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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:)	
)	CASE NO. 13-13653 (DHS)
710 LONG RIDGE ROAD OPERATING COMPANY II, LLC, et al.,)	
)	DESIGNATION OF ITEMS TO BE
)	INCLUDED IN THE RECORD ON APPEAL
)	AND STATEMENT OF ISSUES
)	PRESENTED ON APPEAL
Debtors-in-Possession.)	
)	

The National Labor Relations Board (“Board”) respectfully submits this Designation of Items to Be Included in the Record on Appeal and Statement of Issues to Be Presented on Appeal pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure.

On July 29, 2013, the Board filed a Notice appealing the Bankruptcy Court’s July 15, 2013 Opinion and Order granting interim relief under 11 U.S.C. § 1113(e) (Dkt. Nos. 423 & 424). *See* Dkt. No. 457. The Board also filed a Motion for Leave to Appeal that order (Dkt. No. 458), and a separate Notice identifying related appeals already pending before the Honorable District Judge Dennis M. Cavanaugh in the District Court for the District of New Jersey (Dkt. No. 461).¹

¹ Previously, on April 23, 2013, the Board appealed several Bankruptcy Court orders: the Bankruptcy Court’s (i) March 4, 2013 opinion and order granting interim relief under 11 U.S.C. § 1113(e) (Dkt. Nos. 65 & 66), (ii) April 9, 2013 order on the record denying the motion to

Designation of Items to be Included in the Record on Appeal

The Board designates the following items to be included in the record on appeal:

Designation No.	Date of Filing	ECF No.	Description
1.	2/24/2013	1	Chapter 11 Voluntary Petition.
2.	2/24/2013	5	Affidavit of Victor Matthew Marcos in Support of Debtors' "First Day Motions."
3.	2/25/2013	15	Motion for an Order Authorizing Debtors to Implement Interim Modifications to Their Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU pursuant to 11 U.S.C. Section 1113(e). (Attachments: #1 Verified Application in Support of Debtors' Motion, #2 Exhibit 1 – A.)
4.	2/25/2013	16	Application to Shorten Time (related to ECF No. 15).
5.	2/28/2013	50	Supplemental Affidavit of Victor Matthew Marcos in Connection with Debtors' Motion in support (related to ECF No. 15).
6.	2/28/2013	51	Objection to Debtors' Motion for Authorization to Implement Interim Modifications to Collective Bargaining Agreements Under 11 U.S.C. 1113(e) (related to ECF No. 15) filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: Exhibit #1, Exhibit #2, Exhibit #3, Exhibit #4, Exhibit #5, Exhibit #6, Exhibit #7, Exhibit #8, Exhibit #9, Exhibit #10, Exhibit #11.)
7.	2/28/2013	52	Brief in Opposition to 1113 Application (related to ECF No. 15) filed by the National Labor Relations Board.
8.	2/28/2013	54	Documents supporting Brief of the National Labor Relations Board (related to ECF No. 52). (Attachments: Exhibit #1 District Court Section 10j Order, Exhibit #2 Circuit Notice of Appeal,

amend, make additional findings, or reconsider that order (Dkt. No. 228; opinion on record), and (iii) April 10, 2013 order on the record granting continued interim relief under Section 1113(e) (Dkt. No. 230; opinion on record). *See* Dkt. Nos. 267 & 268. On May 21, 2013, District Court Judge Cavanaugh granted the Board’s motion for leave to appeal, and those appeals are now pending before Judge Cavanaugh. *See* D.N.J. Case No. 13-cv-02977-DMC, Dkt. No. 15; D.N.J. Case No. 13-cv-03247-DMC, Dkt. No. 1. Because the instant appeal and the two pending related appeals involve common questions of law and fact, they should be assigned to Judge Cavanaugh, and consolidated and considered together.

