

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

NPC INTERNATIONAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20–33353 (DRJ)

(Jointly Administered)

Re: Docket No. 629

**Hearing Date: October 30, 2020 at 3:00 p.m. (CT)
Obj. Deadline: October 26, 2020 at 4:00 p.m. (CT)²**

**OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO MOTION OF DEBTORS FOR
AN ORDER (I) APPROVING PROPOSED DISCLOSURE STATEMENT;
(II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES;
(III) SCHEDULING CONFIRMATION HEARING; (IV) ESTABLISHING NOTICE
AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PROPOSED
PLAN; AND (V) APPROVING NOTICE AND OBJECTION PROCEDURES FOR
THE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The Official Committee of Unsecured Creditors (the “Committee”) of NPC International, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this objection (the “Objection”) to the *Motion of Debtors for Entry of an Order (I) Approving Proposed Disclosure Statement; (II) Establishing Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan; and (V) Approving Notice and Objection Procedures for the Assumption of*

¹ The Debtors in these chapter 11 cases are: NPC International, Inc.; NPC Restaurant Holdings I LLC; NPC Restaurant Holdings II LLC; NPC Holdings, Inc.; NPC International Holdings, LLC; NPC Restaurant Holdings, LLC; NPC Operating Company B, Inc.; and NPC Quality Burgers, Inc.

² Extended as to the Committee with the consent of the Debtors.

Executory Contracts and Unexpired Leases (the “Motion”).³ In support of the Objection, the Committee respectfully states:

PRELIMINARY STATEMENT

1. As currently drafted, the Debtors’ disclosure statement is little more than a placeholder filed to comply with milestones imposed on the Debtors that clear the path to a plan that will provide no recovery for unsecured creditors. The Disclosure Statement describes an unusually complex process possibly involving multiple sale transactions and a total or partial reorganization. While chapter 11 plans which “toggle” between sales and a reorganization are not uncommon, the Debtors’ Plan more closely resembles a roulette wheel than a traditional toggle plan.

2. More specifically, the multi-track sale and reorganization processes contemplated under the Plan could result in a reorganization around or a sale of the entire business. There could be separate sales of the Wendy’s and Pizza Hut businesses, a sale of Wendy’s and a reorganization around Pizza Hut, or vice-versa. There could be multiple sales of different segments of the Wendy’s and Pizza Hut businesses, combined with a reorganization around “an optimized footprint” involving parts of both.⁴ The possible outcomes for creditors to consider in deciding whether to vote to accept or reject the Plan are seemingly endless.

3. Under the proposed confirmation timeline attached hereto as Exhibit A, the Debtors intend to file their Plan Supplement disclosing their valuation analysis, financial projections, and expected unsecured creditor recoveries on November 16. However, the outcome of the multi-track sale/reorganization processes will not likely be determined until after

³ Docket No. 629. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Joint Chapter 11 Plan of NPC International, Inc. and its Affiliated Debtors* (the “Plan”) or the *Disclosure Statement for Joint Chapter 11 Plan of NPC International, Inc. and its Affiliated Debtors* (the “Disclosure Statement”). Docket Nos. 627, 628.

⁴ Disclosure Statement, Art.I.A.

the December 4 sale hearing. As such, it is unclear how the Debtors intend to provide useful financial disclosures to creditors through the Plan Supplement before the disposition of these chapter 11 cases has been determined.

4. Against this backdrop, the deadline for creditors to vote on and to object to the plan is November 23: only one week after the Plan Supplement is proposed to be filed and nearly two weeks before the outcome of the sale process is known. While this timeline may have been possible when the Plan was originally filed, it is no longer practical given the modifications to the sale timeline approved at the September 23 bid procedures hearing. Creditors are entitled to know which direction these cases will take under the Plan before voting and should not be required to object to a plan based on financial disclosures that will more than likely be irrelevant by the time of the confirmation hearing.

