

Hearing Date: August 25, 2004 at 10:30 a.m.
Objection Deadline: August 25, 2004 at 10:30 a.m.
PORTLAND

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:) Chapter 11
)
) Case No. 04-20878
PEGASUS SATELLITE TELEVISION, INC., et al.,)
)
) (Jointly Administered)
Debtors._____)

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY
TO MOTION OF D.E. SHAW LAMINAR PORTFOLIOS, L.L.C.
TO ADJOURN AUGUST 25, 2004 HEARING**

The Official Committee of Unsecured Creditors (the "Committee") of Pegasus Satellite Television, Inc. and its affiliated debtors (collectively, "Pegasus" or the "Debtors"), by and through its undersigned counsel, hereby submits this reply (the "Reply") to the Motion of D.E. Shaw Laminar Portfolios, L.L.C. ("DE Shaw") to Adjourn August 25, 2004 Hearing filed on August 19, 2004 (the "Adjournment Request"). In support of this Reply, the Committee respectfully represents as follows:

The Adjournment Request is a last ditch effort by a single subordinated debt holder so desperate to improve its position that it is prepared to bend the truth, misstate facts and make scurrilous accusations having no basis in reality for one goal -- to disrupt the Global Settlement¹

¹ Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Official Committee of Unsecured Creditors' Memorandum of Law (the "Memorandum") in Support of the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 1146(c) and Bankruptcy Rule 9019 (I) Approving Global Settlement Agreement by and Among the Debtors and Debtors in Possession, Pegasus Communications Corporation and Other Non-Debtor Affiliates, DIRECTV, Inc., the DIRECTV Group, Inc., National Rural Telecommunications Cooperative, and the Official Committee of Unsecured Creditors, and (II) Authorizing and Approving in Connection Therewith a Sale, Transfer and Conveyance of Certain Assets of the Debtors to DIRECTV, Inc. (the "Global Settlement Motion").

-- all in an attempt to extort a recovery in these cases that it is not legally or contractually entitled to receive, while placing at risk the recoveries of all other constituencies in these cases.

Prior to the parties' final agreement and execution of the Global Settlement's implementation documents (the "Transaction Documents"), in an effort to satisfy the Debtors' and DIRECTV's request to make the Global Settlement a fully consensual transaction, certain members of the Committee that hold positions in the Debtors' senior notes and D.E. Shaw (another member of the Committee and a holder of contractually subordinated notes) engaged in negotiations over the terms of a potential compromise whereby the senior creditors would *gift* some portion of their recovery in these cases to holders of the Debtors' subordinated notes (the "Gifting Arrangement"). On or about July 30, 2004, the parties agreed on the economic terms of the Gifting Arrangement, but were unable to reach agreement on an implementation mechanism that would ensure that (i) the subordinated debt holders would receive the benefit of the Gifting Arrangement² and (ii) pursuing approval of the Gifting Arrangement prior to or in connection with the Global Settlement would not delay or disrupt approval of the Global Settlement. As a result of the parties' inability to agree upon an implementation mechanism, D.E. Shaw refused to execute the Transaction Documents and, thus, the Gifting Arrangement settlement proposal died.

Contrary to what D.E. Shaw asserts in the Adjournment Request, Daniel Posner, a senior vice president at D.E. Shaw, testified at his deposition that (i) no final agreement was reached on the Gifting Arrangement; (ii) if an agreement had been reached, D.E. Shaw would have

² Given the fact that the Gifting Arrangement could only be enforced through a plan of reorganization and that the senior creditors on the Committee do not hold, in the aggregate, sufficient senior notes to carry the vote on any such plan, D.E. Shaw insisted that the Gifting Arrangement be approved pursuant to Bankruptcy Rule 9019, with the corresponding order of this Court directing that any plan of reorganization filed in these cases provide for the proceeds of the Gifting Arrangement to be paid to the holders of the subordinated notes. The Committee would not consent to this implementation mechanism because there was a substantial likelihood that this Court would not approve such arrangement outside of a plan and the Committee was not prepared to risk delaying the approval process on the Global Settlement. As a result, both D.E. Shaw and the Committee understood that the parties had failed to reach the requisite meeting of the minds with respect to the Gifting Arrangement.

supported the Global Settlement; and (iii) the Gifting Arrangement failed because D.E. Shaw could not be guaranteed the benefits of the Gifting Arrangement.³

Now, notwithstanding the facts, D.E. Shaw, realizing that (i) it erred in not accepting the Gifting Arrangement when it was available and (ii) its scorched earth litigation strategy is failing, has requested a 10-day adjournment of the hearing on the Global Settlement, which adjournment would cost these estates at least \$6 million. See Asset Purchase Agreement at 21.⁴ This latest act makes evident that, notwithstanding the fiduciary duty that D.E. Shaw, as a member of the Committee, owes to all unsecured creditors in these cases, the only thing it really cares about is extorting value when it is entitled to none.