			Exhibit #3 Respondent's Motion for Stay, Exhibit #4 Circuit Motion Stay, Exhibit #5 Order Denying Stay, Exhibit #6 Circuit Temp Stay, Exhibit #7 Formal Motion to Stay, Exhibit #8 Motion for Overlength Brief, Exhibit #9 Circuit Stay Denied, Exhibit #10 Stay Application, Exhibit #11 Ginsberg Denial, Exhibit #12 Renewal Stay Application Letter, Exhibit #13 Order in Pending Case, Exhibit #14 District Court Petition for 10j Injunction.)
9.	3/1/2013	[Hearing]	Transcript of Hearing Before the Honorable Donald H. Steckroth, United States Bankruptcy Judge.
10.	3/4/2013	65	Opinion of the Bankruptcy Court Granting Motion Authorizing Debtors to Implement Interim Modifications (related to ECF No. 15).
11.	3/4/2013	66	Order of the Bankruptcy Court Granting Motion Authorizing Debtors to Implement Interim Modifications (related to ECF No. 15).
12.	3/18/2013	144	Motion to Reconsider (related to ECF Nos. 65 & 66), filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: #1 Motion to Amend or Make Additional Findings and for Reconsideration.)
13.	3/29/2013	197	Motion to Authorize Debtors to Continue to Implement Interim Modifications to Their Expired Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU pursuant to 11 U.S.C. Section 1113(e). (Attachment: #1 Application in Support of Motion.)
14.	4/3/2013	208	Brief in Opposition to Motion to Amend (related to ECF No. 144) filed by 710 Long Ridge Road Operating Company II, LLC.
15.	4/5/2013	215	Statement (A) in Support of the Motion for an Order Authorizing the Debtors to Continue to Implement Interim Modifications (related to ECF No. 197), and (B) in Opposition to the Motion to Amend (related to ECF No. 144) filed by the Official Committee of Unsecured Creditors of 710 Long Ridge Road Operating Company II, LLC.
16.	4/5/2013	216	Objection to Motion to Authorize Debtors to Continue to Implement Interim Modifications (related to ECF No. 197) filed by the New England Health Care Employees Union, District

			1199, SEIU. (Attachments: #1 Affidavit of Jeff D. Benton, #2 Exhibit.)
17.	4/5/2013	217	Opposition to Motion to Authorize Debtors to Continue to Implement Interim Modifications (related to ECF No. 197) filed by the National Labor Relations Board. (Attachments: #1 Declaration, #2 Exhibit A-1 Complaint and Notice of Hearing, #3 Exhibit A-2 Information requests and response, #4 Exhibit A-3 Correspondence on Reinstatement, #5 Exhibit A-4 Consolidated CNH, #6 Exhibit A-5 Subpoenas, #7 Exhibit A-6 Orders re: subpoenas, #8 Exhibit Section 10(j) Order (D. Conn.), #9 Exhibit A-8 telephone conference 12-11-12 (D. Conn.), #10 Exhibit A-9 ALJD.)
18.	4/8/2013	221	Response to Objection to Motion to Authorize Debtors to Continue to Implement Interim Modifications (related to ECF No. 216) filed by 710 Long Ridge Road Operating Company II, LLC.
19.	4/9/2013	228	Order of the Bankruptcy Court Denying Motion To Reconsider (related to ECF No. 144).
20.	4/9/2013	[Hearing]	Transcript of Hearing Before the Honorable Donald H. Steckroth, United States Bankruptcy Judge.
21.	4/10/2013	230	Order of the Bankruptcy Court Authorizing Debtors to Continue to Implement Interim Modifications to Their Expired Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU (related to ECF No. 197).
22.	4/10/2013	[Hearing]	Transcript of Hearing Before the Honorable Donald H. Steckroth, United States Bankruptcy Judge.
23.	4/23/2013	267	Notice of Appeal to District Court (related to ECF No. 65) filed by the National Labor Relations Board.
24.	4/23/2013	268	Notice of Appeal to District Court (related to ECF No. 230) filed by the National Labor Relations Board.
25.	4/23/2013	269	Motion for Leave to Appeal (related to ECF Nos. 267 & 268) filed by the National Labor Relations Board. (Attachments: #1 Board's Exhibit 1 to Motion, #2 Board's Exhibit 2 to Motion, #3 Board's Exhibit 3 to Motion, #4 Memorandum of Law in Support of Motion for

			Leave to Appeal, #5 Board's Exhibit 1 to Memorandum of Law, #6 Board's Exhibit 2 to Memorandum of Law, #7 Proposed Order.)
26.	4/23/2013	271	Notice of Appeal to District Court (related to ECF No. 65) filed by the New England Health Care Employees Union, District 1199, SEIU.
27.	4/23/2013	272	Notice of Appeal to District Court (related to ECF No. 230) filed by the New England Health Care Employees Union, District 1199, SEIU.
28.	4/23/2013	273	Motion for Leave to Appeal (related to ECF Nos. 271 & 272) filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: Attachment No.1 - Dkt. 65, Attachment No. 2 - Dkt. 66, Attachment No. 3 - Dkt. 228, Attachment No. 4 - Dkt. 230, Attachment No. 5 - Transcript of Decision, Proposed Order Granting Leave to Appeal.)
29.	5/22/2013	337	Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement filed by 710 Long Ridge Road Operating Company II, LLC. (Attachments: # 1 Application in Support of Motion # 2 Proposed Order)
30.	6/13/2013	373	Order Granting Motion to Extend/Limit Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement to October 22, 2013. (Related to ECF No. 337).
31.	6/28/2013	392	Motion to Authorize Debtors to Continue to Implement Interim Modifications to Their Expired Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU pursuant to 11 U.S.C. Section 1113(e). (Attachments: Motion Exhibit A, List of Interim Modifications; Motion Exhibit B, Budget Comparisons; Motion Exhibit C, Cash Flow Projections; Declaration Exhibit A, Verified Application in Support of Motion; Declaration Exhibit H, NLRB's Contempt Motion; Declaration Exhibit I, Opposition to Contempt Motion)
32.	7/8/2013	405	Supplemental Affidavit of Victor Matthew Marcos in Support of the Debtors' Motion for an Order Extending the Interim Modifications to the Debtors' Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU (related to ECF No. 392). (Attachments: # 1 Exhibits 1, 2 and 3.)

