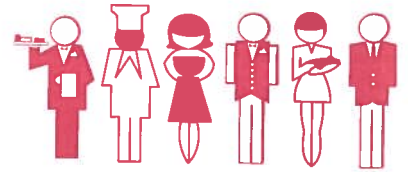


CULINARY WORKERS

UNION, LOCAL 226



July 12, 2012

Affiliated with UNITE HERE INTERNATIONAL UNION

Ms. Roxanne Qualls
801 Plum St Rm 352
Cincinnati, OH 45202-5704

201201117

RE: Financial Track Record of Toby Keith's I Love This Bar & Grill Businesses

To Ms. Qualls:

I am writing to you because of your, your municipality's, or your company's involvement in the development of a Toby Keith's I Love This Bar & Grill restaurant. I have important information to share with you about the company developing the Bar & Grill restaurants and its CEO Frank Capri.ⁱ

Contractors, developers, public officials, and construction companies across the country have entered into contracts with Toby Keith's Bar & Grill presumably based on the understanding that it is a successful enterprise that will generate tax revenue and create jobs. Scottsdale, AZ-based businessman Frank Capri reportedly purchased the master license agreement to develop Toby Keith's I Love This Bar & Grill nationwide.ⁱⁱ Since 2009, 11 new Toby Keith restaurants have been built in 10 different states. Eight more are in the pipeline. Despite this growth, the company that owns the restaurant chain has a track record of litigation and liens. Research has shown that the majority of plaintiffs who have sued the restaurant businesses have sued based on allegations of non-payment.

Restaurants from the first opened in Mesa, AZ to the recently opened in Rancho Cucamonga, CA, have faced and some currently face significant monetary claims against them. Below is a summary of some of these cases. If you are interested in learning more about the subject and status of the lawsuits, see the attached list.

- In December, the Mesa restaurant was sued twice—the Cintas Corporation sued for **\$18,824.09**, and Ahmed Sheekhahmed sued based on dramshop responsibility for an **unspecified amount**. This past May, Arizona's Department of Revenue put a state tax lien of nearly **half a million dollars** on the Arizona establishment, which opened its doors in 2009.
- A Bar & Grill in Tunica, MS, was shut down after seven health and safety inspections were conducted in a period of six weeks. It had been open for about one year. In months following, the Mississippi Department of Revenue put four state tax liens on the property totaling **\$41,300**. Three of those four liens have since been released.
- In Pittsburgh, PA, the Toby Keith's Bar & Grill allegedly defaulted on its lease agreement after failing to provide financial statements as evidence of equity and financing, which was required to fulfill lease obligations. After the deal with developer South Side Works Dine Associates "collapsed," they sued the restaurant company in March 2011 for **\$460,004.60**.ⁱⁱⁱ
- This past November, the Bar & Grill in St. Louis Park, MN was sued by A-1 Contractors for **\$28,460.55**.
- In Auburn Hills, MI, the restaurant was sued by Ray Electric for **\$56,865.19** based on a number of charges including breach of contract and lien foreclosure in late 2010. The lien Ray Electric placed on the property has since been released. This past April, Dennis Himes sued for **over \$25,000** for auto negligence and dramshop. This is the second time in the past 4 months that a Toby Keith's Bar & Grill has been sued for dramshop negligence.
- Toby Keith's I Love This Bar & Grill in Denver, CO was initially sued by Diversified Builders in March 2011 for breach of contract, mechanic's lien foreclosure, and unjust enrichment. A few months later in June, Audio Visual Innovations joined Diversified Builders' lawsuit because they had similar complaints against the restaurant company and other involved parties. Diversified Builders and Audio Visual Innovations both had liens on the Denver property totaling **\$220,248.33**. The liens have since been released and the case dismissed.



- Originally planned for a January 2011 opening, the Toby Keith's Bar & Grill in Rancho Cucamonga, CA finally opened in April 2012. In July, August, September, and October of 2011, at least four different companies involved in the construction of the property sued the restaurant for allegedly unpaid bills. At least thirteen liens were filed on Toby Keith's Bar & Grill. As of July 5, 2012, eight of those liens have been released.
- In July 2011, Sterling Millwork, Inc., a contractor that was involved in the construction of restaurants in St. Louis Park, MN, Auburn Hills, MI, Tunica, MS, Denver, CO, and Foxborough, MA, sued Frank Capri and his two namesake companies—Capri Concepts, LLC, and Capri Concepts Mesa, LLC—for **\$863,898.11**.

What is of particular concern is that despite this company's track record, a number of Toby Keith's Bar & Grills have received millions of dollars in taxpayer assistance, largely in the form of local government subsidies. Municipal agencies, public officials, and elected leaders should know about the restaurant chain's and the CEO's financial track record, as well as its history of litigation and liens.