Any assertion by D.E. Shaw that there had been a meeting of the minds among D.E. Shaw and the Committee as to all of the terms and conditions of the Gifting Arrangement is pure fiction. Any assertion by DE Shaw that the negotiations regarding the Gifting Arrangement were

³ Mr. Posner's deposition testimony was as follows:

Q. You understood, did you not, that as part of this inter creditor arrangement that Shaw would support the motion and the sale to DirecTV?

A. I don't know that the inter creditor arrangement ever happened.

* * *

Q. The point was as part of this inter creditor arrangement one of the features of it was [that] if . . . [it] went forward Shaw would support the settlement, would it not?

A. Yes. That would be my assumption.

* * *

Q. In fact, while the terms of the arrangement were agreed upon the arrangement fell through because of a perceived inability by Shaw to secure that business deal with certainty.

A. That is my understanding, yes.

See August 18, 2004 Deposition Transcript of Daniel E. Posner at 68-70, a copy of which is attached hereto as Exhibit A.

⁴ Section 3.2(f) of the Asset Purchase Agreement provides that "[i]f the Closing Date occurs on or before September 15, 2004, the Purchase Price payable hereunder shall be increased by an amount equal to the product of (i) \$600,000 and (ii) the number of calendar days between the Closing Date and September 15, 2004 (excluding the Closing Date, but including September 15, 2004). The Committee understands that the Closing Date will occur on the day immediately succeeding the date of entry of an order approving the Global Settlement. Accordingly, the requested 10-day adjournment would cost these estates at least \$6 million.

conducted in bad faith or intended to lull D.E. Shaw into a false sense of security or prevent D.E. Shaw from taking other actions in respect of the Global Settlement is a bald face lie. Any assertion that D.E. Shaw's counsel, Brown Rudnick Berlack Israels LLP ("Brown Rudnick"), an experienced and sophisticated law firm with considerable bankruptcy expertise, was lulled into a false sense of security is belied by the facts. The facts are as follows:

- The Committee negotiated with the Debtors, DIRECTV, PCC and NRTC for a period of almost six weeks in an effort to determine if a consensual resolution to the myriad of disputes among Pegasus, DIRECTV and NRTC could be achieved, which negotiations culminated in the Global Settlement and the execution of the Transaction Documents.
- D.E. Shaw, a member of the Committee, by both business persons and lawyers, actively participated in the Global Settlement negotiations, including attending multiple in-person meetings with the Debtors, DIRECTV and PCC. D.E. Shaw also participated in the Committee's discussions with Echostar, the only other potential bidder for the Debtor's Satellite Assets and D.E. Shaw's senior representative and its counsel attended an in-person meeting with representatives of Echostar on July 19, 2004. It was at this meeting that Echostar made a proposal to buy the Debtors' Satellite Assets that was hundreds of millions of dollars inferior to that provided by the Global Settlement.
- In an effort to make the Global Settlement a fully consensual transaction, the senior noteholders on the Committee engaged in negotiations with D.E. Shaw pursuant to which D.E. Shaw sought a *gift* of a portion of the transaction proceeds notwithstanding its contractual and legal entitlement to receive nothing until the senior noteholders are paid in full.
- Part and parcel of the negotiations in respect of the Gifting Arrangement was the express condition by the Committee and the clear understanding of D.E. Shaw that nothing about the Gifting Arrangement could jeopardize or delay approval of the Global Settlement. Indeed, when the parties thought there was an agreement in principle with respect to the economic terms of the Gifting Arrangement, the parties requested that D.E. Shaw execute the Settlement Agreement and the Letter Agreement. D.E. Shaw summarily refused to execute these Transaction Documents because it had not received the guarantee that it was seeking in respect of the implementation of the Gifting Arrangement, thus ending the settlement discussions. Despite good faith negotiations among counsel to the Committee and counsel to D.E. Shaw, no agreement could be reached as to how to implement the Gifting Arrangement.
- Further evidence of the fact that D.E. Shaw knew that no agreement was in place with respect to the Gifting Arrangement was the filing of D.E. Shaw's objection

to the Global Settlement on August 4, 2004, just one day after the filing of the Global Settlement Motion.

