Plan Issues: Support Agreements, Injunctions, Releases & Competing Plans

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL, MAINE & ATLANTIC CANADA CO., Foreign Applicant in Foreign Proceeding.	Chapter 15 Case No. 15-20518

JOINDER AND MEMORANDUM OF LAW OF ROBERT J. KEACH, TRUSTEE, IN SUPPORT OF (A) VERIFIED PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND (B) MOTION FOR ENTRY OF AN ORDER RECOGNIZING AND ENFORCING THE PLAN SANCTION ORDER OF THE QUÉBEC SUPERIOR COURT; RESPONSE TO CANADIAN PACIFIC RAILWAY CO.'S OBJECTION; AND RESPONSE TO U.S. TRUSTEE'S MOTION TO CONTINUE

Dated: August 18, 2015

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Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal, Maine & Atlantic Railway, Ltd. ("MMA") in its chapter 11 case (Case No. 13-10670), hereby joins – and submits the within memorandum of law in support of – Richter Advisory Group Inc.'s (the "Monitor") Verified Petition for Recognition of Foreign Proceeding and Related Relief [D.E. 2] (the "Petition"), regarding the chapter 15 petition of the above-captioned foreign applicant ("MMA Canada"), and the Monitor's Motion for Entry of an Order Recognizing and Enforcing the Plan Sanction Order of the Québec Superior Court [D.E. 3] (the "Motion") seeking enforcement within the United States, against persons and entities domiciled within the United States, of the order sanctioning (confirming in U.S. terms) the plan of arrangement of MMA Canada (the "Sanction Order"), which plan of arrangement had been unanimously accepted by all voting creditors, including all classes of victims of the derailment (the "Derailment"), representing nearly 4,000 votes and approximately $700 million in claims. The Trustee supports the Petition and the Motion, and files this Joinder to emphasize MMA Canada's eligibility for chapter 15

relief, along with the appropriateness of this Court recognizing and enforcing the orders of the Québec Superior Court of Justice (Commercial Division) (the "Québec Court"), including the Sanction Order.[1] Additionally, the Trustee responds herein to the Objection of Canadian Pacific Railway Co. [D.E. 31] (the "CP Objection") and the U.S. Trustee's Motion to Continue [D.E. 32] (the "Motion to Continue"). In support hereof, the Trustee states as follows:

PRELIMINARY STATEMENT

As Judge Brozman wisely stated years ago, in emphasizing the particular importance of international comity in insolvency proceedings:

> Lurking in all transnational bankruptcies is the potential for chaos if the courts involved ignore the importance of comity. As anyone who has made even a brief excursion into this area of insolvency practice will report, there is little to guide practioners or the judiciary in dealing with the unique problems posed by such bankruptcies. Yet it is critical to harmonize the proceedings in the different courts lest decrees at war with one another result.

Petition of Brierly, 145 B.R. 151, 164 (Bankr. S.D.N.Y. 1992). In recognition of this critical principle, as detailed below, no United States court, in a reported decision, has ever failed to recognize a proceeding under the Canadian Companies' Creditors Arrangement Act ("CCAA") or failed to extend comity to, enforce, and provide assistance in favor of an order sanctioning a plan of arrangement under the CCAA, with such courts uniformly finding that the CCAA's provisions comport with our notions of due process, promote fundamental fairness, and are

[1] The entry by this Court of an order enforcing the Sanction Order is a condition precedent to confirmation of the Trustee's plan of liquidation:

> This Plan shall not be confirmed unless the Confirmation Order (a) is in a form and substance satisfactory to the Trustee and is otherwise consistent and in accord with the Settlement Agreements, and (b) approves and implements, among other things, (i) the Settlement Agreements, to the extent any of the Settlement Agreements have not otherwise or previously been approved by the Bankruptcy Court, and (ii) the Releases and Injunctions set forth in this Plan. In addition, Confirmation of this Plan is conditioned upon the entry of the CCAA. Approval Order and the Chapter 15 Recognition and Enforcement Order. The foregoing conditions to confirmation of this Plan are material and non-waivable.

Trustee's Revised First Amended Plan of Liquidation, § 9.1, Ch. 11 Case No. 13-10670, D.E. 1534.

consistent with all fundamental policies of the United States. That unbroken line of precedent includes multiple cases where sanction orders incorporate third-party releases, bar orders, and channeling injunctions.

Far from offending any public policy of the United States, as such decisions hold, such provisions are consistent with the law of the United States; indeed, every judicial circuit in this country would allow the fully-consensual releases provided in the Sanction Order and the plan it confirms. Indeed, the majority of the circuits, including the First, allow for *nonconsensual* third-party releases and related injunctive relief, and the ABI's Commission to Study the Reform of Chapter 11 has recommended that allowance of nonconsensual third-party releases be the law of the land. Far from offending U.S. public policy, Judge Boroff stated emphatically that identical release and injunction provisions in the New England Compounding Pharmacy ("NECP") plan and confirmation order represented the "highest and best use of the Bankruptcy Code…" Excerpt of Confirmation Hearing, attached hereto as **Exhibit A**; see also Confirmation Order, Ch. 11 Case No. 12-12982 (Bankr. D. Mass.), D.E. 1355. Thus, there is no legitimate argument that such provisions are even remotely "manifestly contrary to the public policy of the United States."

Against the overwhelming weight of this precedent, Canadian Pacific Railway Co.'s ("CP") objections are patently baseless, as discussed at length below. Indeed, CP, an entity domiciled in Canada, is wholly without standing to oppose recognition or the enforcement of the Sanction Order; this Court's order (simply extending the Sanction Order to persons or entities domiciled in the U.S.) would add nothing to CP's "burdens" nor would it limit its rights beyond what the Sanction Order already does. Not that it is even burdened by the Sanction Order. As Justice Dumas properly found in the Sanction Order, CP is not prejudiced in the least by the

Sanction Order, CP can freely defend itself and, if found by a future trial court to be jointly and severally liable with any or all settling defendants, will be entitled to such judgment reduction as is ordered by that trial court. That is precisely what CP would be entitled to under U.S. law; indeed, the Sanction Order may be more generous to CP. CP is now seeking leave to appeal the Sanction Order, as it is entitled to do. What CP is not entitled to do is to use meritless arguments to oppose recognition and enforcement of the Sanction Order, or to oppose the U.S. Plan, solely to delay the distribution of funds to the deserving victims of the Derailment in the vain hope of increasing CP's settlement leverage. That cynical and extortionate strategy should gain CP and its counsel nothing except sanctions.

ARGUMENT

A. MMA Canada is Eligible to be a Debtor Under Chapter 15 of the Bankruptcy Code Because it was Not a Railroad at the Time of the Chapter 15 Petition.

The Monitor has done an able job explaining MMA Canada's eligibility to be a debtor under chapter 15 of the Bankruptcy Code. The Trustee joins the Monitor in its argument that the general eligibility requirements of § 109 of the Bankruptcy Code do not apply in chapter 15 cases, and even if they did, MMA Canada is eligible to be a debtor under the Bankruptcy Code.

The Trustee writes separately to emphasize that settled law establishes that the correct time for determining the Monitor's and MMA Canada's eligibility for chapter 15 relief is as of the petition date of the chapter 15 case, July 20, 2015 (the "Petition Date"). As of the Petition Date, MMA Canada was unquestionably eligible to be a debtor under chapter 15.

The recent decision in In re Irish Bank Resolution Corp. Ltd., 2015 WL 4634831, at *1 (D. Del. Aug. 4, 2015) provides additional clear guidance, not that any is needed, on the issue of chapter 15 eligibility. Irish Bank addressed an argument that the debtor therein was ineligible for

chapter 15 relief due to the fact that § 1501(c)(1) provides that chapter 15 does not apply to 'a proceeding concerning an entity, other than a foreign insurance company, identified by exclusions in section 109(b).' Id. at *3. (This is the same section relied upon by CP.) In examining whether the debtor in Irish Bank was a foreign bank with U.S. branches, and thus potentially ineligible for chapter 15 relief to the extent section 109(b) applied (see § 109(b)(3)(B)), the District Court affirmed the Bankruptcy Court's determination that the "plain language of the statute clearly indicates that the relevant time period to consider is the date of the filing of the Chapter 15 petition, not the debtor's 'entire operational history.'" Id. at *3. Since the debtor bank did not have U.S. branches at the time of the filing of the chapter 15 petition, even though it may have had them at a prior time, the debtor was unequivocally eligible for chapter 15 relief. Id.; See also, e.g., Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 130 (2d Cir. 2013) (finding that "the relevant time period is the time of the Chapter 15 petition…" in the context of determining the debtor's center of main interests), In re O.A.S. S.A., 533 B.R. 83, 100 (Bankr. S.D.N.Y. 2015).

MMA Canada sold all of its assets on July 30, 2014, and has not operated a railroad since that date. Petition, ¶¶ 6 & 21. It cannot be disputed that, as of the Petition Date, MMA Canada was not – and could not be – a railroad; MMA Canada neither transports people or freight, nor owns any tracks or related facilities of any kind. See 11 U.S.C. § 101(44) ("The term 'railroad' means common carrier by railroad *engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.*") (emphasis supplied). Accordingly, because none of the other exclusions of § 109 apply to MMA Canada, MMA

Canada is eligible to be a debtor under chapter 15 of the Bankruptcy Code even if eligibility is determined by reference to section 109. [2]

B. This Court Should Grant Comity to the Orders of the Québec Court and Enforce them in this Chapter 15 Case, Because the Provisions of the Orders are Permitted Under Canadian Law and Are Not Barred by the Public Policy Exception in Chapter 15.

In determining whether to grant recognition and to extend comity to the Sanction Order, the Court must only determine that the CCAA affords due process of law to U.S. creditors and that the provisions of the CCAA and its implementation generally are not wholly repugnant to fundamental public policies of the United States. The long unbroken history of U.S. courts recognizing the CCAA and enforcing the orders of Canadian courts issued thereunder, including sanction orders containing third-party releases and channeling injunctions or bar orders, compels the conclusion that this Court should, indeed must, follow that unbroken line of cases and both recognize the CCAA case of MMA Canada as a foreign main proceeding and extend comity to and enforce the Sanction Order.

(i) Comity Generally

The doctrine of international comity has long been recognized by courts of the United States. Hilton v. Guyot, 159 U.S. 113, 164 (1895). In Hilton, the Supreme Court defined comity as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens . . ." Id. "The decision of a foreign tribunal is to be accorded comity where the [foreign] court properly exercised jurisdiction and where its ruling does not violate the public policies of the forum state." Id. at 202-03; Cornfield v. Investors Overseas

[2] CP cites to no authority whatsoever for its suggestion that the Court "should assess MMA's (sic.) status as a railroad at the time of the CCAA filing . . ." Presumably CP means MMA *Canada*, and not the U.S. debtor, MMA. If CP means MMA, its objection fails on its face.

Services, Ltd., 471 F.Supp. 1255, 1259 (S.D.N.Y. 1979); *aff'd* 614 F.2d 286 (2d Cir. 1979). Indeed, in one of the earliest cases on international comity, the Supreme Court held that U.S. bondholders were bound by the terms of a Canadian railroad restructuring and enjoined U.S. suits on the bonds. As a U.S. District Court described that early decision: "In the spirit of international comity and in recognition of the necessarily international reach of bankruptcy decrees, the Supreme Court barred the action and ruled that the plaintiffs were barred by the Canadian reorganization." Pogostin v. Pato Consol. Gold Dredging, Ltd., 1981 WL 1613 at *3 (S.D.N.Y., March 23, 1981) (describing the holding in Canada Southern Rwy. V. Gebbard, 109 U.S. 527 (1883)).

"Comity features prominently in cross-border insolvency cases." In the Matter of Thornhill Global Deposit Fund Ltd., 245 B.R. 1, 15 (D. Mass. 2000) (extending comity to, and granting ancillary relief in support of, Bahamian insolvency proceedings: "affording comity does not violate United States law or public policy. The Bahamian laws are in many ways similar to our own, and the Court so finds them."). "American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings." Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B., 825 F.2d 709, 713 (2d. Cir. 1987). Indeed, comity means that the U.S. court merely judges the fundamental fairness of the foreign insolvency regime, not whether the results generated by the foreign laws are identical to those that would be obtained in the United States or whether the foreign insolvency laws mirror those in this country. Indeed, Judge Brozman, in extending ancillary injunctive relief to the benefit of English administrators under chapter 15's predecessor, section 304 of the Bankruptcy Code, stated that: "The congruence of the Insolvency Act and the Bankruptcy Code convinces me that the comity factor supports a grant of [the administrator's] ancillary petition. Nothing dictates that the foreign law be a carbon copy of

our law; rather, the Insolvency Act must not be repugnant to American law and policies, which it is manifestly not." Brierly, 145 B.R. at 165-166.

Indeed, in cases decided under section 304, U.S. courts consistently extended comity to, and enforced, orders of foreign courts confirming restructuring plans under the law of the forum state. In doing so, those courts also consistently held that the public policy exception to the extension of comity was extremely narrow and limited. In The Argo Fund Ltd. v. Board of Directors of Telecom Argentina. S.A. (In re Board of Directors of Telecom Argentina, S.A.), 528 F.3d 162 (2d. Cir. 2008), the Second Circuit, in an opinion by Circuit Judge (later Justice) Sotomayor, upheld a bankruptcy decision that extended comity to and provided injunctive relief in support of a reorganization plan confirmed under the laws of Argentina. Noting that "comity is the ultimate consideration in determining whether to provide relief under § 304," (Id. at 171), the court stated that "[c]omity, however, does not require that foreign proceedings afford a creditor identical protections as under U.S. bankruptcy law." Id. at 173. Accordingly, the circuit court upheld the order enforcing the Argentine restructuring plan even though it would not comply with the best interests of creditors test under chapter 11, and despite the fact that the distribution to all creditors would not be the same as under U.S. law. Indeed, the circuit panel noted that a holding that required U.S. creditors to get identical relief as under the Code "would turn the principle of comity on its head and would fail to promote a 'friendly intercourse between the sovereignties' particularly necessary in bankruptcy proceedings." Id. at 172 (citing Hilton, 159 U.S. at 165).

Similarly, in In re Board of Directors of Multicanal S.A., 314 B.R. 486 (Bankr. S.D.N.Y. 2004), a bankruptcy court applying section 304 recognized another Argentine proceeding, and enforced orders confirming a plan under the laws of Argentina, including extending injunctive

relief, over the objection of dissenting U.S. creditors. The court again noted that there "is no requirement that the foreign proceedings 'be identical to United States bankruptcy proceedings.'" Id. at 503. Rather, the "key issue is one of due process and the public policy of the forum." Id. With respect to the issue of public policy, there "is no requirement that a foreign proceeding incorporate the conditions to confirmation set forth in § 1129 of the U.S. Bankruptcy Code." Id. at 506. Thus the Argentine plan could be enforced within the United States even though the relevant laws governing the Argentine restructuring did not include a best interest of creditors test or the absolute priority rule. It was also irrelevant that the laws of Argentina did not address avoidance actions in the same fashion as U.S. law: "Although the procedures in Argentina are not identical to the treatment of preferences and fraudulent conveyances under U.S. insolvency law, they need not be." Id. at 508. The "real issue is not whether the same procedures were followed as in a Chapter 11 case but whether there was fundamental due process afforded to Multicanal's creditors." Id. at 510.

The same considerations pertain under chapter 15. "A central tenet of Chapter 15 is the importance of comity in cross-border insolvency proceedings. Comity is not defined in Chapter 15 but it pervades the statute." In re Cozumel Caribe, S.A. de C.V., 482 B.R. 96, 113 (Bankr. S.D.N.Y. 2012). While section 1506 allows a U.S. bankruptcy court to refuse to take an action under chapter 15 if the "action would be manifestly contrary to the public policy of the United States," courts construing section 1506 have held, consistent with the long history of international comity in insolvency proceedings, that the "public policy exception 'requires a narrow reading.'" O.A.S., 533 B.R. at 103 (citing Fairfield Sentry, 714 F.2d at 139). "As the Second Circuit observed, federal courts in the United States have uniformly adopted the narrow application of the public policy exception." Id. This narrow focus is required because of the

history of comity and because the "word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States." Id. "Even the absence of certain procedural or constitutional rights will not itself be a bar under § 1506. Id. at 104 (citing In re Vitro S.A.B. de CV, 701 F.3d 1031, 1069 (5th Cir. 2012)).

Indeed, the focus under section 1506 is at the "macro system" level; the inquiry is whether the foreign insolvency system as a whole "meets our fundamental standards of fairness and accords with the course of civilized jurisprudence." Id. at 103 (citing In re Rede Energia, S.A., 515 B.R. 69, 98 (Bankr. S.D.N.Y. 2014). Thus, the court enforced a plan confirmed under Brazilian law even though that law provided different standards for substantive consolidation than pertained under U.S. law, and different voting rules. Indeed, as the Second Circuit has held, the U.S. court looks only at whether the foreign insolvency laws at issue comport with due process, and not whether the specific individual proceeding afforded all of the due process that a domestic chapter 11 might provide; otherwise, the United States court would be impermissibly acting as a super appellate court with respect to the foreign proceeding and permitting a collateral attack on the specific findings and conclusions of the foreign forum:

> Thus, in Victrix, the Second Circuit looked only to whether the "foreign laws" at issue comported with due process and not whether the specific individual proceeding afforded due process . . . In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 697 (Bankr.S.D.N.Y.2010) (holding that a U.S. bankruptcy court "is not required to make an independent determination about the propriety of individual acts of a foreign court."). To inquire into a specific foreign proceeding is not only inefficient and a waste of judicial resources, but more importantly, necessarily undermines the equitable and orderly distribution of a debtor's property by transforming a domestic court into a foreign appellate court where creditors are always afforded the proverbial "second bite at the apple." Chapter 15's directive that courts be guided by principles of comity was intended to avoid such a result… St. James has not advanced the argument that creditors' interests are not sufficiently protected under French *sauvegarde* law and this Court has no reason to determine otherwise. In concluding that jurisdiction is limited to a determination that French *sauvegarde* proceedings generally are sufficient to protect creditors' interests, it follows that a bankruptcy court is without jurisdiction to inquire whether a particular creditor's interests are sufficiently protected in any specific foreign proceeding.

SNP Boat Serv. S.A. v. Hotel Le St. James, 431 B.R. 776, 785-86 (S.D.Fla. 2012)(citing and quoting, *inter alia*, Vitrix, 825 F.2d at 714) (additional citations omitted). See also, In re Irish Bank Resolution Corp. Ltd., 2014 WL 9953792 at *20-21 (Bankr. D. Del. , April 30, 2014) ("the [Irish] Act has simply established a different way to achieve similar goals of United States statutes. Granting recognition of the Irish proceeding would not only comport with the intent of section 1506 of the Bankruptcy Code, but, more importantly, would also support the strong policy of the United States in favor of a universalism approach to complex multinational bankruptcy proceedings."); In re Gerova Financial Group, Ltd., 482 B.R.86, 94-95 (Bankr. S.D.N.Y. 2012) (Recognizing Bermuda insolvency proceedings even though Bermuda law allows single creditor involuntary bankruptcy; "it is well-accepted that a foreign nation's bankruptcy laws need not mirror those of the United States for its proceedings to be recognized under chapter 15.").

Of similar import is Judge Chapman's recent and extensive opinion in Rede Energia, 515 B.R. 69. Judge Chapman was presented with exactly the same request as is currently before this Court, a request to recognize a Brazilian restructuring and to enforce the order confirming that restructuring by entering relief under both sections 1507 and 1521 of the Bankruptcy Code. Indeed, the case presents a comprehensive road map for these considerations. The starting point of the analysis was as detailed above: "Of particular significance to the case at bar is the well-established principle that the relief granted in a foreign proceeding and the relief available in the United States do not need to be identical." Id. at 91. While the public policy exception must be acknowledged, "[h]owever, the public policy exception is clearly drafted in narrow terms and the few reported cases that have analyzed section 1506 at length recognize that it is to be applied sparingly." Id. at 92 (internal quotations omitted; collecting cases). Reviewing the Brazilian

proceedings for fundamental fairness, and considering U.S. public policy, Judge Chapman found "that the requested Plan Enforcement Relief is proper under both sections 1521 and 1507 of the Bankruptcy Code and should be not be denied pursuant to the public policy exception in section 1506…" Id.[3] The court found that the "request by the Foreign Representative that the Court (i) enforce the [plan] and the Confirmation Decision and (ii) enjoin acts in the U.S. in contravention of the Confirmation Decision is relief of a type that courts have previously granted under section 304 of the Bankruptcy Code and other applicable U.S. law." Id. at 93. The court also found that the interests of the debtors and the creditors, including the objecting U.S.-based creditors were protected by the granting of the relief requested. Id. at 94.

With respect to section 1506 and public policy, Judge Chapman found that

> [N]either the Brazilian Reorganization Plan nor the Brazilian bankruptcy law concepts which are the bases of the Confirmation Decision are manifestly contrary to U.S. public policy. Brazilian bankruptcy law meets our fundamental standards of fairness and accords with the course of civilized jurisprudence. Accordingly, the public policy exception reflected in section 1506 does not provide a basis for denial of the Plan Enforcement Relief.

Id. at 98. This was true despite the fact that the Brazilian law (and the confirmed plan) provided for substantive consolidation for plan purposes under an *ex parte* order, and under different standards than would prevail in a U.S. court. The court noted that substantive consolidation is permitted under certain conditions under U.S. bankruptcy law. The fact that the Brazilian court ordered consolidation using different procedures or different factors was irrelevant: "it is not appropriate for this Court to superimpose requirements of the U.S. law on a case in Brazil or to second-guess the findings of a foreign court." Id. at 100.[4] To do so would impermissibly transform her court into a foreign appellate court where the creditors are given a second bite at

[3] CP tries to make an issue regarding whether relief is available under either §1507 or §1521. As Judge Chapman held in Rede Energia, this is a red herring. Relief is available under *both* sections.
[4] Of course, substantive consolidation results in the effective *release* of intercompany and other claims.

the apple. Id. (citing Cozumel Caribe, 508 B.R. 330, 337 (Bankr. S.D.N.Y. 2014). Judge Chapman noted that the U.S. creditors had objected to substantive consolidation in Brazil and were appealing the decision; thus they had enjoyed due process on this issue. Public policy of the United States was also not offended because the cram down standards were different under Brazilian law, because the voting rules were different, because the distribution scheme was less favorable than under U.S. law, or because different treatment of similarly situated creditors was allowed (where the disparate treatment did not discriminate against U.S. creditors). Id. at 101-107. In conclusion, as to section 1506, the court concluded:

> The public policy exception embodied in section 1506 permits a court to decline to take any action, including granting additional relief or assistance pursuant to section 1521 and 1507 of the Bankruptcy Code, if such action would be manifestly contrary to the public policy of this country. Where, as here, the proceedings in the foreign court progressed according to the course of a civilized jurisprudence and where the procedures followed in the foreign jurisdiction meet our fundamental standards of fairness, there is no violation of public policy.

Id. at 107.

This narrow construction of the public policy exception and liberal application of comity is not limited to bankruptcy cases. As Judge Rakoff (S.D.N.Y.) found, even a seemingly foundational element of U.S. law, the jury trial, is not required for recognition and enforcement of foreign orders: "federal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign." In re Ephedra Products Liab. Litig., 349 B.R. 333, 336 (S.D.N.Y. 2006) (enforcing CCAA claims procedure order which did not allow for jury trials).

(ii) United States Courts Uniformly Recognize CCAA Cases and Uniformly Enforce Canadian Plan Sanction Orders.

Against this backdrop, both historical and under the current chapter 15, it is perhaps not surprising that there is no reported decision where a United States court has failed to grant

recognition to a Canadian insolvency proceeding or failed to enforce a Canadian plan or plan sanction order. Insolvency proceedings in Canada are "routinely recognized under chapter 15." Genova Financial Group, 482 B.R. at 95. Proceedings under the CCAA were "routinely granted comity" under section 304. Multicanal, 314 B.R. at 504. "American federal courts have uniformly and consistently granted comity to Canadian bankruptcy proceedings…" Raddison Design Management, Inc. v. Cummins, 2008 WL 55998 at *2 (W.D. Pa., Jan. 3, 2008). As the court stated in E&L Consulting, Ltd. v. Domain Indus. Ltd.:

> Comity will be granted to the decision or judgment of a foreign court if it is shown that the foreign court is a court of competent jurisdiction, and that the laws and public policy of the forum state and the rights of its residents will not be violated. This certainly holds true for Canada, a sister common law jurisdiction with procedures akin to our own. As Judge Batts noted in Tradewell, Inc. v. American Sensors Electronics, 1997 WL 423075 (S.D.N.Y. July 29, 1997), Canada's bankruptcy procedure under the [CCAA] satisfies the standards of procedural fairness established under the law of this circuit.

360 F. Supp. 2d 465, 470 (E.D.N.Y. 2005). See also, Badalament, Inc. v. Mel-O-Ripe Banana Brands, Ltd., 265 B.R. 732, 737 (E.D. Mich. 2001) ("Courts have consistently extended comity to Canadian bankruptcy proceedings . . . There is no indication that the bankruptcy proceedings in Canada do not comport with American notions of due process or that extending comity would be prejudicial to the interests of American creditors."); Tradewell v. American Sensors Electronics, Inc., 1997 WL 423075 at *1 (S.D.N.Y., July 29, 1997) (Canada is a "sister common law jurisdiction with procedures akin to our own", and thus plaintiff could not contend "that the CCAA violates American laws or public policy.").

Accordingly, the authority of a Bankruptcy Court in the U.S. to enter an order enforcing a CCAA plan sanction order is routine and non-controversial. "The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process.

U.S. federal courts have repeatedly granted comity to Canadian proceedings." In re Metcalfe & Mansfield Alternative Investments, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010); see also Cornfeld v. Investors Overseas Servs., Ltd., 471 F. Supp. 1255, 1259 (S.D.N.Y.) *aff'd,* 614 F.2d 1286 (2d Cir. 1979) ("The fact that the foreign country involved is Canada is significant. It is 'well-settled' in New York that the judgments of the Canadian courts are to be given effect under principles of comity.").

(iii) CCAA Orders Containing Third Party Releases and Injunctive Relief Do Not Offend U.S. Public Policy

The Court in Metcalf confirmed that "the correct inquiry… is whether the foreign orders should be enforced in the United States," as opposed to whether a U.S. court would be permitted to grant the same relief in a plenary chapter 11 case. Metcalfe, 421 B.R. at 696. In In re Sino-Forest Corp., 501 B.R. 655, 662 (Bankr. S.D.N.Y. 2013), the Bankruptcy Court reiterated its ruling in Metcalf that "the correct inquiry in a chapter 15 case was not whether the Canadian orders could be enforced under U.S. law in a plenary chapter 11 case, but whether recognition of the Canadian courts' decision was proper in the exercise of comity in a case under chapter 15."

This question is relevant here primarily because the Sanction Order contains consensual third-party releases for settling parties, and related injuctive relief. As Justice Dumas properly found in his careful and well-reasoned Sanction Order, third-party releases are regularly allowed under Canadian law, including in liquidation cases. Metcalfe involved the recognition and enforcement of an order substantially similar to the Sanction Order, which contained third-party releases. In the underlying Canadian proceedings in Metcalfe, the Court of Appeal for Ontario held that the CCAA permits the inclusion of third party releases in a plan of compromise or arrangement to be sanctioned by the court. Metcalfe, 421 B.R. at 694. The U.S. Bankruptcy Court in Metcalf granted comity to the Canadian orders, specifically finding that it was not

precluded from doing so by the public policy exception under § 1506 of the Bankruptcy Code. Id. at 698. The Bankruptcy Court noted "that principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, *even if those provisions could not be entered in a plenary chapter 11 case*." Id. at 696 (emphasis added).

Sino-Forest, decided after Metcalfe, also involved the recognition and enforcement of an order substantially similar to the Sanction Order.[5] There, the Bankruptcy Court noted that the Canadian courts "specifically found that the approval of the Sanction Order and the Settlement Order was consistent with a prior opinion of the Court of Appeal for Ontario establishing the requirements for third-party releases under the CCAA." Sino-Forest, 501 B.R. at 658 (the "prior opinion" being the Ontario court's decision referenced in Metcalfe). As in Metcalfe, the Bankruptcy Court granted comity to the Canadian orders, and found that § 1506 did not preclude it from doing so. Id. at 665.

Finally, the case of Muscletech Research and Development Inc. ("Muscletech") is particularly on point for present purposes, as it involved a liquidating case where the entire purpose of the CCAA filing was to deal with the wide-ranging products liability claims in the case and where, without the contributions of the third parties who were to benefit from third-party releases and injunctions, no funds would have existed to pay a meaningful dividend. The Endorsement of the Canadian court in Musceltech provides extensive support for the approval,

[5] Sino-Forest addresses Vitro, a case determined after Metcalfe, which declined to grant comity to a Mexican order regarding a reorganization plan. Sino-Forest distinguishes Vitro, given that it was decided on the grounds that "the bankruptcy court did not abuse the discretion expressly provided in section 1507(b)." Further, Sino-Forest distinguishes the unique facts of Vitro, specifically that it concerned "a Mexican court order approving a reorganization plan that vitiated guarantees issued by [the debtor's] U.S.-based affiliates, under loan agreements governed by U.S. law." Sino-Forest Corp., 501 B.R. at 665.

under Canadian law, of a plan sanction order that provides for third-party releases, stating, in relevant part:

> It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties.

Musceltech Endorsement, p. 7, attached hereto as **Exhibit B**.

The plan sanction order in Muscletech was recognized and enforced by Judge Rakoff. A copy of the order is attached hereto as **Exhibit C**. See also, In re Ephedra Products Liab. Litig., 349 B.R. 333 (S.D.N.Y. 2006) (recognizing and enforcing Canadian order approving claims resolution procedure in Musceltech).

In the Sanction Order, the Québec Court explicitly found that the relief requested, including third-party releases were fair and reasonable, and addressed CP's arguments to the contrary, stating, in relevant part:

> [65] In short, the undersigned not only believes that the proposed plan is fair and reasonable but to accept the arguments presented by CP would undermine public confidence in the courts.

Accordingly, because (1) the CCAA permits the inclusion of third-party releases in a plan of compromise or arrangement, (2) the Sanction Order was entered by a Canadian court of competent jurisdiction, and (3) U.S. courts have routinely granted comity to plan sanction orders of Canadian courts that provide substantially similar relief, including third-party releases, this Court should recognize and enforce the Sanction Order, pursuant to its authority under chapter 15 of the Bankruptcy Code and the principles of comity.

C. The Relief Contained in the Sanction Order Is Permitted Under U.S. Law, and is not Manifestly Contrary to Public Policy of the United States.

Although the correct inquiry is whether foreign orders should be enforced in the United States – as opposed to whether a U.S. court would be permitted to grant the same relief in a plenary chapter 11 case – the Trustee submits that U.S. law provides an independent basis for the relief contained in the Sanction Order, including third-party releases. This further supports this Court's recognition and enforcement of the Sanction Order and obviates any concerns over the public policy exception of § 1506 of the Bankruptcy Code.

