

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11
)	
BSI HOLDING CO., INC.,)	Case Nos. 03-13254 <u>et seq.</u> (LHK)
f/k/a BOB'S STORES, INC., <u>et al.</u> ¹)	(Jointly Administered)
)	
Debtors.)	

**ORDER APPROVING DISCLOSURE STATEMENT AND
(A) ESTABLISHING A RECORD DATE, (B) ESTABLISHING
PROCEDURES FOR CONFIRMATION OF THE CONSOLIDATED JOINT
PLAN OF LIQUIDATION OF THE DEBTORS TOGETHER WITH THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE, (C) APPROVING SOLICITATION PROCEDURES AND
(D) APPROVING FORMS OF BALLOTS AND VOTING PROCEDURES
*(relates to Docket No. 825)***

UPON CONSIDERATION OF the Disclosure Statement For Modified Consolidated Joint Plan Of Liquidation Of The Debtors Together With The Official Committee Of Unsecured Creditors Under Chapter 11 Of The Bankruptcy Code (the "Disclosure Statement") and the Joint Motion for Order (A) Establishing A Record Date, (B) Establishing Procedures For Confirmation Of The Consolidated Joint Plan Of Liquidation Of The Debtors Together With The Official Committee Of Unsecured Creditors Under Chapter 11 Of The Bankruptcy Code, (C) Approving Solicitation Procedures And (D) Approving Forms Of Ballots And Voting Procedures (the "Motion"), jointly filed by BSI Holding Co., Inc. and its affiliated debtors-in-possession (the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee") (collectively, the "Plan Proponents") pursuant to 11 U.S.C. §§ 105, 502, 1125, 1126, and 1128, Fed. R. Bankr. P. 2002, 3003, 3017, 3018, and 3020, and Del. Bankr. L.R. 3017-1; and the response (the "UST

¹ The Debtors are the following entities: BSI Holding Co., Inc., f/k/a Bob's Stores, Inc.; BSC Holding Co., Inc., f/k/a Bob's Stores Center, Inc.; Wind Down Corporation, f/k/a Bob's H.C., Inc.; BI Retail, Inc., f/k/a Bob's Inc.; and BNCO, Inc., f/k/a Bob's Non-Connecticut Operating Co.

Response”) of the Acting United States Trustee (the “United States Trustee”) to the Motion (Docket No. 834); the Court having determined that jurisdiction exists to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having further determined that the procedures proposed in the Motion are appropriate under the circumstances pursuant to Del. Bankr. L.R. 3017-1; sufficient notice and due cause appearing therefor; it is hereby ORDERED as follows:

1. The Motion is GRANTED, subject to the terms of this order which have been modified to satisfy certain issues raised by the United States Trustee in the UST Response. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Motion.

2. **Approval of Disclosure Statement.** Upon consideration of the Disclosure Statement, the responses and objections thereto (the “Objections”), and the record of the hearing held to consider the adequacy of the Disclosure Statement, the Court determines after due deliberation that the Disclosure Statement contains adequate information as defined in 11 U.S.C. § 1125 and that the granting of the relief sought is in the best interests of the Debtors’ estates, and the Disclosure Statement is hereby APPROVED and all Objections that were not withdrawn prior to entry hereof are OVERRULED.

3. The following procedures and deadlines shall govern with respect to the Modified Consolidated Joint Plan Of Liquidation Of The Debtors Together With The Official Committee Of Unsecured Creditors Under Chapter 11 Of The Bankruptcy Code (the “Plan”):

(A) **Retention Of Balloting Agent.** The Altman Group (the “Balloting Agent”), appointed to serve as the claims agent in the above-captioned cases, shall serve as

balloting agent to assist the estate with various administrative functions associated with plan confirmation. The Balloting Agent will be deemed to be in constructive receipt of any ballot timely delivered to any address that the Balloting Agent designates for the receipt of ballots cast in connection with the Plan.

(B) **Record Date.** The date of the conclusion of the hearing to approve the Disclosure Statement (the “Disclosure Statement Hearing”) shall serve as the record date (the “Record Date”) for the purposes of Fed. R. Bankr. P. 3017 and 3018.

