Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(the "Applicants")

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION TO PAY SEVERANCE BENEFITS

December 14, 2016

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TO: SERVICE LIST

Court File No. CV-16-11582-00CL

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(the "Applicants")

NOTICE OF FILING IN THE CHAPTER 11 CASES OF BPS US HOLDINGS INC., ET AL. LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION TO PAY SEVERANCE BENEFITS

Pursuant to paragraph 26 of the Cross-Border Restructuring Protocol, the Official Committee of Unsecured Creditors of BPS US Holdings Inc., *et al.* hereby files the *Limited Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion to Pay Severance Benefits,* attached as Schedule "A" hereto, which has also been filed with the United States Bankruptcy Court for the District of Delaware in the Applicants' cases under chapter 11 of title 11 of the United States Code. Attached as Schedule "B" hereto are excerpts of relevant sections of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*).

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SCHEDULE "A"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BPS US Holdings Inc., *et al.*,[1]	Case No. 16-12373 (KJC)
Debtors.	Jointly Administered
	Re: Docket Nos. 10, 63, 231
	Objection deadline: 12/14/2016 at 4:00 p.m. (As to the Committee)

LIMITED OBJECTION OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS
TO THE DEBTORS' MOTION TO PAY SEVERANCE BENEFITS

The Official Committee of Unsecured Creditors (the "***Committee***") of the above-captioned debtors and debtors in possession (collectively, the "***Debtors***") hereby submits this limited objection (the "***Limited Objection***") to entry of a final order authorizing the *Debtors' Motion For Entry of Interim and Final Orders: (i) Authorizing Payment of Certain Prepetition Employee Claims, Including Wages, Salaries, and Other Compensation; (ii) Authorizing Payment of Certain Employee Benefits and Confirming Right to Continue Employee Benefits on Postpetition Basis; (iii) Authorizing Reimbursement to Employees for Prepetition Expenses; (iv) Authorizing Payment of Withholding and Payroll-Related Taxes; (v) Authorizing Payment of Prepetition Claims Owing to Administrators and Third Party Providers; (vi) Authorizing Banks to Honor Prepetition Checks*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

and Fund Transfers for Authorized Payments; (vii) Scheduling a Final Hearing; and (viii) Granting Related Relief [D.I. 10] (the "***Severance Motion***").[2] In support of this Limited Objection, the Committee respectfully submits as follows:

PRELIMINARY STATEMENT

By the Severance Motion, the Debtors seek final authority to pay to former employees an additional $3 million of non-priority Severance Obligations in excess of statutory caps under Bankruptcy Code sections 502(b)(7) and 507(a)(4) (the "***Statutory Caps***"), including payment to certain insiders whose prepetition conduct remains the subject of the Debtors' internal investigations of accounting practices. The Committee endorses the Debtors' belief that their employees constitute their most valuable asset and are essential to the Debtors' business and their sale process. Accordingly, the Committee did not object to the Debtors' request(s) for interim authority to pay, among other things, Unpaid Wages and to continue processing certain Deductions and to provide the Employee Benefits Program. However, the Severance Motion provides no support for non-priority payments of Severance Obligations in excess of the Statutory Caps. Specifically, because information provided to the Committee by the Debtors portends significantly less than full general unsecured creditor recoveries under the currently-proposed stalking horse sale transaction, the Committee submits the Debtors' request for final relief with respect to Severance Obligations is impermissible under the Bankruptcy Code and, until expiry of a bar date for filing proofs of claim, premature (at best). Accordingly, the final relief sought by the Debtors should be further adjourned or otherwise denied.

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[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Severance Motion.

BACKGROUND

General Background

1. On October 31, 2016 (the "***Petition Date***"), each of the Debtors filed a voluntary petition (collectively, the "***Chapter 11 Cases***") under title 11 of the United States Code (11 U.S.C. §§ 101 *et seq*., the "***Bankruptcy Code***"). The Chapter 11 Cases are jointly administered and no trustee or examiner has been appointed.

2. Contemporaneously with the filing of the Chapter 11 Cases, each of the Debtors also made an application for protection (the "***Canadian Proceedings***" and together with the Chapter 11 Cases, collectively, the "***Restructuring Proceedings***") from their creditors under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended with the Ontario Superior Court of Justice (Commercial List) (the "***Canadian Court***"). A monitor has been appointed by the Canadian Court in the Canadian Proceedings.

3. The Committee was appointed on November 10, 2016, and consists of the following three members: (i) Wilmington Savings Fund Society, FSB; (ii) VNSH, LLC; and (iii) Denlea & Carton LLP. *See* D.I. 116.