Under First Circuit law, this Court can confirm a plan that contains nonconsensual third-party releases and an accompanying channeling injunction on a standalone basis under U.S. law. The First Circuit has addressed and tacitly approved the concept of nonconsensual third-party releases in plans. Monarch Life Insurance Co. v. Ropes & Gray, 65 F.3d 973 (1st Cir. 1995); see also, In re G.S.F. Corp., 938 F.2d 1467, 1474 (1st Cir. 1991) (holding that Bankruptcy Code section 105(a) confers ample power to enjoin suit against nondebtors during the pendency of a chapter 11 case where the court reasonably concludes that such actions would entail or threaten adverse impact upon the administration of the chapter 11 case).[6]

[6] Direct authority for a bankruptcy court's order conferring nonconsensual third-party releases and issuing a channeling injunction is found in the United States Supreme Court's decision in U.S. v. Energy Resources Co., 495 U.S. 545, 110 S. Ct. 2139, 109 L.Ed.2d 580 (1990) (affirming First Circuit decision that a bankruptcy court has authority to order IRS to treat tax payments made by Chapter 11 debtor corporations as trust fund tax payments, thus releasing potential insider "responsible persons" from liability, if the bankruptcy court determines that this designation is necessary to the success of a reorganization plan). The Supreme Court's decision was grounded in 11 U.S.C. §§105(a), 1123(b)(5) and 1129. Energy Resources, 495 U.S. at 549. "These statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." Id. See also, Joshua M. Silverstein, *Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debate Over Non-Debtor Releases in Chapter 11 Reorganizations*, 23 EMORY BANKR. DEV. J. 13 (Fall 2006) ("…Energy Resources vindicates the pro-release position on every major issue concerning the validity of non-debtor releases. Therefore, under existing precedent, bankruptcy courts possess the equitable power to extinguish claims against third parties."). See also Travelers Indem. Co. v. Bailey, 557 U.S. 137, 129 S. Ct. 2195, 2207 (2009) (reversing 2nd Circuit; bankruptcy court's jurisdiction to enter, and enforceability of, Manville channeling injunction could not be collaterally

Given this guidance, lower courts in the First Circuit have followed suit. In confirming plans, nonconsensual third party permanent injunctions or releases, are permitted in "exceptional circumstances" and are within the court's authority to issue under §§ 105(a), 1123(b). In re Charles Street African Methodist Episcopal Church of Boston, 499 B.R. 66, 98-103 (Bankr. D. Mass. 2013); In re Chicago Investments, LLC, 470 B.R. 32, 95-96 (Bankr. D. Mass. 2012); In re M.J.H. Leasing, Inc., 328 B.R. 363, 369 (Bankr. D. Mass. 2005); In re Mahoney Hawkes, LLP, 289 B.R. 285, 297 (Bankr. D. Mass. 2002) (holding that § 524(e) does not prohibit third party injunctions and instead simply explains the effect of a debtor's discharge).

Courts within the First Circuit have adopted the Master Mortgage test for determining when a permanent injunction or release in favor of a non-debtor third party is warranted. See Mahoney Hawkes, 289 B.R. at 297-98 (citing In re Master Mtg. Inv. Fund, Inc., 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)); see also Charles Street African Methodist Episcopal Church, 499 B.R. at 100; Chicago Investments, 470 B.R. at 95-96; In re The Ground Round, Inc., 2007 WL 496656 (Bankr D. Mass. Feb. 13, 2007) (finding Master Mortgage test applicable to determination of whether third party injunctions will be allowed). The Master Mortgage test looks to five factors:

i. An identity of interests between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate;

ii. The non-debtor has contributed substantial assets to the reorganization;

iii. The injunction is essential to the reorganization;

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challenged; "We do not resolve whether a bankruptcy court . . . could properly enjoin claims against non-debtor insurers that are not derivative of the debtor's wrong doing."); Johns-Manville Corp. v. The Travelers Indemnity Co. (In re Johns Manville Corp.), 2014 WL 3583780 at *7 (2d. Cir., July 22, 2014) ("The injunction that Bailey approved, therefore, bars … nonderivative claims against nondebtor Travelers …").

iv. A substantial majority of creditors agree to such injunction, specifically, the impacted class, or classes, has overwhelmingly voted to accept the proposed plan treatment; and

v. The plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

Master Mortgage, 168 B.R. at 935.

The debtor does *not* need to prove the existence of all five of these factors; "[t]hese factors are neither exclusive nor conjunctive requirements." Charles Street African Methodist Episcopal Church, 499 B.R. at 100; Chicago Investments, 470 B.R. at 95; M.J.H. Leasing, Inc., 328 B.R. at 369. The factors are a "useful starting point." Charles Street African Methodist Episcopal Church, 499 B.R. at 100.

On this point, Chicago Investments is instructive. The court, in confirming the challenged plan, rejected arguments that the third-party releases were impermissible and overbroad. The court found that the released parties were supplying "substantial consideration," that the "injunction was essential to the reorganization because neither [the principal funding source] nor its related entities would go forward without it," the affected creditors were being paid in full, and the creditors had voted in favor of the plan. Chicago Investments, 470 B.R. at 95-96.

Payment in full is not, however, required; the plan must simply provide a "mechanism" for the substantial payment of affected claims. The Charles Street African Methodist Episcopal Church court held that the plan should "replace what it releases with something of indubitably equivalent value to the affected creditor," such as a settlement fund to which claims are channeled. 499 B.R. at 102. An adequate settlement fund (as is present here) has consistently been held to be such a "mechanism."

The approach in the First Circuit is in the majority; the Second, Fourth, Sixth, Seventh, and Eleventh Circuits at least, all allow for nonconsensual, nondebtor releases in plans. See generally, Jason W. Harbour & Tara L. Elgie, *The 20-Year Split: Nonconsensual Nondebtor Releases*, 21 J. Bankr. L. & Prac. 1 (July 2012). See also SE Property Holdings, LLC v. Seaside Engineering & Surveying, Inc. (In re Seaside Engineering & Surveying Inc.), 780 F. 3d 1070, 1077-1080 (11th Cir. 2015) (noting 11th Circuit is with the majority in allowing nonconsensual third party releases and correcting Vitro court on this point); Behrmann v. National Heritage Foundation, Inc., 663 F.3d 704, 712 (4th Cir. 2011) (noting that third party injunctions are permissible and finding test articulated in In re Railworks Corp., 345 B.R. 529, 536 (Bankr. D. Md. 2006) "instructive," which test considered whether there was "overwhelming approval for the plan . . . a close connection between the causes of action against the third party and the causes of action against the debtor . . . the injunction is essential to the reorganization . . . and . . . the plan of reorganization provides for payment of substantially all of the claims affected by the injunction."); In re Global Indus. Tech., Inc., 645 F.3d 201, 205 (3d Cir. 2011) (stating that "[f]or the Plan to be approved as designed (i.e., with the inclusion of the Silica Injunction), the debtors needed to show that the Plan's resolution of silica-related claims is necessary or appropriate under 11 U.S.C. § 105(a), which . . . requires showing with specificity that the Silica Injunction is both necessary to the reorganization and fair."); SEC v. Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992) (stating that "[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan.").

Judge Sean Lane (Bankr. S.D.N.Y.) recently affirmed the availability of nonconsensual third party releases in an appropriate case, after canvassing relevant Second Circuit authority. In

re Genco Shipping & Trading Ltd., 513 B.R. 233, 268-69 (Bankr. S.D.N.Y. 2014) (citing and applying Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136 (2d Cir. 2005)). Applying the Metromedia factors to the releases proposed in the plan, Judge Lane approved all of the "consensual" releases, including those by parties who expressed consent by failing to check a box on the plan ballot opting out of the releases, even if such creditor voted to reject the plan. Second, the court approved all *nonconsensual* third-party releases for claims that would trigger indemnification or contribution claims against the debtors, explaining that the purpose of such releases is to align with indemnification obligations of the debtors that existed before the filing of the chapter 11 case, such as indemnification obligations that arise under employment agreements, by-laws, loan agreements, and similar agreements. Third, the court approved nonconsensual third-party releases in favor of all parties who provided substantial consideration to the plan by (a) agreeing to forego consideration to which they would otherwise be entitled; (b) providing new value to the debtors by agreeing to "backstop" or guaranty a rights offering; or (c) agreeing to exchange debt for equity in the reorganized debtor. Id.. Thus, the case reaffirms that a plan can require holders of claims to grant a release to non-debtors even where those parties do not consent (by voting for a plan or checking a box), provided one or more of the Metromedia factors is present, such as the fact that the claims will give rise to indemnity or contribution claims against the debtor's estate *or* the plan provides for an adequate settlement fund to which the claims are channeled. Id.

Indeed, the Fourth Circuit, in a decision reaffirming the ability of bankruptcy courts to confirm plans containing nonconsensual third-party releases when one or more of the so-called Dow Corning factors[7] is/are met, recently emphasized the weight given to the creation of an

[7] The Dow Corning factors are similar to the Master Mortgage factors. In re Dow Corning Corp., 255 B.R. 445, 479 (E.D. Mich. 2000).

adequate settlement fund to which claims are channeled in approving nonconsensual third-party releases in a plan. National Heritage Found., Inc. v. Highbourne Found., 2014 WL 2900933 (4th Cir. June 27, 2014).

Additional recent authority emphasizes that nonconsensual nondebtor releases can be a permissible feature of *liquidating* chapter 11 plans, where one or more of the Master Mortgage factors are present. See e.g., In re U.S. Fidelis, Inc., 481 B.R. 503, 518-21(Bankr. E.D. Mo. 2012). Addressing the non-debtor releases in the plan of liquidation before it, which contained a settlement addressing consumer claims against the debtor funded by the released parties, the court (applying Master Mortgage) stated:

> Even if the releases in the Plan cannot be determined to be consensual, under persuasive precedent from the U.S. Bankruptcy Court for the Western District of Missouri, this fact does not make confirmation of the Plan per se improper. *See* In re Master Mortgage Invest. Fund, Inc., 168 B.R. 930 (Bankr. W.D. Mo. 1994). Under Master Mortgage, the court may confirm a plan that includes compelled releases of non-debtors, if such extraordinary relief is warranted. Specifically, releases may be included in a confirmed plan if exceptional circumstances exist, the releases are widely supported by the creditor constituency (including those creditors who will be restrained), the constituency to be restrained receives significant benefits, and the creditors as a whole are being treated fairly. Id. at 935.
>
> All these Master Mortgage requirements are fulfilled here. Exceptional circumstances exist. Despite the incredibly complex nature of the claims and interests among and between the major parties in this Case, a unique and singular opportunity has presented itself in the hard-negotiated [general settlement agreement ("GSA")]: a significant return to the consumer creditors. However, if the third party releases are not permitted in the Plan, the GSA evaporates, as neither Mepco nor Warrantech would agree to its terms. Instead, the UCC, Mepco, and Warrrantech would spend years litigating, resulting in a significant loss to the estate. Meanwhile, the consumer creditors most likely would end up with little return, and no return in the near future (further devaluing whatever return they may receive, if any). This is not a circumstance where the Debtor and its secured creditors filed for bankruptcy relief with the pre-conceived purpose of buying third-party releases at a lowball price. The opposite is true, and the GSA offers the rare opportunity to actually serve the truly injured.
>
> Additionally, the releases were widely supported by the consumer creditors, directly and through the Attorneys General. No consumer creditor who would actually be restrained by the releases objected to confirmation, and the overwhelming majority of consumer

> creditors who cast a ballot voted to accept the Plan. All the Attorneys General that cast ballots voted to accept the Plan (and none objected), and the Steering Committee filed a brief in support of confirmation. And, the consumer creditors stand to obtain the significant benefit in the form of a distribution from the CRF.
>
> Last the consumer creditors as a whole would be treated fairly. Master Mortgage provides that the court should look at five factors in determining the necessity and fairness of third-party releases included in a proposed plan.

Id. at 518-19. The court directly addressed the use of such releases in liquidating plans:

> This Case is—in bankruptcy vernacular—a "liquidating 11." A bankruptcy case may proceed as a liquidating 11, if doing so would benefit the creditors (including the unsecured creditors). It is a well-established use of chapter 11 relief.
>
> A few courts suggest that compelled releases may not be appropriate in a liquidating 11 because the debtor necessarily does not need such extraordinary relief for the purpose of reorganizing. The Court recognizes this concern and the possible abuse that could occur if the releases of non-debtors are commonly included in a plan of liquidation. However, an orderly liquidation is a valid use of chapter 11 and one of its chief purposes—to ensure the best return for the unsecured creditors—should be promoted. If the plan of liquidation ensures the best possible outcome for unsecured creditors and the releases therein are critical to confirmation of the plan, then the fact that the case is not a reorganization should not per se prohibit confirmation of the plan. As discussed in Footnote 8 herein, Mepco will substantially contribute to the orderly liquidation of the Debtor, just as Warrantech and the Debtor itself will do.

Id. at 520.

Moreover, NECP confirms that third-party releases are available in the First Circuit *and* in liquidating chapter 11 cases. NECP involved facts and circumstances substantially similar to those faced by MMA and MMA Canada. In each case, a trustee was tasked with administering an estate with few valuable assets, and ultimately negotiated settlements that provided for third-party releases in exchange for sizable settlement payments. In approving NECP's chapter 11 plan, which provided extensive releases in favor of settling parties, Judge Boroff stated that the result was an example of the "highest and best use of the Bankruptcy Code." See **Exhibit A**.

In addition to the abundant and unequivocal support for approval of third-party releases explained above, the ABI Commission to Study the Reform of Chapter 11 has recommended that

the availability of third-party releases *be codified* and incorporate the Master Mortgage factors. Harner, Michelle M., FINAL REPORT OF THE ABI COMMISSION TO STUDY THE REFORM OF CHAPTER 11, pp. 252-56 (2014). This recommendation alone would indicate that third-party releases do not violate public policy. See Gerova, 482 B.R. at 95 (Bankr. S.D.N.Y. 2012) (Examining the report of the commission that led to the 1978 Code, and stating: "It cannot seriously be argued that the distinguished members of the national commission whose report led directly to the 1978 Code suggested a change that violated a fundamental public policy.").

Indeed, even the minority of circuits that do not permit nonconsensual third-party releases would authorize the *fully-consensual* release contained in the Sanction Order and the plan it confirms. The Sanction Order was entered based on the *unanimous* acceptance of all voting creditors (nearly 4000), including all voting classes of Derailment victims. Under applicable U.S. standards, the releases in the Sanction Order are clearly consensual. See, e.g., In re Specialty Equip. Cos., Inc., 3 F. 3d 1043 (7th Cir. 1993); In re Indianapolis Downs, LLC, 486 B.R. 286, 305-06 (Bankr. D. Del. 2013); In re Adelphia Communications Corp., 368 B.R. 140, 260-70 (Bankr. S.D.N.Y. 2007); In re Conseco, 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003). Even the Ninth and Fifth Circuits allow for plan-based voluntary third-party releases premised on such consent. In re Patriot Place, Ltd., 486 B.R. 773, 822 (Bankr. W.D. Tex. 2013) (emphasizing that 5th Circuit precedent only applies to nonconsensual releases); Billington v. Winograde, (In re Hotel Mt. Lassen, Inc.), 207 B.R. 935, 941 (Bankr. E.D. Cal. 1997)(Ninth Circuit case law permits consensual releases); In re Continental Colors, Case No. LA 98-52676-ES (Bankr. C.D. Cal 1999)(same).[8]

Accordingly, nothing stands in the way of the Court recognizing and enforcing the Sanction Order. The third-party releases provided therein are unequivocally allowed under

[8] Unpublished cases cited herein are available from counsel to the Trustee, upon reasonable request.

Canadian law, and are further allowed under U.S. bankruptcy law. The public policy exception of § 1506 is to be narrowly construed, and applied only in situations that threaten "the most fundamental policies of the United States." Metcalfe, 421 B.R. at 697 (citing Muscletech). In that inquiry, the "key determination" is whether the Canadian procedure "meet[s] our fundamental standards of fairness." Id. The Québec Court's proceedings in issuing the Sanction Order substantially followed U.S. principles of due process and notice: the proceedings were open and public; relevant parties received notice of all pleadings and hearings; the court provided an opportunity to object or respond and considered objections and responses; and there was an opportunity to appeal the Sanction Order under Canadian law. Sino-Forest explicitly found that "where third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy." Sino-Forest, 501 B.R. at 665.[9]

D. CP Lacks Standing to Object to the Petition or the Motion, and the CP Objection is a Poorly Veiled Attempt to Collaterally Attack the Québec Court's Orders and Transform the Bankruptcy Court into a Court of Appeals for the Québec Court.

CP makes five primary (and ultimately flawed) arguments against enforcement and recognition of the Québec Court's orders. Tellingly, the first three arguments are all explicitly complaints with the Sanction Order itself, and barely brush up against the standard for granting recognition to foreign proceedings under chapter 15.

First, CP argues that the Sanction Order's terms provide relief that "far exceed[s] anything authorized by U.S. law." This argument fails for two reasons. One, as explained above, the standard for granting recognition of foreign proceedings in chapter 15 cases does not depend in any way on whether the same relief would be available under U.S. law. Two, also as

[9] Sino-Forest notes that the court in Vitro "specifically declined to decide the case on one of the alternative bases of the bankruptcy court's ruling—*namely, whether the third-party release was manifestly contrary to public policy*." (emphasis added).

explained above, the relief in the Sanction Order unequivocally *is allowed* under U.S. law (if that test were even necessary, which it is not).

Second, CP argues that the Sanction Order confers "one-sided protection to settling non-debtor entities in derogation of CP's due process rights." As the Sanction Order itself indicates, this statement is patently false; nothing in the Sanction Order affects CP's defenses or right to judgment reduction. CP has had ample due process (including the right to appeal, which CP has exercised) and CP's overwrought objections are simply litigation tactics.

Third, CP argues that the releases and injunction contained in the Sanction Order are not allowed under Canadian law and extinguish CP's rights to contractual indemnification and set-off against non-debtors. Like its other arguments, this argument is clearly CP's attempt to have this Court serve as an appellate court for the Québec Court. Not only has the Québec Court found that the releases and injunction contained in the Sanction Order are allowed under Canadian law, but the Sanction Order does nothing to diminish CP's rights to argue contributory negligence, relative liability, and proportionate judgement reduction in defending itself against the various lawsuits that it faces, including arguing that its liability is $0.00.

Fourth, CP argues that MMA Canada is ineligible for chapter 15 relief because it is a foreign railroad. This half-baked argument fails for the reasons set forth above.

Finally, CP argues that because it has appealed the Sanction Order in Canada, this Court should refrain from enforcement of the Québec Court's orders. Caselaw directly on point indicates that this argument has no merit whatsoever.

1. CP Lacks Standing to Object to the Petition or the Motion

Standing is a "threshold question in every federal case." Warth v. Seldin, 422 U.S. 490, 498 (1975). "[T]he standing question is whether the [party] has 'alleged such a personal stake in

the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Id. at 498-99. "[S]tanding . . . is accorded only to a 'person aggrieved.' The 'person aggrieved' paradigm, which delimits appellate jurisdiction even more stringently than the doctrine of Article III standing, bestows standing only where the challenged order directly and adversely affects an appellant's pecuniary interests. Spenlinhauer v. O'Donnell, 261 F.3d 113, 117-18 (1st Cir. 2001) (citations omitted). "[S]tanding exists only where the order directly and adversely affects an appellant's pecuniary interests. A party's pecuniary interests are affected if the order diminishes the appealing party's property, increases its burdens, or detrimentally affects its rights." In re N2N Commerce, Inc., 405 B.R. 34, 39 (Bankr. D. Mass. 2009), citing Kehoe v. Schindler (In re Kehoe), 221 B.R. 285, 287 (1st Cir. B.A.P. 1998) (quotations and internal citations omitted); see also In re Murphy, 288 B.R. 1, 4 (D. Me. 2002).

With the exception of its fourth and fifth arguments, both of which are completely without merit, CP's arguments are, by their own terms, impermissible appeals of the Sanction Order. Because CP is not domiciled in the U.S. (as CP has strenuously argued elsewhere), but rather in Canada, this Court's recognition and enforcement of the Sanction Order will not enlarge or extend the Sanction Order's effect on CP in any way. [10] Recognizing the CCAA case and

[10] Elsewhere in related proceedings, CP has argued extensively that it is not domiciled in the U.S. and has minimal contacts with the U.S.:

> CP does minimal business in the U.S. and did nothing in the U.S. regarding the train that derailed.
> …
> CP is a corporation organized and existing under the laws of Canada, with its principal place of business in Calgary, Canada, and with a place of business in Montreal, Quebec, Canada.
> …
> Besides not being incorporated or having a principal place of business in the U.S., CP's only connection (besides bringing trains 10 miles or less into the U.S. to safely turn over to U.S. crews) with the U.S. is the filing of a proof of claim in MMAR's bankruptcy for debts incurred in Canada.

enforcing the Sanction Order within the U.S. *as to persons and entities domiciled in the U.S.* is not relief that reaches CP; CP is *already bound* by the Sanction Order, and appealing from same. By definition, this Court's orders will not vary CP's legal burdens.[11]

CP's second and third arguments are essentially that it will face tort liability from victims of the Derailment, and this fact somehow gives it standing to oppose recognition and enforcement of the Sanction Order. First, CP's plight again derives solely from the *Sanction Order*, not from this Court's orders. Moreover, Maine courts have explicitly found that the fact that a party will have to defend itself in independent tort actions does not establish a basis for standing. Kemper Life. Ins. Co. v. Bezanson (In re Medomak Canning Co.), 123 B.R. 671, 673-74 (D. Me. 1991); Murphy, 288 B. R. at 4. Further, because this Court's recognition and enforcement of the Sanction Order will not impair CP's rights in any way (as explained below), and in any event not in any way not already accomplished by the Sanction Order, CP cannot argue that it has standing due to being an aggrieved party for some other reason related to this Court's order. See Medomak Canning, 123 B.R. at 674 ("[Appellants's] rights in that respect are in no way impaired by the order of compromise, which specifically preserves all defenses which [it] may have against the negligence claim which has now been brought against it.").

Chapter 15 neither creates nor enhances CP's right to object to the Petition and the Motion. In Drawbridge Spec. Opps. Fund LP v. Barnet (In re Barnet), 737 F.3d 238, 242-43 (3d Cir. 2013), on appeal of a recognition order substantially similar to the relief requested in the

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Canada Pacific Railway Company's Motion to Dismiss, [D.E. 140, Adv. Proc. 14-1001].

[11] A court examining whether to recognize and enforce a foreign order should be focused primarily on the interests of domestic creditors. See In re Atlas Shipping A/S, 404 B.R. 726, 740 (Bankr. S.D.N.Y. 2009) ("this relief [should] only be granted if the interests of local creditors are 'sufficiently protected.'"). Here, CP is a Canadian creditor already bound by the Sanction Order, not a domestic creditor. See also, In re Tri-Cont'l Exch. Ltd., 349 B.R. 627 (Bankr. E.D. Cal. 2006), In re Sivec SRL, 476 B.R. 310 (Bankr. E.D. Okla. 2012).

Motion, the Third Circuit Court of Appeals found that the because the recognition order neither named nor directed any relief against the movant, and because the movant was not affected by the automatic relief provided for in § 1520, the movant lacked standing to appeal the order. Moreover, even if CP has alleged some cognizable "potential harm" from this Court's recognition of the Sanction Order, even that is not sufficient to give CP standing. Id. at 243 ("Indeed, we have explicitly stated that 'potential harm' from a bankruptcy court order is insufficient to justify appellate standing.").

Accordingly, CP has no personal stake and no pecuniary interest in the outcome of the Petition or Motion, its burdens would not be increased by this Court's orders, and thus CP lacks standing to object. Neither the Petition nor the Motion names CP or directs any relief against CP; CP, as an entity domiciled in Canada, is already bound by the terms of the Sanction Order in Canada, and this proceeding simply gives that order extraterritorial effect in the U.S. (a jurisdiction where CP maintains that it is not domiciled and has minimal contacts). See Barnet, 737 F.3d at 243.

2. The Sanction Order Preserved All of CP's Defenses and Does Not Prejudice CP In Any Way; Indeed, It Is Foursquared with Applicable U.S. Law

The Sanction Order itself has already addressed all of CP's arguments regarding alleged one-sidedness or prejudice, further supporting that CP's Objection is nothing more than an improper attempt at extraterritorial appeal at odds with all principles of comity. As the Sanction Order states, in relevant part:

> [48] In this case, the releases sought are an essential condition to the viability of the Plan since the Released Parties are the only ones financing the Plan. This weighs strongly in favour of the fair and reasonable nature of the releases sought:
>
> > [23] [...] As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to

> the Plan. Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided.
>
> [49] Alternatively, CP also submits that the Plan may not be used as a tool to settle disputes between solvent third parties without granting a release to MMAC. This subsidiary argument is in line with CP's argument that the Plan negatively impacts its rights.
>
> [50] Indeed, CP submits the following :
>
> > Since CP's liability is, among others, sought on a solidary basis in the class action, and since CP is not a Released Party under the Plan, its rights shall be directly and considerably affected.
>
> [51] CP submits inter alia that the partial settlement of multi-party litigation must be at least a neutral event for the defendants that are not parties to the settlement.
>
> [52] It submits that the Plan does not grant CP the ordinary protections it would receive under the partial settlement of a class action in civil law.
>
> [53] **As already mentioned, nothing will prevent CP from defending itself in any action brought against it. If it is not liable, the action will be dismissed.**
>
> [54] **If it claims that the damages were caused by a third party, it may submit this argument even if such third party is not involved in the proceedings.**
>
> [55] **In fact, there would even be an advantage for CP as it may continue to argue that the tragedy is everybody's fault, except its own.**
>
> …
>
> [57] **In short, if CP is not liable, the action shall be dismissed against it.**
>
> [58] **If it is liable, and third parties also liable were released, CP will be released from the portion of liability attributable to the solidary debtors that were released.**
>
> [59] **In fact, what would be unfair would be to allow CP to benefit from a release while it did not financially contribute to the Plan, contrary to the other co-defendants**. (Emphasis added).

To the extent relevant, this is exactly the same result as would pertain under U.S. law. Courts have routinely held that proportionate judgment reduction is a sufficient preservation of rights for non-settling parties affected by bar orders. As the Bankruptcy Court in In re Tribune Co., found:

> The Bar Order is fair to the [non-settling defendants] because, as non-settling defendants, they are protected by the proportionate judgment reduction, which is the equivalent of a contribution claim . . . McDermott, Inc. v. AmClyde, 511 U.S. 202, 209 (1994) ("Under this [proportionate share] approach, no suits for contribution from the settling defendants are permitted, nor are they necessary, because the nonsettling defendants pay no more than their share of the judgment.").
>
> …
>
> I conclude that the Bar Order is not an improper third party release as to the [non-settling defendants] because any lost contribution or non-contractual indemnification claims are replaced by the protections of the judgment reduction provision.

464 B.R. 126, 179-180 (Bankr. D. Del.) See also In re Tribune Co., 464 B.R. 208, 223-24 (Bankr. D. Del. 2011) (proportionate judgment reduction fair to settling defendants faced with bar order); In re Semcrude, L.P., 2010 WL 4814377 at *2 (Bankr. D. Del. 2010) ("As the Settlement contains a provision preserving any state law setoff or judgment reduction rights of potential contribution claimants, the Settlement does not appear to deprive PWC [a non-settling defendant] of any material contribution rights. Accordingly, due process issues do not arise and the Settlement should be approved.").

Indeed, U.S. federal courts outside of bankruptcy, in asbestos cases, securities class actions, ERISA class actions, and similar cases, regularly approve partial settlements containing bar orders that prevent contribution and indemnity claims by non-settling defendants against settling defendants, while providing non-settling defendants with judgment reduction.

> Partial settlements which feature the entry of bar orders are neither unusual nor presumptively inappropriate. Such orders barring the interposition of contribution and indemnity claims can not only provide powerful incentive for a party such as [non-settling party] to enter into a settlement, but indeed in most instances represent indispensable features of negotiated partial agreements.

Agway, Inc. Employees' 401(k) Thrift Inv. Plan v. Magnuson, 409 F. Supp. 2d 136, 142-43 (N.D.N.Y. 2005). "[C]ourts may approve provisions in settlement agreements that bar contribution and indemnification claims between the settling defendants and non-settling defendants so long as there is a provision that gives the non-settling defendants an appropriate right of set-off from any judgment imposed against them." In re WorldCom, Inc. ERISA Litig., 339 F. Supp. 2d 561, 568 (S.D.N.Y. 2004); see also Eichenholtz v. Brennan, 52 F.3d 478, 487 (3d Cir. 1995), In re Enron Corp. Sec., Derivative & "ERISA" Litig., 228 F.R.D. 541, 559-60 (S.D. Tex. 2005), Smith v. Arthur Andersen LLP, 421 F.3d 989, 999-1000 (9th Cir. 2005) (all holding same).

Indeed, the First Circuit specifically allows a judgment reduction provision that reallocates among other liable parties the percentage of liability attributable to an entity in bankruptcy. Austin v. Raymark Indus., Inc., 841 F.2d 1184, 1187 (1st Cir. 1988); see also In re New York City Asbestos Litig., 572 N.Y.S.2d 1006 (Sup. Ct. 1991) (same); In re Joint E. & S. Districts Asbestos Litig., 124 F.R.D. 538 (E.D.N.Y. 1989) (same).

3. CP's Argument that this Court Should Refrain from Enforcement of the Sanction Order Because CP has Appealed the Sanction Order in Canada Lacks Merit and is Contrary to All Case Law on Point.

The pendency of an appeal of a foreign court's order is not a basis for a U.S. court to deny – or even delay – recognition or enforcement of the foreign court's order. As the Bankruptcy Court in Gerova clearly explained:

> The Objectors also argue that recognition is not "ripe" because the Bermuda Court's Order winding-up Gerova is currently on appeal. Again, the Objectors cite no authority for the proposition that a foreign proceeding should not be recognized when the order commencing that proceeding is subject to appeal. That requirement cannot be found in the plain language of § 1517. Nor can it be found in § 1515(b)(1), which requires a petitioner to submit "a certified copy of the decision commencing such foreign proceeding" but does not require the decision to be final or non-appealable. Where Congress has elected not to impose such a requirement on recognition, there is no basis for the Court to do so here . . . The order of the Bermuda Court has been adequate to permit the Liquidators to take on their duties, and if the order is reversed on appeal, § 1518 requires that the Liquidators inform this Court accordingly.

482 B.R. 86, 94 (Bankr. S.D.N.Y. 2012) (citations omitted).

The Bankruptcy Court in Sino-Forest took the same view, where, like here, the objecting party had appealed the underlying order in Canada:

> The Objectors' appeal to the Court of Appeal for Ontario failed. While an additional motion for leave to appeal may be filed in the Supreme Court of Canada*, this Court sees no reason to await the outcome of such at motion (if it is made) before ruling on the pending matter; the issues raised are not novel here or in Canada*, as this Court's decision in Metcalfe demonstrates.