- In Cincinnati, OH the city and county loaned developers **\$5.5 million** "to lure"^{iv} tenants like Toby Keith's I Love This Bar & Grill into a development called The Banks project. The restaurant takes up the largest retail space in the plan. The City of Cincinnati contributed **\$21 million** in construction funding, and developers plan to collect **\$80 million** in public funding for The Banks.^v
- Another city in the Buckeye state—Cleveland—expects more than **\$4 million** in tax revenues and the creation of 800 construction-related jobs from a development in which the Bar & Grill is key.^{vi}
- Government officials in Rosemont, IL expect the city to get a huge payback for its **\$40 million** investment in the development where Toby Keith's is planned to be. They also anticipate an annual rent revenue of **\$3 million** and an annual tax revenue of **\$1-1.2 million**.^{vii}
- In Newport News, VA, city councilors recently approved of a "tourism zone" tax package for City Center, the mall development where a Bar & Grill is currently being constructed. This tax incentive is "perhaps the first such incentives in Virginia."^{viii} The package includes a **25% tax rebate** on food and beverage and admissions taxes, and a **1% sales tax rebate** contribution from the state.^{ix}

A detailed record of lawsuits and liens filed against Frank Capri and Toby Keith's I Love This Bar & Grill companies is included in the attached litigation and liens charts. See <http://www.yuckthisbarandgrill.org/> for more details. If you have any questions, please feel free to contact me at jsuh@culinaryunion226.org or at 702-386-5167.

Sincerely,

Jen Suh
Research Analyst
Culinary Workers Union, Local 226

ⁱ <http://tobymesa.com/news/toby-keiths-bar-grill-now-open-in-the-twin-cities>

ⁱⁱ "Mesa Riverview will add Toby Keith-tied eatery," *The Arizona Republic*, 7 April 08.

ⁱⁱⁱ Mark Belko, "Toby Keith bar and grill, Burgatory could join North Shore," *Pittsburgh Post-Gazette*, 12 March 2012.

^{iv} "\$1M city funding for Banks tenant on hold," *The Cincinnati Enquirer*, 23 February 2012.

^v Kareem Elgazzar, "Vision for riverfront taking shape," *Hamilton JournalNews*, 2 October 2011.

^{vi} "Cleveland waterfront project looks to 2nd phase," AP Alert Ohio, 14 April 2012.

^{vii} Madhu Krishnamurthy, "No casino? Look what Rosemont did instead," *Daily Herald*, 8 April 2012.

^{viii} Joe Lawlor, "City Council approves City Center tax rebates," *Daily Press*, 23 May 2012.

^{ix} Ibid.

