

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

<b>IN RE:</b>	)	
	)	
<b>FEDERATED SPORTS &amp; GAMING, INC.,</b>	)	<b>Case No. 12-13523-WIL</b>
<b>FEDERATED HEARTLAND, INC.,</b>	)	<b>Case No. 12-13521-WIL</b>
	)	<b>(Chapter 11)</b>
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	<b>Under 12-13521-WIL</b>

**OBJECTION BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
(1) THE ALLOWANCE OF ALL IN PRODUCTION, LLP’S CLAIM, AND (2) ANY  
PAYMENT ON ACCOUNT OF SUCH CLAIM UNLESS AND UNTIL ALLOWED BY  
COURT ORDER**

The Official Committee of Unsecured Creditors appointed in these Chapter 11 cases (the “Committee”), by its undersigned counsel, hereby objects (the “Objection”), pursuant to Section 502 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the secured claim asserted by All In Production, LLP (“AIP”), on the grounds set forth below. Unless and until AIP’s secured claim is allowed by a final Order of this Court, the Committee objects to any portion of the sale proceeds of the Debtors’ assets being paid to AIP, and respectfully requests that such proceeds from the sale of the assets of Federated Heartland, Inc. (“FHI”) be held subject to further Order of Court after determination of this Objection and any related proceedings.. In support of this Objection, the Committee states as follows:

**A. The Chapter 11 cases.**

1. On February 28, 2012 (the “Petition Date”), Federated Sports & Gaming, Inc. (“FSG”) and FHI (together, the “Debtors”) each filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code.

2. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in these Chapter 11 cases.

4. As reflected in the notice of appointment dated May 15, 2012 [Docket No. 110] the Office of the United States Trustee (the “U.S. Trustee”) appointed the Committee. The Committee initially consisted of: (a) 441 Productions, Inc.; (b) Digitaria Interactive, Inc.; and (c) Savage Tournaments. On June 4, 2012, the United States Trustee added Satellite Broadcasting, Inc. to the Committee.

**B. AIP’s Secured Claim.**

5. AIP has not yet filed a proof of claim in FHI’s bankruptcy case. FHI listed AIP in its Schedule D as having a secured *unliquidated* claim in the amount of \$ 1,966,052.00. The Committee will not know the amount that AIP claims to be owed until AIP files a proof of claim.

**C. The Debtors’ proposed sale of substantially all of the Debtors’ assets.**

5. AIP entered into an asset purchase agreement with the Debtors as a “stalking horse” to purchase substantially all of the Debtors’ assets (the “APA”). On May 8, 2012, the Debtors filed a Motion for Entry of an Order Approving Sale of Substantially All of Debtors’ Assets (the “Sale Motion”). The Sale Motion seeks approval of the APA and the sale of the assets of both Debtors to AIP subject to higher and better offers.

6. The Debtors also filed an Emergency Motion (A) for Order Establishing Bidding Procedures in Connection with the Sale of Substantially all of the Debtors’ Assets; and (B) Approving Procedures for the Assumption and Assignment of Contracts and Determining Cure Amounts [Docket No. 93] (the “Bidding Procedures Motion”) on May 8, 2012 seeking approval of bidding, auction, and certain noticing procedures (the “Bid Procedures Order”). The bidding procedures contained in the proposed Bidding Procedures Order sought bidder protections that

were not in the best interest of the creditors and estates and attempted to eviscerate the Committee's right to challenge AIP's credit bid. Accordingly, the Committee filed a Limited Objection to the Bidding Procedures Motion to protect the interests of the unsecured creditors in these cases.

7. On May 23, 2012, the Court conducted a hearing on the Bidding Procedures Motion and sustained the Committee's Limited Objection. A revised Bid Procedures Order acceptable to the Committee was then entered on May 25, 2012 [Dkt. No. 118].

8. On June 13, 2012, the Debtors conducted the Auction in accordance with the Bid Procedures Order at the office of Debtors' counsel (the "Auction"). At the conclusion of the Auction, PNK Development 10, LLC's ("Pinnacle") \$4.2 million bid was selected by the Debtors as the highest and best bid for substantially all of the assets of FHI, excluding causes of action. Pinnacle's \$300,000 credit bid was selected as the highest and otherwise best bid for the FSG assets, excluding causes of action.

