IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:	
VANTAGE TRAVEL SERVICE, INC.,	
Debtor	Chapter 11 Case No. 23-11060-JEB

UNITED STATES TRUSTEE'S OBJECTION TO CONFIRMATION OF LIQUIDATING PLAN (WITH CERTIFICATE OF SERVICE)

William K. Harrington, the United States Trustee for Region 1, objects to confirmation of the liquidating plan (DE434) ("Plan") filed by Vantage Travel Service, Inc. ("Debtor"), because it does not comply with the Bankruptcy Code.

In support, the United States Trustee states:

JURISDICTION, VENUE AND LEGAL BASIS FOR RELIEF

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

3. Venue is proper in this court under 28 U.S.C. §§ 1408 and 1409.

4. The basis for relief includes 28 U.S.C. §§ 586(a)(3)(B), 11 U.S.C. § 1129, Fed. R. Bankr. P. 3017 and 3020(b) and MLBR 3017-1(b).

5. The United States Trustee's deadline for objecting to confirmation

of the Plan is November 7, 2023 at 12:00 p.m. Noon. DE524.

6. This objection is therefore timely.

FACTS

A. The Plan exculpation provision.

7. The Plan defers resolution of the Committee Challenge Rights and Estate Causes of Action transferred to the Creditor Trust until after the Effective Date.[1] Plan at Section 5.

8. The Plan broadly exculpates insiders, estate professionals and the Plan Administrator, who has not yet been appointed. The exculpation provision states in full:

> 8.4 **Exculpation of Estate Representatives.** The Debtor, the Plan Administrator and the Committee and its members, and each officer, director, attorney, accountant, agent, employee, or representative of the Debtor, the Plan Administrator and the Committee and its members, including without limitation the Professional Persons collectively, the "Exculpated Persons"), shall be exculpated from any liability resulting from or alleged to arise out of such Exculpated Person's administration of, or involvement in matters pertaining to, the Case or the Plan, provided that the foregoing exculpation shall not apply to bar liability that results from an Exculpated Person's act or omission that is determined by Final Order to have constituted gross negligence, willful misconduct, bad faith or an ultra vires act.

Plan at 19-20.

[1] All defined terms in the Disclosure Statement and Plan have the same meaning here.

B. The Plan's treatment of Class Six general unsecured claims.

9. The Plan provides that all of the estate's assets will be liquidated for the benefit of the sole Class One creditor, the Prepetition Lender, subject to the Committee Challenge Rights and Estate Causes of Action. The Prepetition Lender will be paid its adequate protection claim on the Effective Date. Plan at 9-10.

10. Customer Claims totaling approximately $108,000,000, non-Customer Claims totaling approximately $28,000,000 and the Prepetition Lender's deficiency claim totaling approximately $25,000,000 are lumped together in Class 6. DE442 at 15 ("The Plan places General Unsecured Claims into one class, Class Six."); 20-22. The Plan provides separate treatment for Class Six creditors depending on whether they hold Customer Claims, however.

11. Holders of Class Six Customer Claims receive Travel Credits for future travel from PTP, not the Debtor *Id.* at 10. To exercise their Travel Credits, Customers must purchase trips from PTP. *Id.*

12. Holders of Class Six non-Customer Claims receive a pro rata share of the Creditor Trust. *Id.*

13. To share in the distributions from the Creditor Trust, holders of Class Six Customer Claims must waive unused Travel Credits. *Id.* at 11; 22. DE441 at 5.

STATUTORY FRAMEWORK

A. To be confirmed, a chapter 11 plan must satisfy 11 U.S.C. § 1129(a).

14. Section 1129(a) sets forth 16 requirements that a chapter 11 plan must satisfy to be confirmed, including that it complies with applicable provisions of title 11 (subsection 1), that the plan has been proposed in good faith and not by any means forbidden by law (subsection 3), that an impaired class of creditors or interest holders have accepted the plan or will receive or retain under the plan at least what they would receive if the debtor were liquidated in chapter 7 (the best interest of creditors test) (subsection 7), that all classes vote to accept the plan (subsection (8)), that if a class of claims is impaired under the plan, at least once such class has accepted the plan, "determined without including any acceptance of the plan by an insider . . ." (subsection 10) and that the plan is feasible (subsection 11).

