

UNITED STATES DEPARTMENT OF JUSTICE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
	:	
	:	Case No. 25-15343 (MBK)
CBRM Realty Inc., et als., ¹	:	
	:	The Honorable Michael B. Kaplan
Debtors.	:	
	:	Hearing Date: September 4, 2025 at 11:30 a.m.
	:	

**UNITED STATES TRUSTEE’S OBJECTION TO THE JOINT CHAPTER 11 PLAN OF
CBRM REALTY INC. AND CERTAIN OF ITS DEBTOR AFFILIATES**

Andrew R. Vara, the United States Trustee for Regions Three and Nine (the “U.S. Trustee”), through his undersigned counsel, hereby submits this objection (“Objection”) to confirmation of the *Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* (the “Plan”) (Dkt. 338-1), and respectfully states as follows:²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (9071), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), RH New Orleans Holdings MM LLC (1951), and Laguna Reserve Apts Investor LLC (N/A). The location of the Debtors’ service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

² The Debtors granted the U.S. Trustee an extension through August 28, 2025 to file this Objection.



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PRELIMINARY STATEMENT

1. The Debtors and the U.S. Trustee were able to resolve several objections to the Plan, which resolutions will be incorporated in a soon to be filed revised plan. Those resolutions involve Art. I.A.65. (Definition of General Administrative Claim), Art. I.A.66. (Definition of General Administrative Claim Bar Date), Art. II.H. (Quarterly Fees), Art. IV.B (General Settlement of Claims), Art. VIII.A. (Settlement, Compromise, and Release of Claims and Interests), Art. VIII.E. (Exculpation), and Art. VIII.F (Injunction). In addition, the Debtors have agreed to revise similar language (“satisfaction, compromise, settlement, release, and discharge”) in Articles II.A and E, and Articles III.B.1(b), B.2(b), B.3.(b), B.4.(b), B.5.(a), B.6.(b). Further, the Debtors have agreed to incorporate a paragraph in the confirmation order concerning the closing of these cases pursuant to Fed. R. Bankr. P. 3022.³

2. The U.S. Trustee has one remaining objection concerning Article VIII.C of the Plan, which provides an overbroad debtor release provision granting releases to estate fiduciaries and other unknown parties. *See* Dkt. 338-1 at pages 36 and 37 of 43. For the reasons set forth in more detail herein, the U.S. Trustee respectfully requests that the Court enter an order sustaining the objection and requiring the removal of the overbroad debtor release provision or deny confirmation.

JURISDICTION AND STANDING

3. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of New Jersey issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Debtors’ request for approval of the relief requested in the Motion and the matters raised in this Objection.

³ The Debtors have also agreed to provide more information concerning the Debtor’s payment of certain fees of the Ad Hoc Group of Holders of Crown Capital Notes.

4. The U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co.*, 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499 (6th Cir. 1990) ("As Congress has stated, the U.S. trustees are responsible for protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law").

5. Pursuant to 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee has the duty to monitor and comment on plans and disclosure statements filed in chapter 11 cases.

6. Under section 307 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), the U.S. Trustee has standing to be heard on the Debtors' request for confirmation of the Plan. *See U.S. Tr. v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under section 307, which goes beyond mere pecuniary interest).

BACKGROUND

A. The Chapter 11 Cases

7. On May 19, 2025, CBRM Realty Inc. (“CBRM”), Crown Capital Holdings LLC (“Crown”), Kelly Hamilton Apts LLC (“KHA”), Kelly Hamilton Apts MM LLC (“KHAMM”), RH Chenault Creek LLC (“Chenault”), RH Copper Creek LLC (“Copper”), RH Lakewind East LLC (“Lakewind”), RH Windrun LLC (“Windrun”), RH New Orleans Holdings LLC (“NOH”), RH New Orleans Holdings MM LLC (“NOHMM”), commenced these Chapter 11 Cases by filing voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code” or “Code”). *See* for example, Dkt. 1, Case No. 25-15343/MBK.

8. On August 17, 2025, Laguna Reserve Apts Investor LLC (“Laguna” and together with CBRM, Crown, KHA, KHAMM, Chenault, Copper, Lakewind, Windrun, NOH, and NOHMM, the “Debtors”) commenced a chapter 11 case by filing a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code” or “Code”). *See* Dkt. 1, Case No. 25-18643/MBK.

9. The Debtors continues to manage and operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

10. The U.S. Trustee has not appointed an official committee of unsecured creditors in these cases. However, there appears to be an Ad Hoc Group of Holders of Crown Capital Notes involved in these cases. *See* Dkt. 31, Case No. 25-15343/MBK.

11. As of the date hereof, no trustee or examiner has been requested or appointed.

12. The Plan only involves certain of the Debtors including CBRM, Crown, KHA and KHAMM (the “Kelly Hamilton Debtors”). *See* Dkt. 360 at page 12 of 109.