5. In addition, the Disclosure Statement is devoid of any information regarding valuation that would allow unsecured creditors to assess their proposed treatment under the Plan. While the Committee appreciates that this omission is, in part, the product of the toggle structure, there currently is unencumbered value that could provide a meaningful source of recovery to unsecured creditors. Specifically, the Debtors' liquidation analysis fails to attribute any value to millions of dollars in chapter 5 avoidance actions. Moreover, the Committee has identified additional valuable assets, which were not subject to the prepetition lenders' liens as of the Petition Date. These assets include the Debtors' Franchise Agreements and leasehold interests, which form the foundation of the Debtors' business. Together, these unencumbered assets could provide a source of recovery that should be adequately explained in the Disclosure Statement.

6. The problems created by the milestones adopted before the sale timeline was extended and the lack of disclosure regarding unencumbered asset value can easily be remedied. The confirmation timeline should be extended as set forth in Exhibit A, so that (a) the Plan Supplement is filed after the results of the sale process is known; and (b) creditors are given at least two weeks from that date to decide how to vote and whether to object to the Plan. In turn, the Disclosure Statement should be modified to incorporate the avoidance actions into the Debtors' liquidation analysis and to describe the unencumbered assets that could be available for general unsecured creditors in the event of a successful lien challenge.

7. The Committee, the Debtors, and their lenders continue to work to resolve the Committee's concerns and hope to reach an agreement in advance of the hearing on the Motion.

BACKGROUND

I. General Case Background

8. On July 1, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On July 13, 2020, the Office of the United States Trustee for the Southern District of Texas appointed a three-member Committee consisting of: (i) Realty Income Corporation; (ii) International Pizza Hut Franchise Holders Association; and (iii) Jessica Padgett.⁵

⁵ Docket No. 193.

10. The Committee selected Kelley Drye & Warren LLP as its counsel. The Committee also selected Alvarez & Marsal North America, LLC to serve as its financial advisor.

II. The Debtors' Corporate History

11. NPC began with a single location in 1962 and expanded to more than 1,150 Pizza Hut restaurants in 28 states by 2011.⁶ NPC was sold in December 2011 in a leveraged buyout that added substantial debt to the Debtors' balance sheets.⁷ Following the sale, NPC expanded operations into the Wendy's system.

12. On January 31, 2018, the current sponsors acquired the Debtors for approximately \$1.2 billion.⁸ Following the acquisition, the Debtors faced industry headwinds, including disappointing sales and rising costs.

13. In the months leading up to the Petition Date, the Debtors capital structure consisted of a priority facility, a first lien facility, and a second lien facility.⁹ The Debtors negotiated with their franchisors and a group of lenders from the priority and first lien facilities -- the Ad Hoc Priority/1L Group -- the terms of an out-of-court restructuring. Unable to reach an agreement, the Debtors and the Ad Hoc Priority/1L Group entered into the Restructuring Support Agreement, dated July 1, 2020 (the "RSA").¹⁰

14. The RSA set in motion an expedited sale/restructuring process with various milestones for a sale and a possible standalone restructuring, including requirements to (i) file a plan and disclosure statement by August 19; (ii) obtain approval of a disclosure

⁶ *Id.*, Art.III.B.1.

⁷ *Id.*

⁸ *Id.*, Art.III.B.1.

⁹ *Id.*, III.C.

¹⁰ *Id.*, Art.I.A.

statement by September 28; and (iii) confirm a plan by November 7. This aggressive timeline proved unattainable.¹¹

III. The Bankruptcy Filing

15. As of the Petition Date, the Debtors franchised and operated 1,227 Pizza Hut and 393 Wendy's restaurants. The Debtors' capital structure consisted of approximately \$903 million: \$40.5 million under the priority facility, \$702.3 million under the first lien facility, and \$160 million under the second lien facility.

16. The Debtors entered bankruptcy with \$104.2 million of cash and have not required DIP financing.

A. The Cash Collateral Order

17. On August 5, 2020, the Debtors obtained the right to use cash collateral.¹² The Cash Collateral Order granted the prepetition lenders, among other things, adequate protection liens on the Debtors' previously unencumbered assets for any diminution in value of their interest in prepetition collateral.¹³ The deadline for the Committee to challenge the prepetition lenders' liens expires on October 30, 2020.¹⁴

18. Based on its investigation, the Committee believes the Debtors have significant unencumbered assets, including their franchise agreements with Pizza Hut, LLC and Quality Is Our Recipe, LLC (collectively, the "Franchise Agreements"). The Franchise Agreements are expressly excluded from the prepetition lenders' collateral under the terms of the

¹¹ The milestones set forth in the RSA have been informally extended with the consent of the Ad Hoc Priority/IL Group.