- Additional evidence that DE Shaw was aware that no agreement was in place with respect to the Gifting Arrangement *after* the filing of the Global Settlement Motion was that D.E. Shaw propounded substantial discovery requests on the following parties: DIRECTV, NRTC, PCC, the Debtors and the senior noteholder members of the Committee (Singer Children’s Management Trust; LC Capital Master Fund, Ltd.; and Silver Point Capital). Additionally, D.E. Shaw sought and obtained depositions of representatives from each of the foregoing parties. Notwithstanding D.E. Shaw’s assertions that it has been hamstrung in its discovery efforts in the two and one half week period since the filing of D.E. Shaw’s objection to the Global Settlement, D.E. Shaw has received hundreds of thousands of pages of documents in response to its document requests, taken seven depositions and has received full cooperation in respect of all of its discovery requests.⁵
- As an accommodation to D.E. Shaw and its counsel, subsequent to the filing of the Global Settlement Motion and after the Gifting Arrangement proposal had been rejected by D.E. Shaw, counsel for the Committee continued to explore ways to determine if the Gifting Arrangement could be resuscitated. Indeed, while discovery was continuing to be propounded by D.E. Shaw on the Global Settlement parties, Daniel Golden of Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), counsel to the Committee, and Edward Weisfelner of Brown Rudnick continued to delve into whether there was any viable way to re-implement the Gifting Arrangement. Again, the gating factors that counsel for the Committee and counsel for D.E. Shaw could not overcome were (i) guaranteeing D.E. Shaw that the Gifting Arrangement would ever be approved by the Court and (ii) ensuring that any effort to obtain approval of the Gifting Arrangement would in no way delay the approval of the Global Settlement. As these efforts were likewise unsuccessful, Mr. Weisfelner certainly knew no later than during the week of August 9, 2004 that the Committee remained unwilling to meet D.E. Shaw’s demands that the Gifting Arrangement be approved pursuant to Bankruptcy Rule 9019 on or before the date for approval of the Global Settlement.
- During the evening of Monday, August 16, 2004, as discovery continued in earnest, counsel for D.E. Shaw transmitted to Mr. Golden a new proposal for a methodology to resurrect and implement the Gifting Arrangement. This proposal further underscores the fact that D.E. Shaw knew that the Gifting Arrangement, as originally proposed, was no longer on the table. Indeed, the transmittal to Mr. Golden, a copy of which is attached hereto as Exhibit B, contained the proviso that it remained subject to D.E. Shaw’s final approval.

⁵ Contrary to the allegations contained in the Adjournment Request, prior to the time the Adjournment Request was filed with the Court, the parties had agreed on a date and time for the deposition of a representative of Singer Children’s Management Trust, which deposition took place today.

- Again, as an accommodation to D.E. Shaw, Committee counsel transmitted D.E. Shaw's latest settlement proposal to the full Committee and scheduled a full Committee call for August 18, 2004 to obtain Committee guidance. During that call those members of the Committee voting on the settlement proposal voted unanimously to reject the proposal, as the Committee viewed it as unworkable because, among other reasons, it required active participation from DIRECTV whose participation was not forthcoming.⁶

Based on the foregoing facts, it is evident that D.E. Shaw's insinuation of bad faith or an attempt by the Committee to lull D.E. Shaw into a false sense of security as a basis for adjourning the hearing on the Global Settlement Motion is an act of desperation/frustration by an out-of-the money subordinated debt holder to obtain an unwarranted recovery in these cases.

Accordingly, the Committee respectfully asks this Court to see the Adjournment Request for what it is – one last ditch effort to be paid off for attempting to disrupt or delay the approval of the Global Settlement, the approval of which is so clearly in the best interest of these estates.

⁶ On this conference call (while D.E. Shaw and its counsel remained in attendance), Mr. Golden advised the Committee that Akin Gump had been approached by Echostar to undertake a representation on behalf of Echostar in a discrete matter completely unrelated to the Debtors or these cases. Akin Gump advised the Committee that it would only agree to be engaged by Echostar if (i) no member of the Committee objected and (ii) Echostar expressly agreed in writing to a complete and unconditional waiver of any current and/or future conflict involving the Debtors and/or the Committee such that Akin Gump could be adverse to Echostar in connection with the Debtors' chapter 11 cases or in any other matter related to the Debtors and/or the Committee. In response to an inquiry by a Committee member, Akin Gump advised the Committee that notwithstanding the limited nature of the potential Echostar representation, Akin Gump would be able to be adverse to Echostar and, to the extent, warranted, commence actions against Echostar on behalf of the estates and/or the Committee. No member of the Committee objected to Akin Gump being engaged by Echostar. D.E. Shaw's implication at paragraph 14 of the Adjournment Request is just one more unsavory allegation and further evidence of the lack of integrity of D.E. Shaw and its counsel, especially in light of D.E. Shaw's failure to voice an objection to Akin Gump undertaking the Echostar representation. Moreover, after receipt of the Adjournment Request, Akin Gump convened another conference call of the full Committee to, among other things discern if any Committee member objected to Echostar's engagement of Akin Gump. D.E. Shaw participated on that portion of the call. Again, D.E. Shaw did not during the call or prior to the filing of this Reply voice any objection to Akin Gump taking on such engagement.

For all of the foregoing reasons, the Committee respectfully requests that the Court (a) deny the relief requested in the Adjournment Request, (g) approve the Global Settlement and (c) grant such other relief as the Court deems just, equitable and proper.

Dated: Portland, Maine
August 24, 2004

PIERCE ATWOOD

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