LITIGATION HISTORY

Updated 7/5/12

CASE NAME	SUBJECT	CLAIM	JURISDICTION AND CASE NUMBER	COMPLAINT FILED	STATUS
1 Louisville Hotel & Suites, LLC t/a/ Best Western Denver Hotel v. CRGE Colorado, LLC t/a Toby Keith's I Love This Bar & Grill, et al.	Equitable Subrogation and Breach of Lease	\$15,000.00*	County Court, County of Denver, State of Colorado (Case #12-C-57770)	4/9/2012	5/1/2012 Stipulation and Agreement with Respect to Resolution of Outstanding Claim and Provision For Entry of Judgment and Execution; Defendants to pay total sum of \$3,000.00 Answer to complaint filed 6/15/12
2 Dennis Himes, Personal Representative of the Estate of Danielle Himes, Deceased v. Brian Christopher Jobak and Toby Keith's I Love This Bar and Grill	Auto Negligence; Dramshop	> \$25,000.00	Circuit Court for the County of Macomb, State of Michigan (Civil Case #12-1503-IN)	4/2/2012	Answer to complaint filed 6/15/12
3 Cintas Corporation No. 3 v. Capri Concepts Mesa, LLC dba Toby Keith's I Love This Bar & Grill; Boomtown Entertainment LLC; John Does 1-10 and ABC Corporations 1-10	Breach of Contract	\$18,824.09	Superior Court of the State of Arizona In and For the County of Maricopa (Case #CV2011-070824)	12/14/2011	Notice of settlement issued on 4/5/12
4 Ahmed Sheekhahmed and Naima Sheekhahmed v. Adrian Cabrera, Jane Doe Cabrera; CRG Enterprises LLC dba Toby Keith's I Love This Bar and Grill; Capri Concepts Mesa LLC dba Toby Keith's I Love This Bar and Grill; John Does I-V; Jane Does I-V; Black Partnerships I-V; White Corporations I-V	Dram Shop Responsibility; Negligence	Not specified	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2011-020039)	12/7/2011	Answer from Defendant Adrian Cabrera 5/22/12
5 A-1 Contractors LLC v. CRGE Minneapolis LLC, dba Toby Keith's I Love This Bar & Grill	Service rendered; Amount stated	\$28,480.55	Hennepin County District Court (Case #27-CV-12-5765)	11/10/2011	Judgment against CRGE Minneapolis LLC 3/28/12 to pay \$29,825.03
6 K & S Air Conditioning, Inc. v. CRGE Rancho Cucamonga, LLC; Victoria Gardens Mall, LLC; and Does 1 through 100, inclusive	Breach of Contract; Quantum Meruit; Account Stated; Money Had and Received; Mechanics Lien Foreclosure	approximately \$94,000.00	Superior Court of California, County of San Bernardino (Case #CIVRS1108910)	10/7/2011	3/13/12 Plaintiff filed request for dismissal without prejudice
7 Blue Tee Corp. dba Brown-Strauss Steel v. Arc Steel, LLC, CRGE Rancho Cucamonga, LLC, Toby Keiths, Victoria Gardens Mall, Forest City Enterprises, Inc., and Does 1 through XX, inclusive	Complaint for Breach of Contract, Common Counts, and Enforcement of Mechanics' Lien	\$11,690.93	Superior Court of California, County of San Bernardino Rancho Cucamonga District (Case #CIV-RS-1108033)	9/2/2011	10/21/2011 Plaintiff filed request for dismissal with prejudice
8 DSP Electrical Contractors, Inc. v. CRGE Rancho Cucamonga, LLC; Victoria Gardens; and Does 1 through 100	Breach of Contract; Open Book Account; Reasonable Value of Labor and Materials Furnished; Foreclosure of Mechanic's Lien; Recovery on Payment Bond; Prompt Payment Violation; and Recovery on Mechanic's Lien Release Bond	\$27,525.20	Superior Court of California, County of San Bernardino (Case #CIVRS 1107952)	9/1/2011	4/10/12 Notice of Entry of Dismissal filed; settlement reached
9 Preferred Insulation Contractors, Inc. v. K&S Air Conditioning, Inc.; Forest City Enterprises, Inc.; CRGE Rancho Cucamonga, LLC; Boomtown Entertainment, LLC dba Toby Keith's I Love This Bar & Grill; and Does 1 through 50, inclusive	Breach of Contract; Foreclosure of Mechanics' Lien; Quantum Meruit/ Unjust Enrichment; Account Stated; Book Account	\$17,930.00	Superior Court of California, County of San Bernardino (Case #CIVRS1107873)	8/31/2011	10/27/11 Plaintiff filed request for dismissal with prejudice