¹² *Final Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "Cash Collateral Order"). Docket No. 373.

¹³ Cash Collateral Order, ¶ 4.

¹⁴ *See Stipulation Amending the Final Cash Collateral Order and Extending the Challenge Period From October 1, 2020 Through and Including October 30, 2020*. Docket No. 803.

security agreements. According to the Debtors' Draft Consolidated Balance Sheets for June 30, 2020, the Franchise Agreements are the Debtors' most valuable assets.

19. The Committee further believes the following additional assets are not subject to the lenders' prepetition liens: (i) leasehold interests; (ii) commercial tort claims with a value of less than \$250,000; (iii) certain equity interests; (iv) the assets of certain debtors not pledged as collateral; (v) avoidance actions; and (vi) cash held in bank accounts that were not subject to control agreements.¹⁵

B. The Sale Process and Timeline

20. On August 25, 2020, the Debtors sought approval of bidding procedures for the sale of (i) the Pizza Hut assets; (ii) the Wendy's assets; and (iii) the Pizza Hut and Wendy's assets on a combined basis ("WholeCo").¹⁶

21. The original timeline contemplated a multi-day auction process beginning on November 11 and continuing through November 13, with a sale hearing on November 18 (the "Original Sale Timeline"). Both franchisors objected to the timeline and the lack of a definitive process for the franchisors to vet potential purchasers.¹⁷

22. Following the hearing on the bid procedures, the sale timeline was modified to provide for a Wendy's auction on November 18, Pizza Hut and WholeCo auctions on November 30 and December 1, respectively, with a sale hearing December 4 (the "Modified Sale Timeline").¹⁸

¹⁵ As a result, in advance of the hearing on the Motion, the Committee will be filing a motion seeking standing to pursue these claims on behalf of the Debtors' estates.

¹⁶ Docket No. 510.

¹⁷ Docket Nos. 641, 642.

¹⁸ Docket No. 693.

C. The Plan and Disclosure Statement

23. As required by the RSA, the Plan provides for a multi-track process that allows the Debtors to pursue sales or a reorganization depending on the results of the sale process. The Plan toggle leaves open the possibility of (i) a reorganization around the Debtors' entire business; (ii) a sale of the entire business; (iii) separate sales of the Pizza Hut and Wendy's businesses; (iv) a sale of the Pizza Hut business and a reorganization around the Wendy's business; (v) a sale of the Wendy's business and a reorganization around the Pizza Hut business; or (vi) multiple sales of discrete portions of the Wendy's or Pizza Hut assets, and a reorganization around the remaining assets.

24. Under the Plan, holders of Class 5 General Unsecured Claims are not projected to receive any recovery. The Plan proposes to distribute proceeds pursuant to a straight waterfall in the event of a WholeCo sale. In the event of a partial sale or a complete reorganization, Class 5 will receive treatment consistent with section 1129(a)(7) of the Bankruptcy Code as determined by the Debtors and the Ad Hoc Priority/1L Lender Group.¹⁹

25. Given the various potential outcomes detailed above and uncertainty created by the Plan toggle, the Disclosure Statement is understandably light on valuation, projections and expected unsecured creditor recoveries. Rather, the Debtors propose to disclose more detailed information in support of the Plan to creditors through a Plan Supplement to be filed one week before votes and confirmation objections are due and before the outcome of the sale hearing is known.

¹⁹ Plan, Art. IV, § 4.5. In contrast, holders of First Lien Secured Claims are impaired, and have a projected recovery of "TBD" on an estimated \$752 million in allowed claims.