501 B.R. at 663 (emphasis added).

In Rede, the Bankruptcy Court for the Southern District of New York had the opportunity to consider the same question this Court must determine (i.e., whether to enforce a foreign plan confirmation order), including objections similar to CP's (e.g., objections by a party whose appeal of the foreign plan confirmation order was still pending in the foreign jurisdiction, Brazil). In disposing of the objection, the court found that

> [T]he Plan Enforcement Relief does not prevent the Ad Hoc Group from continuing to assert its rights under Brazilian law in the pending appeals of the decisions of the Brazilian Bankruptcy Court. In balancing the interests of the Rede Debtors against those of the Ad Hoc Group, the Court concludes that the Plan Enforcement Relief passes muster under section 1522(a) and is relief that is proper under section 1521.

Rede, 515 B.R. at 94.

The Rede court's reference to §§ 1521 and 1522(a) address CP's Objection head on. Section 1522(a) allows a court to recognize and enforce foreign orders only if the interests of the creditors and "other interested entities" are sufficiently protected. The provision also allows a court to modify or terminate any of the relief available upon recognition. In spite of the pending appeal of the underlying order in Rede, the court did not modify the relief requested in any way (e.g., by deferring enforcement until after the Brazilian appeal had been heard). See id.; see also Multicanal, 314 B.R. at 499 (recognizing and enforcing a foreign proceeding, without modification, while noting that appeals of the foreign order were still pending). CP's argument that "absurd results" or a parade of horribles will result from not waiting is baseless. This Court's order simply extends the reach of the Sanction Order to the U.S. If the effect of the Sanction Order is in suspense, so will be this Court's order.

4. CP's Reliance on Vitro is Misplaced and Misleading

CP cites extensively to Vitro, a case that has been criticized and distinguished repeatedly, and which simply does not stand for the points of law that CP credits to that case. Indeed, CP grossly mis-cites the decision.

Vitro does not stand for the proposition that a U.S. court must consider "whether the relief requested [in a recognition action] would otherwise be available in the United States." Vitro, 701 F.3d at 1057.[12] As detailed above, such a holding would be contrary to every U.S. decision on international comity. The Fifth Circuit's ultimate holding in Vitro was that the Bankruptcy Court did not abuse its discretion in denying recognition to a Mexican proceeding on numerous, non-exclusive grounds:

> [W]e hold that Vitro has not met its burden of showing that the relief requested under the Plan—a non-consensual discharge of non-debtor guarantors—is substantially in accordance with the circumstances that would warrant such relief in the United States. In so holding, we stress the deferential standard under which we review the bankruptcy court's determination. It is not our role to determine whether the above-summarized evidence would lead us to the same conclusion. Our only task is to determine whether the bankruptcy court's decision was reasonable.

Id. at 1069.

Further, Vitro never actually reached the determination of whether the foreign court's orders would violate public policy, and stated so explicitly:

> Because we conclude that relief is not warranted under § 1507, however, and would also not be available under § 1521, we do not reach whether the [foreign] plan would be manifestly contrary to a fundamental public policy of the United States.[46]
>
> > n.46 For the same reason, we do not reach the Objecting Creditors' arguments that the Plan violates a fundamental public policy for infringing on the absolute

[12] Sino-Forest rejects Vitro's "three-step analysis" which includes an analysis of whether the relief requested would be available in the U.S. only if the relief requested does not fall under the enumerated provisions of § 1521. As Sino-Forest found: "the Court believes that Vitro's three-step approach is unnecessary here because the Court already decided in Metcalfe that the relief sought is available under section 1507. Therefore, the Court declines to decide whether the 'any appropriate relief' language in section 1521 would also provide a basis for the relief." Sino-Forest, 501 B.R. at 664, n3.

> priority rule, the Contract Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 1, the Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa, *et seq.,* or the interests of the United States in protecting creditors from so called "bad faith schemes."

Id. at 1070.

As other courts have noted, Vitro "was largely premised on an analysis of section 1507(b)(4) – 'distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title [11] ...'" and concluded "that the bankruptcy court did not abuse its discretion in finding that Vitro did not carry its burden under that subsection." Sino-Forest, 501 B.R. at 665. CP's Objection has nothing to say about the distribution of proceeds under the Sanction Order.

The Eleventh Circuit Court of Appeals noted that even Vitro's analysis of third-party releases was misplaced. Seaside Eng'g, 780 F.3d at 1077 (11th Cir. 2015) ("Although the Fifth Circuit in [Vitro], cited the Eleventh Circuit case of In re Jet Florida Systems, Inc., 883 F.2d 970 (1989), as being consistent with the minority view that non-consensual, non-debtor releases were prohibited by 11 U.S.C. § 524(e), the Fifth Circuit citation was misplaced. Our Jet Florida case did not involve a non-debtor release."). Vitro provides no basis whatsoever to overcome the avalanche of authority compelling recognition and enforcement of the Sanction Order; indeed, Vitro is irrelevant to this case.

E. CP's Counsel Should be Sanctioned Pursuant to 28 U.S.C. §1927.[13]

As Justice Dumas has found, CP's "sole objective" is to "obtain a strategic negotiating advantage that would provide it with even more rights than it would have if the parties had simply decided to settle the class action out of court." He also found that to "accept the arguments presented by CP would undermine public confidence in the courts." Given that the

[13] The Trustee reserves all rights to pursue CP directly for sanctions or damages arising from CP's litigation tactics.

Sanction Order is entitled to comity, those findings and conclusions are entitled to *res judicata* and/or collateral estoppel effect in this Court. In re Aerovias Nacionales de Colombia S.A. Avianca, 345 B.R. 120, 125 (Bankr. S.D.N.Y. 2006) ("a claim determination by a non-bankruptcy court in the United States would seemingly be conclusive as to the issues determined, for bankruptcy purposes, based on *res judicata* or collateral estoppel grounds . . . A similar result should ordinarily apply to determinations of foreign courts by virtue of principles of comity.") (internal citations omitted); Talisman Capital Alternative Inv. Fund, Ltd. v. Moutett (In re Moutett), 493 B.R. 640, 656 (Bankr. S.D. Fla. 2013) ("Because the Jamaican judgment should be given comity, then *res judicata* and collateral estoppel resolve all those claims addressed in or directly dependent on, the allegations resolved by the Jamaican trial court.").

Moreover, CP and its counsel were undoubtedly aware that the relief sought by the Monitor did not add to its burdens under the Sanction Order, given that CP is domiciled in Canada, and that, accordingly, CP was without standing to oppose the relief sought by the Motion. Further, CP and its counsel are charged with knowledge of the overwhelming and unbroken precedent mandating recognition of CCAA proceedings and enforcement of plan sanction orders issued pursuant to the CCAA, precedent that makes CP's opposition patently frivolous. CP has consistently mischaracterized the Sanction Order and the findings of Justice Dumas. Clearly, the opposition to recognition and to enforcement of the Sanction Order is simply part of CP's cynical and extortionate attempt to delay these proceedings and the distribution of funds to the victims of the Derailment at all costs solely in the vain attempt to, at all costs, increase its perceived settlement leverage. That CP has made itself the "last man standing" does not justify CP holding these proceedings, or the distributions to the victims, hostage.

"[A] bankruptcy court may impose sanctions pursuant to 28 U.S.C. §1927 if it finds that an attorney's actions are so completely without merit as to require the conclusion that they must have been taken for some improper purpose such as delay." In re Residential Capital, LLC, 512 B.R. 179, 191 (Bankr. S.D.N.Y. 2014) (Court imposes sanctions for baseless litigation in violation of plan-based injunction and counsel's related delaying tactics). See also In re Saint Vincent's Catholic Med. Ctr. of N.Y., 2014 WL 3545581 at *6 (S.D.N.Y. July 16, 2014) (sanctions under section 1927 are proper "when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose such as delay," citing Oliveri, 675 F.3d at 1273); In re Prosser, 777 F.3d 154, 162 (3d Cir. 2015) (sanctions proper under section 1927 where "counsel knew or should have known" that claims were meritless, and "that the motive for filing the suit was for an improper purpose such as harassment."); In re Royal Manor Mgmt., Inc., 525 B.R. 338, 365 (6th Cir. B.A.P. 2015) ("The purpose of sanctions under §1927 is 'to deter dilatory litigation practices and to punish aggressive tactics that far exceed zealous advocacy.").

Justice Dumas' findings as to improper purpose are entitled to full respect in this Court. CP should not be allowed to put the parties to great expense to defend a settlement and a plan that does not, as a matter of law, prejudice CP in any way. More important, CP should not be allowed to delay these proceedings and the distribution of settlement funds in an attempt to gain an untoward settlement advantage. The fact that CP's attempts, as long as the Trustee serves, will be unsuccessful does not make the attempt any less contemptible or any less sanctionable. CP's counsel should be sanctioned and made to pay the costs of all parties, including the Trustee, in responding to its objections.

F. The U.S. Trustee's Motion to Continue the Petition and Motion Until Such Time as the Court can Rule on the Trustee's Plan is Unnecessary and Should be Denied.

The U.S. Trustee requests that the Court continue the Petition and the Motion to the same date as the hearing on confirmation of the Trustee's plan in MMA's chapter 11 case. This request is another way of suggesting that the Court should first determine whether the Sanction Order would be allowable in a plenary chapter 11 case (specifically MMA's). In other words, the U.S. Trustee does not object to the Petition and the Motion at this time, but would prefer to wait and see if the Court will confirm the Trustee's plan, which contains substantially similar relief to the Sanction Order. For the reasons set forth above, this is legally unnecessary, and not grounded in the law. Indeed, this request ignores the need for comity and simply disrespects the vote that has already occurred under the CCAA and the Sanction Order itself.

As explained in detail above, in determining whether to grant comity to the Sanction Order, the correct inquiry is whether the order's terms are permitted under Canadian law, not whether the terms would be permitted under U.S. bankruptcy law. This Court can enter an order enforcing the Sanction Order even if it could not, or would not, order such relief originally in MMA's chapter 11 case. There is no nexus or inter-dependence. There is no reason to delay this Court's ruling on the Petition and the Motion. For this reason, the Trustee respectfully objects to the Motion to Continue.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Trustee (a) supports the Petition and joins the Motion, (b) requests that this Court recognize and enforce the orders of the Québec Court, including the Sanction Order, and (c) requests that the Court deny the U.S. Trustee's Motion to Continue for the reasons stated above. Additionally, the Trustee requests that the Court sanction

CP in an amount to be determined by the Court, but not less than the amount of attorney's fees incurred by all parties, including the Trustee, in responding to CP's Objection.

Dated: August 18, 2015

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Robert J. Keach

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS - WESTERN DIVISION

IN THE MATTER OF:	.	Case #12-19882-hjb
	.	
NEW ENGLAND COMPOUNDING	.	
PHARMACY, INC.,	.	
	.	Springfield, Massachusetts
	.	**May 19, 2015**
Debtor.	.	10:15 a.m.

TRANSCRIPT OF HEARING ON:
#1219 JOINT MOTION TO APPROVE PLAN SUPPORT AND SETTLEMENT AGREEMENT WITH LIBERTY INDUSTRIES, INC.
#1289 JOINT MOTION FOR APPROVAL OF STIPULATIONS AND ORDER RELATING TO PRESERVATION OF CERTAIN PARTIES' RIGHT TO SEEK COMPARATIVE FAULT ALLOCATIONS UNDER THE FIRST AMENDED JOINT PLAN OF REORGANIZATION
#1311 JOINT MOTION FOR ORDER APPROVING NON-MATERIAL MODIFICATIONS TO THE FIRST AMENDED JOINT PLAN OF REORGANIZATION
#1308 CONFIRMATION OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION

BEFORE THE HONORABLE HENRY J. BOROFF

APPEARANCES:

For the Chapter 11 Trustee, Paul D. Moore:	MICHAEL R. LASTOWSKI, ESQ. PAUL D. MOORE, ESQ. Duane Morris LLP 1100 Market Street Philadelphia, PA 19101
United States: Department of Justice:	JENNIFER L HERTZ, ESQ. Office of the United States Trustee 5 Post Office Square 10th Floor, Suite 1000 Boston, MA 02109
For the Official Committee of Unsecured Creditors:	DAVID J. MOLTON, ESQ. KIERSTEN A. TAYLOR, ESQ. Brown Rudnick LLP Seven Times Square New York, NY 10036

THE COURT: All right, thank you.

MR. MOORE: Thank you.

MR. MOLTON: One last -- Your Honor, one last point before we go. I was reminded by a number of parties of something that I -- a number of -- all the interested parties wanted me to do is thank some of the parties that couldn't have been here today that helped bring us to here, and specifically the team of mediators that was utilized to accomplish the settlements. And that's Professor Eric Green, Carmin Reiss, Stanley Klein (ph.), and David Geronemus.

It's fair to say, Judge, that without them, we wouldn't have had the success that we had in bringing this plan to you today. So I did want to give them a shout-out, and had forgotten to do so earlier, and was glad to be reminded of that.

THE COURT: Thank you. Well, from my perspective, there are too many professionals here for me to thank, for the risk of leaving somebody out. But I wanted to comment that I think that this plan and its associated trust agreements are the best that could have been achieved for the hundreds of people for whom there could be no full compensation. And that this is, in my view, the highest and best use of the Bankruptcy Code, and evidence of the professionalism of the bar in this district and in the affected districts.

Is there anything else to do today?

MR. MOLTON: Nothing, Your Honor.

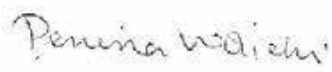
THE COURT: All right. So I'll look forward to getting the third amended plan and the amended proposed order and I will execute them if they are changed as we have discussed today. Thank you.

IN UNISON: Thank you, Your Honor.

(End at 11:21 a.m.)

* * * * * * * * * *

I certify that the foregoing is a true and accurate transcript from the digitally sound recorded record of the proceedings.



/s/ Penina Wolicki May 20, 2015

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#12-19882 05-19-2015

COURT FILE NO.: 06-CL-6241
DATE: 20070222

SUPERIOR COURT OF JUSTICE - ONTARIO
(COMMERCIAL LIST)

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO

Applicants

BEFORE: Justice Ground

COUNSEL: Fred Myers and David Bish, for CCAA Applicants
Derrick Tay and Randy Sutton, for Iovate Companies
Natasha MacParland and Jay Schwartz, for the RSM Richter Inc.
Steven Gollick, for Zurich Insurance Company
A. Kauffman, for GNC Oldco
Sheryl Seigel, for General Nutrition Companies Inc. and other GNC Newcos
Pamela Huff and Beth Posno for Representative Plaintiffs
Jeff Carhart, for Ad Hoc Tort Claimants Committee
David Molton and Steven Smith, for Brown Rudnick
Brent McPherson, for XL Insurance America Inc.
Alex Ilchenko, for Walgreen Co.
Lisa La Horey, for E&L Associates, Inc.

DATE HEARD: February 15, 2007

ENDORSEMENT

[1] The motion before this court is brought by the Applicants pursuant to s. 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for the sanction of a plan (the "Plan") put forward by the Applicants for distributions to each creditor in the General Claimants Class ("GCC") and each creditor in the Personal Injury Claimants Class ("PICC"), such distributions to be funded from the contributed funds paid to the Monitor by the subject parties ("SP") as defined in the Plan.

[2] The Plan is not a restructuring plan but is a unique liquidation plan funded entirely by parties other than the Applicants.

[3] The purpose and goal of the Applicants in seeking relief under the CCAA is to achieve a global resolution of a large number of product liability and other lawsuits commenced principally in the United States of America by numerous claimants and which relate to products formerly advertised, marketed and sold by MuscleTech Research and Development Inc. ("MDI") and to resolve such actions as against the Applicants and Third Parties.

[4] In addition to the Applicants, many of these actions named as a party defendant one or more of: (a) the directors and officers, and affiliates of the Applicants (i.e. one or more of the Iovate Companies); and/or (b) arm's length third parties such as manufacturers, researchers and retailers of MDI's products (collectively, the "Third Parties"). Many, if not all, of the Third Parties have claims for contribution or indemnity against the Applicants and/or other Third Parties relating to these actions.

The Claims Process

[5] On March 3, 2006, this court granted an unopposed order (the "Call For Claims Order") that established a process for the calling of: (a) all Claims (as defined in the Call For Claims Order) in respect of the Applicants and its officers and directors; and (b) all Product Liability Claims (as defined in the Call For Claims Order) in respect of the Applicants and Third Parties.

[6] The Call For Claims Order required people who wished to advance claims to file proofs of claim with the Monitor by no later than 5:00 p.m. (EST) on May 8, 2006 (the "Claims Bar Date"), failing which any and all such claims would be forever barred. The Call For Claims Order was approved by unopposed Order of the United States District Court for the Southern District of New York (the "U.S. Court") dated March 22, 2006. The Call For Claims Order set out in a comprehensive manner the types of claims being called for and established an elaborate method of giving broad notice to anyone who might have such claims.

[7] Pursuant to an order dated June 8, 2006 (the "Claims Resolution Order"), this court approved a process for the resolution of the Claims and Product Liability Claims. The claims resolution process set out in the Claims Resolution Order provided for, *inter alia*: (a) a process for the review of proofs of claim filed with the Monitor; (b) a process for the acceptance, revision or dispute, by the Applicants, with the assistance of the Monitor, of Claims and/or Product Liability Claims for the purposes of voting and/or distribution under the Plan; (c) the appointment of a claims officer to resolve disputed claims; and (d) an appeal process from the determination of the claims officer. The Claims Resolution Order was recognized and given effect in the U.S. by Order of the U.S. Court dated August 1, 2006.

[8] From the outset, the Applicants' successful restructuring has been openly premised on a global resolution of the Product Liability Claims and the recognition that this would be achievable primarily on a consensual basis within the structure of a plan of compromise or arrangement only if the universe of Product Liability Claims was brought forward. It was known to the Applicants that certain of the Third Parties implicated in the Product Liability Actions were agreeable in principle to contributing to the funding of a plan, provided that as a result of

the restructuring process they would achieve certainty as to the resolution of all claims and prospective claims against them related to MDI products. It is fundamental to this restructuring that the Applicants have no material assets with which to fund a plan other than the contributions of such Third Parties.

[9] Additionally, at the time of their filing under the CCAA, the Applicants were involved in litigation with their insurer, Zurich Insurance Company ("Zurich Canada") and Zurich America Insurance Company, regarding the scope of the Applicants' insurance coverage and liability for defence expenses incurred by the Applicants in connection with the Product Liability Actions.

[10] The Applicants recognized that in order to achieve a global resolution of the Product Liability Claims, multi-party mediation was more likely to be successful in providing such resolution in a timely manner than a claims dispute process. By unopposed Order dated April 13, 2006 (the "Mediation Order"), this court approved a mediation process (the "Mediation") to advance a global resolution of the Product Liability Claims. Mediations were conducted by a Court-appointed mediator between and among groups of claimants and stakeholders, including the Applicants, the Ad Hoc Committee of MuscleTech Tort Claimants (which had previously received formal recognition by the Court and the U.S. Court), Zurich Canada and certain other Third Parties.

[11] The Mediation facilitated meaningful discussions and proved to be a highly successful mechanism for the resolution of the Product Liability Claims. The vast majority of Product Liability Claims were settled by the end of July, 2006. Settlements of three other Product Liability Claims were achieved at the beginning of November, 2006. A settlement was also achieved with Zurich Canada outside the mediation. The foregoing settlements are conditional upon a successfully implemented Plan that contains the releases and injunctions set forth in the Plan.

[12] As part of the Mediation, agreements in respect of the funding of the foregoing settlements were achieved by and among the Applicants, the Iovate Companies and certain Third Parties, which funding (together with other funding being contributed by Third Parties) (collectively, the "Contributed Funds") comprises the funds to be distributed to affected creditors under the Plan. The Third Party funding arrangements are likewise conditional upon a successfully implemented Plan that contains the releases and injunctions set forth in the Plan.

[13] It is well settled law that, for the court to exercise its discretion pursuant to s. 6 of the CCAA and sanction a plan, the Applicants must establish that: (a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court; (b) nothing has been done or purported to be done that is not authorized by the CCAA; and (c) the Plan is fair and reasonable.

[14] On the evidence before this court I am fully satisfied that the first two requirements have been met. At the outset of these proceedings, Farley J. found that the Applicants met the criteria for access to the protection of the CCAA. The Applicants are insolvent within the meaning of Section 2 of the CCAA and the Applicants have total claims within the meaning of Section 12 of the CCAA in excess of $5,000,000.

[15] By unopposed Order dated December 15, 2006 (the "Meeting Order"), this Court approved a process for the calling and holding of meetings of each class of creditors on January 26, 2007 (collectively, the "Meetings"), for the purpose of voting on the Plan. The Meeting Order was approved by unopposed Order of the U.S. Court dated January 9, 2007. On December 29, 2006, and in accordance with the Meeting Order, the Monitor served all creditors of the Applicants, with a copy of the Meeting Materials (as defined in the Meeting Order).

[16] The Plan was filed in accordance with the Meeting Order. The Meetings were held, quorums were present and the voting was carried out in accordance with the Meeting Order. The Plan was unanimously approved by both classes of creditors satisfying the statutory requirements of the CCAA.

[17] This court has made approximately 25 orders since the Initial Order in carrying out its general supervision of all steps taken by the Applicants pursuant to the Initial CCAA order and in development of the Plan. The U.S. Court has recognized each such order and the Applicants have fully complied with each such order.

The Plan is Fair and Reasonable

[18] It has been held that in determining whether to sanction a plan, the court must exercise its equitable jurisdiction and consider the prejudice to the various parties that would flow from granting or refusing to grant approval of the plan and must consider alternatives available to the Applicants if the plan is not approved. An important factor to be considered by the court in determining whether the plan is fair and reasonable is the degree of approval given to the plan by the creditors. It has also been held that, in determining whether to approve the plan, a court should not second-guess the business aspects of the plan or substitute its views for that of the stakeholders who have approved the plan.

[19] In the case at bar, all of such considerations, in my view must lead to the conclusion that the Plan is fair and reasonable. On the evidence before this court, the Applicants have no assets and no funds with which to fund a distribution to creditors. Without the Contributed Funds there would be no distribution made and no Plan to be sanctioned by this court. Without the Contributed Funds, the only alternative for the Applicants is bankruptcy and it is clear from the evidence before this court that the unsecured creditors would receive nothing in the event of bankruptcy.

[20] A unique feature of this Plan is the Releases provided under the Plan to Third Parties in respect of claims against them in any way related to "the research, development, manufacture, marketing, sale, distribution, application, advertising, supply, production, use or ingestion of products sold, developed or distributed by or on behalf of" the Applicants (see Article 9.1 of the Plan). It is self-evident, and the Subject Parties have confirmed before this court, that the Contributed Funds would not be established unless such Third Party Releases are provided and accordingly, in my view it is fair and reasonable to provide such Third Party releases in order to establish a fund to provide for distributions to creditors of the Applicants. With respect to support of the Plan, in addition to unanimous approval of the Plan by the creditors represented at meetings of creditors, several other stakeholder groups support the sanctioning of the Plan,

including Iovate Health Sciences Inc. and its subsidiaries (excluding the Applicants) (collectively, the "Iovate Companies"), the Ad Hoc Committee of MuscleTech Tort Claimants, GN Oldco, Inc. f/k/a General Nutrition Corporation, Zurich American Insurance Company, Zurich Insurance Company, HVL, Inc. and XL Insurance America Inc. It is particularly significant that the Monitor supports the sanctioning of the Plan.

[21] With respect to balancing prejudices, if the Plan is not sanctioned, in addition to the obvious prejudice to the creditors who would receive nothing by way of distribution in respect of their claims, other stakeholders and Third Parties would continue to be mired in extensive, expensive and in some cases conflicting litigation in the United States with no predictable outcome.

[22] The sanction of the Plan was opposed only by prospective representative plaintiffs in five class actions in the United States. This court has on two occasions denied class action claims in this proceeding by orders dated August 16, 2006 with respect to products containing prohormone and dated December 11, 2006 with respect to Hydroxycut products. The first of such orders was appealed to the Ontario Court of Appeal and the appeal was dismissed. The second of such orders was not appealed. In my reasons with respect to the second order, I stated as follows:

> ...This CCAA proceeding was commenced for the purpose of achieving a global resolution of all product liability and other lawsuits commenced in the United States against Muscletech. As a result of strenuous negotiation and successful court-supervised mediation through the District Court, the Applicants have succeeded in resolving virtually all of the outstanding claims with the exception of the Osborne claim and, to permit the filing of a class proof of claim at this time, would seriously disrupt and extend the CCAA proceedings and the approval of a Plan and would increase the costs and decrease the benefits to all stakeholders. There appears to have been adequate notice to potential claimants and no member of the putative class other than Osborne herself has filed a proof of claim. It would be reasonable to infer that none of the other members of the putative class is interested in filing a claim in view of the minimal amounts of their claims and of the difficulty of coming up with documentation to support their claim. In this context the comments of Rakoff, J. in *Re Ephedra Products Liability Litigation* (2005) U.S. Dist. LEXIS 16060 at page 6 are particularly apt.
>
> > Further still, allowing the consumer class actions would unreasonably waste an estate that was already grossly insufficient to pay the allowed claims of creditors who had filed timely individual proofs of claim. The Debtors and Creditors Committee estimate that the average claim of class [*10] members would be $ 30, entitling each claimant to a distribution of about $ 4.50 (figures which Barr and Lackowski do not dispute; although Cirak argues that some consumers made repeated purchases of Twinlabs steroid hormones totaling a few hundred dollars each). Presumably, each claimant would have to show some proof of purchase, such as the product bottle. Because the Debtor ceased marketing these

> products in 2003, many purchasers would no longer have such proof. Those who did might well find the prospect of someday recovering $ 4.50 not worth the trouble of searching for the old bottle or store receipt and filing a proof of claim. Claims of class members would likely be few and small. The only real beneficiaries of applying Rule 23 would be the lawyers representing the class. *Cf Woodward*, 205 B.R. at 376-77. The Court has discretion under Rule 9014 to find that the likely total benefit to class members would not justify the cost to the estate of defending a class action under Rule 23.

[35] In addition, in the case at bar, there would appear to be substantial doubt as to whether the basis for the class action, that is the alleged false and misleading advertising, would be found to be established and substantial doubt as to whether the class is certifiable in view of being overly broad, amorphous or vague and administratively difficult to determine. (See *Perez et al. v. Metabolife International Inc.* (2003) U.S. Dist. LEXIS 21206 at pages 3-5). The timing of the bringing of this motion in this proceeding is also problematic. The claims bar date has passed. The mediation process is virtually completed and the Osborne claim is one of the few claims not settled in mediation although counsel for the putative class were permitted to participate in the mediation process. The filing of the class action in California occurred prior to the initial CCAA Order and at no prior time has this court been asked to approve the filing of a class action proof of claim in these proceedings. The claims of the putative class members as reflected in the comments of Rakoff, J. quoted above would be limited to a refund of the purchase price for the products in question and, in the context of insolvency and restructuring proceedings, *de minimus* claims should be discouraged in that the costs and time in adjudicating such claims outweigh the potential recoveries for the claimants. The claimants have had ample opportunity to file evidence that the call for claims order or the claims process as implemented has been prejudicial or unfair to the putative class members.

[23] The representative Plaintiffs opposing the sanction of the Plan do not appear to be rearguing the basis on which the class claims were disallowed. Their position on this motion appears to be that the Plan is not fair and reasonable in that, as a result of the sanction of the Plan, the members of their classes of creditors will be precluded as a result of the Third Party Releases from taking any action not only against MuscleTech but against the Third Parties who are defendants in a number of the class actions. I have some difficulty with this submission. As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided. The representative Plaintiffs and all the members of their classes had ample opportunity to submit individual proofs of claim and have chosen not to do so, except for two or three of the representative Plaintiffs who did file individual proofs of claim but withdrew them when asked to submit proof of purchase of the subject products. Not only are the claims of the representative

Plaintiffs and the members of their classes now barred as a result of the Claims Bar Order, they cannot in my view take the position that the Plan is not fair and reasonable because they are not participating in the benefits of the Plan but are precluded from continuing their actions against MuscleTech and the Third Parties under the terms of the Plan. They had ample opportunity to participate in the Plan and in the benefits of the Plan, which in many cases would presumably have resulted in full reimbursement for the cost of the product and, for whatever reason, chose not to do so.

The representative Plaintiffs also appear to challenge the jurisdiction of this court to authorize the Third Party Releases as one of the terms of the Plan to be sanctioned. I remain of the view expressed in paragraphs 7-9 of my endorsement dated October 13, 2006 in this proceeding on a motion brought by certain personal injury claimants, as follows:

> With respect to the relief sought relating to Claims against Third Parties, the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:
>
> > "the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis."
>
> Moreover, it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made. In addition, the Claims Resolution Order, which was not appealed, clearly defines Product Liability Claims to include claims against Third Parties and all of the Objecting Claimants did file Proofs of Claim settling [sic] out in detail their claims against numerous Third Parties.
>
> It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties. In *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4th) Paperny J. stated at p. 92:

> While it is true that section 5.2 of the CCAA does not authorize a release of claims against third parties other than directors, it does not prohibit such releases either. The amended terms of the release will not prevent claims from which the CCAA expressly prohibits release.

[24] The representative Plaintiffs have referred to certain decisions in the United States that appear to question the jurisdiction of the courts to grant Third Party Releases. I note, however, that Judge Rakoff, who is the U.S. District Court Judge is seized of the *MuscleTech* proceeding, and Judge Drain stated in a hearing in *Re TL Administration Corporation* on July 21, 2005:

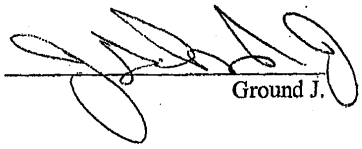
> It appears to us to be clear that this release was, indeed, essential to the settlement which underlies this plan as set forth at length on the record, including by counsel for the official claimants committee as well as by the other parties involved, and, as importantly, by our review of the settlement agreement itself, which from the start, before this particular plan in fact was filed, included a release that was not limited to class 4 claims but would extend to claims in class 5 that would include the type of claim asserted by the consumer class claims.
>
> Therefore, in contrast to the Blechman release, this release is essential to confirmation of this plan and the distributions that will be made to creditors in both classes, class 4 and class 5.
>
> Secondly, the parties who are being released here have asserted indemnification claims against the estate, and because of the active nature of the litigation against them, it appears that those claims would have a good chance, if not resolved through this plan, of actually being allowed and reducing the claims of creditors.
>
> At least there is a clear element of circularity between the third-party claims and the indemnification rights of the settling third parties, which is another very important factor recognized in the Second Circuit cases, including Manville, Drexel, Finely, Kumble and the like.
>
> The settling third parties it is undisputed are contributing by far the most assets to the settlement, and those assets are substantial in respect of this reorganization by this Chapter 11 case. They're the main assets being contributed.
>
> Again, both classes have voted overwhelmingly for confirmation of the plan, particularly in terms of the numbers of those voting. Each of those factors, although they may be weighed differently in different cases, appear in all the cases where there have been injunctions protecting third parties.
>
> The one factor that is sometimes cited in other cases, i.e., that the settlement will pay substantially all of the claims against the estate, we do not view to be dispositive. Obviously, substantially all of the claims against the estate are not

> being paid here. On the other hand, even, again, in the Second Circuit cases, that is not a dispositive factor. There have been numerous cases where plans have been confirmed over opposition with respect to third-party releases and third-party injunctions where the percentage recovery of creditors was in the range provided for under this plan.
>
> The key point is that the settlement was arrived at after arduous arm's length negotiations and that it is a substantial amount and that the key parties in interest and the court are satisfied that the settlement is fair and it is unlikely that substantially more would be obtained in negotiation.