4. On November 28, 2016, the Debtors' filed their *Motion for An Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [D.I. 212] (the "***Bar Date Motion***"). The Bar Date Motion is scheduled for hearing on December 19, 2016.

5. On November 29, 2016, the Court granted the Debtors' request to extend the time by which the Debtors must file their schedules and statements of financial affairs through and including December 15, 2016. *See* D.I. 223. As of the date hereof, the Debtors have not yet filed their schedules and statements of financial affairs.

The Severance Motion

6. On the Petition Date, the Debtors filed the Severance Motion, seeking authority to, among other things, (i) pay accrued prepetition employee wages, salaries, and other compensation; (ii) pay accrued prepetition compensation of independent contractors; (iii) reimburse employees for business expenses incurred prepetition on behalf of the Debtors in the ordinary course of business; (iv) honor prepetition obligations in respect of, and continue in the ordinary course of business, the Debtors' paid time off policies, severance obligations, and employee benefits programs and plans; (v) pay all prepetition payroll taxes and other deductions and withholdings; (vi) continue their Workers Compensation Programs and honor obligations related thereto; and (vii) pay any prepetition claims of third-party payroll and other administrators and any additional obligations to employees not expressly included in the Severance Motion.

7. On November 1, 2016, the Court entered an interim order [D.I. 63] granting the Severance Motion as set forth therein and scheduling a further hearing for November 30, 2016, at 11:00 a.m. (ET).

8. Following its appointment, among other things, the Committee reviewed the relief requested by the Severance Motion and identified several areas requiring further diligence and follow up. Working cooperatively with the Debtors, the Committee resolved most of its concerns in advance of the November 30th hearing on the Severance Motion, and obtained agreed rights to review and, if necessary, oppose certain proposed contractor, reimbursement and bonus payments in the future. The Committee did not consent to the Debtors' request to pay the Severance Obligations in excess of the Statutory Caps.

9. On November 30, 2016, the Court conducted a second interim hearing on the Severance Motion. At the hearing, the Debtors reported on the resolutions reached between the Debtors and the Committee with respect to the Severance Motion and requested the Court schedule

a further hearing on December 19, 2016 to consider payment of Severance Obligations in excess of the Statutory Caps. Later on November 30, 2016, the Court entered a further interim order [D.I. 231] and scheduled a final hearing on the Severance Motion for December 19, 2016 at 1:30 p.m. (ET) (the "***Final Hearing***").

10. Since the November 30th hearing, the Committee's professional advisors have continued to work cooperatively with the Debtors' professional advisors to understand the Debtors' request to pay Severance Obligations in excess of the Statutory Caps. Relatedly, the Committee's advisors have also been working to understand and analyze the Debtors' total general unsecured claims pool and the likely level of creditor recoveries in these Restructuring Proceedings.

11. The Committee's preliminary, ongoing diligence indicates the Debtors' general unsecured claims pool could be materially higher than the Debtors' initial predictions. As a result, especially while the Debtors' sale process is ongoing and the ultimate purchase price for the Debtors' assets is not yet known, it is impossible to determine whether unsecured, non-priority creditors in the Restructuring Proceedings will receive full recoveries. As a result, the Committee believes entry of a final order approving the Severance Motion is premature and, unless all unsecured, non-priority creditors can be assured full recoveries on their claims, the Debtors' request to make payments in excess of the Statutory Caps is inappropriate.

LIMITED OBJECTION

12. Bankruptcy Code section 507(a)(4) limits payments for, *inter alia*, severance to not more than $12,850 for each individual, provided that such amounts must have been "earned within 180 days before the date of the filing of the petition." 11 U.S.C. §507(a)(4).

13. Additionally, Bankruptcy Code section 502(b)(7) disallows any claims arising from the termination of an employment contract that exceeds: (A) the value of one year's contractual compensation following the earlier of (i) the date of the filing of the petition; or (ii) the date on which the employee was terminated plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates. *See* 11 U.S.C. §502(b)(7).

14. The Debtors have provided the Committee with information indicating certain proposed recipients of the Severance Obligations will receive amounts materially exceeding one or both of the foregoing Statutory Caps. In addition, certain of those proposed recipients are former officers of the Debtors whom, upon information and belief, are subject to the Debtors' internal investigations. None of the proposed recipients are current employees of the Debtors who are actively engaged in furthering the Debtors' goals in their Restructuring Proceedings.

15. The Debtors have requested the Committee support the Debtors' request to pay the Severance Obligations in full to non-insider Severed Employees. However, as set forth above, the ultimate recovery to creditors is presently unknown. The Debtors' proposed bar dates have not yet passed, much less been approved by the Court. Further, as of the date hereof, the Debtors' schedules and statements of financial affairs have not yet been filed. In the meantime, the Committee's ongoing diligence suggests the amount of general unsecured claims is likely higher than the Debtors' initial estimates set forth in their first day papers.

