\$500000.00
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		

EXHIBIT B

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
PROBATE DIVISION

In the Estate of:
JOHN Q. HAMMONS,
Deceased.

Estate No. 1331-PR00455

AMERICAN HEART ASSOCIATION, INC.,
a New York not-for-profit corporation,

Petitioner,

v.

JACQUELINE A. DOWDY
Successor Trustee of the John Q. Hammons
Revocable Trust u/t/a dated December 28, 1989,

AND

GREGGORY D. GROVES
Successor Trustee of the John Q. Hammons
Revocable Trust u/t/a dated December 28, 1989,

Respondents.

SERVE: Jacqueline A. Dowdy
300 John Q. Hammons Parkway
Springfield, MO 65806

Greggory D. Groves
300 John Q. Hammons Parkway
Suite 900
Springfield, MO 65806

PETITION FOR ACCOUNTING

COMES NOW the Petitioner, the American Heart Association, Inc. ("AHA"), by and through its counsel of record and in support of its Petition for Accounting under § 461.300.2, RSMo, states as follows:

1. AHA is a New York not-for-profit corporation with its principal place of business located at 7272 Greenville Avenue, Dallas, Texas 75231.

2. An estate is open and Jacqueline A. Dowdy, 300 John Q. Hammons Parkway, Springfield, Missouri 65806, is appointed as personal representative of the estate pursuant to an Application for Letters Testamentary filed by Ms. Dowdy and her attorneys, Stinson Leonard Street LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106-2150.

3. AHA filed a claim dated February 21, 2014, in this estate in the amount of \$500,000 plus allowable interest, costs, and fees on account of a charitable pledge made to AHA by decedent, individually and as trustee of decedent's revocable trust. To date, AHA has received no payments toward its claim.

4. The probate estate of the decedent does not have sufficient assets to pay the claims, taxes, and expenses of administration.

5. AHA made a timely, formal written demand dated September 23, 2014, to the personal representative to commence an action in accounting as required by § 461.300, RSMo., and notice of such written demand to the personal representative was filed with the Court.

6. The personal representative has failed to commence said action within thirty (30) days of AHA's written demand.

7. Therefore, as a creditor of the estate and qualified claimant, AHA has authority to commence this action under § 461.300, RSMo.

8. Counsel for the personal representative have disclosed to counsel for AHA that the Successor Trustees of the John Q. Hammons Revocable Trust u/t/a dated December 28, 1989, are the recipients of a recoverable transfer made by the decedent in that all of decedent's property, not otherwise in the estate, is held by decedent's trust.

9. The assets of decedent's trust constitute property owned by the decedent immediately before his death and are subject to being brought into decedent's estate to the extent necessary to discharge AHA's claim and other claims and expenses of administration remaining unpaid after application of the assets in the decedent's estate.

10. The value of the property so transferred is unknown to AHA.

11. The obligations set forth in § 461.300, RSMo. of the recipient Successor Trustees may be enforced by this action for accounting.

WHEREFORE, Petitioner AHA prays this Court enters judgment against Respondents to recover the value of the property transferred to the Successor Trustees of the John Q. Hammons Revocable Trust u/t/a dated December 28, 1989, or a sufficient portion thereof, to the extent determined by the Court to be necessary to discharge the claims and expenses of administration remaining unpaid after application of the funds and property of decedent's estate, and for such other relief as this Court deems just and proper.

Dated: November 25, 2014

By:

POST ANDERSON LAYTON LINDSTROM, LLP

/s/ Keenan M. Post

KEENAN M. POST #46890
Post Anderson Layton Lindstrom, LLP
12980 Metcalf Avenue, Suite 180
Overland Park, KS 66213
Telephone: 913-341-7800
Facsimile: 913-341-7804
keenan@pal-legal.com

By:

LATHROP & GAGE LLP

/s/ Phillip K. Johnson

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Telecopier: 816.292.2001
pjohnson@lathropgage.com

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Fax: (417) 886-9126
lpoppen@lathropgage.com

Attorneys for American Heart Association, Inc.

CERTIFICATE OF SERVICE

This 25th day of November, 2014, the undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served to counsel of record using the court's e-filing system and was served on the Successor Trustees using the court's e-filing system and by United States Mail, postage prepaid, to:

Jacqueline A. Dowdy
300 John Q. Hammons Parkway
Springfield, MO 65806
Personal Representative and Successor Trustee

Greggory D. Groves
300 John Q. Hammons Parkway
Suite 900
Springfield, MO 65806
Successor Trustee

Richard L. English, Esq.
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
*Attorneys for Jacqueline A. Dowdy,
Personal Representative and Successor Trustee*

/s/ Phillip K. Johnson

An Attorney for American Heart Association, Inc.