[25] The reasoning of Judge Rakoff and Judge Drain is, in my view, equally applicable to the case at bar where the facts are substantially similar.

[26] It would accordingly appear that the jurisdiction of the courts to grant Third Party Releases has been recognized both in Canada and in the United States.

[27] An order will issue sanctioning the Plan in the form of the order submitted to this court and appended as Schedule B to this endorsement.



Released: February 22, 2007

SCHEDULE "A"

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Trademark Ltd.

MT Canadian Supplement Trademark Ltd.

MT Foreign Supplement Trademark Ltd.

HC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Ltd. (f/k/a New HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

SCHEDULE "B"

Court File No. 06-CL-6241

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 15TH
	)	
MR. JUSTICE GROUND	)	DAY OF FEBRUARY, 2007

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO

Applicants

SANCTION ORDER

THIS MOTION, made by MuscleTech Research and Development Inc. ("MDI") and those entities listed on Schedule "A" hereto (collectively with MDI, the "Applicants") for an order approving and sanctioning the plan of compromise or arrangement (inclusive of the schedules thereto) of the Applicants dated December 22, 2006 (the "Plan"), as approved by each class of Creditors on January 26, 2007, at the Meeting, and which Plan (without schedules) is attached as Schedule "C" to this Order, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING: (a) the within Notice of Motion, filed; (b) the Affidavit of Terry Begley sworn January 31, 2007, filed; and (c) the Seventeenth Report of the Monitor dated February 7, 2007 (the "Seventeenth Report"), filed, and upon hearing submissions of counsel to: (a) the

Applicants; (b) the Monitor; (c) Iovate Health Sciences Group Inc. and those entities listed on Schedule "B" hereto; (d) the Ad Hoc Committee of MuscleTech Tort Claimants (the "Committee"); (e) GN Oldco, Inc. f/k/a General Nutrition Companies; (f) Zurich Insurance Company; (g) GNC Corporation and other GNC newcos; and (h) certain representative plaintiffs in purported class actions involving products containing the ingredient prohormone, no one appearing for the other persons served with notice of this Motion, as duly served and listed on the Affidavit of Service of Elana Polan, sworn February 2, 2007, filed,

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan.

SERVICE AND MEETING OF CREDITORS

2. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Plan and the Monitor's Seventeenth Report to all Creditors.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meeting Materials (as defined in the Meeting Order) to all Creditors, and that the Meeting was duly convened, held and conducted, in conformity with the CCAA, the Meeting Order and all other Orders of this Court in the CCAA Proceedings. For greater certainty, and without limiting the foregoing, the vote cast at the Meeting on behalf of Rhodrick Harden by David Molton of Brown Rudnick Berlack Israelis LLP, in its capacity as representative counsel for the Ad Hoc Committee of MuscleTech Tort Claimants, is hereby confirmed.

4. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the within Notice of Motion and Motion Record, and of the date and time of the hearing held by this Court to consider the within Motion, such that: (i) all Persons have had an opportunity to be present and be heard at such hearing; (ii) the within Motion is properly returnable today; and (iii) further service on any interested party is hereby dispensed with.

SANCTION OF PLAN

5. **THIS COURT ORDERS AND DECLARES** that:

(a) the Plan has been approved by the requisite majorities of the Creditors in each class present and voting, either in person or by proxy, at the Meeting, all in conformity with the CCAA and the terms of the Meeting Order;

(b) the Applicants have acted in good faith and with due diligence, have complied with the provisions of the CCAA, and have not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA;

(c) the Applicants have adhered to, and acted in accordance with, all Orders of this Court in the CCAA Proceedings; and

(d) the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, injunctions and results provided for therein and effected thereby, including but not limited to the Settlement Agreements, is both substantively and procedurally fair, reasonable and in the best interests of the

Creditors and the other stakeholders of the Applicants, and does not unfairly disregard the interests of any Person (whether a Creditor or otherwise).

6. **THIS COURT ORDERS** that the Plan be and is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

PLAN IMPLEMENTATION

7. **THIS COURT ORDERS** that the Applicants and the Monitor, as the case may be, are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Plan in accordance with its terms, and enter into, implement and consummate all of the steps, transactions and agreements contemplated pursuant to the Plan.

8. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions precedent set out in Section 7.1 of the Plan, the Monitor shall file with this Court and with the U.S. District Court a certificate that states that all conditions precedent set out in Section 7.1 of the Plan have been satisfied or waived, as applicable, and that, with the filing of such certificate by the Monitor, the Plan Implementation Date shall have occurred in accordance with the Plan.

9. **THIS COURT ORDERS AND DECLARES** that as of the Plan Implementation Date, the Plan, including all compromises, arrangements, transactions, releases, discharges and injunctions provided for therein, shall inure to the benefit of and be binding and effective upon the Creditors, the Subject Parties and all other Persons affected thereby, and on their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

10. **THIS COURT ORDERS AND DECLARES** that, as of the Plan Implementation Date, the validity or invalidity of Claims and Product Liability Claims, as the case may be, and the quantum of all Proven Claims and Proven Product Liability Claims, accepted, determined or otherwise established in accordance with the Claims Resolution Order, and the factual and legal determinations made by the Claims Officer, this Court and the U.S. District Court in connection with all Claims and Product Liability Claims (whether Proven Claims and Proven Product Liability Claims or otherwise), in the course of the CCAA Proceedings are final and binding on the Subject Parties, the Creditors and all other Persons.

11. **THIS COURT ORDERS** that, subject to the provisions of the Plan and the performance by the Applicants and the Monitor of their respective obligations under the Plan, and effective on the Plan Implementation Date, all agreements to which the Applicants are a party shall be and remain in full force and effect, unamended, as at the Plan Implementation Date, and no Person shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations under, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such agreement, by reason of:

(a) any event that occurred on or prior to the Plan Implementation Date that would have entitled any Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicants);

(b) the fact that the Applicants have: (i) sought or obtained plenary relief under the CCAA or ancillary relief in the United States of America, including pursuant to

Chapter 15 of the *United States Bankruptcy Code*, or (ii) commenced or completed the CCAA Proceedings or the U.S. Proceedings;

(c) the implementation of the Plan, or the completion of any of the steps, transactions or things contemplated by the Plan; or

(d) any compromises, arrangements, transactions, releases, discharges or injunctions effected pursuant to the Plan or this Order.

12. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, all Persons (other than Unaffected Creditors, and with respect to Unaffected Claims only) shall be deemed to have waived any and all defaults then existing or previously committed by the Applicants, or caused by the Applicants, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, instrument, credit document, guarantee, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto (each, an "Agreement"), existing between such Person and the Applicants or any other Person and any and all notices of default and demands for payment under any Agreement shall be deemed to be of no further force or effect; provided that nothing in this paragraph shall excuse or be deemed to excuse the Applicants from performing any of their obligations subsequent to the date of the CCAA Proceedings, including, without limitation, obligations under the Plan.

13. **THIS COURT ORDERS** that, as of the Plan Implementation Date, each Creditor shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Creditor shall be deemed:

(a) to have executed and delivered to the Monitor and to the Applicants all consents, releases or agreements required to implement and carry out the Plan in its entirety; and

(b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicants as of the Plan Implementation Date (other than those entered into by the Applicants on or after the Filing Date) and the provisions of the Plan, the provisions of the Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

14. **THIS COURT ORDERS AND DECLARES** that any distributions under the Plan and this Order shall not constitute a "distribution" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada) and section 107 of the *Corporations Tax Act* (Ontario) and the Monitor in making any such payments is not "distributing", nor shall be considered to have "distributed", such funds, and the Monitor shall not incur any liability under the above-mentioned statutes for making any payments ordered and is hereby forever released, remised and discharged from any claims against it under section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada) and section 107 of the *Corporations Tax Act* (Ontario) or otherwise at law, arising as a result of distributions under the Plan and this Order and any claims of this nature are hereby forever barred.

APPROVAL OF SETTLEMENT AND FUNDING AGREEMENTS

15. **THIS COURT ORDERS** that each of the Settlement Agreements be and is hereby approved.

16. **THIS COURT ORDERS** that each of the Confidential Insurance Settlement Agreement and the Mutual Release be and is hereby approved.

17. **THIS COURT ORDERS** that copies of the Settlement Agreements, the Confidential Insurance Settlement Agreement and the Mutual Release shall be sealed and shall not form part of the public record, subject to further Order of this Honourable Court; provided that any party to any of the foregoing shall have received, and is entitled to receive, a copy thereof.

18. **THIS COURT ORDERS AND DIRECTS** the Monitor to do such things and take such steps as are contemplated to be done and taken by the Monitor under the Plan and the Settlement Agreements. Without limitation: (i) the Monitor shall hold and distribute the Contributed Funds in accordance with the terms of the Plan, the Settlement Agreements and the escrow agreements referenced in Section 5.1 of the Plan; and (ii) on the Plan Implementation Date, the Monitor shall complete the distributions to or on behalf of Creditors (including, without limitation, to Creditors' legal representatives, to be held by such legal representatives in trust for such Creditors) as contemplated by, and in accordance with, the terms of the Plan, the Settlement Agreements and the escrow agreements referenced in Section 5.1 of the Plan.

RELEASES, DISCHARGES AND INJUNCTIONS

19. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in the Plan, including those granted by and for

the benefit of the Subject Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan (and without which it would not be possible to complete the global resolution of the Product Liability Claims upon which the Plan and the Settlement Agreements are premised), and that, effective on the Plan Implementation Date, all such releases, discharges and injunctions are hereby sanctioned, approved and given full force and effect, subject to: (a) the rights of Creditors to receive distributions in respect of their Claims and Product Liability Claims in accordance with the Plan and the Settlement Agreements, as applicable; and (b) the rights and obligations of Creditors and/or the Subject Parties under the Plan, the Settlement Agreements, the Funding Agreements and the Mutual Release. For greater certainty, nothing herein or in the Plan shall release or affect any rights or obligations under the Plan, the Settlement Agreements, the Funding Agreements and the Mutual Release.

20. **THIS COURT ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan or in the Call For Claims Order, the Subject Parties and their respective representatives, predecessors, heirs, spouses, dependents, administrators, executors, subsidiaries, affiliates, related companies, franchisees, member companies, vendors, partners, distributors, brokers, retailers, officers, directors, shareholders, employees, attorneys, sureties, insurers, successors, indemnitees, servants, agents and assigns (collectively, the "Released Parties"), as applicable, be and are hereby fully, finally, irrevocably and unconditionally released and forever discharged from any and all Claims and Product Liability Claims, and any and all past, present and future claims, rights, interests, actions, liabilities, demands, duties, injuries, damages, expenses, fees (including medical and attorneys' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual,

liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: (A) any proof of claim filed by any Person in accordance with the Call For Claims Order (whether or not withdrawn); (B) any actual or alleged past, present or future act, omission, defect, incident, event or circumstance from the beginning of the world to the Plan Implementation Date, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any alleged personal, economic or other injury allegedly based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the research, development, manufacture, marketing, sale, distribution, fabrication, advertising, supply, production, use, or ingestion of products sold, developed or distributed by or on behalf of the Applicants; or (C) the CCAA Proceedings; and no Person shall make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding.

21. **THIS COURT ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan or in the Call For Claims Order, all Persons (regardless of whether or not such Persons are Creditors), on their own behalf and on behalf of their respective present or former employees, agents, officers, directors, principals,

spouses, dependents, heirs, attorneys, successors, assigns and legal representatives, are permanently and forever barred, estopped, stayed and enjoined, on and after the Plan Implementation Date, with respect to Claims, Product Liability Claims, Related Claims and all claims otherwise released pursuant to the Plan and this Sanction Order, from:

(a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties or any of them;

(b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or any of them or the property of any of the Released Parties;

(c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties;

(d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; and

(e) taking any actions to interfere with the implementation or consummation of the Plan.

DISCHARGE OF MONITOR

22. **THIS COURT ORDERS** that RSM Richter Inc. shall be discharged from its duties as Monitor of the Applicants effective as of the Plan Implementation Date; provided that the foregoing shall not apply in respect of: (i) any obligations of, or matters to be completed by, the Monitor pursuant to the Plan or the Settlement Agreements from and after the Plan Implementation Date; or (ii) matters otherwise requested by the Applicants and agreed to by the Monitor.

23. **THIS COURT ORDERS** that, subject to paragraph 22 herein, the completion of the Monitor's duties shall be evidenced, and its final discharge shall be effected by the filing by the Monitor with this Court of a certificate of discharge at, or as soon as practicable after, the Plan Implementation Date.

24. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Monitor in the CCAA Proceedings and as foreign representative in the U.S. Proceedings, as disclosed in its reports to the Court from time to time, including, without limitation, the Monitor's Fifteenth Report dated December 12, 2006, the Monitor's Sixteenth Report dated December 22, 2006, and the Seventeenth Report, are hereby approved and that the Monitor has satisfied all of its obligations up to and including the date of this Order, and that in addition to the protections in favour of the Monitor as set out in the Orders of this Court in the CCAA Proceedings to date, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect

to any information disclosed, any act or omission pertaining to the discharge of duties under the Plan or as requested by the Applicants or with respect to any other duties or obligations in respect of the implementation of the Plan, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing, and in addition to the protections in favour of the Monitor as set out in the Orders of this Court, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any proposed action or proceeding.

26. **THIS COURT ORDERS** that the Monitor, its affiliates, and their respective officers, directors, employees and agents, and counsel for the Monitor, are hereby released and discharged from any and all claims that any of the Subject Parties or their respective officers, directors, employees and agents or any other Persons may have or be entitled to assert against the Monitor, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of this Order in any way relating to, arising out of or in respect of the CCAA proceedings.

CLAIMS OFFICER

27. **THIS COURT ORDERS** that the appointment of The Honourable Mr. Justice Edward Saunders as Claims Officer (as defined in the Claims Resolution Order) shall automatically cease, and his roles and duties in the CCAA Proceedings and in the U.S. Proceedings shall terminate, on the Plan Implementation Date.

28. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Claims Officer pursuant to the Claims Resolution Order, and as disclosed in the Monitor's Reports to this Court, are hereby approved and that the Claims Officer has satisfied all of his obligations up to and including the date of this Order, and that any claims against the Claims Officer in connection with the performance of his duties as Claims Officer are hereby stayed, extinguished and forever barred.

MEDIATOR

29. **THIS COURT ORDERS** that the appointment of Mr. David Geronemus (the "Mediator") as a mediator in respect of non-binding mediation of the Product Liability Claims pursuant to the Order of this Court dated April 13, 2006 (the "Mediation Order"), in the within proceedings, shall automatically cease, and his roles and duties in the CCAA Proceedings and in the U.S. Proceedings shall terminate, on the Plan Implementation Date.

30. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Mediator pursuant to the Mediation Order, and as disclosed in the Monitor's reports to this Court, are hereby approved, and that the Mediator has satisfied all of his obligations up to and including the date of this Order, and that any claims against the Mediator in connection with the performance of his duties as Mediator are hereby stayed, extinguished and forever barred.

ESCROW AGENT

31. **THIS COURT ORDERS** that Duane Morris LLP shall not be liable for any act or omission on its part as a result of its appointment or the fulfillment of its duties as escrow agent pursuant to the escrow agreements executed by Duane Morris LLP and the respective Settling Plaintiffs that are parties to the Settlement Agreements, excluding the Group Settlement Agreement (and which escrow agreements are attached as schedules to such Settlement Agreements), and that no action, application or other proceedings shall be taken, made or continued against Duane Morris LLP without the leave of this Court first being obtained; save and except that the foregoing shall not apply to any claim or liability arising out of any gross negligence or wilful misconduct on its part.

REPRESENTATIVE COUNSEL

32. **THIS COURT ORDERS** that Representative Counsel (as defined in the Order of this Court dated February 8, 2006 (the "Appointment Order")) shall not be liable, either prior to or subsequent to the Plan Implementation Date, for any act or omission on its part as a result of its appointment or the fulfillment of its duties in carrying out the provisions of the Appointment Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on its part, and that no action, application or other proceedings shall be taken, made or continued against Representative Counsel without the leave of this Court first being obtained.

CHARGES

33. **THIS COURT ORDERS** that, subject to paragraph 34 hereof, the Charges on the assets of the Applicants provided for in the Initial CCAA Order and any subsequent Orders in the

CCAA Proceedings shall automatically be fully and finally terminated, discharged and released on the Plan Implementation Date.

34. **THIS COURT ORDERS** that: (i) the Monitor shall continue to hold a charge, as provided in the Administrative Charge (as defined in the Initial CCAA Order), until the fees and disbursements of the Monitor and its counsel have been paid in full; and (ii) the DIP Charge (as defined in the Initial CCAA Order) shall remain in full force and effect until all obligations and liabilities secured thereby have been repaid in full, or unless otherwise agreed by the Applicants and the DIP Lender (as defined in the Initial CCAA Order).

35. **THIS COURT ORDERS AND DECLARES** that, notwithstanding any of the terms of the Plan or this Order, the Applicants shall not be released or discharged from their obligations in respect of Unaffected Claims, including, without limitation, to pay the fees and expenses of the Monitor and its respective counsel.

STAY OF PROCEEDINGS

36. **THIS COURT ORDERS** that, subject to further order of this Court, the Stay Period established in the Initial CCAA Order, as extended, shall be and is hereby further extended until the earlier of the Plan Implementation Date and the date that is 60 Business Days after the date of this Order, or such later date as may be fixed by this Court.

37. **THIS COURT AUTHORIZES AND DIRECTS** the Monitor to apply to the U.S. District Court for a comparable extension of the Stay Period as set out in paragraph 36 hereof.

INITIAL CCAA ORDER AND OTHER ORDERS

38. **THIS COURT ORDERS** that:

(a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect until the Plan Implementation Date; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and

(b) all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

39. **THIS COURT ORDERS AND DECLARES** that, without limiting paragraph 38(b) above, the Call For Claims Order, including, without limitation, the Claims Bar Date, releases, injunctions and prohibitions provided for thereunder, be and is hereby confirmed, and shall operate in addition to the provisions of this Order and the Plan, including, without limitation, the releases, injunctions and prohibitions provided for hereunder and thereunder, respectively.

APPROVAL OF THE SEVENTEENTH REPORT

40. **THIS COURT ORDERS** that the Seventeenth Report of the Monitor and the activities of the Monitor referred to therein be and are hereby approved.

FEES

41. **THIS COURT ORDERS** that the fees, disbursements and expenses of the Monitor from November 1, 2006 to January 31, 2007, in the amount of $123,819.56, plus a reserve for fees in the amount of $100,000 to complete the administration of the Monitor's mandate, be and are hereby approved and fixed.

42. **THIS COURT ORDERS** that the fees, disbursements and expenses of Monitor's legal counsel in Canada, Davies Ward Phillips & Vineberg LLP, from October 1, 2006 to January 31, 2007, in the amount of $134,109.56, plus a reserve for fees in the amount of $75,000 to complete the administration of its mandate, be and are hereby approved and fixed.

43. **THIS COURT ORDERS** that the fees, disbursements and expenses of Monitor's legal counsel in the United States, Allen & Overy LLP, from September 1, 2006 to January 31, 2007, in the amount of USD$98,219.87, plus a reserve for fees in the amount of USD$50,000 to complete the administration of its mandate, be and are hereby approved and fixed.

GENERAL

44. **THIS COURT ORDERS** that the Applicants, the Monitor or any other interested parties may apply to this Court for any directions or determination required to resolve any matter or dispute relating to, or the subject matter of or rights and benefits under, the Plan or this Order.

EFFECT, RECOGNITION, ASSISTANCE

45. **THIS COURT AUTHORIZES AND DIRECTS** the Monitor to apply to the U.S. District Court for the Sanction Recognition Order.

46. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may otherwise be enforceable.

47. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA and the Initial CCAA Order, and requests that the Federal Court of Canada and the courts and judicial, regulatory and administrative bodies of or by the provinces and territories of Canada, the Parliament of Canada, the United States of America, the states and other subdivisions of the United States of America including, without limitation, the U.S. District Court, and other nations and states act in aid, recognition and assistance of, and be complementary to, this Court in carrying out the terms of this Order and any other Order in this proceeding. Each of Applicants and the Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other court and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF MuscleTech Research and Development Inc. and those entities listed on Schedule "A" hereto

Court File No: 06-CL-62

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SANCTION ORDER

GOODMANS LLP
Barristers & Solicitors
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Solicitors for the Applicants

File No.: 04-1534

GOODMANS\COSTAC\5353974.8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re EPHEDRA PRODUCTS LIABILITY LITIGATION	04 MD 1598 (JSR)
In re MUSCLETECH RESEARCH AND DEVELOPMENT INC., et al., Foreign Applicants in Foreign Proceedings.	06 CIV 538 (JSR)
In re RSM RICHTER INC., AS FOREIGN REPRESENTATIVE OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND ITS SUBSIDIARIES Plaintiff, v. SHARON AGUILAR, an individual; et al.; Defendants.	06 CIV 539 (JSR) ORDER

JED S. RAKOFF, U.S.D.J.

Before the Court is the February 13, 2007 motion (the "Motion") of RSM Richter Inc., appointed by the Ontario Superior Court of Justice (the "Ontario Court"), as monitor and foreign representative of MuscleTech Research and Development Inc. and its subsidiaries (collectively, the "Foreign Applicants") in proceedings under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), seeking entry of an order (i) recognizing and giving effect to the Ontario Court's order, dated February 15, 2007 (the "Canadian Sanction

Order") (a copy of which is annexed hereto as Exhibit "A"),[1] and the Foreign Applicants' plan of compromise or arrangement, including the Settlement Agreements, the Funding Agreements, and the Mutual Release, as contemplated thereunder and approved by creditors under the CCAA (collectively, the "CCAA Plan"), and (ii) closing the Chapter 15 Cases, as more fully described in Motion. The Monitor having given due and proper notice of the Motion, and after due deliberation and sufficient cause appearing for the relief requested, this Court determines that the Monitor has demonstrated:

(A) the Foreign Applicants proposed the CCAA Plan to provide for: (a) a global resolution of all Claims, Product Liability Claims and Related Claims against or between any one or more of the Foreign Applicants and the Subject Parties (and certain related parties); (b) payment in respect of the Claims and Product Liability Claims in full and final satisfaction thereof; and (c) the waiver and release of the Related Claims;

(B) the CCAA Plan was unanimously approved by each class of affected creditors of the Foreign Applicants at the creditors' meetings held on January 26, 2007, satisfying the requirements for creditor approval as prescribed under the CCAA. In addition, the CCAA Plan is supported by the Foreign

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Canadian Sanction Order and the CCAA Plan.

Applicants, the *Ad Hoc* Committee of MuscleTech Tort Claimants, the Subject Parties, and the Monitor;

(C) on February 15, 2007, the Ontario Court sanctioned the CCAA Plan by entering the Canadian Sanction Order thereby approving the CCAA Plan and underlying Settlement Agreements;

(D) the requested relief is consistent with the relief available pursuant to Bankruptcy Code sections 105(a), 350, 1507 and 1521 and is necessary to permit the expeditious and economical administration of the Foreign Applicants' estates in accordance with the terms and conditions set forth in the Canadian Sanction Order, CCAA Plan and Settlement Agreements, and is not manifestly contrary to the public policy of the United States;

(E) absent relief, one or more creditors may attempt to commence or continue the prosecution in the United States of judicial, arbitration, administrative or regulatory actions or proceedings against the Foreign Applicants or the Subject Parties or any of their property, and/or seek to obtain or retain the assets of the Foreign Applicants, or the proceeds thereof, and, as a result, irreparable injury will befall the Foreign Applicants to the detriment of their creditors because the efforts of the Foreign Applicants to implement the terms and provisions of the Canadian Sanction Order and CCAA Plan and

administer the Foreign Applicants' foreign estates pursuant thereto would be hindered, for which no adequate remedy at law exists;

(F) the relief requested will not cause undue hardship or inconvenience to the creditors of the Foreign Applicants and, to the extent that any hardship or inconvenience does result from an order granting the relief requested in the Motion, such hardship or inconvenience is outweighed by the benefits to the Foreign Applicants, their estates and creditors; and

(G) unless an order giving full force and effect in the United States to the Canadian Sanction Order and the CCAA Plan, is granted by this Court, the CCAA Plan will not become effective and the Foreign Applicants' creditors will suffer irreparable harm.

This Court therefore grants the Motion and requested relief on the following terms:

(1) The Canadian Sanction Order and CCAA Plan are hereby given full force and effect in the United States, and are enforceable in accordance with their terms, including, without limitation, the release and injunction provisions set forth in the CCAA Plan, and in the Canadian Sanction Order, which provides, *inter alia* and without limitation, as follows:

a. the compromises, arrangements, releases, discharges and injunctions contemplated in the CCAA Plan, including those granted by and for the benefit of the Subject Parties, are integral components thereof and are necessary for, and vital to, the success of the CCAA Plan (and without which it would not be possible to complete the global resolution of the Product Liability Claims upon which the CCAA Plan and the Settlement Agreements are premised), and that, effective on the Plan Implementation Date, all such releases, discharges and injunctions are hereby sanctioned, approved and given full force and effect, subject to: (i) the rights of Creditors to receive distributions in respect of their Claims and Product Liability Claims in accordance with the CCAA Plan and the Settlement Agreements, as applicable; and (ii) the rights and obligations of Creditors and/or the Subject Parties under the CCAA Plan, the Settlement Agreements, the Funding Agreements and the Mutual Release. *Canadian Sanction Order* at ¶ 19;

b. without limiting anything in the Canadian Sanction Order, including without limitation, paragraph 1a. hereof, or anything in the CCAA Plan or in the Call For Claims Order, the Subject Parties and their respective representatives, predecessors, heirs, spouses, dependents, administrators, executors, subsidiaries, affiliates, related companies, franchisees, member companies, vendors, partners, distributors,

brokers, retailers, officers, directors, shareholders, employees, attorneys, sureties, insurers, successors, indemnitees, servants, agents and assigns (collectively, the "Released Parties"), as applicable, be and are hereby fully, finally, irrevocably and unconditionally released and forever discharged from any and all Claims and Product Liability Claims, and any and all past, present and future claims, rights, interests, actions, liabilities, demands, duties, injuries, damages, expenses, fees (including medical and attorneys' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: (A) any proof of claim filed by such Person in accordance with the Call For Claims Order (whether or not withdrawn); (B) any actual or alleged past, present or future act, omission, defect, incident, event or circumstance from the beginning of the world to the Plan Implementation Date, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any alleged personal, economic or other injury allegedly based on, in connection with, arising out of, or in

any way related to, in whole or in part, directly or indirectly, the research, development, manufacture, marketing, sale, distribution, fabrication, advertising, supply, production, use, or ingestion of products sold, developed or distributed by or on behalf of the Debtors; or (C) the CCAA Proceedings; and no Person shall make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Subject Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, or under the provisions of any statute or regulation, and that in the event that any of the Subject Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. *Id.* at ¶ 20;

c. without limiting anything in the Canadian Sanction Order, including without limitation, paragraph 1a. hereof, or anything in the CCAA Plan or in the Call For Claims Order, all Persons (regardless of whether or not such Persons are Creditors), on their own behalf and on behalf of their

respective present or former employees, agents, officers, directors, principals, spouses, dependents, heirs, attorneys, successors, assigns and legal representatives, are permanently and forever barred, estopped, stayed and enjoined, on and after the Plan Implementation Date, with respect to Claims, Product Liability Claims, Related Claims and all claims otherwise released pursuant to the CCAA Plan and the Canadian Sanction Order, from:

i. commencing, conducting or continuing in any manner, directly or indirectly, any action, suit, demand or other proceeding of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties or any of them;

ii. enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or any of them or the property of any of the Released Parties;

iii. commencing, conducting or continuing in any manner, directly or indirectly, any action, suit or demand, including without limitation by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of

any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties;

iv. creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; and

v. taking any actions to interfere with the implementation or consummation of the CCAA Plan. *Id.* at ¶ 21.

(2) The Foreign Applicants are authorized to file under seal copies of the Settlement Agreements and the other related agreements. Any motion seeking to unseal such documents shall be made in writing, shall conform in all respects with the requirements of the Court, shall set forth in sufficient detail the basis on which the relief is sought and the need by the moving party to have access to any Settlement Agreement or related agreement, and shall be made on notice to the Foreign Applicants, the Monitor, the relevant creditor and Subject Party, and their respective U.S. counsel in these cases and Canadian counsel in the CCAA Proceedings (if different).

(3) Neither the Debtors nor the Monitor, nor any of their respective professional advisors, employees or partners, whether in Canada or the United States, shall have incurred or

shall incur any liability to any Person for any act or omission in connection with, or arising out of, the CCAA Proceedings, the U.S. Proceedings, the CCAA Plan, the Settlement Agreements, the pursuit of sanctioning of the CCAA Plan, the consummation and implementation of the CCAA Plan or the administration of the CCAA Plan or the property to be distributed under the CCAA Plan, except for their own willful misconduct or gross negligence, and all such Persons, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the CCAA Plan and in the CCAA Proceedings and the U.S. Proceedings, and shall be fully protected from liability in acting or refraining from acting in accordance with such advice.

(4) Representative Counsel shall not be liable, either prior to or subsequent to the Plan Implementation Date, for any act or omission on its part as a result of its appointment or the fulfillment of its duties in carrying out the provisions of the Appointment Order, save and except for any claim or liability arising out of any gross negligence or willful misconduct on its part, and that no action, application or other proceedings shall be taken, made or continued against Representative Counsel without the leave of the Ontario Court first being obtained.

(5) The failure to specifically include any particular provision, paragraph, clause or term of the Canadian Sanction Order or the CCAA Plan in this Order will not diminish the effectiveness of such provision, it being the intention of this Court that the Canadian Sanction Order and the CCAA Plan are hereby given full force and effect in the United States. The provisions of this Order are integrated with each other and are non-severable and mutually dependent unless expressly stated by further order of the Court.

(6) All other Orders of this Court made in the U.S. Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the U.S. Proceedings; provided that the protections granted in favor of the Monitor shall continue in full force and effect after the Plan Implementation Date.

(7) Effective upon the date that the Monitor files a certificate in these chapter 15 cases that all conditions precedent to the occurrence of the Plan Implementation Date have been satisfied and that the Plan Implementation Date has occurred as provided in section 7.2 of the CCAA Plan, and without further order of this Court, each of the Product Liability Cases and Consumer Class Action Cases (listed on

Exhibit B annexed hereto) are hereby dismissed with prejudice, and counsel for the defendants in such actions are hereby authorized to take, or cause to be taken, such steps and actions as may be necessary to implement and effectuate the terms of this section 7 of this Order for each such Product Liability Case and Consumer Class Action Case.