10	Ferguson Enterprises, Inc. v. Rancho Mall, LLC; CRGE Rancho Cucamonga, LLC; Does 1 through XX	Complaint to Foreclose on Mechanic's Lien, on Mechanic's Lien Release Bond, to Enforce Stop Notice, and on Stop Notice Release Bond	\$34,683.96 plus accrued service charges	Superior Court of California, County of San Bernardino (Case #CIVRS 1106791)	7/22/2011	10/24/11 Plaintiff filed request for dismissal with prejudice; settlement reached
11	Sterling Millwork, Inc. dba Sterling Contracting, Inc v. Capri Concepts, LLC, Capri Concepts Mesa, LLC and Frank Capri	Breach of Contract, Unjust Enrichment, Building Control Fund Act, Arizona Trust Fund Violation	\$863,898.11 Plus costs, common law and statutory interest and attorney fees	State of Michigan In the Circuit Court for the County of Oakland (Case #2011-120315-CK)	7/12/2011	5/10/12 Stipulated Order of Dismissal Pursuant to Mutual Acceptance of Case Evaluation
12	South Side Works Dine Associates, L.P. v. CRGE Pittsburgh, LLC dba Toby Keith's I Love This Bar and Grill	Complaint in Confession of Judgment for Money	\$460,004.60	The Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division (Case #GD-11-010828)	6/13/2011	Settlement negotiation in process; Discovery deadline extended to 9/3/12
13	Diversified Builders, Inc. v. Sterling Contracting LLC and/or Sterling Contracting, Inc; Stapleton North Town, LLC; CRGE Colorado LLC d/b/a Toby Keith's I Love This Bar & Grill; The Prudential	Breach of Contract; Mechanics Lien Foreclosure; Unjust Enrichment	\$142,081.33	Denver District Court, City and County of Denver, Colorado (Case #2011CV1817)	3/9/2011	8/3/11 Order of Dismissal and for Discharge of Recorded Notice of Commencement of Action
14	Donelson Ciancio & Goodwin, P.C. v. CRGE Colorado, LLC dba Toby Keith's I Love This Bar & Grill	Money	\$3,771.22	County Court, City and County of Broomfield, Colorado (Case #2011-C000380)	3/4/2011	Voluntary dismissal filed by plaintiffs on 4/25/11; Case closed 4/26/2011
15	Raymond Destelger, Inc. dba Ray Electric v. Primary Electrical Services, Inc, Capri Concepts, LLC, The Taubman Company, LLC, and Sterling Construction Services, LLC	Breach of Contract Against Primary, Unjust Enrichment Against Primary and Capri, Lien Foreclosure, Breach of the Michigan Building Contract Fund Act Against Sterling	\$56,865.19	State of Michigan In the Circuit Court for the County of Oakland (Case #2010-114553-CK)	10/2/2010	Default judgment against Capri Concepts Mesa, LLC 12/10/10; Certificate of Satisfaction of Judgment filed 3/30/11
16	Lyon Financial Services, Inc. dba US Bancorp Manifest Funding Services v. Capri Properties, LLC dba The Play Factory, Frank Capri	Breach of Contract	\$76,223.77 **	Superior Court of the State of Arizona In and For the County of Maricopa (Case #CV2010-023972)	8/17/2010	Court orders Capri to pay \$76,223.77 on 6/14/11; Parties settle for \$30,000
17	FIA Card Services, N.A. fka Bank of America v. Frank Capri and Jane Doe Capri	Breach of Contract	\$64,153.45	Superior Court of the State of Arizona In and For the County of Maricopa (Case #CV2010-016191)	5/27/2010	Judgment against Capri 10/25/10; Satisfaction of judgment entered 12/5/11
18	Aurora Loan Services, Inc. v. Frank Capri and Jane Doe Capri	Summary Action for Forcible Entry and Detainer	\$693,642.90	Superior Court of the State of Arizona In and For the County of Maricopa (Case #CV2010-013411)	4/30/2010	Judgment against Capri 5/27/10
19	M&I Marshall and Hsley Bank v. Frank Capri	Promissory Note	\$702,375.85	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2009-036399)	11/17/2009	Judgment against Capri 5/17/10
20	M&I Marshall and Hsley Bank v. Frank Capri and Jane Doe Capri	Mortgage Deficiency Action	\$248,117.67	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2009-025607)	8/10/2009	Judgment against Capri 5/3/10
21	M&I Marshall and Hsley Bank v. Frank Capri and Jane Doe Capri	Mortgage Deficiency Action	\$675,008.68	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2009-025605)	8/7/2009	Judgment against Capri 5/17/10
22	American Express Travel Related Services, Inc. v. Frank Capri and J. Doe Capri	Breach of Contract-Deficiency	\$51,448.95	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2009-013926)	5/5/2009	Judgment against Capri 2/21/10; Satisfaction of judgment entered 4/28/11
23	The Residences at 2211 Camelback Condominium Association, Inc. v. Frank Capri, Mortgage Electronic Registration Systems, Inc.,	Lien Foreclosure	\$43,928.03	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2009-091211)	4/7/2009	Judgment against Capri 7/6/09; Partial satisfaction of judgment entered 11/22/11

	Greenpoint Mortgage Funding, Inc., Q. Diamond Concrete, Inc.	Breach of Contract	\$73,476.70	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2008-031590)	12/12/2008	Judgment against Capri 6/17/09
24	First American Title Insurance Company v. Frank Capri and Jane Doe Capri	Breach of Contract; Quantum Meruit; Unjust Enrichment	\$18,689.09	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2008-027931)	11/18/2008	Judgment against Capri 7/17/09; Satisfaction of Judgment entered 10/14/09
25	Dioguardi Flynn, LLP v. Frank Capri	Injunctive Relief	\$5,626.00	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV-2008-017031)	7/11/2008	Judgment against Capri 8/17/09; Satisfaction of Judgment entered 3/26/10
26	Boulder Heights Owners Association v. Frank Capri	Breach of Contract; Quantum Meruit	\$32,284.03	Superior Court of the State of Arizona In and For the County of Maricopa (Case # CV2008-070295)	5/9/2008	Judgment against Capri 8/29/08; Partial satisfaction and release of judgment lien entered 1/30/10
27	TWM Custom Homes, Inc. v. Frank Capri, Frank Capri Homes, LLC		\$4,426,486.53			
	TOTAL AMOUNT					

*Total amount accounts for \$3,000.00 in Case No. 1.
 ** Total amount accounts for \$30,000 settlement in Case No. 16.