15. "Courts have interpreted [section 1129(a)(1)] as requiring that a plan comply with the requirements of §§ 1122 (governing classification of claims) and 1123 (governing the contents of a plan), as well as other Code provisions . . . ." *In re Charles Street African Methodist Episcopal Church of Boston*, 578 B.R. 56, 95 (Bankr. D. Mass. 2017).

16. Section 1123(a)(4) provides that "a plan shall . . . provide the same

treatment for each claim or interest in a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest . . . ."

17. "Release and exculpation clauses have also been found to be subject to review pursuant to section 1129(a)(1)." *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 133 (Bankr. D.N.J. 2010). Accordingly, complying with section 1129(a) requires that a plan not include improper release or exculpation language.

18. Exculpation "must be limited to the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the Committees and their members, and the Debtors' directors and officers . . . ." *In re Wash. Mut., Inc.*, 442 B.R. 314, 351 (Bankr. D. Del. 2011). Exculpation "only extends to conduct that occurs between the Petition Date and the effective date . . . ." *In re Mallinckrodt PLC*, 639 B.R. 837, 883 (Bank. D. Del. 2022).

19. Even where there are no objections to a plan, a bankruptcy court must find that the debtor fulfilled the requirements of section 1129(a). *In re Friese*, 103 B.R. 90, 91 (Bankr. S.D.N.Y. 1989). A plan proponent bears the burden of proof with respect to each and every element of section 1129(a). *See In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001).

ARGUMENT

I. THE COURT SHOULD DENY CONFIRMATION OF THE PLAN, BECAUSE IT DOES NOT COMPLY WITH THE BANKRUPTCY CODE

20. The Court should deny confirmation of the Plan, because it does not comply with the Bankruptcy Code, as required by 11 U.S.C. § 1129(a)(1).

A. The exculpation provision is overly broad.

21. Exculpation clauses should not extend past the effective date of a plan, to avoid exculpating actions that have not yet occurred and are yet unknown. *See In re Mallinckrodt PLC*, at 883. In addition, post-effective date entities cannot receive prospective immunity by exculpation, just as they cannot receive prospective immunity through a release. *See Wash. Mut.*, 442 B.R. at 348 ("The Liquidating Trust and its Trustee have not done anything yet for which they need a release. They will not even come into existence until the Plan is confirmed.").

22. Section 1125(e) is the only section of the Bankruptcy Code that provides for exculpation. *See* 11 U.S.C. § 1125(e) (limiting liability in connection with certain good faith solicitation and plan participation efforts).

23. The Plan exculpation provision is overly broad and impermissible, because it gives a prospective release to an entity that does not yet exist, the Plan Administrator, on account of future conduct and claims that have yet to arise.

24. The Plan exculpation provision is overly broad and impermissible, because it is not temporally limited to actions taken by Exculpated Persons from the Petition to Effective Dates.

25. The exculpation provision is overly broad and impermissible, because it includes Mr. Lewis, a director and former officer of the Debtor, who, along with his trust, is the Prepetition Lender, possibly undermining the Creditor Trustee's ability to prosecute the Committee Challenge Rights and Estate Causes of Action.

26. The exculpation provision should be limited (and is not here), as courts bar only "claims against the exculpated parties based on the negotiation, execution, and implementation of agreements and transactions that were approved by the Court." *In re Aegean Marine Petroleum Network, Inc.* 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019).

27. Accordingly, unless the Debtor revises the Plan exculpation provision so that it is consistent with 11 U.S.C. § 1125(e), the Court should deny confirmation of the Plan.

B. The Plan does not provide the same treatment to holders of Class Six unsecured creditors.

28. According to the Debtor, the chief benefit to creditors provided by the Plan is the Travel Credits. However, any benefit to Customers comes from

PTP and not the Debtor.