26. Aside from providing decidedly little information on value, projections and unsecured creditor recoveries, the Disclosure Statement fails to include valuable avoidance actions claims in its liquidation analysis or to describe the valuable assets that will be available to general unsecured creditors in the event of a successful Committee lien challenge.

OBJECTION

I. The Confirmation Timeline Should be Modified

27. As set forth in paragraph 23 above, the Plan provides for various possible outcomes. While the Committee appreciates the Debtors' desire for flexibility to maximize value, the myriad possible outcomes under the Plan leave creditors unable to make an informed decision as to how to vote and whether to object to the Plan.

28. The proposed voting and confirmation objection deadline is November 23, with a December 4 sale hearing. While these dates were workable under the Original Sale Timeline, when the auctions concluded on November 13, they are no longer practical under the Modified Sale Timeline.²⁰ The Modified Sale Timeline requires creditors to vote one week after receiving the Plan Supplement and two weeks before the sale hearing.

29. It is unclear how the Debtors intend to make meaningful financial disclosures through the Plan Supplement without knowing whether the businesses will be sold, partially sold, reorganized or partially reorganized. Each scenario seems to compel a separate valuation along with individual financial projections and creditor recoveries all of which depends on the final outcome of the sale hearing. For the same reason, creditors cannot make an informed decision on the Plan until the sale process has concluded and the Debtors can provide some certainty and provide related financial information on exit structure, plan value and

²⁰ See Exhibit A.

feasibility. Forcing creditors to object to and vote on the Plan before the auctions based on financial information that is subject to change will leave creditors without adequate information to make an informed judgement.

30. While the Committee appreciates the uncertainty of the current economic climate, and the desire to exit chapter 11 as expeditiously as possible, the Debtors have the liquidity to extend the timeline in order to allow creditors adequate information to decide how to vote. The Debtors entered these cases with \$104.2 million in cash. Even after funding their cases on cash alone, the Debtors' cash position has actually improved since the Petition Date. As of the filing of this Objection, the Debtors had \$110.7 million of cash and have outperformed their budget by \$7.7 million.

31. In short, the expedited timeline is not necessary. The confirmation timeline should be extended as set forth in Exhibit A so that the voting deadline and confirmation objection deadline are at least two weeks following the sale hearing and the Debtors' service of the Plan Supplement.

II. The Disclosure Statement Lacks Adequate Information

32. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement contain "adequate information" regarding a plan before it may be sent to creditors for the purpose of soliciting votes to accept or reject the plan.²¹

33. The determination of what constitutes adequate information is subjective and made on a case-by-case basis.²² Moreover, "the importance of full and honest disclosure cannot be overstated."²³ A disclosure statement must "clearly and succinctly inform the average

²¹ See 11 U.S.C. § 1125(b).

²² *In re Cajun Elec. Power Co-op, Inc.*, 150 F.3d 503, 518 (5th Cir. 1998).

²³ *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996).

unsecured creditor what it is going to get, when it is going to get it, and what contingences there are to getting its distribution,”²⁴ and must also contain “all material information relating to the risks posed to creditors and equity interest holders under the proposed plan of reorganization.”²⁵

34. The obligation to provide adequate information is “pivotal.”²⁶ In determining whether a plan proponent has provided “adequate information” to creditors and parties in interest, the standard is not whether the failure to disclose information would harm creditors but whether “hypothetical reasonable investors receive such information as will enable them to evaluate for themselves what impact the information might have on their claims and on the outcome of the case, and to decide for themselves what course of action to take.”²⁷

35. For a creditor to fairly evaluate a proposed plan, the court must ensure that a disclosure statement sets forth “all those factors presently known to the plan proponent to bear upon the success or failure of the proposals contained in the plan.”²⁸ Factors courts consider in determining whether a disclosure statement contains adequate information include, among other things: (1) a description of the available assets and their value; (2) the anticipated future of the company; (3) financial information, data, valuations or projections relevant to the creditors’ decision to accept or reject the Chapter 11 plan; and (4) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers.²⁹

²⁴ *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991),

²⁵ *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990).

