

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:)	Chapter 11
)	
NEWBURY COMMON)	Case No. 15-12507 (LSS)
ASSOCIATES, LLC, <u>et al.</u> ,)	
)	Jointly Administered
Debtors. ¹)	
)	Hearing Date: October 21, 2016 at 2:00 p.m. (ET)

**NOTICE OF STATUS CONFERENCE IN CONNECTION WITH
PROPOSED WORK PLAN FOR RESOLUTION OF VARIOUS MATTERS**

On September 15, 2016 (the “**Hearing**”), the Court held a hearing on the first quarterly fee applications and certain monthly fee applications filed by professionals representing the above-referenced debtors (the “**Debtors**”), which included a discussion of various issues surrounding the allocation and resolution of liabilities between and among the Debtors. The Court requested that the Debtors prepare a contemplated work plan (the “**Work Plan**”) for how they would propose to analyze and bring about a resolution of the various open issues related to these cases.

Consistent with the Court’s request, the Debtors have prepared a proposed Work Plan, which is attached as Exhibit 1. The Debtors have circulated the proposed Work Plan to certain parties in interest in advance of its filing.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); Tag Forest, LLC (8974); Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); 300 Main Street Associates, LLC (8501); and 220 Elm Street II, LLC (7625). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

PLEASE TAKE NOTICE that a status conference regarding the Work Plan shall be held on **October 21, 2016 at 2:00 p.m. (ET)** before the Honorable Laurie Selber Silverstein in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom #2, Wilmington, Delaware 19801.

Dated: October 5, 2016
Wilmington, Delaware

Respectfully submitted,

By: /s/ Sean T. Greecher
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*Attorneys for the Debtors and
Debtors in Possession*

EXHIBIT 1

Work Plan

Step 1: Re-engage forensic accounting process.

In order to get a clearer picture as to the amount and validity of claims, Anchin would need to examine the bank records for non-Debtor Seaboard Consolidated, LLC (“**Consolidated**”) and various Debtors and related non-Debtor entities managed by John DiMenna going back at least to Consolidated’s inception to analyze what transfers occurred into and out of Consolidated. This process will help to make a determination as to the source of money coming into Consolidated and track the destination of those funds, in order to figure out the existence and amount of claims between debtors. This could be accomplished in two phases.

Phase 1 – analyzing the intercompany journal entries and adjustments found in general ledgers; tracing and scheduling out bank account activity since 2007 to determine net movement of cash into and out of Consolidated, as well as movement of funds booked directly between Debtors or between a Debtor and a non-Debtor entity (other than through Consolidated).²

Phase 2 – analyzing the timing of funds flow and review of balances to determine the ultimate source and destination of cash payments to determine which entities would have claims against others if the transaction ignored the intermediate step of funds being filtered through Consolidated. Essentially, for example, if \$100,000 was transferred from 88 Hamilton Avenue Associates, LLC and into Seaboard Consolidated on one day, and Seaboard Consolidated transferred \$50,000 to Park Square West Associates, LLC and \$50,000 to Seaboard Hotel LTS Associates, LLC, this phase 2 analysis would treat these transfers as though they were direct transfers, with Park Square West Associates, LLC and Seaboard Hotel LTS Associates, LLC as owing \$50,000 general unsecured claims to 88 Hamilton Avenue Associates, LLC. Anchin has identified 4,900 transfers from 2007-2015 for which funds would need to be traced as coming in and leaving the Seaboard Consolidated account. It is uncertain that the funds could be traced into and out of the Consolidated account with meaningful certainty given the volume and timing of transfers.³

The Debtors believe that, in order to engage parties to reach a reasonable compromise, it is important that Anchin complete Phase 1 in order to provide parties with an overall picture as to what each debtor’s potential net exposure to the victims of the Consolidated scheme is or net claims against parties that were borrowers from the Consolidated scheme would be.

² Anchin estimates that completion of this process would cost approximately \$100,000 to \$125,000.

³ Anchin estimates that completion of this process would cost approximately \$50,000 to \$75,000.

Step 2: Initial claims review and reconciliation.

