

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

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

ORDER FOR EXPEDITED TELEPHONIC CONFERENCE
CONCERNING PROCEDURES REGARDING PLAN OF
REORGANIZATION FILED BY THE DEBTOR ON JULY 28, 2006

On July 28, 2006, the debtor filed a document entitled "TBR USA's Plan of Reorganization Dated July 28, 2006". Without other specific designation or indication, buried as the last sentence in the second full paragraph on page 3 of this document is the statement: "The Debtor is submitting this Plan to holders of claims against and equity interests in the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code". Although not readily apparent, the Court deems this statement to be somehow intended to provide the designation required by Interim Fed.R.Bankr.P. 3016(b), which in pertinent part states:

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(b) Disclosure Statement. In a chapter 9 or 11 case, a disclosure statement under § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.¹

Assuming that the plan was filed in accordance with 11 U.S.C. § 1121(e), 11 U.S.C.

¹ The Court deems the documentation filed by the debtor to be insufficient to bring to the Court's attention the designation provided by this rule. However, because of the nuances in the procedures now dictated by BAPCPA with respect to a small business case, the Court is taking no chances in addressing the document as if the debtor intended to make the designation. This would appear to be a valid assumption in light of the fact that a separate disclosure statement was not filed with the plan.

§ 1129(e) states that in a small business case, "the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed . . ." The Court construes this section to require the commencement of a hearing on confirmation of the plan within 45 days after filing of the plan. The Court does not construe this statute to require that a final order be entered providing for confirmation of the plan at that hearing – because of the multitude of evidentiary and legal issues which may arise with respect to objections to confirmation of a plan, or classes which vote against the plan, only an idiot could possibly construe this statute to require that all action necessary to confirm a Chapter 11 plan be completed at a hearing held no more than 45 days after the filing of a plan. The Court's parents didn't raise an idiot. However, Fed.R.Bankr.P. 2002(b)(2) requires a 25-day notice to parties-in-interest of the time fixed for filing objections to a Chapter 11 plan, and of the date set for the hearing on confirmation of that plan. Fed.R.Bankr.P. 2002(b)(1) provides a 25-day notice to parties-in-interest with respect to the time fixed for filing objections to, and the date set for hearing on, a disclosure statement. Obviously, it is impossible to separately determine the adequacy of a disclosure statement under 11 U.S.C. § 1125, and to then subsequently provide notice of a hearing on confirmation of a plan – in light of the requirements of 11 U.S.C. § 1129(e). In order to seek to provide a mechanism for overcoming this conundrum, 11 U.S.C. § 1125(f) provides that in a small business case, the Court may either "determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary", or the Court "may conditionally approve a disclosure statement subject to final approval after notice and a hearing", and then combine the hearing on the conditionally approved disclosure statement with the hearing on confirmation of the plan. Interim Fed.R.Bankr.P. 3017.1(a) provides the mechanism for conditional approval of the disclosure statement, if in fact a separate disclosure statement is necessary. This approval process is initiated either by an application of the plan

proponent, or by the Court's own initiative.

Cutting to the chase, it seems to be the debtor's intention that the plan filed on July 28, 2006 be deemed to provide adequate information pursuant to 11 U.S.C. § 1125(f)(1). However, because of the shortness of the deadlines which must be met with respect to scheduling a hearing on confirmation of this plan if that is so, the Court deems it necessary to conduct an expedited telephonic conference with counsel for the debtor, a representative of the Office of the United States Trustee, and counsel for the debtor's principal creditor. While the hearing will be conducted telephonically, a record of the hearing will be made by a court reporter.

IT IS ORDERED that a telephonic hearing will be held on **August 3, 2006, at 3:00 P.M.** with respect to the matters addressed above.

Dated at Hammond, Indiana on August 1, 2006.

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

Distribution:
Debtor, Attorney for Debtor
US Trustee
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