(C) **Distribution of Solicitation Package.**

- (i) A “Solicitation Package” means a package (or multiple packages) of documents containing copies of the following documents: (a) the Disclosure Statement (together with the Plan annexed thereto as Exhibit A); (b) the appropriate Ballot(s) and voting instructions (as described below); (c) the Confirmation Hearing Notice; and (d) this order (the “Solicitation Procedures Order”).
- (ii) On or before the Deadline for Service of Solicitation Packages, the Balloting Agent or the Debtors shall cause a Solicitation Package to be sent by first-class mail to: (i) all persons or entities that, as of the Record Date, have timely filed proofs of claim, (ii) all persons or entities listed in the Schedules as of the Record Date, provided that the amount scheduled for such person or entity is greater than zero dollars (\$0.00) according to the Schedules and is not listed as contingent, unliquidated or disputed; (iii) other known holders of liquidated, noncontingent and undisputed general unsecured claims against the Debtors, if any, as of the Record Date; (iv) any parties in interest that have filed and served a request for notice in the Debtors’ Chapter 11 cases on or before the date of service (the “2002 Notice Parties”); (v) counsel to the Creditors’ Committee; and (vi) the Office of United States Trustee; provided, however, that the Balloting Agent is not required to serve Solicitation Packages upon holders of claims or interests that are in a class of the Plan that is deemed to accept the Plan under § 1126(f) of the Bankruptcy Code (i.e., Unclassified Claims and Classes 1 and 2) or to reject the Plan under § 1126(g) of the Bankruptcy Code (i.e., Classes 5, 6 and 7). To the extent any party asserts more than one claim in the same class, the Balloting Agent shall serve upon such party one Ballot for each claim although such party shall receive only one Solicitation Package.

- (iii) The Balloting Agent shall mail to holders of claims or interests who are not entitled to vote: (a) the Confirmation Hearing Notice and (b) either (i) a Notice of Non-Voting Status (Classes Not Impaired Under the Plan), or (ii) a Notice of Non-Voting Status (Classes Deemed to Have Rejected the Plan), substantially in the form approved in this order, as applicable. It shall not be necessary for the Balloting Agent to mail copies of the Plan or Disclosure Statement to holders of claims or interests who are not entitled to vote, provided that the Balloting Agent shall mail copies to any such holders that contact the Balloting Agent and request that copies be provided.
- (iv) The Balloting Agent or the Debtors shall mail the 2002 Notice to the 2002 Notice Parties.
- (v) In the event any delivery is returned by the United States Postal Service as undeliverable, the Debtors and the Balloting Agent may, but are not required to re-mail any Solicitation Packages or Confirmation Hearing Notices, as the case may be, to entities whose addresses in the database of the Balloting Agent as of the Record Date are incorrect or insufficient, so long as they are substantially the same as the Debtors' books and records or the addresses listed in the entities' proof(s) of claim. If a creditor has changed its mailing address on or after the Petition Date, the burden shall be upon the creditor, not the Debtors, to advise the Balloting Agent of the new address.
- (v) The Balloting Agent shall also publish a copy of the Confirmation Hearing Notice (making appropriate modifications to maximize notice and conserve resources) in one or more regionally or nationally circulated publications on or about June 13, 2004. Publication of the Confirmation Hearing Notice in accordance with this subparagraph will be deemed to provide sufficient notice of the Voting Deadline, the Objection Deadline, and the date, time and place of the Confirmation Hearing to persons who may not otherwise receive notice by mail.

(D) **Voting and Tabulation Procedures.**

- (i) The Ballot transmitted in each Solicitation Package the forms of ballots attached hereto as (i) Exhibit E for Class 3, Convenience Claims; and (ii) Exhibit F for Class 4, General Unsecured Claims (collectively, the "Ballots"). The Balloting Agent shall customize each Ballot to include the creditor's name, address and claim information.
- (ii) Specific Requirements of Ballots.