B. The Kelley Hamilton Property and the Sale of the Kelly Hamilton Property

13. The Kelly Hamilton Debtors own and operate the Kelly Hamilton Apartments, a multifamily affordable housing complex located in Pittsburgh, Pennsylvania (the “Kelly Hamilton Property”). *See id.* The Kelly Hamilton Property provides rent-restricted housing to low-income residents and is supported in part by government housing programs. *See id.*

14. On July 11, 2025, the Debtors filed a Motion for Entry of an Order (I) Approving (A) Bidding Procedures, the Sale Timeline, and the Form and Manner of Notice Thereof for the Kelly Hamilton Property, (B) the Debtors' Entry into and Performance Under the Stalking Horse Agreement, (C) Bid Protections in Connection with the Stalking Horse Agreement, and (D) Assumption and Assignment Procedures, and (II) Granting Related Relief (the “Sale Motion”). *See* Dkt. 281.

15. On July 24, 2025, the Court entered an Order (I) Approving (A) Bidding Procedures, the Sale Timeline, and the Form and Manner of Notice Thereof for the Kelly Hamilton Property, (B) the Debtors' Entry into and Performance Under the Stalking Horse Agreement, (C) Bid Protections in Connection with the Stalking Horse Agreement, and (D) Assumption and Assignment Procedures, and (II) Granting Related Relief (the “Bidding Procedures Order”). *See* Dkt. 325.

16. On July 28, 2025, the Debtors filed a Notice of Proposed Sale, Entry Into Stalking Horse Agreement, Bidding Procedures, Auction, and Confirmation and Sale Hearing (the “Stalking Horse Notice”). *See* Dkt. 333. Pursuant to the Stalking Horse Notice, the Debtors set forth that they entered into a Stalking Horse Agreement with the Kelly Hamilton DIP Lender, 3650 SS1 Pittsburgh LLC for the purchase of the Kelly Hamilton Property. *See id.*

17. On August 15, 2025, the Debtors filed a Notice of Cancellation of Auction and Designation of the Stalking Horse Bid as the Successful Bid for the Kelly Hamilton Property (the “Auction Notice”). *See* Dkt. 383. Pursuant to the Auction Notice, the Debtors advised that they did not receive any qualified bids other than the stalking horse bid, that the August 14, 2025 auction was cancelled, and that the Stalking Horse Bidder was designated as the successful bidder with respect to the Kelly Hamilton Property. *See id.*

C. The Combined Disclosure Statement and Plan.

18. On June 30, 2025, the Debtors filed a disclosure statement (the “First Disclosure Statement”) and plan (the “First Plan”). *See* Dkts. 246 and 247.

19. On July 11, 2025, the Debtors filed a Motion for Entry of an Order (I) Conditionally Approving the Adequacy of the Information Contained in the Disclosure Statement, (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief (the “Conditional DS Approval Motion”). *See* Dkt. 283.

20. On July 24, 2025, the Debtors filed a revised disclosure statement (the “Second Disclosure Statement”) and revised plan (the “Second Plan”). *See* Dkt. 320 and 321.

21. On July 30, 2025, the Debtors filed a revised disclosure statement (the “Third Disclosure Statement”) and the Plan. *See* Dkts. 338 and 339.

22. On August 1, 2025, the Court entered an Order Granting Debtors’ Motion for Entry of an Order (i) Conditionally Approving the Adequacy of the Information Contained in the Disclosure Statement, (II) Approving the Solicitation and Voting Procedures With Respect to Confirmation of the Plan, (III) Approving the Form of Ballots and Notices in Connection

Therewith, (IV) Scheduling Certain Dates With Respect Thereto, and (V) Granting Related Relief (the “Conditional DS Approval Order”). *See* Dkts. 347 and 349. The Court scheduled a hearing on the Plan for September 4, 2025.

23. On August 5, 2025, the Debtors filed a Notice of Errata Regarding Disclosure Statement For the Joint Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates (the “Errata Notice”). *See* Dkt. 360. Pursuant to the Errata Notice, the Debtors attached a revised disclosure statement (the “Disclosure Statement”). *See id.*

D. Specific Provision of the Plan

24. Article VIII.C of the Plan broadly provides that each of the Released Parties⁴ are “deemed released by the Debtors and their Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted on behalf of the Debtors.”⁵ *See* Dkt. 338-1 at Art. VIII.C, pages 36 and 37 of 43.

⁴ The Plan defines “Released Party” as follows:

“each of the following in its capacity as such: (a) the Independent Fiduciary; (b) the Kelly Hamilton Purchaser; (c) the Asset Manager; (d) the Property Manager; (e) the Kelly Hamilton DIP Lender; (f) the Ad Hoc Group of Holders of Crown Capital Notes and each of its members; (g) with respect to each of the foregoing entities in clauses (b) through (f), such Entity’s current and former Affiliates, and such Entity’s and its current and former Affiliates’ subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; and (h) with respect to the Debtors and the Debtors’ non-Debtor subsidiaries, White & Case LLP as counsel, IslandDundon LLC as financial advisor, Ken Rosen Advisors PC as New Jersey counsel and co-counsel, and the Claims and Noticing Agent. For the avoidance of any doubt, no Person or Entity identified on the Schedule of Excluded Parties shall constitute a Released Party for purposes of the Plan.”