(8) The Monitor and the Foreign Applicants are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

(9) This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, and requests for any additional relief in the U.S. Proceedings and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court.

(10) The stay entered in these cases that expires on March 31, 2007 is hereby extended until the earlier of the Plan Implementation Date or the date that is 60 Business Days after the date hereof, or such later date as may be fixed by this Court.

(11) Except with respect to the filing of the certificate by the Monitor referred to in section 7 above and the matters over which this Court has expressly retained jurisdiction, the above-captioned Chapter 15 cases are hereby

closed, subject to them being reopened pursuant to Bankruptcy Code section 350(a).

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
March 8, 2007

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Bk. No. 13-10670 Chapter 11

TRUSTEE'S MEMORANDUM OF LAW IN SUPPORT OF, AND OMNIBUS REPLY TO OBJECTIONS TO, CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED PLAN OF LIQUIDATION DATED JULY 15, 2015

E. The Release, Exculpation, and Injunction Provisions of the Plan Should Be Approved

114. The releases, injunctions, and exculpation provisions (collectively, the "Releases") set forth in the Plan are consistent with applicable law. ***First***, after unanimous acceptance by Holders of Derailment Claims entitled to vote on the CCAA Plan, the Sanction Order entered on July 13, 2015 approved the releases, injunctions and exculpation provisions contained in the CCAA Order, which mirror the Releases in the Plan. *See* Sanction Order, ¶ 87; CCAA Plan § 5.1. ***Second***, on August 26, 2015, the Court entered the Enforcement Order, enforcing the Releases in the CCAA Plan in the United States regardless of whether independently enforceable under U.S. law. ***Third***, the Releases contained in the Plan are consistent with First Circuit law independent of their approval in the CCAA Proceedings and the Enforcement Order.

i. Subject Matter Jurisdiction

115. As a threshold matter, this Court clearly has subject matter jurisdiction to grant the Releases and Injunctions. In the first instance, as the Releases and Injunctions are part of the Plan (and confirmation is a "quintessential bankruptcy matter"), this Court has "arising under" jurisdiction to consider the Releases and Injunctions. *See* In re Charles Street African Methodist Episcopal Church of Boston, 499 B.R. 66, 98-103 (Bankr. D. Mass. 2013). While "[i]t may or may not be appropriate for a court . . . to confirm a plan containing a third-party release—and, if it is appropriate, the manner and degree of relation of the released claim to the case are certainly factors in the analysis—but the court ***undoubtedly has jurisdiction to adjudicate the plan, even without recourse to its related-to jurisdiction***. Charles Street, 499 B.R. at 98-103 (citing Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 983–84 (1st Cir. 1995)) (emphasis added).

116. But even if the Court declined to adopt the recent, well-reasoned analysis of the Bankruptcy Court for the District of Massachusetts, the Court has jurisdiction to approve the Releases and Injunctions by virtue of its "related-to" jurisdiction. "The statutory grant of 'related to' jurisdiction is quite broad. Congress deliberately allowed the cession of wide-ranging jurisdiction to the bankruptcy courts to enable them to deal efficiently and effectively with ***the entire universe of matters connected with bankruptcy estates***." In re Boston Reg. Med. Ctr., Inc., 410 F.3d 100, 105 (1st Cir. 2005) (emphasis added). Indeed, "bankruptcy courts ordinarily may exercise related to jurisdiction as long as the outcome of the litigation '***potentially [could] have some effect on the bankruptcy estate***, such as altering debtor's rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate.'" Id. (quoting In re G.S.F. Corp., 938 F.2d 1467, 1475 (1st Cir. 1991)) (emphasis added); *see also* In re Chicago Invests., LLC, 470 B.R. 32, 95 (Bankr. D. Mass 2012) (reiterating that bankruptcy court has power to approve third party releases when it is appropriate to do so); In re Otero County Hosp. Assoc., Inc. v. Quorum Health Resources, LLC, 527 B.R. 719, 758 (Bankr. D.N.M. 2015) ("[B]ankruptcy court[s] [have] jurisdiction to adjudicate claims between third parties where the outcome of the litigation could have a conceivable effect on the bankruptcy estate."). As set forth in the Keach Declaration, to the extent any of the Contributing Parties is or becomes liable to any party who suffered damages arising from the Derailment, those parties will have claims against the Debtor, or against a party who has already asserted or who can in turn assert a claim against the Debtor, for, *inter alia*, contribution and indemnity. Keach Decl. ¶ 42. Indeed, many such claims arise under indemnification agreements or rights to indemnification arising under applicable non-bankruptcy law, which are alone sufficient to confer subject matter jurisdiction upon a bankruptcy court. *See* Virginia ex rel. Itegra REC LLC v. Countrywide Secs. Corp., No.

3:14-cv-706, 2015 WL 1237084, at *2 (E.D. Va. Mar. 17, 2015) (finding subject matter jurisdiction to consider a dispute even where none of the parties was a debtor, but debtor had an indemnification agreement with defendant). The release of indemnification, contribution, and other such claims against the Estate does not merely "*potentially* have *some* effect on the bankruptcy estate, such as altering debtor's rights," but would decimate recoveries for the Debtor's stakeholders. *See* Boston Reg. Med. Ctr., 410 F.3d at 105 (emphasis added); *see also* Otero County Hosp., 527 B.R. at 758 (finding "related-to" jurisdiction where outcome of litigation could have a "conceivable effect" on bankruptcy estate through adjudication of debtor's relative fault, even if debtor not a party). Accordingly, the Court also has "related-to" jurisdiction over confirmation of the Plan and approval of the Releases and Injunctions as they apply to each and every Released Party.[33]

[33] In a case, like New England Compounding, that is on nearly all-fours with this case, the Delaware bankruptcy court first approved a sale of substantially all of the debtors' assets, after the debtors were driven into chapter 11 by a flurry of personal injury suits. In re Blitz U.S.A., Inc., 2012 WL 5182985 (Bankr. D. Del. Oct. 16, 2012) (sale order). The debtors then filed a plan of liquidation providing for the creation of a tort claims trust, a buy-back of liability insurance policies, a channeling injunction, and third-party releases. In re Blitz U.S.A., Inc., 2013 WL 6825607 (Bankr. D. Del., Nov. 12, 2013) (Debtor's and Official Committee of Unsecured Creditors' Joint Plan of Liquidation). The court confirmed the liquidating plan. In re Blitz U.S.A., Inc., 2014 WL 2582976 (Bankr. D. Del., Jan. 30, 2014). As for voting on the liquidating plan, the court noted:

> As reflected in the Voting Declaration, 95.29% (81 out of 85) of the holders of Blitz Personal Injury Claims in Class 4(a) of the Plan that voted on the Plan and 100% (3 out of 3) of the holders of Blitz Personal Injury Claims in Class 4(b) of the Plan have voted to accept the Plan. On the record at the Confirmation Hearing, three of the parties that had originally voted against confirmation of the Plan announced that they were changing their votes to votes in support of the Plan. As a result of those announcements, only one vote against confirmation of the Plan in Class 4(a) remains, and that claimant did not object to confirmation of the Plan. Accordingly, the Plan has been overwhelmingly accepted by the classes of creditors affected by the Releases and the Channeling Injunction and there is no remaining objection to confirmation of the Plan.

Judge Walsh, found both subject matter jurisdiction to enter the releases and the "identity of interest" prong in the same facts:

> *Identity of Interest*. There is a substantial identity of interest between the Debtors and the Protected Parties, such that a Blitz Personal Injury Claim asserted against a Protected Party is essentially a claim against the Debtors.

Id. at *6. This same is true here: a Derailment Claim against any and all of the Contributing Parties and/or Released Parties is essentially a claim against the Debtor and MMA Canada. As the Blitz USA court found, the settling parties, plaintiffs and Debtors had, as they do here, a common interest:

ii. The Legal Standard for Granting Third-Party Releases

117. Under First Circuit law, the Bankruptcy Court can confirm the Plan including the Releases in the Chapter 11 Case. The First Circuit has addressed and tacitly approved the concept of nonconsensual third-party releases in plans. *See* Monarch, 65 F.3d at 975-76 (affirming bankruptcy court's confirmation of plan that contained third-party releases); *see also* G.S.F. Corp., 938 F.2d at 1474 (section 105(a) confers ample power to enjoin suit against nondebtors during the pendency of chapter 11 case where court reasonably concludes that such actions would entail or threaten adverse impact upon administration of chapter 11 case).[34]

118. Given this guidance, lower courts in the First Circuit have followed suit. In confirming plans, nonconsensual third-party permanent injunctions or releases are permitted in "exceptional circumstances" and are within the court's authority to issue under 11 U.S.C. §§ 105(a), 1123(b). *See*, *e.g.*, In re New England Compounding Pharmacy, Inc., No. 12-19882 (HJB) (Bankr. D. Mass. May 20, 2015) [D.E. 1355] (confirming plan containing third-party releases based on "exceptional" facts, over written objection of U.S. Trustee); Charles Street, 499 B.R. at 98-103 (finding subject matter jurisdiction and constitutional authority to approve

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> Each of the Protected Parties share a common goal of resolving their competing and interrelated claims and achieving a fair and equitable distribution of the Debtors' remaining assets through the Plan. Absent the involvement of each of the Protected Parties, none of the settlements required for, or entered into in connection with, the confirmation of the Plan would be possible, and few, if any, assets would be available for distribution to the Debtors' Creditors.

Id. at *7.

[34] Direct authority for a nonconsensual third-party releases and channeling injunctions is found in the United States Supreme Court's decision in U.S. v. Energy Resources Co., 495 U.S. 545 (1990) (affirming First Circuit decision that a bankruptcy court has authority to order IRS to treat tax payments made by chapter 11 debtor as trust fund tax payments, thus releasing potential insider "responsible persons" from liability, if the bankruptcy court determines that this designation is necessary to the success of a reorganization plan). The Supreme Court's decision was grounded in 11 U.S.C. §§105(a), 1123(b)(5) and 1129. Energy Resources, 495 U.S. at 549. "These statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." Id.; *see also* Joshua M. Silverstein, *Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debate Over Non-Debtor Releases in Chapter 11 Reorganizations*, 23 EMORY BANKR. DEV. J. 13 (Fall 2006) ("Energy Resources vindicates the pro-release position on every major issue concerning the validity of non-debtor releases. Therefore, under existing precedent, bankruptcy courts possess the equitable power to extinguish claims against third parties.").

releases in a chapter 11 plan and adopting the Master Mortgage factors—described below—for approval of such releases, but ultimately finding those factors not met); In re Chicago Invests., LLC, 470 B.R. 32, 95-96 (Bankr. D. Mass. 2012) (confirming plan containing third party releases where released parties were supplying "substantial consideration," the "injunction was essential to the reorganization because neither [the principal funding source] nor its related entities would go forward without it," the affected creditors were being paid in full, and the creditors had voted in favor of the plan).

119. The approach in the First Circuit is in the majority: at least the Second, Third, Fourth, Sixth, Seventh and Eleventh Circuits all allow for nonconsensual, nondebtor releases in plans under certain circumstances. *See* SEC v. Drexel Burnham Lambert Grp., Inc., 960 F.2d 285, 293 (2d Cir. 1992) ("In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan."); In re Global Indus. Techs., Inc., 645 F.3d 201, 205 (3d Cir. 2011) (stating that "[f]or the Plan to be approved as designed (*i.e.*, with the inclusion of the [] Injunction), the debtors needed to show that the Plan's resolution of silica-related claims is necessary or appropriate under 11 U.S.C. § 105(a), which . . . requires showing with specificity that the [] Injunction is both necessary to the reorganization and fair.") (citing Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203, 214 (3d Cir. 2000)); Behrmann v. Nat'l Heritage Found., Inc., 663 F.3d 704, 712 (4th Cir. 2011) (noting that third-party injunctions are permissible and finding test articulated in In re Railworks Corp., 345 B.R. 529, 536 (Bankr. D. Md. 2006) "instructive," which test considered whether (i) "there was overwhelming approval for the plan," (ii) there was "a close connection between the causes of action against the third party and the causes of action against the debtor," (iii) "the injunction is essential to the reorganization," and (iv) "the plan of reorganization provides for payment of substantially all of the claims affected by the

injunction"); In re Dow Corning Corp., 280 F.3d 648, 658 (6th Cir. 2002) (finding that a plan provision "enjoining a non-consenting creditor's claim against a non-debtor" may be "an appropriate provision of a reorganization plan pursuant to section 1123(b)(6)," but that the facts at issue did not comport with the five-factor test articulated for such a finding); In re Airadigm Commc'ns, Inc., 519 F.3d 640, 657-58 (7th Cir. 2008) (finding that third-party release was appropriate in this case because, among other things, (i) the release was limited to claims "arising out of or in connection with" the reorganization and carved out willful misconduct and (ii) the record demonstrated that the exit financer required the release to fund consummation of the chapter 11 cases, which in turn was necessary for a successful reorganization); SE Property Holdings, LLC v. Seaside Engineering & Surveying, Inc. (In re Seaside Engineering & Surveying Inc.), 780 F. 3d 1070, 1077-1080 (11th Cir. 2015) (noting 11th Circuit is with the majority in allowing nonconsensual third party releases and correcting Vitro[35] court on this point).[36]

120. Courts within the First Circuit have adopted the Master Mortgage[37] test for determining whether a permanent injunction or release in favor of a non-debtor third party is warranted. *See*, *e.g.*, Chicago Invests., 470 B.R. at 95-96 (adopting Master Mortgage test when determining whether third party injunctions will be allowed); *see also* Charles Street, 499 B.R. at 100 (same). The Master Mortgage test looks to five factors:

(a) An identity of interests between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate;

[35] In re Vitro S.A.B. DE C.V., 701 F.3d 1031, 1061 (2012).

[36] In addition, the minority of circuits that do not permit nonconsensual third-party releases would authorize the fully consensual releases contained in the Plan. *See*, *e.g.*, In re Patriot Place, Ltd., 486 B.R. 773, 822 (Bankr. W.D. Tex. 2013) (emphasizing that 5th Circuit precedent only applies to nonconsensual releases); Billington v. Winograde, (In re Hotel Mt. Lassen, Inc.), 207 B.R. 935, 941 (Bankr. E.D. Cal. 1997) (noting that Ninth Circuit case law does not preclude consensual releases, and the same are common in bankruptcy cases).

[37] In re Master Mtg. Inv. Fund, Inc., 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994).

(b) The non-debtor has contributed substantial assets to the reorganization;

(c) The injunction is essential to the reorganization;

(d) A substantial majority of creditors agree to such injunction—specifically, the impacted class, or classes, has overwhelmingly voted to accept the proposed plan treatment; and

(e) The plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

Master Mortg., 168 B.R. at 935.

121. The plan proponent need not prove the existence of all five Master Mortgage factors. *See* Charles Street, 499 B.R. at 100 ("These factors are neither exclusive nor conjunctive requirements."); Chicago Invests., 470 B.R. at 95 (same). Rather, the factors are a "useful starting point." Charles Street, 499 B.R. at 100.

122. Indeed, canvassing Second Circuit authority, Judge Sean Lane from the Southern District of New York recently affirmed that consent by the affected class (similar to the fourth Master Mortgage factor) is not a requirement for approval of a third-party release where the appropriate standard has otherwise been met. *See*, *e.g.*, In re Genco Shipping & Trading Ltd., 513 B.R. 233, 268-72 (Bankr. S.D.N.Y. 2014) (citing Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136 (2d Cir. 2005)) (approving (i) "consensual" releases, where consent had been expressed by failing to check a box on the ballot opting out of the releases, even if such creditor voted to reject the plan; (ii) nonconsensual third-party releases for claims that would trigger indemnification or contribution claims against the debtors; and (iii) nonconsensual third-party releases in favor of all parties who provided substantial consideration to the plan by (a) agreeing to forego consideration to which they would otherwise be entitled, (b) providing new value to the debtors by agreeing to "backstop" or guaranty a rights offering, or (c) agreeing to exchange debt for equity in the reorganized debtor).

123. Additional recent authority emphasizes that nonconsensual non-debtor releases can be a permissible feature even of liquidating chapter 11 plans where one or more of the Master Mortgage factors are present. *See*, *e.g.*, In re New England Compounding Pharmacy, Inc., No. 12-19882 (HJB) (Bankr. D. Mass. May 19, 2015), Tr. of Hr'g (the "NECC Confirmation Transcript") (approving third-party releases for settling defendants that contributed to a toxic tort trust in a liquidating chapter 11)[38]; In re U.S. Fidelis, Inc., 481 B.R. 503, 518-21 (Bankr. E.D. Mo. 2012) (finding that the non-consensual nature of third-party releases did not render such releases impermissible *per se*). In U.S. Fidelis, The court directly addressed the use of such releases in liquidating plans: "This Case is—in bankruptcy vernacular—a 'liquidating 11.'" U.S. Fidelis, 481 B.R. at 520. The Court went on to apply its analysis specifically in the context of a liquidating chapter 11:

> A few courts suggest that compelled releases may not be appropriate in a liquidating 11 because the debtor necessarily does not need such extraordinary relief for the purpose of reorganizing. The Court recognizes this concern and the possible abuse that could occur if the releases of non-debtors are commonly included in a plan of liquidation. However, an orderly liquidation is a valid use of chapter 11 and one of its chief purposes—to ensure the best return for the unsecured creditors—should be promoted. If the plan of liquidation ensures the best possible outcome for unsecured creditors and the releases therein are critical to confirmation of the plan, then the fact that the case is not a reorganization should not *per se* prohibit confirmation of the plan.

Id. at 520.

124. With respect to the second Master Mortgage factor, consideration is "substantial" when the plan "replace[s] what it releases with something of indubitably equivalent value to the affected creditor," such as a settlement fund to which claims are channeled. Chicago Invests., 499 B.R. at 102; *see also* NECC Confirmation Transcript, 24:14-25:18 (explaining that the released parties' contribution in exchange for the releases is a

[38] Pertinent excerpts of the NECC Confirmation Transcript are attached hereto as Exhibit A. Electronic copies of the entire transcript are available upon reasonable request of counsel to the Trustee.

settlement fund of approximately $200 million, without which "the likelihood of *any* creditor recoveries would be very dim, indeed.") (emphasis added); *cf.* In re Dow Corning Corp., 255 B.R. 445, 479 (E.D. Mich. 2000) (affirming the denial of confirmation of a plan containing third party releases where plan, *inter alia*, did not provide such a fund).

iii. The Releases and Injunctions Are Appropriate Under the Circumstances

125. In this case, the Master Mortgage factors weigh heavily in favor of approving the Releases in the Plan. In particular:

(a) **Identity of Interest**. The identity of interest test is met, as suits against the Settling Defendants would necessitate claims for indemnity and contribution against the Debtor, preventing any distribution until they were resolved, including from existing insurance proceeds.[39] Such suits would also involve the Debtor in discovery and perhaps intervention, costing the Estate needed funds.

(b) **Substantial Contribution**. The Settling Defendants are contributing substantial and necessary Settlement Payments to the Indemnity Fund, totaling approximately $CAD446 million,[40] *none* of which would be available for distribution to the Debtor's creditors absent the Releases in the Plan.

(c) **Essential to Plan**. There is no chance of a plan of liquidation without the Releases—releases will be necessary even for a distribution of the insurance proceeds. And absent the Plan, dismissal of the Chapter 11 Case is the only option, with no return to any creditor, including victims of the Derailment, other than through costly, time-consuming, and uncertain litigation.

(d) **Consent**. The claimants affected by the Releases have manifested their consent to such Releases through their affirmative and unanimous votes in favor two plans. These are the only parties whose consent is relevant when assessing this factor.

(e) **Mechanism for Substantial Payment**. The Plan provides for a mechanism for payment of all, or substantially all, of the Claims affected by the Releases: the Indemnity Fund distributed in part via the WD Trust.

[39] Indeed, the United States District Court for the District of Maine emphasized the presence of such indemnity rights and "shared insurance" in finding that the wrongful death litigation in the United States was related to the Chapter 11 Case and in transferring such cases to Maine under 28 U.S.C. § 157(b)(5).

[40] This figure is based on CAD/USD exchange rates as of September 10, 2015.

126. In addition, as set forth in the Keach Declaration (and in response to CP's contention to the contrary), this Chapter 11 Case presents truly exceptional circumstances warranting approval of the third-party releases. *See generally* Keach Decl.; *see also* CP Obj., ¶¶43-46. In particular, this case began as administratively insolvent. *See* Discl. Stmt. at 31. It was the Trustee's negotiation with, from the outset, the Debtor's secured creditors to obtain a carve-out from their collateral to fund administration of the case that prevented its dismissal, which would have produced little to no recovery for any creditor, including Derailment victims. Id. Having procured a means for funding the case, the Trustee and others set out to pursue those potentially responsible for the Derailment in order to amass assets to compensate the victims. *See* Keach Decl., ¶ 31. But absent the ability to assure those potentially responsible parties that they would not be subject to further lawsuits, the Trustee would not have been able to procure Settlement Payments to compensate the victims—no Settling Defendant would have signed up to make any contribution, let alone the substantial ones made, if concerned that it might be forced to defend itself in additional, subsequent litigation and face attendant additional judgments. *See* Keach Decl., ¶¶ 39, 47-49. Offering those potentially responsible parties releases from such risk was thus the only way to amass *any* assets for distribution to the Debtor's creditors, short of years of lengthy and expensive litigation wrought with risk for the victims. Accordingly, and in addition to satisfaction of the relevant Master Mortgage factors, this Chapter 11 Case presents the extraordinary circumstances that particularly lend themselves to approval of third-party releases. *See generally* New England Compounding, No. 12-19882 (HJB) (Bankr. D. Mass. May 19, 2015).

127. Finally, the Confirmation Order provides for a judgment reduction in favor of the Non-Settling Defendant. Such a provision is equitable to the Non-Settling Defendant and is otherwise consistent with applicable law; indeed, it is all that the Non-Settling Defendant is

entitled to. *See*, *e.g.*, Austin v. Raymark, 841 F. 2d 1184 (1st Cir. 1988) (requiring a reduction in any damage award against non-settling defendants by the amount equivalent to the settling defendants' proportionate liability, and finding reasonable the reapportionment of insolvent defendant's liability as among other defendants); In re Worldcom, Inc. ERISA Litigation, 339 F. Supp. 2d 561 (S.D.N.Y. 2004) (over objection of non-settling defendant, approving settlement agreement that barred third-party claims against non-settling defendants, but which also included a proportionate judgment reduction formula, albeit one that reduced the judgment reduction credit to account for the insolvency of a settling defendant); In re Tribune Co., 464 B.R. 208, 223-24 (Bankr. D. Del. 2011) (denying motion of non-settling defendant for reconsideration of order confirming plan, which included third-party releases with accompanying judgment reduction provision for non-settling defendant, as confirmation order preserved rights of non-settling defendant under applicable law); Whyte v. Kivisto (In re Semcrude), No. 08–11525, 2010 WL 4814377, at *6-7 (Bankr. D. Del. Nov. 19, 2010) (finding fair and equitable a settlement that barred third-party claims against settling parties but also included a judgment reduction provision that left intact non-settling defendants' state law setoff/contribution rights).

128. The Trustee thus submits that for the reasons set forth above, the Releases are appropriate under applicable law.

CONCLUSION

Bankruptcy Code section 1129 is satisfied by the Plan, and the Trustee has satisfied all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, orders of this Court, and other applicable rules and regulations. The Trustee has worked diligently and in good faith to maximize the value of the assets of the Debtor's estate and to develop a Plan that will maximize the distributions to the Debtor's creditors, particularly the victims of the Derailment. The Trustee is confident that the Plan provides for the best possible distribution to creditors and, moreover, that no other alternatives exist which would provide a greater distribution to creditors. Accordingly, the Trustee respectfully requests that this Court confirm the Plan and enter such other and further relief as this Court deems necessary and appropriate.

Dated: September 17, 2015

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Lindsay K. Zahradka

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EXHIBIT A

Excerpts from NECP Confirmation Hearing Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS - WESTERN DIVISION

IN THE MATTER OF:	.	Case #12-19882-hjb
	.	
NEW ENGLAND COMPOUNDING	.	
PHARMACY, INC.,	.	
	.	Springfield, Massachusetts
	.	**May 19, 2015**
Debtor.	.	10:15 a.m.

TRANSCRIPT OF HEARING ON:
#1219 JOINT MOTION TO APPROVE PLAN SUPPORT AND SETTLEMENT AGREEMENT WITH LIBERTY INDUSTRIES, INC.
#1289 JOINT MOTION FOR APPROVAL OF STIPULATIONS AND ORDER RELATING TO PRESERVATION OF CERTAIN PARTIES' RIGHT TO SEEK COMPARATIVE FAULT ALLOCATIONS UNDER THE FIRST AMENDED JOINT PLAN OF REORGANIZATION
#1311 JOINT MOTION FOR ORDER APPROVING NON-MATERIAL MODIFICATIONS TO THE FIRST AMENDED JOINT PLAN OF REORGANIZATION
#1308 CONFIRMATION OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION

BEFORE THE HONORABLE HENRY J. BOROFF

APPEARANCES:

For the Chapter 11 Trustee, Paul D. Moore:	MICHAEL R. LASTOWSKI, ESQ. PAUL D. MOORE, ESQ. Duane Morris LLP 1100 Market Street Philadelphia, PA 19101
United States: Department of Justice:	JENNIFER L HERTZ, ESQ. Office of the United States Trustee 5 Post Office Square 10th Floor, Suite 1000 Boston, MA 02109
For the Official Committee of Unsecured Creditors:	DAVID J. MOLTON, ESQ. KIERSTEN A. TAYLOR, ESQ. Brown Rudnick LLP Seven Times Square New York, NY 10036

settlements, which are subject to approval under Rule 9019. And as Your Honor no doubt has observed, we have filed declarations in support of each of those settlements, including Mr. Moore's declaration, but also declarations filed on behalf of the settling parties. We would rest on those declarations, and again, on our confirmation hearing brief, in support of our 9019 presentation, unless Your Honor has a different preference.

THE COURT: No, you may rely on those declarations.

MR. LASTOWSKI: There was only one objection filed in opposition to confirmation, and that was filed by the Office of the United States Trustee. And what I would -- and they objected to the plan's release provisions on a couple of specific grounds.

I will not speak on behalf of Ms. Hertz. When she has the podium, I'm sure she'll present her objection well. What I'd like to do, though, is just generally state why we think the releases are important and why we satisfy the relevant criteria. And then I would turn the podium to Ms. Hertz, to state her objection. And I think Mr. Molton would reply to her objection, if that's okay, Your Honor?

THE COURT: Yes.

MR. LASTOWSKI: We've cited in our brief, authority for the proposition that Your Honor can approve third-party releases. As we note, the majority of circuit courts that

have addressed this issue, have found that under certain circumstances, these releases may be approved. In each instance, the releases are subject to a very fact-intensive test, and each case is very fact-specific. But I think what they all have in common is that each court characterizes the facts before it, that is when they approve these releases, as being extraordinary.

Your Honor, the plan proponents would urge you to find that, in fact, this case, or more specifically the plan and the facts surrounding it, are also extraordinary. When this case began, the estate was administratively insolvent and the likelihood of recovery appeared dim, no doubt, to the creditors of the estate.

After many months of negotiations and drafting and mediations, we are now presenting to you a plan which has the potential to provide distributions to creditors approaching $200 million. Again, we think this is extraordinary. And I would highlight the fact that if you were to look at the liquidation analysis prepared by Mr. Darr, which is set forth in his declaration, if on the other hand this case were not confirmed, and the case were converted, it would go back into a situation where it would be administratively insolvent, and the likelihood of any creditor recoveries would be very dim, indeed.

We've been able to assemble the funds for

distributions to creditors, of course, the settlement agreement. And as we've set forth -- as you will see in the declarations, the settling parties were willing to make these contributions, really only on the condition that at the end of the day, there would be a confirmed plan providing them these third-party releases.

Cases identify certain criteria that should be reviewed before you approve third-party releases, and we would submit that this case satisfies all of them. And most importantly, I would say, is that there is overwhelming support for the plan. We had this very, very broad solicitation. And in fact, no creditor of the estate has filed an objection. We have an objection from the U.S. Trustee, but there's been no creditor objection whatsoever.

The releases are essential to the plan, as I've explained. The benefit of those releases, the settlements would go into effect, and we would have distributions approaching $200 million.

The settling parties would not have entered into those agreements absent the condition that at the end of the day there would be releases. And also, there is an identity of interest, as is required by the cases, that -- between the debtor and these settling parties. Because absent the releases, these parties would have claims of indemnity and/or contribution. So in effect, claims against them are claims

against the debtor.

The final criteria (sic) that courts have addressed, is a requirement that the plan provide a mechanism for the payment of all or substantially all of the claims of the class or classes affected by the injunction. And the way that's been interpreted, Your Honor, is that the plan provide for a means of payment. And what we have here is the establishment of a tort trust with claims against the estate being channeled into that tort trust for satisfaction of those claims.

So in brief, in terms of the criteria that have been identified by courts, we submit that we've satisfied them all, and in fact, the third-party releases and the channel injunctions should be approved.

That's my very brief presentation. I will turn the podium over to the United States Trustee. And again, Mr. Molton will address -- will respond to their objection, once it's been made.

THE COURT: Thank you.

MS. HERTZ: Your Honor, the U.S. Trustee has nothing further to add with respect to his objection and rests on his papers.

THE COURT: The United States Trustee, in his objection, set forth a standard that he thought ought to be applied and said that it was going to be the burden of the plan proponents to demonstrate that this case presented the

kinds of exceptional circumstances that many courts have used to justify these kinds of third-party releases. Does the United States Trustee have a position as to whether the plan proponents have met that burden?

MS. HERTZ: Your Honor, ultimately it's your decision as to whether the burden has been met. But the U.S. Trustee does believe the burden has been met in this case, yes.

THE COURT: Thank you. All right.

MR. MOLTON: Judge, David Molton. I guess I was teed up to respond. I'm not going to respond other than saying one thing, is that we believe that the substantial evidentiary record here supports the exceptional circumstances in this case. And we're glad that the U.S. Trustee agrees with us. Thank you.

THE COURT: I have a number of questions about particular provisions. And I don't know whether they're best addressed to Mr. Lastowski, Mr. Molton, but why don't I start with them. And whoever wants to respond can.

In the plan, section 6.07 -- it's on page 39 of the second amended plan. It talks about the estimation procedure that is set forth in Section 502(c) of the Bankruptcy Code. The third sentence begins: "In the event that the bankruptcy court estimates any disputed claim in classes A, B, C, D, or E, the amount so estimated shall constitute either the allowed

THE COURT: All right, thank you.

MR. MOORE: Thank you.

MR. MOLTON: One last -- Your Honor, one last point before we go. I was reminded by a number of parties of something that I -- a number of -- all the interested parties wanted me to do is thank some of the parties that couldn't have been here today that helped bring us to here, and specifically the team of mediators that was utilized to accomplish the settlements. And that's Professor Eric Green, Carmin Reiss, Stanley Klein (ph.), and David Geronemus.

It's fair to say, Judge, that without them, we wouldn't have had the success that we had in bringing this plan to you today. So I did want to give them a shout-out, and had forgotten to do so earlier, and was glad to be reminded of that.

