

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

TBAC WIND DOWN, LTD.,

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

NOTICE OF NON-VOTING STATUS AND RELEASE OPT-OUT FORM
FOR UNCLASSIFIED CLAIMS AND UNIMPAIRED CLASSES

PLEASE TAKE NOTICE THAT on November 1, 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. 285] (the “**Disclosure Statement Order**”) that, among other things, (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. 275] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. 274] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).¹

PLEASE TAKE FURTHER NOTICE THAT the Disclosure Statement, the Disclosure Statement Order, the Plan, and other documents and materials included in the Solicitation Package may be obtained at no charge from Donlin, Recano & Company, Inc., the administrative agent retained by the Circus in this chapter 11 case (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at www.donlinrecano.com/bigapplecircus; (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing drcvote@donlinrecano.com. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at www.nysb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because **you are not entitled to vote on the Plan**, either because your claim is not classified under the

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Plan or, pursuant to the terms of Article III of the Plan and the applicable provisions of the Bankruptcy Code, your claim(s) against the Circus are not Impaired and, therefore, pursuant to section 1126(f) of the Bankruptcy Code, you are conclusively presumed to have accepted the Plan. Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus' Chapter 11 Plan of Liquidation* are being sent to you for informational purposes and to provide you with the potential ability to elect to opt out of the Third Party Release (as defined below) in the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Circus is requesting that the Court approve certain third party releases as a part of the Plan. Because the Court will only make its final determinations as to who might be bound under such releases at the Confirmation Hearing, the Circus strongly encourages you to think about and decide whether you wish to make an election in the box provided below. Article VIII, Section 3 of the Plan includes the following language to lay out and explain the proposed third party release (the “**Third Party Release**”):

As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument or agreement, executed to implement the Plan.

Defined terms. As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“Released Parties” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

The Circus will request at the Confirmation Hearing that the “Releasing Parties” include all holders of Claims regardless of whether such holders have consented to the Third Party Release. The Circus believes that the Third Party Release is appropriate because, among other things, each of the Released Parties afforded value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. However, parties may object to the Third Party Release and the Court may find that such release may only be approved with consent of the applicable claim holder. If, and only if, the Court makes such a finding, the Circus is seeking that the Releasing Parties shall mean, collectively, all holders of Claims who, with respect to such Claims, (a) vote to accept the Plan, (b) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (c) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (d) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.

PLEASE COMPLETE ITEMS 1 AND 2 ONLY IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE

Item 1. Optional Release Election.

The below election is intended to be used, and will only be considered, if the Court finds that the consent of the applicable Claim holder is required for the Third Party Release to be effective against such entity.

REGARDLESS OF WHETHER YOU ELECT TO OPT-OUT OF THE PLAN’S THIRD PARTY RELEASE, YOUR RECOVERY UNDER THE PLAN REMAINS UNAFFECTED.

The holder of the Claim set forth in Item 1 elects to (optional):

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Opt Out of the Plan’s Third Party Release
with Respect to the Released Parties.

You are strongly encouraged to review the Disclosure Statement and the Plan before you make an election. You may wish to seek legal advice concerning the Plan and the treatment of your Claim.

Item 2. Certifications. By signing this Ballot, the undersigned certifies to the Court and the Circus that either: (a) the entity is the holder of the claim(s) electing to opt-out of the Third Party Release; or (b) the entity is an authorized signatory for an entity that is a holder of the claim(s) making such election.

Name of Holder: _____
(Please print or type)

Social Security Number or Federal Tax
Identification Number: _____

Signature: _____

Name of Signatory: _____
(If other than Holder)²

Title: _____

Address: _____

Phone Number: _____

Email Address: _____

Date Completed: _____

**IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE,
PLEASE COMPLETE, SIGN, AND DATE THIS RELEASE OPT-OUT FORM AND
RETURN IT PROMPTLY. YOUR RELEASE OPT-OUT FORM MUST BE ACTUALLY
RECEIVED BY THE OPT-OUT DEADLINE, WHICH IS DECEMBER 1, 2017 AT
5:00 P.M. (PREVAILING EASTERN TIME).**

² If you are completing this election on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

INSTRUCTIONS FOR COMPLETING THE RELEASE OPT-OUT FORM

1. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information. If you abstain from returning this release opt-out form or you do not check the box in Item 2, you will be bound by the Third Party Release. To ensure that your election to opt-out of the Third Party Release is sufficient, you must: (i) complete your release opt-out form by providing all the information requested in accordance with these instructions; (ii) clearly indicate your decision to opt-out of the releases contained in Article VIII Section 3 of the Plan; (iii) review and complete Items 1 and 2 in accordance with the instructions therein; and (iv) clearly sign, date and return an original of your release opt-out form to the address set forth below.
2. To opt out of the Third Party Release, your release opt-out form must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received** by the Administrative Agent, in any case, no later than **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**. All release opt-out forms should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc., P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to tbacballots@donlinrecano.com. Delivery of a release opt-out form to the Administrative Agent by facsimile will not be valid.
3. **If a release opt-out form is received after the deadline above, it will not qualify as an opt-out of the Third Party Release.** No release opt-out form should be sent to the Circus, the Circus' agents (other than the Administrative Agent), the Circus' financial or legal advisors, the Creditors' Committee, or the Creditors' Committee's advisors, and if so sent will not be effective.
4. The release opt-out form is not a letter of transmittal and may not be used for any purpose other than to opt out of the Third Party Release. Accordingly, at this time, holders of claims should not surrender certificates or instruments representing or evidencing their claims, and neither the Circus nor the Administrative Agent will accept delivery of any such certificates or instruments surrendered together with a release opt-out form.
5. This release opt-out form does not constitute, and will not be deemed to be: (a) a proof of a claim; or (b) an assertion or admission of a claim.
6. Please be sure to sign and date your release opt-out form. If you are signing an release opt-out form in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Administrative Agent, the Circus, or the Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing

label is attached to the release opt-out form.

PLEASE SUBMIT YOUR RELEASE OPT-OUT FORM PROMPTLY!

**IF YOU HAVE ANY QUESTIONS REGARDING THIS
RELEASE OPT-OUT FORM OR THE VOTING PROCEDURES,
PLEASE CONTACT THE ADMINISTRATIVE AGENT AT (212) 771-1128.**

PLEASE TAKE FURTHER NOTICE THAT if you have any questions about the status of any of your claims, you should contact the Administrative Agent in accordance with the instructions provided above.

Dated: November 3, 2017
New York, New York

/s/ Christopher Updike
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