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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re)	Chapter 9
)	
NEW YORK CITY OFF-TRACK BETTING)	Case No. 09-17121 (MG)
CORPORATION,)	
)	
Debtor.)	

Re: Docket Nos. 1,6 and 33

**LIMITED STATEMENT OF YONKERS RACING CORPORATION IN SUPPORT OF
DEBTOR’S BANKRUPTCY PETITION AND STATEMENT OF
QUALIFICATIONS UNDER SECTION 109(C)**

TO: THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Yonkers Racing Corporation (“Yonkers”), as the largest unsecured creditor of New York City Off-Track Betting Corporation (“NYC OTB”), submits this limited statement (the “Statement”) in support of the Debtor’s Bankruptcy Petition and Statement of Qualifications Under Section 109(c), and respectfully represents as follows:

STATEMENT

1. On December 3, 2009 (the “Petition Date”), NYC OTB filed a voluntary petition (the “Petition”) for relief under Chapter 9 of Title 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) [Docket No. 1] and a Statement of Qualifications Under Chapter 9 of the Bankruptcy Code [Docket No. 6], along with the Declaration of Robert J. Garry in Support of the Chapter 9

Petition and the Statement of Qualifications [Docket No. 2] and the Declaration of Raymond Casey in Support of the Chapter 9 Petition and the Statement of Qualifications [Docket No. 3].

2. Yonkers, the Debtors' largest unsecured creditor,¹ supports the survival of NYC OTB. In fact, if the provisions of chapter 9 of the Bankruptcy Code are used appropriately and not in derogation of any of the rights of NYC OTB's creditors, Yonkers supports the reorganization of NYC OTB under chapter 9 of the Bankruptcy Code.

3. Indeed, subject to the following, Yonkers does not dispute that NYC OTB has satisfied its burden of demonstrating its eligibility to be a debtor under section 109(c) of the Bankruptcy Code. This, however, is not a typical chapter 9 case. NYC OTB is not a traditional county, city or other municipal government whose actions would necessarily implicate concerns of the federal government interfering with the legitimate police powers of such municipal governments. Instead, NYC OTB is a going-concern business that operates as such and happens to meet the requirements of section 109(c) of the Bankruptcy Code. As a result, there is a certain measure of uncertainty concerning the legitimate expectations and rights of NYC OTB and its creditors. In this regard, Yonkers files this Statement concerning whether NYC OTB's petition should be dismissed pursuant to section 921(c) of the Bankruptcy Code, which provides that "the court . . . may dismiss the petition if the debtor did not file the petition in good faith" 11 U.S.C. § 921(c).

4. One of the motivations behind the good faith requirement for filing "has always been to ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended." In re Sullivan County Reg'l Refuse Disposal Dist.,

¹ List of Creditors Holding 20 Largest Unsecured Claims [Docket No. 4].

165 B.R. 60, 80 (Bankr. D.N.H. 1994). Therefore, “a petition would be deemed *not* in good faith if ‘it is unreasonable to expect that a plan of reorganization can be effected.’”² Id.

5. Despite hopes to the contrary, Yonkers has concerns regarding NYC OTB’s ability to successfully reorganize. In the past, NYC OTB has failed to meet its financial obligations to Yonkers. For instance, in the year leading up to the Petition Date, to the extent NYC OTB paid Yonkers its statutorily-mandated distributions, such payments were made several months after NYC OTB’s obligations became due.

6. NYC OTB has communicated to Yonkers its intent to pay all postpetition obligations to Yonkers as such obligations become due or in certain circumstances on a reasonable thirty day delay.³ NYC OTB should be required to establish that it has the financial wherewithal to pay its postpetition commercial obligations and that it will, in fact, pay such amounts in a timely manner as represented.⁴ If, however, NYC OTB intends not to pay, or

² Several courts have provided that chapter 11 standards should be used in determining whether “good faith” exists under chapter 9. For instance, one court provided that in “[d]etermining whether a petition has been filed in good faith requires an evaluation of a debtor’s ‘financial condition, motives, and the local financial realities.’ These comments would appear to be equally applicable, at least in part, to a Chapter 9 petition.” In re McCurtain Mun. Auth., Case No. 07-80363, 2007 WL 4287604, at *4 (Bankr. E.D. Okla. Dec. 4, 2007) (citing In re Villages at Castle Rock Metro. Dist. No. 4, 145 B.R. 76, 81 (Bankr. D. Colo. 1990)).

³ Specifically, NYC OTB has represented to Yonkers that NYC OTB will pay (i) shift settlement and host fees to Yonkers by daily wires on a 30 day lag (i.e., all December amounts due will be paid by the end of January) and (ii) commissions to Yonkers on out-of-state/region tracks including “dark day payments” on the last business day of the following month (i.e., all December amounts due will be paid on January 29th).

⁴ In order to comply with the requirements of the racing laws of the state of New York, it is necessary to make the postpetition statutory distributions currently owed and all future postpetition statutory distributions pursuant to 28 U.S.C. § 959(b). Section 959(b) of title 28 of the United States Code provides that a trustee, receiver or manager appointed in any case pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959(b). A debtor “must comply with all applicable state laws that regulate any aspect of ‘carrying on’ a business.” 1 COLLIER ON BANKRUPTCY ¶ 10.03 (15th ed. 2009).

cannot pay its postpetition obligations on a timely basis, the Petition should be dismissed for a lack of good faith, as it would be unreasonable to expect that a plan of reorganization can be effectuated in such circumstances. In this regard, Yonkers respectfully requests that, to comply with the good faith requirement of section 921(c), any order for relief under chapter 9 provide that (i) NYC OTB be required to pay its undisputed postpetition commercial obligations as they become due in a manner consistent with the representations made to Yonkers, and (ii) in the event that NYC OTB ceases to pay its undisputed postpetition commercial obligations, the chapter 9 case shall be dismissed.

7. Notwithstanding the concerns listed above, Yonkers seeks to work constructively with NYC OTB to preserve NYC OTB as a going-concern business and to ensure a successful reorganization with the maximum recovery for NYC OTB's stakeholders.

RESERVATION OF RIGHTS

8. Notwithstanding the above Statement, Yonkers reserves all rights and remedies under applicable law.

Dated: New York, New York
January 13, 2010

WHITE & CASE LLP

By: /s/ Gerard Uzzi
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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2010, a true and correct copy of the Limited Statement of Yonkers Racing Corporation in Support of Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c) was served upon the following parties in the manner indicated below.

/s/ Gerard Uzzi
Gerard Uzzi (GU-2297)

Via Federal Express

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