THE COURT: Thank you. Well, from my perspective, there are too many professionals here for me to thank, for the risk of leaving somebody out. But I wanted to comment that I think that this plan and its associated trust agreements are the best that could have been achieved for the hundreds of people for whom there could be no full compensation. And that this is, in my view, the highest and best use of the Bankruptcy Code, and evidence of the professionalism of the bar in this district and in the affected districts.

Is there anything else to do today?

MR. MOLTON: Nothing, Your Honor.

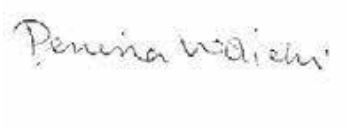
THE COURT: All right. So I'll look forward to getting the third amended plan and the amended proposed order and I will execute them if they are changed as we have discussed today. Thank you.

IN UNISON: Thank you, Your Honor.

(End at 11:21 a.m.)

* * * * * * * * * *

I certify that the foregoing is a true and accurate transcript from the digitally sound recorded record of the proceedings.



/s/ Penina Wolicki May 20, 2015

AAERT Certified Electronic Transcriber (CET**D-569) Date

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#12-19882 05-19-2015

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SJC, Inc.,	Case No. 14-11763 (MFW)
Debtor.	**Hearing Date: July 29, 2015 @10:30 a.m. (ET)** **Obj. Deadline: July 23, 2015 @ 4:00p.m. (ET)**

NOTICE OF MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 105(A), 305(A), AND 1112(B) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR (A) THE DISMISSAL OF THE DEBTOR'S CHAPTER 11 CASE, (B) THE RECONCILIATION, RESOLUTION AND ALLOWANCE OF CERTAIN CLAIMS AGAINST THE DEBTOR AND THE MAKING OF DISTRIBUTIONS TO HOLDERS OF SUCH ALLOWED CLAIMS, AND (C) THE DISALLOWANCE OF CERTAIN CLAIMS AND (II) GRANTING CERTAIN RELATED RELIEF

PLEASE TAKE NOTICE that on July 2, 2015, SJC, Inc., the above-captioned debtor and debtor-in-possession (the "Debtor") and through its undersigned counsel, filed a *Motion of the Debtor, Pursuant to Sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code, for Entry of an Order (I) Approving Procedures for (A) the Dismissal of the Debtor's Chapter 11 Case, (B) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (C) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Motion is scheduled for **July 29, 2015 at 10:30 a.m. (Eastern Time)** (the "Hearing") before The Honorable Mary F. Walrath, United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that all objections, if any, to the Motion may be in writing filed and served upon the undersigned counsel on or before **July 23, 2015 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 2, 2015

Respectfully submitted,

/s/ Joseph H. Huston, Jr.

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Attorneys for Debtor SJC, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**HEARING DATE: July 29, 2015 @10:30 a.m. (ET)**
	:	**OBJECTIONS DUE: July 23, 2015 @ 4:00p.m. (ET)**
Debtor.	:	

MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 105(a), 305(a), AND 1112(b) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR (A) THE DISMISSAL OF THE DEBTOR'S CHAPTER 11 CASE, (B) THE RECONCILIATION, RESOLUTION AND ALLOWANCE OF CERTAIN CLAIMS AGAINST THE DEBTOR AND THE MAKING OF DISTRIBUTIONS TO HOLDERS OF SUCH ALLOWED CLAIMS, AND (C) THE DISALLOWANCE OF CERTAIN CLAIMS AND (II) GRANTING CERTAIN RELATED RELIEF

SJC, Inc., the above-captioned debtor and debtor-in-possession (the "Debtor") moves this Court (the "Motion") for entry of an order substantially in the form annexed hereto as **Exhibit 1** (the "Approval Order"), pursuant to sections 105(a), 305(a), and 1112(b) of title 11 of the United States Code (the "Bankruptcy Code") (i) approving procedures for (a) the dismissal of the Debtor's chapter 11 case, (b) the reconciliation, resolution and allowance of certain claims against the Debtor and the making of distributions to holders of such allowed claims, and (c) the disallowance of certain claims and (ii) granting related relief. In further support, the Debtor states as follows:

SUMMARY OF REQUESTED RELIEF

1. The Debtor requests approval of a "structured dismissal" in accordance with the Third Circuit's holding in Official Committee of Unsecured Creditors v. CIT Group/Business Credit, Inc. (In re Jevic Holding Corp.), Case. No. 14-1465, 2015 WL 2403443 at *1 (3d Cir. May 21, 2005) and as approved in numerous other cases in this district, because such a result

would represent the best outcome for the estate's creditors. The basis for this assertion and the details regarding how it will be accomplished are described below.

2. During the pendency of this bankruptcy case, the Debtor has worked diligently to liquidate all of its assets and resolve all remaining outstanding issues. Pursuant to orders of the Court, the Debtor sold its entire inventory through liquidation sales (the "GOB Sales"), rejected all of its remaining leases and contracts, and reconciled the majority of claims. As a result, the Debtor has ceased operations. As of the filing of this Motion, the Debtor is holding $186,542.56 in its bank account (the "Account").[1] Stevens & Lee, P.C. ("S&L"), co-counsel to the Debtor, received a total of $50,000.00 in retainer in connection with this case, all of which was received prior to the entry of the Order for Relief and $24,509.00 of which was applied to pay for services rendered and $2,481.79 for expenses incurred prepetition. The balance ($23,009.21) is being held in S&L's IOLTA account.

3. From the funds in the Account, the Debtor proposes to pay, in full, all: (a) administrative claims, which consist solely of outstanding professional fees, subject to Court approval of such fees; (b) unsecured priority claims; and (c) United States Trustee's fees. The Debtor proposes to use the balance of the funds, available after paying the claims listed above, to make a distribution to general unsecured creditors, estimated in the amount of 1.19% of their allowed claims. The estimated distribution is based on an aggregate $50,000.00 in estimated legal fees and expenses that are outstanding plus legal fees and expenses necessary to file and prosecute this Motion and the procedures outlined herein. The names of the Debtor's prepetition creditors, classification of the claim held by such creditors, amount of asserted or scheduled claim, and the amount of their proposed Allowed Claim (defined below) are more fully described

[1] The money in the Account is derived from the Debtor's tax refund.

on **Exhibit A** attached hereto and incorporated herein by reference.[2] Accordingly, the Debtor proposes to make a distribution to the Debtor's administrative creditors, unsecured priority creditors, and general unsecured creditors based upon the creditors' proposed Allowed Claim listed on Exhibits A.

4. As discussed more fully below, the Debtor has reviewed potential causes of action under chapter 5 of the Bankruptcy Code and has determined that no meaningful recovery is available. Because there are no viable assets remaining for a chapter 7 trustee to marshal or monetize, and minimal estate funds for distribution to general unsecured creditors, the best interests of this estate will be served through an orderly dismissal of the Debtor's chapter 11 case. Conversion would result in unnecessary accrual of chapter 7 administrative expenses to the detriment of the Debtor's chapter 11 creditors. Following the making of distributions to priority unsecured creditors, the Debtor proposes that a final professional fee hearing be scheduled. Upon entry of an order approving final fee and expense requests by case professionals, the Debtor proposes paying all outstanding professional fees and expenses, as approved by the Court, making a distribution to the general unsecured creditors, and promptly dismissing this chapter 11 case thereafter, as provided in the procedures described below.

JURISDICTION, VENUE AND PREDICATES FOR RELIEF

5. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

[2] The Debtor proposes to disallow certain secured claims, priority unsecured claims, and general unsecured claims, as discussed in more detail below and described on **Exhibit C**, because such claims have been paid in full in accordance with various orders of this Court, are duplicate claims, or claims that were scheduled as contingent, unliquidated, and disputed, but for which proofs of claim were not filed.

6. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

7. The predicates for the relief sought herein are sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code.

BACKGROUND

A. The Chapter 11 Filing

8. On July 21, 2014 (the "Petition Date"), the Debtor commenced the above-captioned chapter 11 case (the "Case") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court.

9. The Debtor continues to operate its business and manage its property as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed by the United States Trustee in the Case.

10. Prior to the commencement of the Case, the Debtor operated as a retail business consisting of mall stores featuring "Silver" brand jeans and related clothing. Originally operating one store, with the support of Western Glove Works ("WGW") – the developer of the Silver Jeans brand and wholesaler of the same – the Debtor decided to more fully launch a retail business, with a plan to open five stores at selected premium malls across the United States.

11. As a result of both internal and external factors, including the extremely slow economic recovery in the United States and the resulting lack of disposable income within the target demographic, as well as steep competition from more established brands like Lucky and

True Religion, the stores were never profitable. The Debtor filed the Case because it concluded that it was simply not viable, given the high costs of operating the retail stores (including rent) and the low sales volumes which were not expected to improve materially or in the near or medium-term.

12. After months of failed out-of-court sales and refinancing processes, the Debtor determined that the best way to maximize the value for the benefit of all interested parties was a prompt and orderly wind-down of the retail business. As more fully discussed in the *Declaration of Scott Merrell in Support of Chapter 11 Petition and First Day Motions* [D.E. 16], the conclusion to liquidate was reached following a lengthy process in which the Debtor considered and explored all reasonable strategic alternatives.

13. On the Petition Date, the Debtor filed various motions including the *Debtor's Motion for an Order Authorizing the Debtor to Pay Prepetition Wages, Compensation, Employee Benefits, and Other Associated Obligations* [D.E. 3] (the "Payroll Motion"), the *Debtor's Motion for Interim and Final Orders Authorizing the Debtor to Pay Certain Prepetition Taxes and Related Obligations* [D.E. 8] (the "Taxes Motion"), the *Motion for an Order (I) Prohibiting Utilities from Altering, Refusing or Discontinuing Services, (II) Approving the Adequate Assurance Deposits Proposed by the Debtor, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* [D.E. 11] (the "Utilities Motion"), and the *Debtor's Motion for an Order Authorizing the Debtor to Honor Certain Prepetition Obligations to Customers and to Otherwise Continue Certain Customer Practices and Programs in the Ordinary Course of Business* [D.E. 13] (the "Customer Programs Motion").

14. In the Payroll Motion, the Debtor sought authority to pay certain prepetition claims of its employees including, among other things, payroll and paid time off (or vacation pay). By order dated July 23, 2014, the Court granted the Payroll Motion and authorized the

payment of prepetition payroll and paid time off payable at termination of employment. See D.E. 42 (the "Payroll Order").

15. In the Taxes Motion, the Debtor sought authority to pay prepetition tax obligations, including sales tax, which would become due and payable following the Petition Date. By order dated July 23, 2014, the Court granted the Taxes Motion and authorized the payment of prepetition taxes, fees, and related obligations to various federal, state, county, and city taxing and licensing authorities. See D.E. 45 (the "Taxes Order").

16. In the Utilities Motion, the Debtor sought an order prohibiting various utility providers from altering, refusing, or discontinuing services and limiting the amount of adequate assurance to a deposit which does not exceed a normal monthly bill. By order dated August 11, 2014, the Court granted the Utilities Motion and authorized the Debtor to make deposit payments to the utility companies. See D.E. 101 (the "Utilities Order").

17. In the Customer Programs Motion, the Debtor sought authority to honor certain customer programs including gift cards/certificates, returns, refunds and adjustments (the "Customer Programs"). By order dated August 25, 2014, the Court granted the Customer Programs Motion and authorized the Debtor to honor the prepetition Customer Programs. See D.E. 121 (the "Customer Programs Order").

18. Prior to the Petition Date, the Debtor entered into a software license agreement, software support agreement, and managed services agreement (the "License Agreements") with Island Pacific Systems, Inc. ("Island Pacific"). Pursuant to the License Agreements, the Debtor was given a nonexclusive license to use Island Pacific's software which included point-of-sale functionality, inventory management, and financial and sales auditing capabilities. Shortly after the Petition Date, Island Pacific threatened to terminate the License Agreements. Following negotiations, the Debtor and Island Pacific reached a short-term agreement for the Debtor's use

of Island Pacific's software. The agreement provided that the Debtor would pay Island Pacific $15,809.00 in full and final satisfaction of any prepetition amounts due to Island Pacific under the License Agreements.

19. On August 7, 2014, the Debtor filed the *Debtor's Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving Settlement Agreement with Island Pacific Systems, Inc.* [D.E. 89] (the "Island Pacific Motion"). Pursuant to the Island Pacific Motion, the Debtor requested authority to enter into a settlement agreement memorializing the parties' agreement. By order dated August 11, 2014, the Court granted the Island Pacific Motion and authorized the Debtor to pay Island Pacific $15,809.00 in full and final satisfaction of any obligations under the License Agreements. See D.E. 106 (the "Island Pacific Order").

B. GOB Sales

20. On August 4, 2014, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105, 363, 364, 365 and 554 (I) Approving Assumption of Agency Agreement (II) Approving Store Closing Sales, (III) Authorizing the Debtor to Abandon Property, and (IV) Granting Related Relief* [D.E. 72] (the "Sale Order") authorizing the Debtor to, among other things, conduct the GOB Sales to liquidate its inventory pursuant to an agency agreement with Hilco Merchant Resources, LLC (the "Hilco Agency Agreement"). The Hilco Agency Agreement provided that Hilco Merchant Resources, LLC ("Hilco") would be paid through the GOB Sales. To secure Hilco's obligations under the agency agreement and to guarantee payment to Hilco, the Hilco Agency Agreement stated that the Debtor would provide Hilco with an irrevocable standby letter of credit.

21. Pursuant to the Hilco Agency Agreement, on or before August 31, 2014, the Debtor concluded the GOB Sales at all five of its store locations, after which the Debtor closed

all such locations. Further, Hilco was paid all amounts due and owing under Hilco Agency Agreement through the GOB Sales. Accordingly, the Debtor does not owe Hilco any further payments under the Hilco Agency Agreement or otherwise.

C. Rejection of Leases and Employment Agreements

22. On August 5, 2014, the Debtor filed motions to reject the leases for each of the Debtor's five store locations. See D.E. 75, 76, 77, 78, and 79. By orders dated August 27, 2014, the Court granted the motions and authorized the rejection of each of the leases. See D.E. 129, 130, 131, 132, and 133.

23. On September 12, 2014, the Debtor filed motions to reject the employment agreement of two of the Debtor's senior management professionals. See D.E. 137 and 138. By orders dated October 1, 2014, the Court granted the motions and authorized the rejection of each of the employment agreements. See D.E. 151 and 152.

D. Claims Resolution and Reconciliation

24. Pursuant to an order entered on November 6, 2014 [D.E. 171] (the "Bar Date Order"), this Court established December 17, 2014 as the bar date by which any person or entity, other than governmental units, holding a claim against the Debtor arising (or deemed to arise) before the Petition Date, including claims arising under section 503(b) of the Bankruptcy Code, was required to file a proof of claim. The Bar Date Order established January 20, 2015 as the bar date by which governmental units holding a claim against the Debtor arising (or deemed to arise) before the Petition Date were required to file a proof of claim. No requests for payment of administrative expenses have been filed.

1. Resolution of Filed Proofs of Claim

25. On August 28, 2014, Darren D. James, a former employee of the Debtor, filed Claim Number 5 in the amount of $45,000 regarding amounts allegedly owed to him in

connection with his employment with the Debtor (the "James Claim"). The James Claim asserted priority status under section 507(a)(4) for the entirety of the claim even though the statute limits priority treatment to $12,475. The Debtor filed an objection to the James Claim on March 9, 2015 [D.E. 214] (the "James Claim Objection") requesting that the claim be allowed in the amount of $45,000 but according only $12,475 priority treatment under section 507(a)(4). On April 20, 2015, the Court entered an order sustaining the James Claim Objection, allowing the James Claim in the amount of $45,000, of which $12,475 is entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code and the remaining $32,525 is a non-priority general unsecured claim. See D.E. 249.

26. On September 29, 2014, Denise Norkus, a former employee of the Debtor, filed Claim Number 7 in the amount of $194,661.52 regarding amounts claimed to be due to her in connection with her employment with the Debtor (the "Norkus Claim"). A portion of the Norkus Claim, $34,615.20, was attributable to impermissible "waiting time" penalties.

27. The Debtor filed an objection to the Norkus Claim on March 9, 2015 [D.E. 215] (the "Norkus Claim Objection") requesting that the Court disallow the waiting time penalties and allow the Norkus Claim in the amount of $160,046.32, according $12,475 of the claim priority treatment under section 507(a)(4). On April 20, 2015, the Court entered an order sustaining the Norkus Claim Objection, allowing the Norkus Claim in the amount of $160,046.32, according $12,475 of the claim priority treatment under section 507(a)(4), and treating the remaining $147,571.32 as a non-priority general unsecured claim. See D.E. 250. The Court specifically disallowed the portion of the claim attributable to "waiting time" penalties in the amount of $34,615.20. See id.

28. On November 3, 2014, La Plaza Mall/Simon Property Group, Inc. ("Simon") filed Claim Number 9 in the amount of $252,331.48 for amounts claimed to be due as a result of the

rejection of the La Plaza Mall store location lease (the "La Plaza Claim"). On that same date, Woodfield Mall, LLC/Simon filed Claim Number 10 in the amount of $367,151.36 for amounts claimed to be due as a result of the rejection of the Woodfield Mall store location lease (the "Woodfield Claim"). The Debtor filed objections to the La Plaza Claim [D.E. 216] (the "La Plaza Claim Objection") and the Woodfield Claim [D.E. 217] (the "Woodfield Claim Objection") on March 9, 2015, requesting the Court to reduce the claims based on the amount of the letter of credit provided by the Debtor to Simon and to disallow the claims pending further information from Simon regarding mitigation of damages. On March 30, 2015, Simon filed responses to the claim objections. See D.E. 236, 237 (the "Simon Responses"). After these filings, the Debtor and Simon engaged in negotiations regarding the La Plaza Claim and Woodfield Claim. As a result of these discussions, the parties reached an agreement resolving the claims objections. Accordingly, the Court entered orders memorializing the agreement which provided that in full and final satisfaction of Simon's claims against the Debtor with respect to the leases for the La Plaza Mall and Woodfield Mall, Simon shall have an allowed general unsecured claim in the amount of $125,027.36 with respect to the La Plaza Claim and $244,668.64 with respect to the Woodfield Claim. See D.E. 256 and 257.

29. The Debtor scheduled a claim for the State Board of Equalization (TX) (the "Board") in the amount of $1,381.00 for taxes. The Board then filed a proof of claim for prepetition taxes owed by the Debtor in the amount of $345.60, which proof of claim supersedes the Board's scheduled claim pursuant to Rule 3003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). See Claim No. 11. The Debtor paid this claim in full pursuant to the Taxes Order [D.E. 45] dated July 23, 2014. Accordingly, the Board's claim should be deemed satisfied and the final claim amount for this claim is $0.00.

30. WGW filed two proofs of claim, Claim Numbers 12 and 13, both in the amount of

$7,146,808.59. Claim Number 13 is a duplicate of Claim Number 12 and, therefore, Claim Number 13 should be disallowed. WGW consents to this treatment.

2. Resolution of Scheduled Claims That Have Been Paid or For Which Proofs of Claim Have Not Been Filed

31. The Debtor scheduled certain claims, which were not scheduled as disputed, contingent, or unliquidated, that have been paid in full pursuant to orders of this Court. The Debtor scheduled a secured claim in the amount of $264,723.63 for Hilco pursuant to the standby letter of credit under the Hilco Agency Agreement. Because Hilco was paid in full through the GOB Sales, Hilco's claim should be deemed satisfied and the final claim amount is $0.00. The Debtor scheduled a claim for ShopperTrak in the amount of $500, a vendor of the Debtor. This creditor shows no amount due. Accordingly, this claim should be deemed satisfied and the final claim amount is $0.00.

32. Similarly, the Debtor scheduled a claim for the Illinois Department of Revenue in the amount of $6,256 and a claim for the Texas Comptroller of Public Accounts in the amount of $12,255 for taxes. Both claims have been paid in full pursuant to the Taxes Order. The Debtor scheduled claims for Keter Environmental in the amount of $324.35 and WCI – World Communication in the amount of $1,394.75 for utility services that were paid in full pursuant to the Utilities Order. The Debtor also scheduled claims for Deposits by Individuals – relating to gift cards or gift certificates – in the amount of $4,000, employee vacation pay in the amount of $85,726.52, employee payroll in the amount of $55,570.96, Vision Service Plan in the amount of $47.76 for employee vision plans, and a claim for American United in the amount of $401.68 for certain employee health benefits. These claims were paid in full pursuant to the Customer Programs Order [D.E. 121] dated August 25, 2014 and the Payroll Order [D.E. 42] dated July 23, 2014. Accordingly, these claims should be deemed satisfied and the final claim amount for the

Illinois Department of Revenue, the Texas Comptroller of Public Accounts, the Deposits by Individuals, employee vacation pay, employee payroll, Vision Service Plan, and American United is $0.00. The Debtor also scheduled $1,820.30 for SPE, Inc. for utility services. This claim was partially paid pursuant to the Utilities Order leaving a balance owed of $1,369.80.

33. The Debtor scheduled a claim for American Express in the amount of $16,043.94, Loomis in the amount of $1,364.39, and two separate claims for UPS in the amounts of $1,554.37 and 48.69. WGW and its affiliates had these vendors in common with the Debtor. WGW elected to pay these claims in full in order to preserve its vendor relationships. Accordingly, these claims should be deemed satisfied and the final claim amount for American Express, Loomis, and UPS is $0.00.

34. The Debtor scheduled the following claims as contingent, unliquidated, and disputed:

(a) Island Pacific: $28,221.25;

(b) Simon Property Group: $1,606,447;

(c) Glendale II Mall Associates, LLC: $1,420,121;

(d) Stonebriar Mall, LLC: $1,482,360; and

(e) Woodlands Mall Associates, LLC: $1,720,093.

The claim for Island Pacific was resolved via payment pursuant to the Island Pacific Order [D.E. 106] dated August 11, 2014 and, as discussed above, Simon filed proofs of claim for the La Plaza Mall and Woodfield Mall, which filed proofs of claim supersede the scheduled claims pursuant to Bankruptcy Rule 3003, and those claims were resolved per orders of this Court. No proofs of claim were filed for the remaining contingent, unliquidated, and disputed claims of Glendale II Mall Associates, LLC, Stonebriar Mall, LLC, and Woodlands Mall Associates, LLC. Accordingly, these claims should be deemed satisfied and the final claim amount for these

scheduled claims is $0.00, or, in the case of Simon, treated pursuant to the resolution of its proofs of claim.

3. Resolution of Claims for which Notice was Recently Received

35. The Debtor recently received notices from creditors (largely city and county taxing authorities) regarding certain outstanding balances. Because the Debtor was unaware that these amounts were owed, claims were not scheduled for these creditors. Nonetheless, the Debtor proposes that the claims of these creditors be treated as set forth herein.

36. The Debtor received notices detailing base taxes due from the following taxing authorities:

(a) City of McAllen Tax Office: $560.99;

(b) Collin County Tax Office: $4,479.24;

(c) Hidalgo County Tax Assessor-Collector: $2,455.60; and

(d) Montgomery County Tax Office: $4,718.33.

As detailed on Exhibit A, the Debtor proposes to treat these claims as priority unsecured claims. The City of McAllen Tax Office, the Hidalgo County Tax Assessor-Collector, and the Montgomery County Tax Office will have final claim amounts as set forth above. The base tax amount due for the Collin County Tax Office includes $921.09 for the City of Frisco. Because the City of Frisco filed a separate proof of claim, which the Debtor is paying in full, the Collin County Tax Office will have a final claim amount of $3,558.15 (*i.e.*, $4,479.24-$921.09).

37. The Debtor also received notices from Burbank Water and Power for prepetition amounts owed totaling $990.50 and from Entergy Gulf States, Inc. for prepetition amounts owed totaling $104.93. The Debtor proposes to treat Burbank Water and Power's claim for $990.50 as a general unsecured claim. Entergy Gulf States, Inc. confirmed a zero balance owed and therefore its final claim amount is $0.00.

38. The Debtor has devoted significant time and resources to the reconciliation of outstanding claims against the Debtor both prior to and after the claims bar dates. The remaining assets now consist of approximately $186,542.56 in the Account. Based upon the Debtor's review and analysis of the claims after resolution and reconciliation, there are (a) **$0.00** in outstanding valid administrative expense indebtedness chargeable to the estate (other than accrued and unpaid professional fees as discussed below and upcoming United States Trustee's fees); (b) **$0.00** in outstanding valid secured indebtedness chargeable to the estate (c) **$45,325.91** in outstanding valid priority unsecured indebtedness chargeable to the estate; and (d) **$7,710,904.65** in outstanding valid general unsecured indebtedness chargeable to the estate.

39. Professionals have not submitted their final fee applications to the Court. However, the Debtor proposes to distribute the funds as described below with professional fees to be paid in full subject to approval by this Court at a final hearing on fee applications.

40. The funds available will be sufficient to pay, in full, allowed: professional fees and priority unsecured claims. After payment of these claims, the Debtor will not have sufficient funds to pay general unsecured claims in full; however, the Debtor estimates that it will be able to disburse funds to allowed general unsecured creditors in an amount equal to 1.19% of their claims. The percentage distribution to allowed general unsecured creditors may change depending on the amount of approved professional fees and after payment of fees owed to the United States Trustee.

RELIEF REQUESTED

41. The Debtor requests that the Court approve the below described procedures for the dismissal of the Case, the distribution of funds to holders of allowed claims, and the disallowance of certain claims. Granting the relief requested in the Motion will result in prompt resolution of the estate. Entry of the Approval Order will not dismiss this chapter 11 case.

Rather the Approval Order authorizes procedures to implement a structured dismissal. Once the procedures are complete, the Debtor will submit the proposed Dismissal Order (defined below) to effectuate dismissal of the case.

42. After review, the Debtor does not believe there are any other viable sources of recovery for this estate including chapter 5 avoidance actions. Attached hereto as **Exhibit 2** is a list of payments made by the Debtor within ninety days before the Petition Date. These payments were made in the ordinary course of the Debtor's business and represent expenditures for, among other things, leasehold improvements and lease related expenses. Exhibit 2 also lists payments made to WGW within the year immediately preceding the Petition Date. While there are individuals several levels up in the corporate structure who are involved with the Debtor and also involved with WGW, WGW is not an insider under sections 101(31) or 101(2) of the Bankruptcy Code. Accordingly, there are no viable sources of recovery under chapter 5 of the Bankruptcy Code.

43. The Debtor is not aware of any allowable outstanding administrative expense claims other than United States Trustee's fees and professional fee claims. With respect to professional fee claims, the Debtor estimates that outstanding professional fee claims, including holdbacks and fees and expenses necessary to conclude the Case, will be in excess of approximately $50,000 at the conclusion of the Case. S&L received a total of $50,000 in retainer in connection with the Case, all of which was received prior to the entry of the Order for Relief and $24,509.00 of which was applied to pay for services rendered and $2,481.79 for expenses incurred prepetition. The balance ($23,009.21) is being held in S&L's IOLTA account and will be available to pay amounts owed the firm.

44. As demonstrated by the above discussion, it is not economically possible to confirm a chapter 11 plan. The only two alternatives are dismissal of the Case or conversion to a

chapter 7 case. Conversion to a chapter 7 case does not benefit creditors. The unencumbered cash would be consumed to pay chapter 7 administrative expenses, diminishing the funds available to pay claims. Payments to prior employees of allowed priority claims would be needlessly delayed. The Debtor believes the better solution is to undertake a structured dismissal of the Case while respecting the priority scheme of the Bankruptcy Code in the distribution of the remaining unencumbered funds in the estate.

45. In order to effectuate the dismissal, the Debtor needs to distribute its cash in accordance with the priority claims under the Bankruptcy Code. The distributions to be made are on account of (a) United States Trustee's fees; (b) priority unsecured claims, primarily wage claims; (c) general unsecured claims; and (d) professional fee claims. Distributions on account of United States Trustee's fees will be made in the ordinary course until the Dismissal Order is entered. Professional fee claims, other than fees and expenses approved at upcoming scheduled hearings, will be paid upon entry of an order approving final fee applications prior to the dismissal of the Case. Priority unsecured claims will be paid upon entry of the Approval Order pursuant to the below described procedures. Finally, general unsecured claims will receive a *pro rata* distribution after payment to the priority unsecured claimants and after professional fees are paid, but prior to the entry of the Dismissal Order, pursuant to the below described procedures:

(a) As noted above and based upon the Debtor's review and analysis of the claims after resolution and reconciliation, there is (1) **$0.00** in outstanding valid administrative expense indebtedness chargeable to the estate (other than accrued and unpaid professional fees and upcoming United States Trustee's fees); (2) **$0.00** in outstanding valid secured indebtedness chargeable to the estate; (3) **$45,325.91** in outstanding valid priority unsecured indebtedness chargeable to the estate; and (4) **$7,710,904.65** in outstanding valid general unsecured indebtedness chargeable to the estate.

(b) Subject to Court approval of the relief requested herein, the Debtor proposes to pay, in full, priority unsecured claims and professional fee claims. The Debtor also proposes to distribute approximately $91,216.65 to holders of general unsecured claims on a *pro rata* basis, **thereby**

resulting in an estimated distribution to holders of general unsecured claims of approximately 1.19% of the allowed amount of such claims.[3]

(c) Given the size of the claims pool and the comparatively miniscule amount of funds available for distribution, the Debtor submits that the best interests of this estate will be served by a claims resolution process that strikes a fair balance between the due process rights of claim holders and the economic realities of the Case. Accordingly, with respect to claims that have not, as of this Motion, been resolved by prior order of the Court, the Debtor proposes that the claim amount asserted by a person or entity (each, a "Claimant") who has filed a claim (or, in the absence of a filing, the claim as provided on the Debtor's schedules) be deemed the allowed amount of such claim for purposes of distribution (each, an "Allowed Claim"), subject to the variances in claim amounts detailed above and except that the disallowed claims discussed below will not be entitled to a distribution.

(d) Any claim filed after the filing of this Motion, shall be deemed disallowed as an untimely filed claim, except to the extent that a proof of claim may be filed after the claims bar date under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

(e) A schedule identifying the Claimants, the amounts of their asserted claim (or scheduled claim), the type of claim, the amounts of their proposed Allowed Claims, and a brief explanation as to any objection to such claims or variance between the claim amounts asserted (or scheduled) and the proposed amount for allowance is annexed hereto as **Exhibit A** (the "Claims Schedule"). If a Claimant or other party disputes the amount of the Allowed Claim set forth on the Claim Schedule, such Claimant or other party (an "Objecting Party") shall be encouraged to contact counsel for the Debtor informally and attempt to resolve its dispute amicably, without the need to file a formal objection.[4]

(f) If an Objecting Party nevertheless wishes to file a formal objection, the Debtor proposes that any such Objecting Party be required to file such objection with the Court, together with documentation supporting its objection (each a "Claim Objection") on or before the deadline to be set by the Court in the order approving this Motion (the "Objection Deadline") and serve such Objection on counsel for the Debtor so as to be received by the Objection Deadline. In any Claim Objection, the Objecting Party must state the ground for its objection clearly and with particularity. The Debtor seeks to resolve any Claim Objection without further order of the Court. If counsel for the Debtor and the Objecting

[3] The distribution to Allowed Claims (as that term is defined and used below) for general unsecured creditors may be less than the estimated distribution to the extent that the amount of Allowed Claims and/or the amount of professional fee/expense claims exceeds the Debtor's estimate.