9. Pursuant to the Bid Procedures Order, the Committee was given until the hearing on the Sale Motion set for June 14, 2012 at 2:00 p.m. (the "Sale Hearing") to investigate and object to, among other things, the validity, nature, extent, and priority of AIP's lien on FHI's assets, and AIP's right to credit bid. After conducting an investigation, the Committee objects to the allowance of AIP's claim, and challenges the validity, extent and amount of AIP's lien on the assets of FHI.

**D. The Debtors' prepetition purchase of the Heartland Poker Tour business from AIP.**

10. Prior to the filing of these bankruptcy cases, AIP owned and operated the Heartland Poker Tour and related assets (the "Heartland Tour"). AIP sold the Heartland Tour assets to FSG pursuant to an Asset Purchase Agreement dated as of April 28, 2011 (the "APA").

The Debtor paid \$1,350,000 in cash, assumed the liabilities set forth in the APA, and executed a promissory note dated June 10, 2011 in the amount of \$2,950,000 (the “Note”). In addition, FSG provided AIP with certain equity interests (collectively with the cash payment and Note, the “AIP Transfers”). The Note required the Debtors to pay \$1.0 million to AIP on or before September 30, 2011, and the balance by December 15, 2011. The Debtors failed to make the required payments under the Note. AIP filed a Complaint in the United States District Court for the District of North Dakota against the Debtors (Case No. 3:11-cv-00093-RRE-KKK) seeking payment from the Debtors (the “Litigation”). The Litigation was resolved pursuant to a settlement agreement (the “Settlement”), which the Committee’s counsel received subject to a confidentiality agreement which restricts the Committee from providing more specific details about it. However, under the Settlement and as reflected in the Debtors’ statement of financial affairs, the Debtors wired \$ 500,000 each directly to Greg Lang and Todd Anderson, the principals of AIP, for total payments of \$ 1.0 million. These payments were made within 90 days of the Petition Date.

11. The Committee has reviewed the filings in these cases and the confidential documents produced by the Debtors that evidence, relate or refer to (i) the prepetition purchase of the Heartland Tour assets and payments to AIP and its principals, and (ii) the Debtors’ financial condition at the time of the transaction and thereafter. Based on this review, the Committee believes that the APA rendered FSG insolvent, that FSG did not receive reasonably equivalent value in exchange for the AIP Transfers, and that the AIP Transfers are avoidable as fraudulent transfers under Section 548 of the Bankruptcy Code. In just a matter of five months after the closing of the APA, the Debtors were in default of their obligations to AIP, and it is

apparent that the Debtors did not have sufficient capital to continue in business and meet their obligations in the ordinary course as a result of the APA and the transfers made thereunder.

### **Relief Requested**

12. The AIP Claim should be disallowed under Section 502(d) of the Bankruptcy Code because it arises from a fraudulent transfer and is unenforceable against FHI and its estate. The Committee reserves the right to seek standing to avoid AIP's lien, the AIP Transfers, and the transfers to AIP's principals, as fraudulent and preferential transfers after the filing of this Objection.<sup>1</sup>

### **Objection**

#### **A. The AIP Claim should be disallowed and expunged in its entirety pursuant to Sections 502 and 548 of the Bankruptcy Code.**

13. Section 502(a) of the Bankruptcy Code provides, in relevant part, that “[a] claim or interest . . . is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a); see also Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 225 (B.A.P. 9<sup>th</sup> Cir. 1995). Section 502(b) and Bankruptcy Rule 3007 permit a party in interest to object to a claim. Section 502(b)(1) requires disallowance of a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured . . . .” 11 U.S.C. § 502(b)(1).

14. Rule 3003(a) of the Bankruptcy Rules provides that an amount listed as owed to a creditor in a debtor's schedules and statements constitutes prima facie evidence of the validity and amount of the creditor's claim, unless the claim is scheduled as disputed, contingent, or unliquidated. Fed. R. Bankr. P. 3003(b)(1).

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<sup>1</sup> Detailed information about the AIP Transfer, and solvency of the Debtors, will be included in any adversary proceeding, subject to the terms of the confidentiality agreement between the Debtors and Committee.

15. Despite the fact that the AIP Claim was scheduled as “unliquidated,” AIP was not required to file a proof of claim prior to the auction and hearing on the Sale Motion because the bar date for AIP to file a proof of claim is not until June 25, 2012. Fed. R. Bankr. P. 3003(c)(2).

