

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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	:	CHAPTER 11
In re	:	
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PEGASUS SATELLITE TELEVISION, INC., <u>et al.</u>,	:	Case Nos.: BK. No. 04-20878
	:	
Debtors.	:	28 Cases Jointly
	:	Administered Through
	:	Bk. 04-20878
	:	
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**OBJECTION OF REGEN CAPITAL I AND RIVERSIDE CLAIMS LLC TO
CONFIRMATION OF THE DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN**

ReGen Capital I and Riverside Claims, LLC (collectively, "Riverside"), creditors and parties-in-interest in the above-captioned jointly administered bankruptcy cases, hereby submit their objection to confirmation of the Debtors' First Amended Joint Chapter 11 Plan (the "Plan"), and in support thereof, states as follows:

PRELIMINARY STATEMENT

The Plan cannot be confirmed because it does not meet the best interest of creditors test contained in Section 1129(a)(7)(A)(ii) of the Bankruptcy Code. It is well settled that where a chapter 11 debtor proves solvent, its plan of reorganization must provide for the payment of post-petition interest to unsecured creditors before any surplus can be recovered by equity holders or the debtor in order for the best interest test to be met. However, the Debtors' Plan does not meet this requirement. The liquidation analyses provided with the Plan show that the estates of Pegasus Broadcast Television, Inc. and PST Holdings, Inc., which Riverside's claims are against, have sufficient assets to pay unsecured creditors post-petition interest. However, the Plan does not provide for the payment of post-petition interest to unsecured creditors, while it does provide

for a distribution to equity. By the Debtors' own admission, unsecured creditors would receive post-petition interest if the Debtors were liquidated. Thus, the Plan does not meet the best interest of creditors test and cannot be confirmed.

BACKGROUND

1. On June 2, 2004 (the "Petition Date"), Pegasus Satellite Television, Inc., and certain of its subsidiaries and affiliates, each a debtor or debtor in possession in the above-captioned cases (collectively, the "Debtors") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered.

2. The Debtors are continuing in possession of their properties and are operating and maintaining their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 10, 2004, the United States Trustee for the District of Maine appointed an official committee of unsecured creditors pursuant to section 1102(a) of the Bankruptcy Code (the "Committee").

4. No request has been made for the appointment of a trustee or examiner in these cases.

5. On January 7, 2005, the Debtors filed the Debtors' Joint Chapter 11 Plan (the "Original Plan") and the accompanying Disclosure Statement for Debtors' Joint Chapter 11 Plan (the "Original Disclosure Statement"), each dated January 7, 2005. On January 31, 2005, the Debtors' filed the Debtors' First Amended Joint Chapter 11 Plan (as amended from time to time, the "Plan") and the accompanying First Amended Disclosure Statement for Debtors' First Amended Joint Chapter 11 Plan (as amended from time to time, the "Disclosure Statement"), each dated January 31, 2005.

6. The Disclosure Statement related to the Plan was approved by this Court on or about February 9, 2005.

7. Riverside is the valid holder and/or owner by assignment of claims against the Debtors aggregating approximately \$1,590,056.06.

8. On or about March 2, 2005, Riverside submitted its ballots and voted against confirmation of the Plan.

Objection

The Plan Does Not Meet the Best Interest of Creditors Test Because It Does Not Provide For the Payment of Post-Petition Interest to Unsecured Creditors

8. Where a chapter 11 debtor proves solvent, its chapter 11 plan of reorganization must provide for the payment of post-petition interest to unsecured creditors before any surplus is paid to equity or the debtor in order for the plan to meet the best interest of creditors test under Section 1129(a)(7)(A)(ii). See In re Dow Corning Corporation, 237 B.R. 380 (Bankr. E.D. Mich. 1999)(plan of reorganization had to provide interest on allowed general unsecured claims from date that petition was filed in order to satisfy best interest of creditors test); see also In re Coram Healthcare Corp., 315 B.R. 321 (Bankr. D. Del. 2004) (citing Sections 726(a)(5) and 1129(a)(7) to support the holding that noteholders were entitled to post-petition interest on their unsecured claims before any distribution was made to equity holders in solvent debtors' reorganization proceeding). The Bankruptcy Code provides for the award of post-petition interest to all unsecured creditors where the debtor proves solvent. See Debentureholders Protective Committee of Continental Investment Corporation v. Continental Investment Corporation, 679 F.2d 264 (1st Cir. 1982) (under federal bankruptcy law, if alleged debtor proves solvent, creditors have right to receive post-petition interest before any surplus reverts to the debtor); In re Fesco Plastics Corp., 996 F.2d 152,155 (7th Cir. 1993) (post-petition interest is payable to unsecured creditors where estate is solvent); Kitrosser v. CIT Group/Factoring, Inc.,