- (a) In order for a Ballot to be counted in voting to accept or reject the Plan, the party submitting such Ballot must comply with all of the voting instructions attached to each of the Ballots. The voting instructions attached to each of the Ballots is approved and incorporated into these procedures by reference.
- (b) In order for a Ballot to be counted in voting to accept or reject the Plan, the properly executed and completed Ballot must be delivered to the Balloting Agent (I) by first class mail, in the return envelope provided with each Ballot, (II) by overnight courier, or (III) by personal delivery so that it is **actually received** by the Balloting Agent no later than Voting Deadline. Ballots not properly submitted in compliance with these procedures **will not be counted**, regardless of whether they were submitted to the Bankruptcy Court, the Clerk of the Court, the Plan Proponents, the Plan Proponents' respective attorneys, the United States Trustee, or any person or entity other than the Balloting Agent.
- (c) The following types of Ballots will not be counted in determining whether the Plan has been accepted or rejected:
 - (I) Any Ballot received after the Voting Deadline unless the Plan Proponents or the Court extends the Voting Deadline with respect to such Ballot;
 - (II) Any Ballot that is illegible or contains insufficient information to permit the identification of the creditor;
 - (III) Any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote on the Plan;
 - (IV) Any Ballot cast for a claim scheduled as unliquidated, contingent or disputed for which no proof of claim has been filed and which has not been temporarily allowed for voting purposes pursuant to Fed. R. Bankr. P. 3018(a);
 - (V) Any Ballot that does not contain an original signature; and

- (VI) Any Ballot delivered by facsimile, e-mail, or any other means not otherwise described in the voting instructions.
- (d) The following voting procedures and standard assumptions shall be used in tabulating ballots:
 - (A) The method of delivery of ballots to be sent to the Balloting Agent is at the election and risk of each creditor.
 - (B) If multiple Ballots are received from an individual party with respect to the same claims prior to the Voting Deadline, the last Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot.
 - (C) Any ballot that is properly completed, executed and timely returned to the Balloting Agent but does not indicate acceptance or rejection of the Plan is deemed to be a vote to accept the Plan. Creditors must vote all of their claims either to accept or reject the Plan and may not split their vote, and thus, Ballots of creditors that partially accept and partially reject the Plan will not be counted.
 - (D) The Plan Proponents, in their sole discretion, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice, so long as the identity of the claimant and the intent of the Claimant as to acceptance or rejection is apparent.
 - (E) In the event a designation is requested under § 1126(e) of the Bankruptcy Code, any vote to accept or reject the plan cast with respect to such claim will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise.
 - (F) Unless otherwise ordered by the Court, all questions as to the validity, form, eligibility (including time of receipt), and revocation or withdrawal of Ballots will be determined by the Plan Proponents in their sole discretion, which determination shall be final and binding.

- (G) The Plan Proponents reserve the right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Plan Proponents, not be in accordance with the provisions of the Bankruptcy Code.
 - (H) Any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors (or the Court) determine, and delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived.
 - (I) Neither the Debtors, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liabilities for failure to provide such notification. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will not be counted.
- (iii) Subject to subparagraph (iv) of this paragraph, solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of or distribution on account of a claim, and without prejudice to the rights of the Plan Proponents in any other context, each claim within a class of claims entitled to vote to accept or reject the Plan be temporarily allowed in an amount equal to:
- (a) the amount of such claim as set forth in a timely filed proof of claim;
 - (b) the amount temporarily allowed by Court order for voting purposes pursuant to Fed. R. Bankr. P. 3018(a), after notice and a hearing prior to the Voting Deadline;
 - (c) if no proof of Claim was filed, the amount of such Claim in the Schedules (except if such Claim was reduced or expunged by prior Court order); or (iv) in the absence of any of the foregoing, zero.
- (iv) Notwithstanding subparagraph (iii) of this paragraph:
- (a) If a timely-filed proof of claim is marked on the proof of claim as contingent or unliquidated or is designated as such by court order, such claim will be temporarily allowed for

voting purposes only, and not for purposes of allowance, at \$1.00.