[4] Debtor's counsel should be contacted by e-mail at rdesai@bernsteinshur.com or by phone at (207) 774-1200.

Party cannot agree on a resolution, then an omnibus hearing to consider any and all Claim Objections filed will be held on a date to be provided by the Court in the order approving this Motion (the "Claims Hearing").

(g) In the event that no Claims Objection is filed, or if all Claim Objections have been resolved prior to the Claims Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Authorizing Distribution on Account of Allowed Claims substantially in the form annexed hereto as **Exhibit B** (the "Distribution Order"). The Distribution Order will (1) highlight any modifications made to the Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Claim Objections, (2) authorize counsel to the Debtor to make distributions on account of the Allowed Claims identified in the Claim Scheduled annexed to the Distribution Order, and (3) schedule a final fee hearing. In the event that one or more Claim Objections is filed and not resolved prior to the Claims Hearing, counsel to the Debtor will submit to the Court a proposed Distribution Order promptly following the Court's ruling on such Claim Objection(s).

(h) The Debtor hereby seeks a determination from the Court that any Claimant or other interested party who does not timely file a Claim Objection shall be barred from subsequently asserting any claim against the Debtor or from challenging the proposed Allowed Claim amounts set forth in the Claim Schedule.

(i) In order to effectuate the foregoing claims resolution process (the "Claims Resolution Process"), the Debtor requests that the Court waive, to the extent otherwise applicable, the requirements of Bankruptcy Rule 3007 and Local Rule 3007-1 with regard to substantive objections and omnibus claims objections.[5]

(j) Distributions on account of Allowed Claims that are priority unsecured claims will be made by counsel to the Debtor from the funds held in the Account within 10 days of the Court's entry of the Distribution Order.

(k) Distributions on account of Allowed Claims that are general unsecured claims will be made by counsel to the Debtor from the funds held in the Account, after distribution to the Allowed Claims that are priority unsecured claims and to case professionals, within 30 days of the Court's

[5] Courts in this district have previously granted relief from Local Rule 3007-1 where circumstances have warranted, and is well authorized to approve appropriate procedures that further the fair and efficient administration of this estate and the conclusion of the Case. See In re G.I. Joe's Holding Corp., et al., Case No. 09-10713 (KG), D.E. 735 (Bankr D. Del. 2011) (granting relief from Local Rule 3007-1 to allow estate representatives to administer informal claims resolution process in connection with chapter 11 dismissal); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (KG), D.E. 5114 (Bankr D. Del. 2010) (granting debtors relief from Local Rule 3007-1 with respect to omnibus objections to claims on substantive grounds); In re KB Toys, Inc., Case No. 08-13269 (KJC), D.E. 914 (Bankr D. Del. 2009) (granting relief from Local Rule 3007-1 to allow debtors to administer similar informal claims resolution process in furtherance of orderly chapter 11 dismissal).

entry of an order approving the case professionals' final request for allowance and payment of all fees and expenses incurred during the Case.

46. Given the minimal amount of funds available for distribution ($186,542.56) and the estimated distribution percentage, the Debtor requests that the Court approve the following guidelines governing distributions on account of Allowed Claims:

(a) Debtor's counsel shall be authorized to make a single distribution to creditors of the funds held in the Account.

(b) Any distributed check that has not been claimed and/or cashed within 60 days after dispatch of the check (the "Check Cashing Period") shall be deemed void and the distribution on account of such claim shall be deemed forfeited by the creditor.

(c) Any funds remaining in the Account after the expiration of the Check Cashing Period shall be remitted to the Debtor.

47. Because available funds are severely limited, the estate cannot afford an extensive claims resolution process that would serve to reduce the already limited funds available to pay general unsecured creditors. This is true regardless of whether the Case is concluded by structured dismissal, as the Debtor submits is in the best interests of the estate, or if the Case were to be converted to chapter 7. Because the Debtor resolved many of the claims asserted against it in the process of claims objections and by payment pursuant to orders of this Court, it is not anticipated that a significant number of objections to the Claims Schedule will be filed or even raised informally.

48. In addition to the Claims Resolution Process, the Debtor seeks disallowance of certain scheduled claims and filed proofs of claim because these claims have been paid in full pursuant to orders entered by the Court, are duplicate claims, or because the Debtor scheduled the claim as contingent, unliquidated, and disputed and the creditor did not file a proof of claim. A schedule identifying such claims is annexed hereto as **Exhibit C** (the "Disallowed Claims Schedule"). The Disallowed Claims Schedule includes the claim number (if applicable), the

name of the claimant, the claim amount as filed or scheduled, and the reason for disallowance of the claim.

49. The Debtor requests that the Court approve the following guidelines governing disallowance of claims:

(a) If a claimant wishes to object to the treatment of its claim as set forth on the Disallowed Claims Schedule, such claimant must file an objection with the Court (the "Disallowed Claims Objection") on or before the deadline set by the Court in the Approval Order (the "Disallowed Claims Objection Deadline") and serve such Disallowed Claims Objection on counsel to the Debtor by the Disallowed Claims Objection Deadline.

(b) In the event a Disallowed Claims Objection is filed and not resolved, then an omnibus hearing to consider any and all Disallowed Claims Objections will be held on a date to be provided by the Court in the Approval Order (the "Disallowed Claims Objection Hearing").

(c) In the event that no Disallowed Claims Objection is filed, or if all Disallowed Claims Objections have been resolved prior to the Disallowed Claims Objection Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Disallowing Certain Claims, substantially in the form annexed hereto as **Exhibit D** (the "Disallowed Claims Order").

(d) The Disallowed Claims Order will (a) highlight any modifications made to the Disallowed Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Disallowed Claims Objections.

(e) The Debtor hereby seeks a determination from the Court that any claimant or other interested party who does not timely file a Disallowed Claims Objection shall be barred from subsequently asserting a claim based on a disallowed claim against the Debtor.

(f) The Debtor requests that the Court waive, to the extent otherwise applicable the requirements of Bankruptcy Rule 3007 and Local Rule 3007-1 with regard to substantive claims objections and omnibus claims objections.

50. After all distributions to holders of Allowed Claims that are priority unsecured claims are made, but before the Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case (defined below) is filed, the Debtor will schedule a final fee

hearing and the case professionals will each file a final request for allowance and payment of all fees and expenses incurred during the Case.

51. Within 30 days after entry of an order by the Court approving the final request for allowance and payment of all fees and expenses requested by case professionals, Debtor's counsel will distribute the remaining funds in the Account first, to pay, in full, the case professionals and, second, to pay the Allowed Claims that are general unsecured claims a *pro rata* share of the remaining funds in the Account.

52. After the above described claims disallowance process and Claims Resolution Process have been completed, all distributions have been made, final fee applications have been adjudicated and all accrued and as yet unpaid fees owing to the United States Trustee have been paid, counsel to the Debtor will file with the Court a Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case, substantially in the form annexed hereto as **Exhibit E** (the "Dismissal Order"). The Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case will, among other things, (a) verify that distributions on account of Allowed Claims were made by the Debtor's counsel, (b) confirm that all accrued United States Trustee fees have been paid, and (c) request entry of the Dismissal Order.

BASIS FOR RELIEF

A. Dismissal of This Case Is Warranted Under Section 1112(b) of the Bankruptcy Code

53. Numerous courts, both in this district and throughout the country, have approved orderly dismissals under similar circumstances to the Debtor's case, where the debtor lacks the requisite financial ability to confirm a chapter 11 plan and/or where the costs associated with plan confirmation would eliminate the possibility of a meaningful creditor recovery. See e.g., In re Beacon Power Corp., et. al., Case No. 11-13450, D.E. 341 (Bankr. D. Del. 2012); In re G.I.

Joe's Holding Corp and G.I. Joe's, Inc., Case No. 09-10713, D.E. 753, 773 (Bankr. D. Del. 2011); In re KB Toys, Inc., Case No. 08-13269, D.E. 914 (Bankr. D. Del. 2009); In re CFM U.S. Corporation, et. al., Case No. 08-10668, D.E. 1097 (Bankr. D. Del. 2009); In re Wickes Holdings, LLC, et al., Case No. 08-10212, D.E. 1418 (Bankr. D. Del. 2009); In re Bag Liquidation, Ltd, Case No. 08-32096, D.E. 688 (Bankr. N.D. Tex. 2009); In re Levitz Home Furnishings, Inc., et. al., Case. No. 05-45189, D.E. 1167 (Bankr. S.D.N.Y. 2008); In re Magnolia Energy L.P., et al., Case No. 06-11069, D.E. 196 (Bankr. D. Del. 2007).

54. Moreover, in Jevic Holding Corp., 2015 WL 2403443 at *1, the Third Circuit confirmed that structured dismissals, like the dismissal requested here, are permissible under the Bankruptcy Code in appropriate cases. The Third Circuit held that "absent a showing that a structured dismissal has been contrived to evade the procedural protections and safeguards of the plan confirmation or conversion processes, a bankruptcy court has discretion to order such a disposition." Id. at *6 (the Third Circuit also noted the bankruptcy court's findings that "there was no prospect of a confirmable plan [in the case] and that conversion to Chapter 7 was a bridge to nowhere.").

55. Further, under section 1112(b) of the Bankruptcy Code, a court shall "convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, *whichever is in the best interests of creditors and the estate*, for cause." 11 U.S.C. § 1112(b) (emphasis added); In re Albany Partners, Ltd., 749 F.2d 670, 674 (11th Cir. 1984); In re Blunt, 236 B.R. 861, 864 (Bankr. M.D. Fla. 1999). A determination of cause is made by the court on a case-by-case basis. Albany Partners, 749 F.2d at 674. The decision to dismiss or convert a case is particularly delegated to the bankruptcy court's sound discretion. See In re Camden Ordinance Mfg. Co. of Arkansas, Inc., 1999 WL 587790, at *2 (Bankr. E.D. Pa. July 21, 1999) (citing In re

Atlas Supply Corp., 837 F.2d 1061, 1063 (5th Cir. 1988)). Therefore, it is clear that the Court is authorized to dismiss the Debtor's chapter 11 case upon a showing of "cause."

56. Case law interpreting section 1112(b) of the Bankruptcy Code indicates that a court has wide discretion to use its equitable powers to dispose of a debtor's case. In re Preferred Door Co., 990 F.2d 547, 549 (10th Cir. 1993) (holding that a court has broad discretion to dismiss a bankruptcy case); In re Sullivan Cent. Plaza I, Ltd., 935 F.2d 723, 728 (5th Cir.1991) (holding that a determination of whether cause exists under section 1112(b) of the Bankruptcy Code "rests in the sound discretion" of the bankruptcy court); In re Koerner, 800 F.2d 1358, 1367 & n.7 (5th Cir. 1986) (holding that a bankruptcy court is afforded "wide discretion" under section 1112(b) of the Bankruptcy Code); Albany Partners, 749 F.2d at 674 (same).

57. Section 1112(b) of the Bankruptcy Code provides a nonexclusive list of 16 grounds for dismissal. 11 U.S.C. § 1112(b)(4)(A)-(P); Frieouf v. U.S., 938 F.2d 1099, 1102 (10th Cir. 1991) (finding that section 1112(b) of the Bankruptcy Code's list is nonexhaustive); In re Blunt, 236 B.R. at 864 (same). One such ground is where a party-in-interest establishes that there is an "inability to effectuate substantial consummation of a confirmed plan [of reorganization]." 11 U.S.C. § 1112(b)(2)(A); Preferred Door Co., 990 F.2d at 549; Sullivan Cent. Plaza I, 935 F.2d at 728. Inability to effectuate a plan arises when a debtor lacks the capacity to "formulate a plan or carry one out" or where the "core" for a workable plan of reorganization "does not exist." See Preferred Door, 990 F.2d at 549 (quoting Hall v. Vance, 887 F.2d 1041, 1044 (10th Cir. 1989)) (finding an inability to effectuate a plan arises where debtor lacks capacity to formulate a plan or carry one out); In re Blunt, 236 B.R. at 865 (finding cause to dismiss debtor's case under section 1112(b)(2) of the Bankruptcy Code where "core" for a workable plan of reorganization found to be nonexistent). Accordingly, the Court may dismiss the Case because the Debtor is unable to effectuate or fund the plan process.

58. As explained above, it is simply not possible for the Debtor to confirm a chapter 11 plan because the Debtor has liquidated all of its assets, wound down its estate, has no business to reorganize and there are insufficient funds available to confirm a plan of liquidation. By continuing in bankruptcy, the Debtor would likely incur additional administrative expenses beyond its ability to pay. In sum, the Debtor has met its burden of proof to show that cause exists to dismiss this chapter 11 case under section 1112(b) of the Bankruptcy Code due to its inability to effectuate a plan of reorganization.

59. Once a court determines that cause exists to dismiss a chapter 11 case, the court must also evaluate whether dismissal is in the best interests of the estate and creditors. See In re Superior Sliding & Window, Inc., 14 F.3d 240, 243 (4th Cir. 1994); In re Mazzocone, 183 B.R. 402, 411 (Bankr. E.D. Pa. 1995); In re Warner, 83 B.R. 807, 809 (Bankr. M.D. Fla. 1988). A variety of factors demonstrates that it is in the best interests of the Debtor's estate and creditors to dismiss this chapter 11 case and authorize the relief sought herein.

60. The dismissal of a debtor's chapter 11 case meets the best interests of creditors' test where a debtor has nothing left to reorganize and the debtor's assets are fixed and liquidated. See In re BTS, Inc., 247 B.R. 301, 310 (Bankr. N.D. Okla. 2000); In re Camden Ordinance Mfg. Co. of Arkansas, Inc., 245 B.R. 794, 799 (E.D. Pa. 2000) (finding that a reorganization to salvage a business which ceased doing business was not feasible); In re Brogdon Inv. Co., 22 B.R. 546, 549 (Bankr. N.D. Ga. 1982) (dismissing chapter 11 case in part where there was "simply nothing to reorganize" and no reason to continue the reorganization). As noted above, the Debtor has nothing left to reorganize, as all of the Debtor's assets have been liquidated. Additionally, dismissal of this chapter 11 case is warranted because the alternative – conversion to chapter 7 – would not serve the best interests of the Debtor's estate and creditors, because it would significantly deplete the already limited funds available to pay the Debtor's general

unsecured claims by virtue of the fact that chapter 7 administrative accruals enjoy priority in payment over chapter 11 claims.

61. One element of the best interests test focuses on whether the economic value of the estate is greater inside or outside of bankruptcy. In re Clark, 1995 WL 495951, at *5 (N.D. Ill. Aug. 17, 1995); In re Staff Inv. Co., 146 B.R. 256, 261 (Bankr. E.D. Cal. 1993). The prime criterion for assessing the best interests of the estate is the maximization of value as an economic enterprise. See id. Here, dismissal will maximize the value of the Debtor's estate because conversion to chapter 7 would impose substantial and unnecessary additional administrative costs upon the Debtor with no hope that this estate and creditors would receive even the small distribution provided under the Motion. Simply put, there is nothing for a chapter 7 trustee to do here.

62.

63.

B. Dismissal of This Case Is Warranted Under Section 305(a)(1) of the Bankruptcy Code

64. Alternatively, cause exists to dismiss this chapter 11 case pursuant to section 305(a) of the Bankruptcy Code, which provides, in pertinent part:

> (a) The court, after notice and a hearing, may dismiss a case under this title or may suspend all proceedings in a case under this title, at any time if—
>
> (1) the interests of creditors and the debtor would be better served by such dismissal or suspension[.]

11 U.S.C. § 305(a). In applying section 305(a), courts have considered a wide range of factors, including, but not limited to:

> (a) economy and efficiency of administration;
>
> (b) whether federal proceedings are necessary to reach a just and equitable solution;

(c) whether there is an alternative means of achieving an equitable distribution of assets; and

(d) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves the interests in the case.

See In re Crown Village Farm, LLC, Case No. 09-11522 (KG), 415 B.R. 86, 97 (Bankr. D. Del. 2009) (enumerating 305(a) factors and denying motion only because dismissal or abstention would have a deleterious effect on the administration of the debtor's chapter 11 case "which would languish while core issues were tried elsewhere"); see also In re Mazzocone, 200 B.R. 568, 575 (E.D. Pa. 1996). However, "the exact factors to be considered and the weight to be given to each of them is highly sensitive to the facts of each individual case." Mazzocone, 200 B.R. at 575.

65. Dismissal of this case is warranted under section 305(a)(1) for the same reasons that "cause" exists to dismiss this case pursuant to section 1112(b) – dismissal of the case will effectuate an efficient administration of this estate and represents the least expensive and most equitable alternative for the distribution of assets. Indeed, courts have approved dismissals similar to that proposed by the instant Motion under section 305(a) of the Bankruptcy Code. See e.g. In re Beacon Power Corp., et. al., Case No. 11-13450 (KJC), D.E. 341 (Bankr. D. Del. 2012); In re CSI, Inc., et al., Case No. 01-12923 (REG), D.E. 284 (Bankr. S.D.N.Y. 2006).

66. Authorizing the distributions contemplated herein and allowing the dismissal of this chapter 11 case furthers the efficient administration of the Debtor's estate and maximizes value.

NOTICE

67. Notice of this motion was served on the following parties on the date and in the manner set forth in the certificate of service: (a) the United States Trustee, (b) the Claimants, (c)

those claimants listed on the Disallowed Claims Schedule, (d) parties that have requested service of papers pursuant to Bankruptcy Rule 2002, (e) federal and state taxing authorities; and (f) the creditor matrix. The Debtor respectfully submits that no other or further notice is required.

NO PRIOR REQUEST

68. No prior motion for relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit 1**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: July 2, 2015

Respectfully submitted,

/s/ Joseph H. Huston, Jr.

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Attorneys for Debtor SJC, Inc.

EXHIBIT 1

Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

ORDER GRANTING MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 105(a), 305(a), AND 1112(b) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR (A) THE DISMISSAL OF THE DEBTOR'S CHAPTER 11 CASE, (B) THE RECONCILIATION, RESOLUTION AND ALLOWANCE OF CERTAIN CLAIMS AGAINST THE DEBTOR AND THE MAKING OF DISTRIBUTIONS TO HOLDERS OF SUCH ALLOWED CLAIMS, AND (C) THE DISALLOWANCE OF CERTAIN CLAIMS AND (II) GRANTING CERTAIN RELATED RELIEF

Upon the motion (the "Motion") of SJC, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), pursuant to sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code, for the entry of an order (I) approving procedures for (a) the dismissal of the Debtor's chapter 11 case, (b) the reconciliation, resolution and allowance of unsecured claims against the Debtor and the making of distributions to holders of such allowed claims, and (c) the disallowance of certain claims and (II) granting certain related relief; and this Court having reviewed the Motion[1] and having conducted a hearing on the Motion, at which time all parties-in-interest were given an opportunity to be heard; and it appearing that sufficient notice of the Motion having been given to parties-in-interest; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (b) notice of the Motion and the opportunity for a hearing thereon was adequate and sufficient under the circumstances and no other or further notice need

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

be given, (c) the legal and factual bases set forth in the Motion constitute just cause for the relief granted herein, and (d) the relief requested in the Motion is in the best interests of the Debtor's estate and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The Motion is hereby GRANTED as set forth herein.

2. Counsel for the Debtor is authorized to distribute the funds held in the Account pursuant to the terms of this Order.

3. The following procedures shall govern the reconciliation, resolution and allowance of all claims asserted against the Debtor and the distributions to be made to holders of Allowed Claims (the "Claims Resolution Process"):

(a) With respect to claims that have not, as of the Motion, been resolved by prior order of the Court, the claim amount asserted by a person or entity (each a "Claimant") who has filed a claim (or, in the absence of a filing, the claim as provided on the Debtor's schedules shall be deemed the allowed amount of such claim for purposes of the distribution to be made from the Account, subject to the variances in claim amounts noted on Exhibit A to the Motion and except that the Disallowed Claims will not be entitled to a distribution;

(b) Any claim filed after the date of the Motion shall be deemed disallowed as an untimely filed claim, except to the extent that a proof of claim may be filed after the claims bar date under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6);

(c) If a Claimant or other party disputes the amount of the Allowed Claim set forth on the Claims Schedule, such Claimant or other party (an "Objecting Party") shall be encouraged to contact counsel for the Debtor informally and attempt to resolve its dispute amicably, without the need to file a formal claim or objection;[2]

(d) If an Objecting Party nevertheless wishes to file a formal objection, the Objecting Party shall be required to file such objection with the Court, together with documentation supporting its claim or objection (each "Claim Objection") on or before 4:00 p.m. Eastern Time on _____, 2015 (the "Objection Deadline") and serve such

[2] Debtor's counsel should be contacted by e-mail at rdesai@bernsteinshur.com or by phone at (207) 774-1200.

Claim Objection on counsel for the Debtor so as to be received by the Objection Deadline. In any Claim Objection, the Objecting Party must state the grounds for its objection clearly and with particularity;

(e) The Debtor shall be authorized to resolve any Claim Objection without further order of the Court. If counsel for the Debtor and the Objecting Party cannot agree on a resolution, then an omnibus hearing to consider any such Claim Objection(s) will be held on _____ _____, 2015 at _____ Eastern Time (the "Claims Hearing");

(f) In the event that no Claim Objection is filed, or if all Claim Objections have been resolved prior to the Claims Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Authorizing Distribution on Account of Allowed Claims, substantially in the form annexed to the Motion as Exhibit B (the "Distribution Order"). The Distribution Order will (a) highlight any modifications made to the Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Claim Objections (b) authorize Debtor's counsel to make distributions on account of the Allowed Claims identified in the Claims Schedule annexed to the Distribution Order, and (c) schedule a final fee hearing;

(g) In the event that one or more Claim Objections is filed and not resolved prior to the Claims Hearing, counsel to the Debtor will submit to the Court a proposed Distribution Order promptly following the Court's ruling on such Claim Objection(s);

(h) Any Claimant or other interested party who does not timely file a Claim Objection shall be barred from subsequently asserting a claim against the Debtor or from challenging the proposed Allowed Claim amounts set forth in the Claim Schedule;

(i) Distributions on account of Allowed Claims that are priority unsecured claims will be made by counsel to the Debtor from the funds held in the Account within 10 days of the entry of the Distribution Order; and

(j) Distributions on account of Allowed Claims that are general unsecured claims will be made by counsel to the Debtor from the funds held in the Account, after distribution to the Allowed Claims that are priority unsecured claims and to case professionals, within 30 days of the Court's entry of an order approving the case professionals' final request for allowance and payment of all fees and expenses incurred during the Case.

4. Service of the notice of the filing of and hearing on the Motion upon the Claimants, those claimants included on the Disallowed Claims Schedule, and the other entities

and claimants listed in the Motion shall constitute good and sufficient notice of the filing of the Motion and all relief requested therein.

5. The requirements of Bankruptcy Rule 3007 and Local Rule 3007-1, with regard to claims objections and omnibus claims objections, are waived to the extent inconsistent with the Claims Resolution Process and the claims disallowance process.

6. Counsel to the Debtor shall administer distributions to holders of Allowed Claims from the funds held in the Account in accordance with the following guidelines governing distributions:

(a) The Debtor shall be authorized to make a single distribution to creditors of the funds held in the Account;

(b) Any distributed check that has not been claimed and/or cashed within 60 days after dispatch of the check (the "Check Cashing Period") shall be deemed void and the distribution on account of such claim shall be deemed forfeited by the creditor; and

(c) Any funds remaining in the Account after the expiration of the Check Cashing Period shall be remitted to the Debtor.

7. After all distributions to holders of Allowed Claims that are priority unsecured claims are made, but before the Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case is filed, the Debtor shall schedule a final omnibus fee hearing and professionals shall each be required to file a final request for allowance and payment of all fees and expenses incurred during this case.

8. Within 30 days after entry of an order by the Court approving the final request for allowance and payment of all fees and expenses requested by case professionals, Debtor's counsel will distribute the remaining funds first, to pay, in full, any remaining amounts owed to the case professionals and, second, to pay the Allowed Claims that are general unsecured claims a *pro rata* share of the remaining funds.

9. The following procedures shall govern the disallowance of certain claims asserted against the Debtor:

(a) If a claimant wishes to object to the treatment of its claim as set forth on the Disallowed Claims Schedule, such claimant must file an objection with the Court on or before 4:00 p.m. Eastern Time on _____, 2015 (the "Disallowed Claims Objection Deadline") and serve such objection on counsel to the Debtor by the Disallowed Claims Objection Deadline;

(b) In the event an objection (the "Disallowed Claims Objection") is filed, then an omnibus hearing to consider any and all Disallowed Claims Objections will be held on _____, 2015 at _____ Eastern Time (the "Disallowed Claims Objection Hearing");

(c) In the event that no Disallowed Claims Objection is filed, or if all Disallowed Claims Objections have been resolved prior to the Disallowed Claims Objection Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Disallowing Certain Claims, substantially in the form annexed to the Motion as Exhibit D (the "Disallowed Claims Order");

(d) The Disallowed Claims Order will (a) highlight any modifications made to the Disallowed Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Disallowed Claims Objections; and

(e) Any claimant or other interest party who does not timely file a Disallowed Claims Objection shall be barred from subsequently asserting a claim based on a disallowed claim against the Debtor.

10. After the claims disallowance process and Claims Resolution Process have been completed, all distributions have been made, final fee applications have been adjudicated and all accrued and as yet unpaid fees owing to the United States Trustee have been paid, the Debtor will file with the Court a Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case, substantially in the form annexed to the Motion as Exhibit E (the "Dismissal Order"). The Certification of Counsel and Request for Entry of the Proposed Dismissal Order will, among other things, (a) verify that distributions on account of Allowed

Claims were made by the Debtor's counsel, (b) confirm that all accrued United States Trustee's fees have been paid, and (c) request entry of the Dismissal Order.

11. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in this chapter 11 case.

12. To the extent applicable, Bankruptcy Rule 6004(h) is waived and this Order shall be effective and enforceable immediately upon entry.

Date: Wilmington, Delaware
_____, 2015

_____
Honorable Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT 2

LIST OF PAYMENTS MADE BY THE DEBTOR WITHIN NINETY (90) DAYS OF THE PETITION DATE

VENDOR NAME	CHECK AMOUNT	CHECK DATE	DESCRIPTION OF EXPENSE
ISLAND PACIFIC	5,868.75	5/21/14	SOFTWARE
GLENDALE II MALL ASSOCIATES, LLC	6,632.47	8/05/14	LEASE
WOODFIELD MALL, LLC	6,722.49	8/05/14	LEASE
ISLAND PACIFIC	9,748.20	6/04/14	SOFTWARE
UNITED HEALTH CARE	10,290.03	6/04/14	HEALTH PLAN
WOODFIELD MALL, LLC	13,233.72	5/14/14	LEASE
SIMON PROPERTY GROUP (TEXAS L.P.)	13,899.90	5/21/14	LEASE
STONEBRIAR MALL, LLC.	15,364.32	5/21/14	LEASE
THE WOODLAND MALL ASSOC.	15,621.90	5/21/14	LEASE
ISLAND PACIFIC	18,357.22	5/08/14	SOFTWARE
GLENDALE II MALL ASSOCIATES, LLC	18,691.50	5/21/14	LEASE
WOODFIELD MALL, LLC	18,945.19	5/21/14	LEASE
MOAC MALL HOLDINGS LLC	23,940.80	5/22/14	LEASE
STATE COMPTROLLER	28,151.35	7/31/14	SALES TAX
GREAT LAKES WOODWORKING COMPANY INC.	134,789.23	5/22/14	LEASEHOLD IMPROVEMENTS
AMERICAN EXPRESS	70,695.16	5/02/14	COMPANY EXPENSES
AMERICAN EXPRESS	11,010.60	6/04/14	COMPANY EXPENSES
TEXEIRA CONTRACTING,	35,333.61	6/11/14	CONTRACTOR FOR LEASEHOLD IMPROVEMENTS

LIST OF PAYMENTS MADE TO WESTERN GLOVE WORKS WITHIN THE YEAR PRECEDING THE PETITION DATE

VENDOR NAME	CHECK AMOUNT	CHECK DATE
WESTERN GLOVE WORKS	66,875.60	9/25/13
WESTERN GLOVE WORKS	63,138.22	10/23/13
WESTERN GLOVE WORKS	52,641.19	1/31/14
WESTERN GLOVE WORKS	1,377,432.86	1/17/14
WESTERN GLOVE WORKS	685,038.93	4/30/14
WESTERN GLOVE WORKS	30,068.46	6/04/14
	2,275,195.26	

EXHIBIT A

Claims Schedule

CLAIMS SCHEDULE

SECURED CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Secured (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
Hilco Merchant Resources, LLC	c/o Mark L. Desgrosseilliers	Womble Carlyle Sandridge & Rice, LLP	222 Delaware Avenue, Suite 1501	Wilmington	DE	19801		$264,723.63	$0.00	$264,723.63	$0.00	Paid pursuant to Hilco Agency Agreement and through GOB Sales
TOTAL								**$264,723.63**	**$0.00**	**$264,723.63**	**$0.00**	

PRIORITY CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Priority (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
Araceli Estrada	8659 Lehigh Ave			Sun Valley	CA	91352	4		$1,696.16	$1,696.16	$1,696.16	
City of Frisco	c/o Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	3		$924.92	$924.92	$924.92	
City of McAllen Tax Office	c/o Rebecca M. Grimes, Tax Assessor-Collector	PO Box 220	311 N. 15th St.	McAllen	TX	78505-0220				$560.99	$560.99	Recently received notice of amount due
Collin County Tax Office	c/o Kenneth L. Maun	2300 Bloomdale Rd., Suite 2324	PO Box 8046	McKinney	TX	75071				$3,558.15	$3,558.15	Recently received notice of amount due
	c/o E. Lopez, Esq.	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207						
Darren D James	25577 Via Brava			Valencia	CA	91355	5		$45,000.00	$45,000.00	$12,475.00	Per Court's Order dated 4/20/15 [D.E. 249]
Denise Norkus	8044 Woodrow Wilson Drive			Los Angeles	CA	90046	7		$12,475.00	$12,475.00	$12,475.00	Per Court's Order dated 4/20/15 [D.E. 250]
Deposits by Individuals								$4,000.00		$4,000.00	$0.00	Paid pursuant to Customer Programs Order dated 8/25/14 [D.E. 121]
Employee Payroll								$55,570.96		$55,570.96	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Employee Vacation Pay								$85,726.52		$85,726.52	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952		Sacramento	CA	95812-2952	1		$1,101.06	$1,101.06	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]; Amended Proof of Claim shows $0.00 balance.
Hidalgo County Tax Assessor-Collector	c/o Pablo (Paul) Villarreal, Jr., PCC	PO Box 178		Edinburg	TX	78540				$2,455.60	$2,455.60	Recently received notice of amount due
	c/o Pablo (Paul) Villarreal, Jr., PCC	205 South Pin Oak Avenue		Edinburg	TX	78539						
Illinois Department of Revenue	P.O. Box 19044			Springfield	IL	62796-0001		$6,526.00		$6,526.00	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
Montgomery County Tax Assessor/Collector	c/o Tammy J. Mcrae, Tax Assessor-Collector	400 N. San Jacinto		Conroe	TX	77301-2823				$4,718.33	$4,718.33	Recently received notice of amount due
	c/o Kaye Brouse, Esq.	Linebarger Goggan Blair & Sampson, LLP	103 W. Phillips Street	Conroe	TX	77301						
Stacey E. Schweppe	1474 Ramsay Circle			Walnut Creek	CA	94597	2		$6,461.76	$6,461.76	$6,461.76	
State Board of Equalization	Special Operations Branch, MIC: 55	P.O. Box 942879		Sacramento	CA	94279-0055	11	$1,381.00	$345.60	$345.60	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
Texas Comptroller of Public Accounts	Revenue Accounting DIV	Bankruptcy Section	PO Box 13528	Austin	TX	78711-3528		$12,255.00		$12,255.00	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
TOTAL								**$165,459.48**	**$68,004.50**	**$243,376.05**	**$45,325.91**	