The Court has approved October 21, 2016 as the bar date for prepetition claims and administrative expense claims arising through September 1, 2016. After the bar date has run, the Debtors will be able to provide a preliminary view into the asserted claims held by third parties against the various debtors, which together with the Anchin analysis of net claims or receivables resulting from the Consolidated scheme will form the basis for establishing the potential scope of assets and liabilities of each of the Debtor entities.

Step 3: Evaluation of Causes of Action.

Additionally, Anchin and the Debtors will complete an analysis of investors' contributions made and distributions received (including equity investments and dividends as well as purported investor notes payable and receivable), and will analyze transfers made by the Debtors within the applicable avoidance periods. This evaluation will help to determine the extent to which each estate may have claims against creditors, investors, and others for fraudulent transfers, preferential transfers, and unauthorized or invalid dividend payments, and will also help the estates determine the viability of challenges to the extent, validity, and priority of claims and alleged liens of mezzanine lenders and other parties. The Debtors will also begin the process of evaluating other potential litigation targets.

Step 4: Identification and Evaluation of Recorded Receivable Balances.

The Debtors are in the process of identifying various notes, accounts and subscription receivables noted on the books and records of numerous Debtor entities. This analysis will assist the debtors in determining the nature, validity, and extent of the various receivables for purposes of determining whether such receivables are sources of potential recovery to the respective Debtor estates.

Step 5: Examination of John DiMenna.

The Debtors have been in contact with the United States Attorney's Office in Connecticut (the "USAO"), which is currently investigating Mr. DiMenna's conduct in relation to these cases. Mr. DiMenna has met with the USAO and confessed his misconduct, and the Office anticipates that the defendant will plead guilty to federal charges in the relatively near future. The Debtors have now also participated in an interview with Mr. DiMenna at the US Attorney's office in Bridgeport, Connecticut, where DiMenna acknowledged his illegal conduct. The Debtors propose, in conjunction with the USAO's ongoing investigation, to depose Mr. DiMenna at a date and time noticed to all parties in interest who may seek to examine Mr. DiMenna about his conduct. The Debtors believe, based on the information they have received to date, that Mr. DiMenna's responses will substantiate the fraudulent nature of various transactions and the evidence of commingling of funds among the various entities; will help parties identify potential litigation targets and the strength of estate claims, as well as potential defenses to remaining claims; and will assist all parties in interest of the challenges that the estates will face in unwinding the illegal conduct at issue.

Step 6: Identify working group parties.

In order to have a meaningful negotiation with parties that represent various distinct interests, the Debtors will seek to identify a working group of parties willing to participate in discussions (including remaining purported secured creditors of the Debtors that owned the Properties, holders of asserted mezzanine loans against the Initial Debtors, and investors in various of the Initial Debtors) so that the positions of as many distinct interests as practical can be heard, considered and represented in connection with any proposed settlement.

Step 7: Settlement conference/agreement.

Armed with the above information, the Debtors would propose to engage in a settlement conference with the settlement working group regarding the preliminary findings of Anchin and the preliminary claims analysis, the potential costs and risks related to inter-Debtor litigation and litigation regarding the remaining unresolved loans made to the Debtors, and the conduct of litigation against parties responsible for damages related to the fraud. It is the Debtors' belief that litigation required to fully unwind the fraudulent conduct would be extremely complex, protracted, and costly, and that it is in the best interests of all parties to reach a resolution memorialized in a chapter 11 plan that incorporates a settlement of various disputes under Bankruptcy Rule 9019 and that preserves the ability of some fiduciary to investigate and determine whether to pursue causes of action against third parties and principals.

The Debtors believe that a settlement conference should take place at some point in late November or early December, after the parties have had the opportunity to complete the items above and provide parties with the Debtors' findings. The Debtors believe that this timing should allow for sufficient analysis to become available that parties in interest can consider and intelligently negotiate a resolution of the remaining disputes. The Debtors estimate that the analysis and process called for above will cost roughly \$500,000, in relation to fees and expenses incurred by Anchin, Beilinson Advisory Group, and Young Conaway.