16. As previously stated, the Committee objects to the AIP Claim because the AIP Transfers, and AIP’s lien, should be avoided under Section 548 of the Bankruptcy Code. The amount shown in Schedule D as the AIP Claim also fails to reflect the adequate protection payments AIP received during these cases. Accordingly, the AIP Claim should be disallowed pursuant to Section 502(d) of the Bankruptcy Code. The Committee reserves the right to seek derivative standing if the Debtors refuse to prosecute these avoidance actions.

17. With the filing of this Objection, the burden of persuasion as to the validity and amount of the AIP Claim shifts to AIP. See, e.g., In re Allegheny Int’l, Inc., 954 F.2d 167, 174 (3d Cir. 1992); In re Fidelity Mortgage Holding Co., Ltd., 837 F.2d 696, 698 (5th Cir. 1988); In re Cranston, 387 B.R. 480, 484 (Bankr. D. Md. 2008). This Objection initiates a contested matter which requires that a hearing be held. See 11 U.S.C. § 502(b); Fed. R. Bankr. P. 3007(a); Local Rule 3007-1.

18. Accordingly, until the issues surrounding the AIP Claim and lien are resolved, the AIP Claim is not an allowed claim, and AIP cannot properly be paid on account of the AIP Claim at the closing of the sale of FHI assets to Pinnacle.

**B. The Committee intends to seek derivative standing to institute an adversary proceeding against AIP to avoid the AIP Transfer and lien, and to recover funds from AIP and its principals for the benefit of creditors and the estate.**

19. Avoidance actions under Section 547 and 548 of the Bankruptcy Code are property of the estate under Section 541, and a debtor has authority to pursue such actions. 11 U.S.C. §§ 547, 548, 1107. The practice of conferring standing upon creditors’ committees to pursue actions on behalf of a bankruptcy estate is widely followed and accepted. See, e.g., In re

Baltimore Emergency Services II, Corp., 432 F.3d 557, 560 (4th Cir. 2005) (noting that “[u]nder the doctrine of ‘derivative standing,’ some of our sister circuits allow a creditor or creditor’s committee to file an action in bankruptcy court in place of the debtor-in-possession or trustee”); see also Official Comm. of Unsecured Creditors of Cybergeneics Corp. v. Chinery, 330 F.3d 548, 568 (3rd Cir. 2003) (en banc) (holding Sections 1101(c)(5) and 1109(b) of the Bankruptcy Code implicitly authorize a court to grant a creditors’ committee derivative standing to prosecute an avoidance action when the trustee or debtor in possession cannot or will not do so, or when the debtor in possession is unlikely to act).

20. In this case, the resolution of the AIP claim will have a significant impact on the estates and the recoveries to creditors, especially for the creditors of the parent company, FSGI. Accordingly, in the event the Debtors refuse to assert the estate’s claims against AIP and its principals, the Committee reserves the right to seek derivative standing to bring the actions.

**Reservation of Rights**

21. The Committee reserves the right to supplement this Objection and to object to the AIP Claim and lien on additional grounds not stated herein.

**Procedure for Responding to this Objection**

22. WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS OBJECTION, THE CLAIMANT MAY FILE AND SERVE A MEMORANDUM IN OPPOSITION TO THIS OBJECTION, TOGETHER WITH ANY DOCUMENTS AND OTHER SUPPORTING EVIDENCE THE CLAIMANT WISHES TO ATTACH IN SUPPORT OF ITS CLAIM UNLESS THE CLAIMANT WISHES TO RELY SOLELY ON THE PROOF OF CLAIM (IF AND WHEN FILED).

23. ANY INTERESTED PARTY MAY REQUEST A HEARING ON THE OBJECTION THAT WILL BE HELD AT THE COURT’S DISCRETION.

**Notice**

Pursuant to Bankruptcy Rules 3003, 3007 and Local Rule 3007-1, the Committee is serving a copy of this Objection upon: (a) counsel for AIP, (b) counsel for the Debtors, (c) the United States Trustee, and (d) all parties who have requested notice pursuant to Bankruptcy Rule 2002. The Committee submits that no other or further notice is necessary or required.

WHEREFORE, the Committee respectfully requests that the Court disallow and expunge the AIP Claim in its entirety, preclude AIP from being paid on account of the AIP Claim at the closing of the sale of Federated Heartland's assets to Pinnacle, and grant the Committee such other and further relief as the Court deems appropriate and just.

Dated: June 14, 2012

By: /s/ Irving E. Walker

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