LIENS HISTORY

Updated 7/5/12

	BUSINESS AFFECTED	AMOUNT DUE	LIEN TYPE	CLAIMANT	LIEN ISSUED, LIEN #	MONEY DUE FOR	STATUS
1	Capri Concepts Mesa LLC and Toby Keith's I Love This Bar & Grill	\$422,583.90	state tax lien	Department of Revenue, State of Arizona	5/9/2012; 10118422		
2	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$63,390.20	mechanic's lien	Aldan, Inc.	9/23/2011; 2011-0424018	Material and Labor for the Installation of Plumbing System	10/24/2011 Lien released
3	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$10,900	mechanic's lien	Masco Contractor Services of CA Inc	9/21/2011; 2011-0447106	Furnished and installed insulation	11/9/2011 Lien released
4	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$997.76	mechanic's lien	Hawkeye Equipment Rentals	9/20/2011; 2011-0402171	Construction Rental & Sales of Construction Equipment	10/27/2011 Lien released
5	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$134,062.00	mechanic's lien	Finesse Construction, LLC	8/2/2011; 2011-0347429	Supplied Materials and Labor for Licensing, Superintendent Consulting and Demolition Services	11/10/2011 Lien released
6	CRGE Tunica, LLC	\$5,291.00	state tax lien; sales tax	Department of Revenue, State of Mississippi	7/19/2011; 52412567		
7	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$94,000.00	mechanic's lien	K&S Air Conditioning, Inc.	7/12/2011; 2011-0282749	Furnished and installed HVAC	1/13/2012 Request for dismissal of Mechanic's Lien Foreclosure
8	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$15,294.00	mechanic's lien	Procraft, Inc.	6/30/2011; 2011-0297318	Material, Labor, Supplies, & Equipment to perform tenant improvement services	10/19/2011 "Property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded."
9	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$13,980.00	mechanic's lien	Temecula Valley Drywall Inc.	6/30/2011; 2011-0297319	Material, Labor, Supplies, & Equipment to perform tenant improvement services	10/19/2011 "Property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded."
10	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$10,900.00	mechanic's lien	Masco Contractor Services of CA Inc	6/24/2011; 2011-0331717	Furnished and installed insulation	9/21/2011 Lien released

11	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$48,033.90	mechanic's lien	Aidan Inc.	6/16/2011; 2011-0257480	Material and Labor for the installation of Plumbing System	10/24/2011 Lien released
12	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$27,525.20	mechanic's lien	DSP Electrical Contractors, Inc.	6/6/2011; 2011-0226816		3/28/2012 Lis pendens withdrawn
13	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$34,683.96	mechanic's lien	Ferguson Enterprises, Inc.	6/3/2011; 2011-0224914	Materials furnished by claimant	10/20/2011 Lien released
14	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$11,690.93	mechanic's lien	Blue Tee Corp. dba Brown-Strauss Steel Company	6/2/2011; 2011-0237855	For materials furnished by claimant and consisting of structural steel materials	10/21/2011 Request for dismissal with prejudice
15	CRGE Tunica, LLC	\$118.52	state tax lien	Department of Revenue, State of Mississippi	5/26/2011; 52118479		9/26/2011 Lien released
16	CRGE Tunica, LLC	\$18,096.58	state tax lien	Department of Revenue, State of Mississippi	5/26/2011; 52194965		9/26/2011 Lien released
17	CRGE Tunica, LLC	\$17,793.70	state tax lien	Department of Revenue, State of Mississippi	5/26/2011; 52260639		9/26/2011 Lien released
18	Toby Keith's I Love This Bar & Grill in Denver	\$142,081.33	mechanic's lien	Audio Visual Innovations, Inc.	2/14/2011; 2011016509		7/15/2011 Lien released
19	Toby Keith's I Love This Bar & Grill in Denver	\$78,203.00	mechanic's lien	Diversified Builders, Inc.	1/24/2011; 2011009179		7/18/2011 Lien released
20	Toby Keith's I Love This Bar & Grill in Rancho Cucamonga	\$17,930.00	mechanic's lien	Preferred Insulation Contractors, Inc.	6/6/2010; 2011-0236783	Labor and materials for insulation on grease ductwork off of two hoods with seven access doors included	10/24/2011 Lien released
21	Toby Keith's I Love This Bar & Grill in Auburn Hills	\$52,826.55	construction lien	Raymond de Steiger dba Ray Electric	5/6/2010; 4204SPC609		1/13/2012 Lien released
	TOTAL AMOUNT	\$1,220,382.53					