

Case History Prior to the Appointment of the Trustee

Sunday, 02 December 2007

HISTORY OF THE 1031 TAX GROUP CASES, ET AL

PRIOR TO THE APPOINTMENT OF THE TRUSTEE

1. Between August 2005 and December 2006, Edward H. Okun ("Okun") acquired six regional enterprises engaging in the business of acting as "qualified intermediaries" for deferred "like kind" property exchanges under Section 1031 of the Internal Revenue Code. Attached as Exhibit "A" is an organizational chart of the Debtors.

2. Okun was also the sole owner of the "IPofA" companies and Okun Holdings. Attached as Exhibit "B" is an organizational chart of the IPofA companies.

3. IPofA and Okun Holdings engaged in the inter-company transfers of money from the 1031 Tax Group Debtors, with the 1031 Tax Group Debtors obtaining Notes in exchange ("Affiliate Notes").

4. On April 27, 2007, the Postal Inspector executed a Search Warrant to search and seize all documents from the Debtors and Okun Entities in Richmond, VA.

5. According to the Debtors, during negotiations held the week preceding the Petition Date, Okun agreed to execute a personal guarantee of the Affiliate Notes.

6. On May 13, 2007, (the "Petition Date"), the 1031 Tax Group Debtors filed bankruptcy petitions under Chapter 11 of the Bankruptcy Code.

7. As of the Petition Date, the aggregate balance of the Affiliate Notes amounted to \$137 million in principal. As of the Petition Date, there were approximately 300 open exchange contracts representing an estimated liability of \$151 million.

8. Prior to the Petition Date, on or about May 1, 2007, the Debtors engaged Drier LLP ("Drier") to advise

them of their legal restructuring alternatives. Shortly thereafter, on or about May 11, 2007, Huron Consulting Services, LLP ("Huron") was also engaged by the Debtors to provide professional advice. James M. Lukenda, a managing director from Huron was engaged as the Debtors' Chief Restructuring Officer and Richard Robbins ("Rob") Vanderbeek became the Debtors' Treasurer. Final court approval was obtained on July 3, 2007 of both Drier and Huron

9. In May 2007, shortly after the Petition Date, the UST filed its motion for the appointment of a Chapter 11 Trustee as did other creditors in the case. Several of the creditors filed motions to convert the cases (collectively, "Trustee Motions").

10. On May 25, 2007, Okun relinquished all managerial responsibilities and Edward G. Moran was retained to be the sole manager, director / partner of the Debtors. Mr. Moran was to be paid \$20,000 per month for the year.

11. On May 30, 2007, the Office of the United States Trustee ("UST") appointed a nine member Official Committee of Unsecured Creditors ("Committee"). In August and September, 2007, three of the initial nine-members resigned after selling their claims to claims traders. Only two of the three members have been replaced, leaving eight members on the Committee.

12. On June 11, July 2, and July 11, the Court conducted hearing on the motions for a chapter 11 Trustee. At the June 11 hearing, Okun through his counsel, Kluger, Perez, et al, provided the court and interested parties the commitment not to sell, transfer or otherwise encumber assets pending further order of the Court. The agreement was memorialized via stipulation dated June 18, 2007 and so order by the Court on June 22.

13. On July 30, 2007, the Court approved the retention of Greenberg, Taurig LLP as counsel for the Committee and Mesirow Financial Consulting as its financial advisors.

14. The Debtors' plan for re-paying the creditors was to fund the plan to repay the Debtors' creditors in full through financing from JPS Capital Partners, LLP ("JPS"). JPS was expected refinance of Okun's non-Debtor assets and provide \$147 million for the Debtors' plan (\$142 million for the unsecured creditors and \$5 million set aside for administrative expenses). This financing was colloquially termed by the parties as "Plan A."

15. Plan B was conceived by the parties in the event Plan A failed. Plan B essentially provided that Okun pledged to make the \$147 million in payments and continue to operate his businesses while co-operating with a creditor representative designated under a confirmed plan. Plan B also included broad non-Debtor releases in favor of Okun and his entities.

16. On July 19, 2007, they jointly filed their Joint Plan of Reorganization. Numerous objections were filed to both the approval of the Disclosure Statement as well as to the substance of the Joint Plan. On July 29, 2007, the Committee and Debtors filed their joint disclosure statement.

17. Pursuant to the Memorandum and Order dated August 13, 2007, the Court denied the Trustee Motions because the Court was persuaded that the appointment of a Chapter 11 Trustee would delay negotiations with Okun and JPS. The plan proponents represented to the Court at the July 11, 2007 hearing that the parties would know by the middle or end of August 2007 whether JPS would fund.

18. Objections were filed to the approval of the Disclosure Statement. A hearing was held on August 16 where counsel to JPS informed the Court that a closing was contemplated in late September. The Court continued the hearing to September 24.

19. On August 29, 2007, the Debtors and the Committee filed the First Amended Joint Disclosure Statement. Various objections thereto were filed by certain creditors.

20. On September 24, the Debtors requested and obtained a short adjournment for "one last chance";

21. On October 2, 2007, three non-debtor affiliates (West Oaks Debtors) filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Eastern District of Virginia (Richmond Division). The West Oaks Malls were part of the collateral to support Plan A or B and part of the so ordered stipulation approved by the Court that precluded Okun from transferring his assets.

22. The Court held a hearing on October 9, and at that hearing, the Debtors stated that the JPS funding was not nearly as much as expected and conceded that Plan A was unlikely "it was "iffy" from the beginning and became worse as the credit markets deteriorated. At this hearing, the Committee requested additional time to reach an agreement with Okun. The Court granted this request and set the hearing for October 12.

23. At the October 12 hearing, the Committee presented an executed "Agreement to Transfer Interests and Assets for the Benefit of Bankruptcy Estates (the "Asset Transfer Agreement"), in which Okun irrevocably transferred virtually all his assets (except two vehicles "a Hummer and a Lamborghini -- and two homes "one in New Hampshire and the other in Miami) to the bankruptcy estate.

24. On October 23, 2007, the Court granted the Motions for the appointment of a Chapter 11 Trustee.

25. On October 25, 2007, the Court approved the appointment of Gerard A. McHale, Jr. as Chapter 11 Trustee.

26. On October 26, 2007, the Court approved the Asset Transfer Agreement.

Exhibits A & B - 1031 Tax Group & IPoA Organizational Charts (PDF)