See Dkt. 338-1 at Art. I.A 115, at page 14 of 43.

⁵ The Plan provides for a release by the Debtors as follows:

“Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtors and their Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf

These include Claims and Causes of Action “whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise.” *See id.*

OMNIBUS OBJECTION

25. The Plan provides for a release by the Debtors to the Released Parties. *See* Dkt. 338-1 at Art. VIII.C.

26. The Plan does not establish that each of the proposed Released Parties are providing adequate consideration in exchange for receiving such releases. In addition, certain persons included in the Released Party definition do not appear to be entitled to such releases under applicable case law. Further, there are many individuals and entities included in the definition of Released Parties that are unknown parties. Also, estate fiduciaries are not only receiving an exculpation under the Plan but are also receiving a release from the Debtors.

27. In *In re Zenith Elecs. Corp.*, the Court identified five factors that are relevant to determine whether a debtor’s release of a non-debtor is appropriate:

- (1) an identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate’s resources;
- (2) a substantial contribution to the plan by the non-debtor;
- (3) the necessity of the release to the reorganization;

of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Restructuring Documents or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtors taking place on or before the Effective Date.”

See Dkt. 338-1 at Art. VIII.C., pages 36 and 37 of 43.

(4) the overwhelming acceptance of the plan and release by creditors and interest holders; and

(5) the payment of all or substantially all of the claims of the creditors and interest holders under the plan.

See Zenith, 241 B.R. 92, 110 (Bankr. D. Del. 1999) (*citing Master Mortgage Inv. Fund, Inc.*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). These factors are neither exclusive nor conjunctive requirements but provide guidance in the court's determination of fairness. *See Master Mortgage*, 168 B.R. at 935 (finding there is no "rigid test" to be applied in every circumstance and that the five factors are neither exclusive, nor conjunctive).

28. The first *Zenith* factor requires an "identity of interest between the debtor and the third-party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate." *See In re Spansion, Inc.*, 426 B.R. 114, n. 47 (Bankr. D. Del. 2010), *citing Zenith*, 241 B.R. at 110. An identity of interest exists when, among other things, the debtor has a duty to indemnify the non-debtor receiving the release. *See Wash. Mut.*, 442 B.R. 314, 347 (Bankr. D. Del 2011) (recognizing that indemnification may create an identity of interest thereby satisfying the first factor of *Zenith*). Here, it is unclear whether an identity of interest exists between the Debtors and each of the Released Parties.

29. The second *Zenith* factor involves whether the non-debtor party benefiting from the release made a substantial contribution of assets to the debtor's reorganization. *See In re Congoleum Corp.*, 362 B.R. 167, 193 (Bankr. D.N.J. 2007). In considering releases, substantial contribution does not include contributions to the reorganization related to operational restructuring or negotiating for the financial restructuring. *See In re Genesis Health*, 266 B.R. 591, 606-7 (Bankr. D. Del 2001) ("the officers, directors and employees have been otherwise compensated for their contributions, and the management functions they performed do not

constitute contributions of ‘assets’ to the reorganization.”). Here, it does not appear that each of the Released Parties provided a substantial contribution of assets.

30. As to the third *Zenith* factor, there is no information provided to support a contention that all of the releases are necessary to a reorganization.

31. The fourth *Zenith* factor concerning acceptance of the plan cannot be assessed at this time as the Debtors have not filed a certification of ballots.

32. The fifth *Zenith* factor is not satisfied as it does not appear that unsecured creditors will receive all or substantially all of their claims. Accordingly, these factors do not support the Debtor Releases.

33. Additionally, estate fiduciaries are being exculpated for their actions or inactions between the Petition Date and the Effective Date. *See* Dkt. 338-1 at Art. VIII.E, page 37 of 43. The estate fiduciaries do not satisfy the *Zenith* factors and should only be granted an exculpation, not a release from the Debtors.

RESERVATION OF RIGHTS

34. The U.S. Trustee reserves all of his rights and objections regarding any and all future amendments to the Plan. The U.S. Trustee reserves the right to comment on and object to the proposed form of confirmation order. The U.S. Trustee reserves the right to amend or supplement this Objection.

CONCLUSION

WHEREFORE, the U.S. Trustee respectfully requests that this Court sustain the objection and require the removal of the overbroad debtor release provision or deny confirmation of the Plan and grant such other relief it deems just and proper.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: /s/ Jeffrey M. Sponder
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/s/ Lauren Bielskie
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Dated: August 28, 2025