²⁶ *Westland Oil Dev. v. MCorp Mgmt. Solutions, Inc.*, 157 B.R. 100, 102 (Bankr. S.D. Tex. 1993).

²⁷ *In re Applegate Prop., Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991).

²⁸ *In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986).

²⁹ *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401-02 (Bankr. S.D. Tex. 2016).

36. The Disclosure Statement fails to provide this basic type of information to creditors, including the value of the Debtors' business and assets that may form the basis for a recovery to general unsecured recoveries and should be modified as follows.

37. First, the Debtors must support their proposed creditor treatment with a proper valuation. While a valuation may not ultimately be necessary if the Debtors complete a WholeCo sale, if the Debtors seek any other alternative, creditors are entitled to the benefit of the Debtors' valuation analysis in casting their votes. In addition, the Committee must have sufficient time to test the Debtors' valuation once the Committee knows what the resulting exit structure will be. Unlike more traditional plan structures, the Committee cannot conduct a valuation analysis now when the ultimate size and structure of the Debtors' business are in flux.

38. Second, the Debtors' liquidation analysis must include the value of chapter 5 avoidance actions.³⁰ The Debtors' statements of financial affairs list at least \$317,880,966 of payments made to non-insiders during the ninety days prior to the Petition Date and \$6,857,384 of payments made to insiders in the one year prior to the Petition Date. The Debtors summarily dismiss this value based on alleged adequate protection claims for diminution in value of the secured lenders collateral.³¹ Importantly, no claim for diminution in value has been asserted or proven by the prepetition lenders. And, given the Debtors' significant outperformance of their own budget during these cases and increase in cash position, the prepetition lenders face a significant hurdle in establishing any such diminution claim. In any event, a potential diminution claim does not justify the exclusion of this value from the liquidation analysis.

³⁰ See Liquidation Analysis, p. 3.

³¹ See Liquidation Analysis, p. 9, n.5 ("all of the Debtors property is subject to pre-petition or adequate protection liens and the proceeds of such property is subject to the priority waterfall contained in this Liquidation Analysis").

39. Third, the Disclosure Statement must adequately describe the assets subject to the Committee's lien challenge. Such assets include: (i) the debtors' Franchise Agreements; (ii) leasehold interests; (iii) commercial tort claims; (iv) certain Debtors' unpledged common stock; (v) avoidance actions; (vi) bank accounts that were unperfected as of the Petition Date; (vii) a claim for unmatured interest; and (viii) any assets held by the debtors not party to the prepetition facilities. Like the avoidance actions, these assets are valuable and could result in a meaningful recovery to unsecured creditors.

40. The Committee and the Debtors are discussing proposed language to address the Committee's concerns. The parties will continue to work cooperatively to revise the Disclosure Statement in advance of the hearing on the Motion.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Motion and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 26, 2020

KELLEY DRYE & WARREN LLP

/s/ Eric R. Wilson

Eric R. Wilson (admitted *pro hac vice*)

Jason R. Adams (admitted *pro hac vice*)

Maeghan J. McLoughlin (admitted *pro hac vice*)

Sean T. Wilson (TX. Bar. 24077962)

Email: EWilson@KelleyDrye.com

JAdams@KelleyDrye.com

MMcLoughlin@KelleyDrye.com

SWilson@KelleyDrye.com

101 Park Avenue

New York, New York 10178

Tel: (212) 808-7800

Fax: (212) 808-7897

*Counsel to the Official Committee of Unsecured
Creditors of NPC International, Inc., et al.*

Exhibit A

Event	Original Sale Process Dates	Confirmation Timeline	Modified Sale Process Dates	Committees' Proposed Confirmation Timeline
Wendy's Auction	November 11		November 18	
Pizza Hut Auction	November 12		November 30	
WholeCo Auction	November 13		December 1	
Plan Supplement Deadline		November 16		December 4
Sale Hearing	November 18		December 4	
Voting Deadline		November 23		December 18
Plan Objection Deadline		November 23		December 18
Confirmation Hearing		December 4		December 23

CERTIFICATE OF SERVICE

I certify that on October 26, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Maeghan J. McLoughlin
Maeghan J. McLoughlin