- (b) If a claim is listed in the Schedules as contingent, unliquidated or disputed and a proof of Claim was not (i) filed before the applicable bar date for filing such proof of claim or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, unless the Debtors have consented in writing, such claim will be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Fed. R. Bankr. P. 3003(c).
- (c) If any party serves and files an objection to a claim no later than fifteen days prior to the Voting Deadline, such claim will be temporarily disallowed for voting purposes only and not for the purposes of the allowance or distribution, except to the extent the Court temporarily allows such claim for voting purposes only pursuant to Fed. R. Bankr. P. 3018(a). The Plan Proponents reserve the right to object to all claims for allowance or distribution purposes until any date set by the Court stating when objections are due.
- (d) Any Fed. R. Bankr. P. 3018(a) motion seeking temporary allowance of a claim for voting purposes and all evidence in support thereof must be filed no later than the Voting Deadline and served on the same date by hand delivery, facsimile, electronic mail, or overnight delivery upon counsel for the Plan Proponents.
- (v) Objections to confirmation of the Plan. Objections to confirmation of the Plan must be filed and served on or before the Objection Deadline. The Court shall consider only written objections that are timely filed and served, and only to the extent the objecting party states with particularity the grounds for objection. Objections not timely filed and served in accordance with the provisions of this subparagraph will be overruled. With regard to any timely-filed objection, the Plan Proponents are authorized (but not required) to file a reply, if any, to any such objection by no later than three (3) days prior to the date of the Confirmation Hearing.

(E) **Parties entitled to notice.** The “Parties Entitled To Notice” shall be the

following:

Michael J. Pappone, P.C.
GOODWIN PROCTER LLP
Exchange Place
Boston, MA 02109
Counsel to the Debtors

Jay R. Indyke, Esq.
KRONISH LIEB WEINER &
HELLMAN LLP
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*Counsel to the Official Committee
of Unsecured Creditors*

David M. Fournier, Esq.
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Committee of Unsecured Creditors*

David M. Klauder, Esq.
Office of the United States Trustee
844 King Street, Suite 2207
Wilmington, DE 19801

(F) **The Confirmation Hearing and Plan-Related Deadlines.** The

following dates and deadlines shall apply:

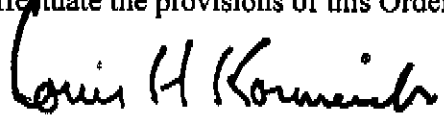
- (i) The deadline by which the Balloting Agent shall serve copies of the Solicitation Package upon all Claimants: June 12, 2004 (the “Deadline for Service of Solicitation Package”).
- (ii) Deadline by which ballots containing original signatures must be actually received by the Balloting Agent: July 1, 2004 at 4:00 p.m. Eastern Time (the “Voting Deadline”);
- (iii) Deadline for filing with the Court and completing service of objections to confirmation of the Plan: July 1, 2004 at 4:00 p.m. Eastern Time (the “Objection Deadline”);
- (iv) Deadline for the Debtor and/or the Balloting Agent to file a report of the results of voting on the Plan: The commencement of the confirmation hearing; and
- (v) The hearing to consider confirmation of the Plan (the “Confirmation Hearing”) shall commence on July 8, 2004 at 9:30 a.m. Eastern Time.

4. **Approval of Forms.** Upon consideration of the Motion:

- (a) The form of Confirmation Hearing Notice attached hereto as **Exhibit A** is approved.
- (b) The form of Notice of Non-Voting Status (Classes Not Impaired Under the Plan), attached hereto as **Exhibit B**, is approved. The form of Notice of Non-Voting Status (Classes Deemed to Have Rejected the Plan), attached hereto as **Exhibit C**, is approved.
- (c) The form of the 2002 Notice attached hereto as **Exhibit D** is approved.
- (d) The form of Ballot attached hereto as **Exhibit E** is approved for voting by holders of claims classified in Class 3 of the Plan. The form of Ballot attached hereto as **Exhibit F** is approved for voting by holders of claims classified in Class 4 of the Plan.

5. The Debtors are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the provisions of this Order.

Dated: June 10, 2004
Wilmington, Delaware



HONORABLE LOUIS H. KORNREICH
UNITED STATES BANKRUPTCY JUDGE