CLAIMS SCHEDULE

UNSECURED CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Unsecured (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
American Express	P.O. Box 360001			Fort Lauderdale	FL	33336-0001		$16,043.94		$16,043.94	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
American United	One American Square, 510A	P.O. Box 6010		Indianapolis	IN	46282-0002		$401.68		$401.68	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Burbank Printing	3131 W. Burbank Road			Corpus Christi	TX	78416		$911.01		$911.01	$911.01	
Burbank Water and Power	P.O. Box 631			Burbank	CA	91503-0631				$990.50	$990.50	Recently received notice of amount due
	City of Burbank	164 W. Magnolia Blvd.		Burbank	CA	91502						
Darren D James	25577 Via Brava			Valencia	CA	91355	5		$45,000.00	$45,000.00	$32,525.00	Per Court's Order dated 4/20/15 [D.E. 249]
Denise Norkus	8044 Woodrow Wilson Drive			Los Angeles	CA	90046	7		$182,186.52	$182,186.52	$147,571.32	Per Court's Order dated 4/20/15 [D.E. 250]
Entergy Gulf States, Inc.	c/o Convergent Commercial, Inc.	925 Westchester Ave.	Suite 101	White Plains	NY	10604				$104.93	$0.00	Recently received notice $0.00 balance owed
Entergy Texas, Inc.	L-JEF-359	4809 Jefferson Hwy.		Jefferson	LA	70121-3126	8	$822.58	$148.26	$148.26	$148.26	
Glendale II Mall Associates, LLC	c/o Glendale Galleria	110 N. Wacker Drive		Chicago	IL	60606-1511		$1,420,121.00		$1,420,121.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No Proof of Claim Filed.
Great Lakes Woodworking Co., Inc.	11345 Mound Rd.			Detroit	MI	48212	6	$3,436.48	$5,574.90	$5,574.90	$5,574.90	
Island Pacific	17310 Red Hill Avenue	Suite 320		Irvine	CA	92614-5600		$28,221.25		$28,221.25	$0.00	Paid pursuant to Island Pacific Order dated 8/11/14 [D.E. 106]
Keter Environmental	P.O. Box 417468			Boston	MA	02241-7468		$324.35		$324.35	$0.00	Paid pursuant to Utilities Order dated 8/11/14 [D.E. 101]
La Plaza Mall - 2546	c/o Simon Property Group, Inc.	225 W. Washington St.		Indianapolis	IN	46204	9		$252,331.48	$252,331.48	$125,027.36	Per Court's Order dated 4/21/15 [D.E. 257]
Level 10	P.O. Box 88496			Chicago	IL	60680-1496		$91.18		$91.18	$0.00	IT expense; paid prepetition in the ordinary course of business
Loomis	Dept. Ch. 10500			Palatine	IL	60055-0001		$1,364.39		$1,364.39	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
Quill Corporation	300 Arbor Lake Drive	Suite 200		Columbia	SC	29223-4536		$796.24		$796.24	$796.24	
Raj Trading & Imports	830 South Broadway #101			Los Angeles	CA	90014-3202		$3,060.00		$3,060.00	$3,060.00	
Revgrp	Kwai Chung, New Territories			Hong Kong	China			$296.44		$296.44	$296.44	
ShopperTrak	233 S. Wacker Drive	41st Floor		Chicago	IL	60606-6323		$500.00		$500.00	$0.00	Service was cancelled in July 2014. Vendor shows no amount due.
Simon Property Group	Attn: Ronald Tucker, Esquire	225 West Washington Street		Indianapolis	IN	46204-3438		$1,606,447.00		$1,606,447.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. Proofs of claim No. 9 and 10 filed and resolved via orders dated 4/21/15 [D.E. 256, 257]
SPE, Inc.	d/b/a Screen Play	3411 Thorndyke Avenue West		Seattle	WA	98119-1606		$1,820.30		$1,820.30	$1,369.80	Partially paid pursuant to Utilities Order dated 8/11/14 [D.E. 101]
Stonebriar Mall, LLC	c/o Stonebriar Centre	Attn: Law/Lease Admin. Dept.	110 N. Wacker Dr.	Chicago	IL	60606-1511		$1,482,360.00		$1,482,360.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No proof of Claim Filed.
Thomas Realty	150 East Olive Avenue	Suite 308		Burbank	CA	91502-1850		$1,975.00		$1,975.00	$0.00	Commercial Lease; paid in full through security deposit
ULINE	P.O. Box 88741			Chicago	IL	60680-1741		$80.18		$80.18	$80.18	

CLAIMS SCHEDULE

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Unsecured (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
UPS	55 Glenlake Parkway, NE			Atlanta	GA	30328-3474		$1,554.37		$1,554.37	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
UPS	55 Glenlake Parkway, NE			Atlanta	GA	30328-3474		$48.69		$48.69	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
Valley Bottle Water	1401 S. P. I. D.			Corpus Christi	TX	78416		$32.41		$32.41	$32.41	
Vision Service Plan	P.O. Box 45223			San Francisco	CA	94145-0223		$47.76		$47.76	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
WCI - World Communication	P.O. Box 9497			Seattle	WA	98109-0497		$1,394.75		$1,394.75	$0.00	Paid pursuant to Utilities Order dated 8/11/14 [D.E. 101]
Western Glove Works	555 Logan Avenue			Winnipeg	Canada	MB R3A 0S4	12	$7,215,498.59	$7,146,808.59	$7,146,808.59	$7,146,808.59	
Western Glove Works	555 Logan Avenue			Winnipeg	Canada	MB R3A 0S4	13		$7,146,808.59	$7,146,808.59	$0.00	Duplicate of Claim Number 12
Woodfield Mall - 5037	c/o Simon Property Group, Inc.	225 W. Washington St.		Indianapolis	IN	46204	10	$1,835,566.00	$367,151.36	$367,151.36	$244,668.64	Per Court's Order dated 4/21/15 [D.E. 256]
Woodlands Mall Assc. LLC	c/o The Woodlands Mall	Attn: Law/Lease Admin. Dept.	110 N. Wacker Drive	Chicago	IL	60606-1511		$1,720,093.00		$1,720,093.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No Proof of Claim Filed.
YCD Multimedia, Inc.	104 West 27th Street	7th Floor		New York	NY	10001-6210		$1,044.00		$1,044.00	$1,044.00	
TOTAL								**$15,344,352.59**	**$15,146,009.70**	**$21,436,134.07**	**$7,710,904.65**	
										GRAND TOTAL	**$7,756,230.56**	

EXHIBIT B

Distribution Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

CERTIFICATION OF COUNSEL AND PROPOSED ORDER AUTHORIZING DISTRIBUTION ON ACCOUNT OF ALLOWED CLAIMS

The undersigned counsel to SJC, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), hereby certifies as follows:

1. On _____, 2015 the Court entered an order (the "Approval Order") granting the *Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* [D.E. ___] (the "Motion"),[1] pursuant to which the Court, *inter alia*, approved procedures governing the reconciliation, resolution and allowance of claims asserted against the Debtor.

2. Pursuant to the Approval Order, Claimants were encouraged to contact counsel for the Debtor to attempt to informally reconcile any disputes concerning the Claims Schedule and counsel for the Debtor was authorized to resolve any such disputes by agreement with Claimants without the need to obtain further order of the Court. The Debtor reached agreements with the following Claimants on an informal basis and the Claims Schedule has been revised to

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

reflect these claim allowances (the "Revised Claims Schedule"). A copy of the Revised Claims Schedule is annexed to the Proposed Distribution Order (defined below).

Claimant	**Claim Allowance**

3. Pursuant to the Approval Order, the deadline for Claimants to file and serve Claim Objections was _____, 2015 at 4:00 p.m. Eastern Time. Except as provided herein, no other Claim Objection was filed.

4. The Debtor respectfully requests entry of an order (the "Proposed Distribution Order"), substantially in the form annexed hereto, authorizing and approving the making of the distributions reflected in the Revised Claims Schedule and scheduling a hearing to consider approval of final fee and expense applications of the estate professionals.

[Remainder of page left intentionally blank. Signature page follows.]

Dated: _____, 2015

Respectfully submitted,

/s/

Joseph H. Huston, Jr. (No. 4035)
STEVENS & LEE, P.C.
1105 North Market Street, Suite 700
Wilmington, Delaware 19801
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and

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rdesai@bernsteinshur.com

Attorneys for Debtor SJC, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

ORDER AUTHORIZING DISTRIBUTION ON ACCOUNT OF ALLOWED CLAIMS AND SCHEDULING FINAL FEE HEARING

Pursuant to that *Order Granting Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief*, entered on _____ (the "Approval Order")[1] and the *Certification of Counsel and Proposed Order Authorizing Distribution on Account of Allowed Claims*, dated _____, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The Debtor is authorized to make distributions to creditors reflected in Schedule A hereto from the funds held in the Account.

2. Distributions on account of Allowed Claims that are priority unsecured claims on Schedule A hereto will be paid in full and made by counsel to the Debtor from the funds held in the Account within 10 days of the entry of this Order.

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Approval Order.

3. A hearing to consider approval of final fee and expense applications of estate professionals shall be held by the Court on _____ and the objection deadline with respect to any such application is _____.

4. Within 30 days after entry of an order by the Court approving the final fee and expense applications of estate professionals, Debtor's counsel will distribute the remaining funds first, to pay, in full, any outstanding amounts owed to the case professionals and, second, to pay the Allowed Claims that are general unsecured claims on Schedule A hereto a *pro rata* share of the remaining funds.

5. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in this chapter 11 case.

6. To the extent applicable, Bankruptcy Rule 6004(h) is waived and this Order shall be effective and enforceable immediately upon entry.

Date: Wilmington, Delaware
_____, 2015

_____
Honorable Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT C

Disallowed Claims Schedule

DISALLOWED CLAIMS SCHEDULE

SECURED CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Secured (From POC)	Claim	Allowed Amount of Claim	Reason for Disallowance of Claim
Hilco Merchant Resources, LLC	c/o Mark L. Desgrosseilliers	Womble Carlyle Sandridge & Rice, LLP	222 Delaware Avenue Suite 1501	Wilmington	DE	19801		$264,723.63	$0.00	$264,723.63	$0.00	Paid pursuant to Hilco Agency Agreement and through GOB Sales
TOTAL								**$264,723.63**	**$0.00**	**$264,723.63**	**$0.00**	

PRIORITY CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Priority (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
Deposits by Individuals								$4,000.00		$4,000.00	$0.00	Paid pursuant to Customer Programs Order dated 8/25/14 [D.E. 121]
Employee Payroll								$55,570.96		$55,570.96	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Employee Vacation Pay								$85,726.52		$85,726.52	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952		Sacramento	CA	95812-2952	1		$1,101.06	$1,101.06	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]; Amended Proof of Claim shows $0.00 balance.
Illinois Department of Revenue	P.O. Box 19044			Springfield	IL	62796-0001		$6,526.00		$6,526.00	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
State Board of Equalization	Special Operations Branch, MIC: 55	P.O. Box 942879		Sacramento	CA	94279-0055	11	$1,381.00	$345.60	$345.60	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
Texas Comptroller of Public Accounts	Revenue Accounting DIV	Bankruptcy Section	PO Box 13528	Austin	TX	78711-3528		$12,255.00		$12,255.00	$0.00	Paid pursuant to Taxes Order dated 7/23/14 [D.E. 45]
TOTAL								**$165,459.48**	**$1,446.66**	**$165,525.14**	**$0.00**	

UNSECURED CLAIMS

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Unsecured (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
American Express	P.O. Box 360001			Fort Lauderdale	FL	33336-0001		$16,043.94		$16,043.94	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
American United	One American Square, 510A	P.O. Box 6010		Indianapolis	IN	46282-0002		$401.68		$401.68	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
Entergy Gulf States, Inc.	c/o Convergent Commercial, Inc.	925 Westchester Ave.	Suite 101	White Plains	NY	10604				$104.93	$0.00	Recently received notice $0.00 balance owed
Glendale II Mall Associates, LLC	c/o Glendale Galleria	110 N. Wacker Drive		Chicago	IL	60606-1511		$1,420,121.00		$1,420,121.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No Proof of Claim Filed.
Island Pacific	17310 Red Hill Avenue	Suite 320		Irvine	CA	92614-5600		$28,221.25		$28,221.25	$0.00	Paid pursuant to Island Pacific Order dated 8/11/14 [D.E. 106]
Keter Environmental	P.O. Box 417468			Boston	MA	02241-7468		$324.35		$324.35	$0.00	Paid pursuant to Utilities Order dated 8/11/14 [D.E. 101]

DISALLOWED CLAIMS SCHEDULE

Creditor	Address 1	Address 2	Address 3	City	State	Zip	Claim #	Scheduled	Unsecured (From POC)	Claim	Allowed Amount of Claim	Reason for Variance Between Scheduled/Filed Claims and Allowed Claims
Level 10	P.O. Box 88496			Chicago	IL	60680-1496		$91.18		$91.18	$0.00	IT expense; paid prepetition in the ordinary course of business
Loomis	Dept. Ch. 10500			Palatine	IL	60055-0001		$1,364.39		$1,364.39	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
ShopperTrak	233 S. Wacker Drive	41st Floor		Chicago	IL	60606-6323		$500.00		$500.00	$0.00	Service was cancelled in July 2014. Vendor shows no amount due.
Simon Property Group	Attn: Ronald Tucker, Esquire	225 West Washington Street		Indianapolis	IN	46204-3438		$1,606,447.00		$1,606,447.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. Proofs of claim No. 9 and 10 filed and resolved via orders dated 4/21/15 [D.E. 256, 257]
Stonebriar Mall, LLC	c/o Stonebriar Centre	Attn: Law/Lease Admin. Dept.	110 N. Wacker Dr.	Chicago	IL	60606-1511		$1,482,360.00		$1,482,360.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No proof of Claim Filed.
Thomas Realty	150 East Olive Avenue	Suite 308		Burbank	CA	91502-1850		$1,975.00		$1,975.00	$0.00	Commercial Lease; paid in full through security deposit
UPS	55 Glenlake Parkway, NE			Atlanta	GA	30328-3474		$1,554.37		$1,554.37	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
UPS	55 Glenlake Parkway, NE			Atlanta	GA	30328-3474		$48.69		$48.69	$0.00	WGW and its affiliates had common vendors with SJC. This claim was paid by WGW to preserve its ongoing vendor relationship.
Vision Service Plan	P.O. Box 45223			San Francisco	CA	94145-0223		$47.76		$47.76	$0.00	Paid pursuant to Payroll Order dated 7/23/14 [D.E. 42]
WCI - World Communication	P.O. Box 9497			Seattle	WA	98109-0497		$1,394.75		$1,394.75	$0.00	Paid pursuant to Utilities Order dated 8/11/14 [D.E. 101]
Western Glove Works	555 Logan Avenue			Winnipeg	Canada	MB R3A 0S4	13		$7,146,808.59	$7,146,808.59	$0.00	Duplicate of Claim Number 12
Woodlands Mall Assc. LLC	c/o The Woodlands Mall	Attn: Law/Lease Admin. Dept.	110 N. Wacker Drive	Chicago	IL	60606-1511		$1,720,093.00		$1,720,093.00	$0.00	Scheduled as Contingent, Unliquidated, Disputed. No Proof of Claim Filed.
TOTAL								**$6,280,988.36**	**$7,146,808.59**	**$13,427,901.88**	**$0.00**	

EXHIBIT D

Disallowed Claims Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

CERTIFICATION OF COUNSEL AND
PROPOSED ORDER DISALLOWING CERTAIN CLAIMS

The undersigned counsel to SJC, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), hereby certifies as follows:

1. On _____, 2015 the Court entered an order (the "Approval Order") granting the *Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* [D.E. ___] (the "Motion"),[1] pursuant to which the Court, *inter alia*, approved procedures governing the disallowance of certain claims.

2. The Debtor reached agreements with the following claimants on an informal basis and the Disallowed Claims Schedule has been revised to reflect these claim allowances (the "Revised Disallowed Claims Schedule"). A copy of the Revised Disallowed Claims Schedule is annexed to the Proposed Disallowed Claims Order (defined below).

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

Claimant	Allowed Distribution Amount

3. Pursuant to the Approval Order, the deadline for claimants to file and serve Disallowed Claims Objections was _____, 2015 at 4:00 p.m. Eastern Time. Except as provided herein, no other Disallowed Claims Objection was filed.

4. The Debtor respectfully requests entry of an order (the "Proposed Disallowed Claims Order"), substantially in the form annexed hereto, disallowing the claims on the Revised Disallowed Claims Schedule and approving the making of distributions to the claimants listed above in the Proposed Disallowed Claims Order.

[Remainder of page left intentionally blank. Signature page follows.]

Dated: _____, 2015

Respectfully submitted,

/s/

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Attorneys for Debtor SJC, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

ORDER DISALLOWING CERTAIN CLAIMS

Pursuant to that *Order Granting Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* , entered on _____ (the "Approval Order")[1] and the *Certification of Counsel and Proposed Order Disallowing Certain Claims*, dated _____ _____, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The claims reflected in Schedule A are disallowed in their entirety.

2. The following claims are allowed and the Debtor is authorized to make distributions on account of the claims:_____.

3. Claims listed in paragraph 2 that are unsecured priority claims, will be paid in full. Claims listed in paragraph 2 that are general unsecured claims will be paid, on a *pro rata* basis with all other Allowed Claims that are general unsecured claims, within 30 days after entry of an order by the Court approving the final fee and expense applications of estate professionals.

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Approval Order.

4. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in this chapter 11 case.

5. To the extent applicable, Bankruptcy Rule 6004(h) is waived and this Order shall be effective and enforceable immediately upon entry.

Date: Wilmington, Delaware
_____, 2015

_____
Honorable Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT E

Dismissal Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

CERTIFICATION OF COUNSEL AND REQUEST
FOR ENTRY OF AN ORDER DISMISSING CHAPTER 11 CASE

Pursuant to that *Order Granting Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* , entered on _____ (the "Approval Order"), SJC, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), hereby submits the following Certification of Counsel and Request for Entry an Order Dismissing Chapter 11 Case:[1]

1. The Approval Order, among other things, (a) approves procedures governing the reconciliation, resolution and allowance of claims asserted against the Debtor, (b) authorizes certain distributions to holders of Allowed Claims, (c) approves procedures for the disallowance of certain claims, and (d) authorizes the dismissal of the Debtor's chapter 11 case after the making of distributions and upon the filing of a Certification of Counsel and Request for Entry of An Order Dismissing Chapter 11 Case.

[1] Capitalized terms not defined herein have the meanings ascribed to them in the Approval Order.

2. Upon completion of the Claims Resolution Process, the Account consisted of approximately $186,542.56 in cash. Through the Claims Resolution Process, all disputes regarding the allowed amounts of claims asserted against the Debtor were resolved. Claims totaling approximately _____ were allowed against the Debtor's estate. _____ of the claims were priority unsecured claims and _____ of the claims were general unsecured claims.

3. Accordingly, on or about _____, counsel to the Debtor made distributions to holders of Allowed Claims that were priority unsecured claims from funds held in the Account. Distributions were made to holders of Allowed Claims that were priority unsecured claims in the amounts set forth on Schedule A to the Court's Order Authorizing Distribution on Account of Allowed Claims and Scheduling Final Fee Hearing, entered on _____.

4. The Court entered an Order approving the final fee applications of the professionals in this case on _____.

5. Accordingly, on or about _____, counsel to the Debtor made *pro rata* distributions to holders of Allowed Claims that were general unsecured claims from the funds remaining in the Account after distribution to holders of Allowed Claims that were priority unsecured claims, to professionals, and to the United States Trustee.

6. Pursuant to the Approval Order, any funds remaining in the Account after the expiration of the Check Cashing Period shall be remitted to the Debtor.

7. To the best of the Debtor's knowledge, all United States Trustee fees accrued through the date hereof have been paid.

8. Pursuant to the terms of the Approval Order, the Debtor hereby requests entry of an Order substantially in the form attached hereto dismissing the Debtor's chapter 11 case.

Dated: _____, 2015

Respectfully submitted,

/s/

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Attorneys for Debtor SJC, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. _____**
Debtor.	:	

ORDER DISMISSING CHAPTER 11 CASE

Pursuant to that *Order Granting Motion of the Debtor, Pursuant to Section 105(a), 305(a), and 1112(b) of the Bankruptcy Code, For Entry of An Order (I) Approving Procedures for (a) the Dismissal of the Debtor's Chapter 11 Case, (b) the Reconciliation, Resolution and Allowance of Certain Claims Against the Debtor and the Making of Distributions to Holders of Such Allowed Claims, and (c) the Disallowance of Certain Claims and (II) Granting Certain Related Relief* , entered on _____ (the "Approval Order")[1] and the *Certification of Counsel and Request for Entry of an Order Dismissing Chapter 11 Case*, filed on _____, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. Pursuant to sections 1112(b) and 305(a) of the Bankruptcy Code, the Debtor's chapter 11 case is hereby dismissed.

2. Notwithstanding section 349 of the Bankruptcy Code, all orders of the Court entered in this chapter 11 case shall survive the dismissal of this chapter 11 case.

3. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in this chapter 11 case.

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Approval Order.

4. To the extent applicable, Bankruptcy Rule 6004(h) is waived and this Order shall be effective and enforceable immediately upon entry.

Date: Wilmington, Delaware
_____, 2015

_____
Honorable Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 14-11763 (MFW)
SJC, Inc.	:	
	:	**Related Docket Nos. 294**
Debtor.	:	

ORDER GRANTING MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 105(a), 305(a), AND 1112(b) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR (A) THE DISMISSAL OF THE DEBTOR'S CHAPTER 11 CASE, (B) THE RECONCILIATION, RESOLUTION AND ALLOWANCE OF CERTAIN CLAIMS AGAINST THE DEBTOR AND THE MAKING OF DISTRIBUTIONS TO HOLDERS OF SUCH ALLOWED CLAIMS, AND (C) THE DISALLOWANCE OF CERTAIN CLAIMS AND (II) GRANTING CERTAIN RELATED RELIEF

Upon the motion (the "Motion") of SJC, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), pursuant to sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code, for the entry of an order (I) approving procedures for (a) the dismissal of the Debtor's chapter 11 case, (b) the reconciliation, resolution and allowance of unsecured claims against the Debtor and the making of distributions to holders of such allowed claims, and (c) the disallowance of certain claims and (II) granting certain related relief; and this Court having reviewed the Motion[1] and having conducted a hearing on the Motion, at which time all parties-in-interest were given an opportunity to be heard; and it appearing that sufficient notice of the Motion having been given to parties-in-interest; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (b) notice of the Motion and the opportunity for a hearing thereon was adequate and sufficient under the circumstances and no other or further notice need

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

be given, (c) the legal and factual bases set forth in the Motion constitute just cause for the relief granted herein, and (d) the relief requested in the Motion is in the best interests of the Debtor's estate and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The Motion is hereby GRANTED as set forth herein.

2. Counsel for the Debtor is authorized to distribute the funds held in the Account pursuant to the terms of this Order.

3. The following procedures shall govern the reconciliation, resolution and allowance of all claims asserted against the Debtor and the distributions to be made to holders of Allowed Claims (the "Claims Resolution Process"):

(a) With respect to claims that have not, as of the Motion, been resolved by prior order of the Court, the claim amount asserted by a person or entity (each a "Claimant") who has filed a claim (or, in the absence of a filing, the claim as provided on the Debtor's schedules shall be deemed the allowed amount of such claim for purposes of the distribution to be made from the Account, subject to the variances in claim amounts noted on Exhibit A to the Motion and except that the Disallowed Claims will not be entitled to a distribution;

(b) Any claim filed after the date of the Motion shall be deemed disallowed as an untimely filed claim, except to the extent that a proof of claim may be filed after the claims bar date under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6);

(c) If a Claimant or other party disputes the amount of the Allowed Claim set forth on the Claims Schedule, such Claimant or other party (an "Objecting Party") shall be encouraged to contact counsel for the Debtor informally and attempt to resolve its dispute amicably, without the need to file a formal claim or objection;[2]

(d) If an Objecting Party nevertheless wishes to file a formal objection, the Objecting Party shall be required to file such objection with the Court, together with documentation supporting its claim or objection (each "Claim Objection") on or before 4:00 p.m. Eastern Time on September 9, 2015 (the "Objection Deadline") and serve such

[2] Debtor's counsel should be contacted by e-mail at rdesai@bernsteinshur.com or by phone at (207) 774-1200.

Claim Objection on counsel for the Debtor so as to be received by the Objection Deadline. In any Claim Objection, the Objecting Party must state the grounds for its objection clearly and with particularity;

(e) The Debtor shall be authorized to resolve any Claim Objection without further order of the Court. If counsel for the Debtor and the Objecting Party cannot agree on a resolution, then an omnibus hearing to consider any such Claim Objection(s) will be held on September 16 , 2015 at12:30 p.m. Eastern Time (the "Claims Hearing");

(f) In the event that no Claim Objection is filed, or if all Claim Objections have been resolved prior to the Claims Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Authorizing Distribution on Account of Allowed Claims, substantially in the form annexed to the Motion as Exhibit B (the "Distribution Order"). The Distribution Order will (a) highlight any modifications made to the Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Claim Objections (b) authorize Debtor's counsel to make distributions on account of the Allowed Claims identified in the Claims Schedule annexed to the Distribution Order, and (c) schedule a final fee hearing;

(g) In the event that one or more Claim Objections is filed and not resolved prior to the Claims Hearing, counsel to the Debtor will submit to the Court a proposed Distribution Order promptly following the Court's ruling on such Claim Objection(s);

(h) Any Claimant or other interested party who does not timely file a Claim Objection shall be barred from subsequently asserting a claim against the Debtor or from challenging the proposed Allowed Claim amounts set forth in the Claim Schedule;

(i) Distributions on account of Allowed Claims that are priority unsecured claims will be made by counsel to the Debtor from the funds held in the Account within 10 days of the entry of the Distribution Order; and

(j) Distributions on account of Allowed Claims that are general unsecured claims will be made by counsel to the Debtor from the funds held in the Account, after distribution to the Allowed Claims that are priority unsecured claims and to case professionals, within 30 days of the Court's entry of an order approving the case professionals' final request for allowance and payment of all fees and expenses incurred during the Case.

4. Service of the notice of the filing of and hearing on the Motion upon the Claimants, those claimants included on the Disallowed Claims Schedule, and the other entities

and claimants listed in the Motion shall constitute good and sufficient notice of the filing of the Motion and all relief requested therein.

5. The requirements of Bankruptcy Rule 3007 and Local Rule 3007-1, with regard to claims objections and omnibus claims objections, are waived to the extent inconsistent with the Claims Resolution Process and the claims disallowance process.

6. Counsel to the Debtor shall administer distributions to holders of Allowed Claims from the funds held in the Account in accordance with the following guidelines governing distributions:

(a) The Debtor shall be authorized to make a single distribution to creditors of the funds held in the Account;

(b) Any distributed check that has not been claimed and/or cashed within 60 days after dispatch of the check (the "Check Cashing Period") shall be deemed void and the distribution on account of such claim shall be deemed forfeited by the creditor; and

(c) Any funds remaining in the Account after the expiration of the Check Cashing Period shall be remitted to the Debtor.

7. After all distributions to holders of Allowed Claims that are priority unsecured claims are made, but before the Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case is filed, the Debtor shall schedule a final omnibus fee hearing and professionals shall each be required to file a final request for allowance and payment of all fees and expenses incurred during this case.

8. Within 30 days after entry of an order by the Court approving the final request for allowance and payment of all fees and expenses requested by case professionals, Debtor's counsel will distribute the remaining funds first, to pay, in full, any remaining amounts owed to the case professionals and, second, to pay the Allowed Claims that are general unsecured claims a *pro rata* share of the remaining funds.

9. The following procedures shall govern the disallowance of certain claims asserted against the Debtor:

(a) If a claimant wishes to object to the treatment of its claim as set forth on the Disallowed Claims Schedule, such claimant must file an objection with the Court on or before 4:00 p.m. Eastern Time on September 9, 2015 (the "Disallowed Claims Objection Deadline") and serve such objection on counsel to the Debtor by the Disallowed Claims Objection Deadline;

(b) In the event an objection (the "Disallowed Claims Objection") is filed, then an omnibus hearing to consider any and all Disallowed Claims Objections will be held on September 16, 2015 at 12:30 p.m. Eastern Time (the "Disallowed Claims Objection Hearing");

(c) In the event that no Disallowed Claims Objection is filed, or if all Disallowed Claims Objections have been resolved prior to the Disallowed Claims Objection Hearing, counsel to the Debtor will file with the Court a Certification of Counsel and Proposed Order Disallowing Certain Claims, substantially in the form annexed to the Motion as Exhibit D (the "Disallowed Claims Order");

(d) The Disallowed Claims Order will (a) highlight any modifications made to the Disallowed Claims Schedule, if any, to reflect agreements reached to resolve any formal or informal Disallowed Claims Objections; and

(e) Any claimant or other interest party who does not timely file a Disallowed Claims Objection shall be barred from subsequently asserting a claim based on a disallowed claim against the Debtor.

10. After the claims disallowance process and Claims Resolution Process have been completed, all distributions have been made, final fee applications have been adjudicated and all accrued and as yet unpaid fees owing to the United States Trustee have been paid, the Debtor will file with the Court a Certification of Counsel and Request for Entry of the Proposed Order Dismissing Chapter 11 Case, substantially in the form annexed to the Motion as Exhibit E (the "Dismissal Order"). The Certification of Counsel and Request for Entry of the Proposed Dismissal Order will, among other things, (a) verify that distributions on account of Allowed

Claims were made by the Debtor's counsel, (b) confirm that all accrued United States Trustee's fees have been paid, and (c) request entry of the Dismissal Order.

11. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in this chapter 11 case.

12. To the extent applicable, Bankruptcy Rule 6004(h) is waived and this Order shall be effective and enforceable immediately upon entry.

Date: Wilmington, Delaware
August 12, 2015

Honorable Mary F. Walrath
United States Bankruptcy Judge