177 B.R. 458 (S.D.N.Y. 1995)(same); In re Manville Forest Products Corp., 43 B.R. 293, 299 (Bankr. S.D.N.Y. 1984)(same). Where an estate proves solvent, the right of unsecured creditors to receive post-petition interest arises under Section 726(a)(5) of the Bankruptcy Code. Section 726(a)(5) provides that after payment of all amounts due under Sections 726(a)(1) through (a)(5), post-petition interest is payable on all allowed unsecured claims at the legal rate from the petition date until the payment of such claims. See 11 U.S.C. Section 726(a)(5).

9. Section 726(a)(5) is made applicable in chapter 11 cases by virtue of Section 1129, specifically, upon the objection to confirmation by a dissenting junior creditor or equity holder pursuant to Section 1129(a)(7)(A)(ii) of the Bankruptcy Code. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan of reorganization under chapter 11. Section 1129(a)(7)(A)(ii), otherwise known as the “best interest test,” states that for a plan to be confirmed, dissenting members of a class must receive, as of the effective date of the plan, the value of their allowed claims that is not less than the amount such creditors would receive if the debtor were liquidated under chapter 7 on such date. See 11 U.S.C. Section 1129(a)(7)(A)(ii). Therefore, where a chapter 11 debtor proves solvent, its plan of reorganization must provide for the payment of post-petition interest to unsecured creditors before any surplus reverts to equity and/or the debtors in order to meet the best interest test. See Kitrosser, 177 B.R. at 470 (stating that the right to post-petition interest arises under Sections 1129(a)(7)(A)(ii) and 726(a)(5)).

10. In this case, the liquidation analyses for the estates of Pegasus Broadcast Television, Inc. and PST Holdings, Inc., which Riverside’s claims are against, show that there are sufficient assets to pay post-petition interest to unsecured creditors. However, despite this fact, the Plan does not provide for the payment of post-petition interest to unsecured creditors, while it does provide for a distribution to the Debtors’ equity holders. By the Debtors’ own admission, unsecured creditors would receive post-petition interest if the Debtors were

liquidated. Thus, unsecured creditors are not doing better under the Plan than they would in liquidation. Because the Plan purports to pay equity without first paying unsecured creditors post-petition interest on their claims, the Plan does not meet the best interest of creditors test and cannot be confirmed.

CONCLUSION

WHEREFORE, for the foregoing reasons, Riverside respectfully requests that confirmation of the Plan be denied unless the objection contained herein is addressed and remedied, and for such other and further relief as Riverside is justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Holly G. Rogers. Esq.
Holly G. Rogers, Esq. (HG-7457)
Riverside Claims, LLC,
c/o ReGen Capital LLC
P.O. Box 626
Planetarium Station
New York, NY 10024-0540
(212) 501-0990/7088(fax)
e-mail: notice@regencap.com

CERTIFICATE OF SERVICE

This is to certify that on March 16, 2005, I caused a true and correct copy of the foregoing Objection to served on the following parties at the addresses indicated by facsimile transmission and overnight mail, postage prepaid:

Sidley Austin Brown & Wood LLP
Larry J. Nyhan
James F. Conlan
Paul S. Caruso
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603

Sidley Austin Brown & Wood LLP
Guy S. Neal
Ellen R. Moring
Christopher F. van Elk
787 Seventh Avenue
New York, New York 10019

Robert Checkoway
Office of the U.S. Trustee for the District of Maine
537 Congress Street, Suite 303
Portland, ME 04101

Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
Attn: Daniel Golden, Esq.
David Botter, Esq.

/s/ Holly G. Rogers, Esq.
Holly G. Rogers, Esq.