29. The Plan does not provide Customers Claims priority claim status under 11 U.S.C. § 507(a)(7). And they are not being paid the value of their claim.

30. In providing different treatment to holders of Customer and non-Customer unsecured Class Six claims, the Plan violates 11 U.S.C. §§ 1123(a)(4).

31. Because the Plan does not comply with 11 U.S.C. § 1123(a)(4) it violates 11 U.S.C. § 1129(a)(1).

32. Accordingly, the Court should not confirm it.[2]

REQUESTED RELIEF

For these reasons, the United States Trustee requests that the Court enter orders: 1) denying confirmation of the Plan; and 2) granting him all such other and further legal and equitable relief to which he may be entitled.

[2] Assuming Class Six rejects and Class Four accepts (*See* DE522), the Court should deny confirmation of the Plan unless the Debtor demonstrates that the Plan's disparate treatment of Customer Clams and non-Customer claims is appropriate under 11 U.S.C. § 1129(b)(2)(B)(ii). *See In re Barney and Carey Co.*, 170 B.R. 17, 25 (Bankr. D. Mass. 1994) (denying confirmation of a plan that proposed to pay holders of a dissenting class of unsecured claims less than holders of separately classified mortgage deficiency claim, *citing Granada Wines, Inc. v. New England Teamsters and Trucking Industry Pension Fund*, 748 F.2d 42, 46 (1st Cir. 1984)).

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE
REGION 1

By: */s/ Eric K. Bradford*

Eric K. Bradford BBO#560231
Department of Justice
John W. McCormack Post Office & Courthouse
5 Post Office Square, 10th Floor, Suite 1000
Boston, MA 02109-3934
Phone: (202) 306-3815
Fax: (617) 565-6368
Eric.K.Bradford@usdoj.gov

Dated: November 7, 2023.

CERTIFICATE OF SERVICE

I certify that on November 7, 2023, true and correct copies of the foregoing objection were served by CM/ECF only upon the individuals who filed notices of appearance in the Court's CM/ECF database, including counsel for the Debtor, Michael J. Goldberg, Esq., who is identified below.

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE
REGION 1

By: */s/ Eric K. Bradford*
Eric K. Bradford BBO#560231
Department of Justice
John W. McCormack Post Office & Courthouse
5 Post Office Square, 10th Floor, Suite 1000
Boston, MA 02109-3934
Phone: (202) 306-3815
Fax: (617) 565-6368
Eric.K.Bradford@usdoj.gov

Dated: November 7, 2023.

BY CM/ECF:

BY CM/ECF:

Allison L. Carr on behalf of Creditor Commonwealth of Pennsylvania, Office of the Attorney General
acarr@attorneygeneral.gov

David A Casale on behalf of Creditor JPMorgan Chase Bank, N.A., Successor-In-Interest By Purchase Of The Loan From The Federal Deposit Insurance Corporation As Receiver For First Republic Bank, San Francisco
dcasale@reedsmith.com, lsizemore@reedsmith.com;jroach@reedsmith.com;slucas@reedsmith.com

Robert F Casey, Jr on behalf of Creditor Brad L Harris
bobcasey@robertfcasey.com, bankrupt@robertfcasey.com

Robert F Casey, Jr on behalf of Creditor John McCatherin
bobcasey@robertfcasey.com, bankrupt@robertfcasey.com

Robert F Casey, Jr on behalf of Creditor William P Graves III
bobcasey@robertfcasey.com, bankrupt@robertfcasey.com

Daniel C. Cohn on behalf of Interested Party Pacific Travel Partners, Inc.
dcohn@murthalaw.com, lmulvehill@murthalaw.com

Joseph M DiOrio on behalf of Interested Party Brookline Bancorp
jmdiorio@dioriolaw.com, jdiorio@pldolaw.com;aperry@pldolaw.com;mrollinson@pldolaw.com