16. As a result, the Committee cannot support the request to pay certain unsecured creditors more than what they may ultimately be entitled to recover in these Restructuring Proceedings. Unless and until it is clear that unsecured creditors will recover 100% of their allowed claims, the Committee cannot determine whether the proposed payments of the Severance

Obligations in amounts in excess of the Statutory Caps is appropriate or permissible under the Bankruptcy Code.

17. Finally, the Committee notes the Debtors have requested that the Canadian Court authorize the payment of Severance Obligations by Canadian Debtors in these dual, plenary Restructuring Proceedings. To be clear, the Committee intends for this Limited Objection to apply equally in the Canadian Proceedings.[3] The Debtors have not offered any authority to support a different result. To the contrary, the Court-approved cross-border protocol is designed to facilitate international comity and respect of the laws of both the United States and Canada in these Restructuring Proceedings and proscribes any requirement for either the U.S. or Canadian Court to take action that is inconsistent with its applicable, governing laws. *See* Cross-Border Protocol at D.I. 220.

RESERVATION OF RIGHTS

18. The Committee reserves the right to supplement this Limited Objection at any time prior to the Final Hearing, including, but not limited to, withdrawing this Limited Objection in whole or in part. The Committee expressly reserves its rights to raise additional or further objections to the relief requested in the Severance Motion at or prior to the Final Hearing.

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[3] Indeed nearly 78% of the Severance Obligations pertain to U.S. employees.

WHEREFORE, the Committee requests that, absent the Debtors' addressing each of the issues raised herein to the satisfaction of the Committee, the Court (i) deny approval of the Severance Motion and (ii) provide the Committee such other and further relief as the Court may deem just, proper and equitable.

Respectfully submitted,

Dated: December 14, 2016
Wilmington, Delaware

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Proposed Counsel to the Official Committee of Unsecured Creditors of BPS US Holdings Inc., et al

SCHEDULE "B"

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos)
Subchapter I. Creditors and Claims

11 U.S.C.A. § 502

§ 502. Allowance of claims or interests

Currentness

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that--

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds--

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of--

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds--

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of--

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

(c) There shall be estimated for purpose of allowance under this section--

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that--

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g)(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if--

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)--

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that--

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2579; Pub.L. 98-353, Title III, § 445, July 10, 1984, 98 Stat. 373; Pub.L. 99-554, Title II, §§ 257(j), 283(f), Oct. 27, 1986, 100 Stat. 3115, 3117; Pub.L. 103-394, Title II, § 213(a), Title III, § 304(h)(1), Oct. 22, 1994, 108 Stat. 4125, 4134; Pub.L. 109-8, Title II, § 201(a), Title VII, § 716(d), Title IX, § 910(b), Apr. 20, 2005, 119 Stat. 42, 130, 184.)

Notes of Decisions (1494)

11 U.S.C.A. § 502, 11 USCA § 502
Current through P.L. 114-248.

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos)
Subchapter I. Creditors and Claims

11 U.S.C.A. § 507

§ 507. Priorities

Effective: April 1, 2016
Currentness

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502(f) of this title.

(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 [1] for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan--

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of--

(i) the number of employees covered by each such plan multiplied by $12,850 [1]; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(6) Sixth, allowed unsecured claims of persons--

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility--

but only to the extent of $6,325 [1] for each such individual.

(7) Seventh, allowed unsecured claims of individuals, to the extent of $2,850 [1] for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition--

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of--

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on--

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise--

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.

(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub.L. 98-353, Title III, §§ 350, 449, July 10, 1984, 98 Stat. 358, 374; Pub.L. 101-647, Title XXV, § 2522(d), Nov. 29, 1990, 104 Stat. 4867; Pub.L. 103-394, Title I, § 108(c), Title II, § 207, Title III, § 304(c), Title V, § 501(b)(3), (d)(11), Oct. 22, 1994, 108 Stat. 4112, 4123, 4132, 4142, 4145; Pub.L. 109-8, Title II, §§ 212, 223, Title VII, §§ 705, 706, Title XIV, § 1401, Title XV, § 1502(a)(1), Apr. 20, 2005, 119 Stat. 51, 62, 126, 214, 216; Pub.L. 111-203, Title XI, § 1101(b), July 21, 2010, 124 Stat. 2115; Pub.L. 111-327, § 2(a)(15), Dec. 22, 2010, 124 Stat. 3559.)

Notes of Decisions (1130)

Footnotes

1 Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

11 U.S.C.A. § 507, 11 USCA § 507

Current through P.L. 114-248.

Court File No. CV-16-11582-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD. ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
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