33.	7/9/2013	411	Objection to Debtors' Motion for Authorization to Continue to Implement Interim Modifications to the Collective Bargaining Agreements Under 11 U.S.C. 1113(e) (related to ECF No. 392) filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: Exhibit #1, Exhibit #2, Exhibit #3, Exhibit #4, Exhibit #5, Exhibit #6, Exhibit #7, Exhibit #8, Exhibit #9, Exhibit #10, Exhibit #11, Exhibit #12, Exhibit #13, Exhibit #14 [all exhibits filed under seal].)
34.	7/9/2013	412	Opposition to Debtors' Motion for Authorization to Continue to Implement Interim Modifications to Collective Bargaining Agreements Under 11 U.S.C. 1113(e) (related to ECF No. 392) filed by the National Labor Relations Board.
35.	7/10/2013	417	Declaration of Ryan T. Jareck, Esq. in Support of Debtors' Motion for an Order Extending Interim Modifications to the Debtors' Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU Pursuant to 11 U.S.C. § 1113(e) (related to ECF No. 392).
36.	7/11/2013	[Hearing]	Transcript of Hearing Before the Honorable Donald H. Steckroth, United States Bankruptcy Judge. ²
37.	7/15/2013	423	Opinion of the Bankruptcy Court Authorizing Debtors to Continue to Implement Interim Modifications to Their Expired Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, (related to ECF No. 392).
38.	7/15/2013	424	Order of the Bankruptcy Court Authorizing Debtors to Continue to Implement Interim Modifications to Their Expired Collective Bargaining Agreements with the New England Health Care Employees Union, District 1199, SEIU (related to ECF No. 392).
39.	7/29/2013	454	Notice of Appeal to District Court (related to ECF Nos. 423 & 424) filed by the New England

² The transcript of this July 11, 2013 hearing has been ordered, and is expected to be available shortly. With the exception of this item, copies of all of the other designated items will be mailed tomorrow to the Clerk of the Bankruptcy Court pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure. The Board will separately mail a copy of the transcript to the Clerk as soon as the Board receives it.

			Health Care Employees Union, District 1199, SEIU.
40.	7/29/2013	455	Motion for Leave to Appeal (related to ECF Nos. 423 & 424) filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: #1 ECF No. 423, #2 ECF No. 424, #3 Proposed Order.)
41.	7/29/2013	457	Notice of Appeal to District Court (related to ECF Nos. 423 & 424) filed by the National Labor Relations Board. (Attachments: #1 ECF No. 423, #2 ECF No. 424.)
42.	7/29/2013	458	Motion for Leave to Appeal (related to ECF Nos. 271 & 272) filed by the National Labor Relations Board. (Attachments: #1 ECF No. 423, #2 ECF No. 424, #3 Memorandum of Law in Support, #4 Proposed Order.)
43.	7/30/2013	461	Notice of Related Cases (related to ECF Nos. 268 & 230) filed by the National Labor Relations Board.
44.	7/30/2013	464	Corrected Motion for Leave to Appeal (related to ECF Nos. 454) filed by the New England Health Care Employees Union, District 1199, SEIU. (Attachments: #1 ECF No. 423, #2 ECF No. 424, #3 Proposed Order.)

Statement of Issues on Appeal

1. Whether a bankruptcy court has jurisdiction under 11 U.S.C. § 1113(e) to authorize debtors to make interim modifications to the terms of collective bargaining agreements that had expired prior to the filing of the Chapter 11 petitions.
2. Assuming jurisdiction under Section 1113(e), whether the bankruptcy court erred in granting such authorization where:
 - (a) 11 U.S.C. § 1113(f) prohibited the bankruptcy court from construing Section 1113(e) to permit such authorization, because debtors had already unilaterally made the requested modifications prior to court permission; and
 - (b) a federal district court in another circuit had rejected debtors' claim of irreparable financial harm and ordered debtors to reverse those same unilateral modifications, finding such an order just and proper under 29 U.S.C. § 160(j), pending the outcome of administrative proceedings to determine the legality of debtors' modifications.

Respectfully submitted,

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