

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
TBR USA, INC.,) CASE NO. 06-60429 JPK
) Chapter 11
Debtor.)

ORDER REGARDING APPROVAL OF DISCLOSURE
STATEMENT/CONFIRMATION OF PLAN

On September 11, 2006, pursuant to the Court's order entered on August 3, 2006, a final hearing was held with respect to approval of the debtor's disclosure statement, and hearing was held regarding confirmation of the debtor's Plan of Reorganization filed on July 28, 2006. The debtor appears by counsel Mark Werling; creditor Pramco IV, LLC appears by counsel David Blaskovich; creditors John Worstell and The Worstell Business Trust appear by counsel Gordon Gouveia; the United States Trustee appears by Trial Attorney Jennifer Prokop.

The Court first directs the parties to address whether or not the debtor's disclosure statement, included within its plan pursuant to Fed.R.Bankr.P. 3016(b), provides "adequate information" as required by 11 U.S.C. § 1125. For the reasons stated on the record in open court, the Court finds that the information stated in the debtor's Plan of Reorganization filed on July 28, 2006 does not constitute the provision of "adequate information", and that the foregoing document cannot be finally approved as a disclosure statement under 11 U.S.C. § 1125.

With respect to proceedings concerning confirmation of the debtor's Plan of Reorganization, having heard the arguments of counsel, for the reasons stated on the record in open court, the Court finds that 11 U.S.C. § 1129(e) requires the commencement of a confirmation hearing within 45 days after the plan is filed, but that at that hearing the Court can only make a final determination as to confirmation of a plan with respect to a plan "that complies with the applicable provisions of this title". 11 U.S.C. § 1129(a)(2) requires as a condition of confirmation that the proponent of the plan has complied with applicable provisions of Title 11, one of which is the provision to creditors of a disclosure statement which complies with the

provisions of 11 U.S.C. § 1125. Because the Court has not approved the information provided by the debtor to creditors in conjunction with its plan as "containing adequate information", the Court cannot presently consider whether or not the debtor's proposed plan can be confirmed. For the reasons stated on the record in open court, the Court determines that it is necessary to provide separately for a disclosure statement apart from information contained in the plan; to determine the adequacy of the disclosure statement separately from consideration concerning confirmation of the plan; and to cause a proposed plan, or an amended plan, to be scheduled for confirmation only after a separate disclosure statement has been approved by the Court.

A critical factor in information to be disclosed pursuant to 11 U.S.C. § 1125, and concerning the nature of arrangements to be proposed by a plan, is whether or not the debtor's lease with Pramco IV, LLC will be assumed pursuant to 11 U.S.C. § 365. The parties agree that it is necessary to resolve this issue before undertaking further proceedings with respect to approval of a disclosure statement or review of a proposed plan for confirmation.

IT IS ORDERED that further proceedings regarding provision of information pursuant to 11 U.S.C. § 1125, and further proceedings concerning review of the confirmability of the debtor's Plan of Reorganization, are suspended pending further order of the Court in order to allow determination of issues relating to the debtor's assumption of its lease with Pramco IV, LLC. In the event that the debtor and that creditor are able to resolve issues relating to the assumption of the lease in advance of the hearing to be scheduled by separate order with respect to that matter, the debtor may file a motion with the Court requesting the entry of an order which provides a deadline for filing a separate disclosure statement pursuant to 11 U.S.C. § 1125.

Dated at Hammond, Indiana on September 13, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, US Trustee, All Creditors, All Parties-in-Interest