Ronald W. Dunbar, Jr. on behalf of Creditor Annette Woolf
dunbar@dunbarlawpc.com

Michael J. Goldberg on behalf of Debtor Vantage Travel Service, Inc.
goldberg@casneredwards.com

Peter J. Haley on behalf of Creditor Annette Woolf
peter.haley@nelsonmullins.com, marie.moss@nelsonmullins.com

Andrew C. Helman on behalf of Creditor Committee Official Committee of Unsecured Creditors of Vantage Travel Service, Inc.
andrew.helman@dentons.com, samantha.hayes@dentons.com,tiffany.babcock@dentons.com

Jonathan Horne on behalf of Interested Party Pacific Travel Partners, Inc.
jhorne@murthalaw.com, lmulvehill@murthalaw.com

Robert J. Keach on behalf of Creditor Henry R. Lewis Trust u/t/d November 24, 2004
rkeach@bernsteinshur.com,
acummings@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com;aprescott@bernsteinshur.com

Robert J. Keach on behalf of Creditor Henry R Lewis
rkeach@bernsteinshur.com,
acummings@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com;aprescott@bernsteinshur.com

John G. Loughnane on behalf of Miscellaneous Participant John G. Loughnane
LoughnaneJ@whiteandwilliams.com

Patrick J. McBurney on behalf of Interested Party Brookline Bancorp
pmcburney@pldolaw.com

John J. Monaghan on behalf of Interested Party Nordic Hamburg GmbH
bos-bankruptcy@hklaw.com, hapi@hklaw.com

Sarah E Petrie on behalf of Creditor Commonwealth of Pennsylvania, Office of the Attorney General
sarah.petrie@mass.gov

Sarah E Petrie on behalf of Miscellaneous Participant Commonwealth of Massachusetts, Office of the Attorney General
sarah.petrie@mass.gov

Adam Prescott on behalf of Creditor Henry R. Lewis Trust u/t/d November 24, 2004
aprescott@bernsteinshur.com,
astewart@bernsteinshur.com;kquirk@bernsteinshur.com;sbaker@bernsteinshur.com;12978@notices.nextchapterbk.com;cmastrogiorgio@bernsteinshur.com

Adam Prescott on behalf of Creditor Henry R Lewis
aprescott@bernsteinshur.com,
astewart@bernsteinshur.com;kquirk@bernsteinshur.com;sbaker@bernsteinshur.com;12978@notices.nextchapterbk.com;cmastrogiorgio@bernsteinshur.com

David P. Primack on behalf of Creditor U.S. Specialty Insurance Company and its affiliated sureties
dprimack@mdmc-law.com, gbressler@mdmc-law.com;scarney@mdmc-law.com

Cara Sgobba on behalf of Creditor Trip Mate, Inc.
csgobba@grsm.com

Heather Sprague on behalf of Assistant U.S. Trustee Richard King - B
Heather.Sprague@usdoj.gov

Jeffrey D. Sternklar on behalf of Creditor Smith Duggan Cornell & Gollub LLP
jeffrey@sternklarlaw.com,
jdsternklar@yahoo.com;r60083@notify.bestcase.com;3338331420@filings.docketbird.com

Melissa L Van Eck on behalf of Creditor Commonwealth of Pennsylvania, Office of the Attorney General
mvaneck@attorneygeneral.gov

A. Davis Whitesell on behalf of Debtor Vantage Travel Service, Inc.
whitesell@casneredwards.com, luo@casneredwards.com,kohadr97042@notify.bestcase.com

Harvey J Wolkoff on behalf of Creditor Airlines Reporting Corporation
camillechirillo@quinnemanuel.com,
erikamorabito@quinnemanuel.com;brittanynelson@quinnemanuel.com

Lynne B. Xerras on behalf of Interested Party Nordic Hamburg GmbH
lynne.xerras@hklaw.com

Gina M. Young on behalf of Creditor Committee Official Committee of Unsecured Creditors of Vantage Travel Service, Inc.
gina.young@dentons.com