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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	CASE NO. 09-33886
	§	
PROVIDENT ROYALTIES, LLC, *et al.*,	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)

MOTION FOR APPROVAL OF SETTLEMENT AND COMPROMISE WITH BRENDAN COUGHLIN AND HENRY HARRISON AND RESOLUTION OF RELATED ADVERSARY PROCEEDING

TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:

Milo H. Segner, Jr. (the "Trustee"), as the duly-appointed Liquidating Trustee of the PR Liquidating Trust (the "Trust") pursuant to the confirmed *Fourth Amended Consolidated Plan of Liquidation for Debtors' Estates Under Chapter 11 of the United States Bankruptcy Code* [Docket

No. 748] (the "Plan"),[1] files his *Motion for Approval of Settlement and Compromise with Brendan Coughlin and Henry Harrison and Resolution of Related Adversary Proceeding* (the "Motion"). In support of the Motion, the Trustee respectfully states as follows:

I. BACKGROUND

A. Jurisdiction and Venue

1. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(a) and 1334 and Article XIII of the Plan. The Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are section 105 of title 11 of the United States Code, § 101, *et seq.* (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

B. General Overview of the Bankruptcy Cases and the Transfer of the Causes of Action to the Trust

3. On June 22, 2009 (the "Petition Date"), the Debtors filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, thereby initiating the above-referenced cases with the Court (collectively, the "Bankruptcy Cases").

4. On June 10, 2010, the Court entered the Confirmation Order, thereby confirming the Plan. On June 14, 2010 (the "Effective Date"), all conditions precedent to the effectiveness of the Plan were satisfied or waived and the Plan became effective.

5. On or about the Effective Date and pursuant to section 6.2.2. of the Plan, the Initial Trust Assets (as defined in the Plan) were transferred to and vested in the Trust. The Initial Trust Assets included the Causes of Action. *See* Plan § 1.1.53. The Causes of Action, as defined by section 1.1.21. of the Plan, included, among other things, any action, cause of action, or suit for

[1] The Court entered its order [Docket No. 860] (the "Confirmation Order") confirming the Plan on June 10, 2010.

damages related to or based on: (i) fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, or (v) causes of action based upon alter ego or other liability theories.

6. Additionally, pursuant to section 6.2.6. of the Plan, the Trustee was appointed as the Liquidating Trustee of the PR Liquidating Trust.

C. The D&O Adversary Proceeding

7. On March 9, 2011, the Trustee filed his *Original Complaint* (the "Complaint") against Robert Jordan ("Jordan"), Mark Miller ("Miller"), Brian Grindem ("Grindem"), Keith Flowers ("Flowers"), Paul Melbye ("Melbye"), Brendan Coughlin ("Coughlin"), and Henry Harrison ("Harrison") (collectively, the "D&O Defendants"), thereby commencing Adversary Proceeding No. 11-03148-HDH, styled *Segner vs. Jordan, et al*. (the "Adversary Proceeding"). Through the Complaint, the Trustee asserted, among other things, common law officer and director liability claims and fraudulent transfer claims against the D&O Defendants.

8. On or about July 14-15, 2011, the Trustee attended mediation with the D&O Defendants (the "First Mediation"). Christopher Nolland was the mediator for the First Mediation. The First Mediation was also attended by Navigators Insurance Company, Beazley Insurance Company, and the United States Securities and Exchange Commission (the "SEC").

9. At the conclusion of the First Mediation, the Trustee and the "Previously Settled D&O Defendants" Jordan, Miller, Grindem, Flowers and Melbye agreed to the terms of a settlement and compromise of the Adversary Proceeding and all the Trustee's claims against the Previously Settled D&O Defendants asserted therein. The Settlement with the Previously Settled D&O Defendants was documented and approved by the Court by Order dated January 25, 2012. *See* Dkt. 1134.

10. The Trustee contended a settlement was also reached with the Defendants Harrison and Coughlin (the "Settling Defendants" or "Harrison and Coughlin") and indicated he would move to enforce the settlement as to those Defendants. Harrison and Coughlin contended otherwise.

11. On February 20-21, 2012, the Trustee, Harrison, Coughlin, the SEC, and representatives of the Financial Industry Regulatory Authority ("FINRA") attended an intense, two-day mediation session with the Honorable Glen Ashworth, of JAMS Mediation Services (the "Second Mediation"). At the Second Mediation, the Trustee, Harrison, and Coughlin agreed to settle the claims asserted in the Adversary Proceeding as well as any claims the Trustee may have against Harrison and Coughlin for breach of settlement agreement. The Trustee, Harrison, and Coughlin have prepared, signed, and, subject to the Court's approval, intend to consummate that certain Settlement Agreement (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated herein for all purposes.

II. RELIEF REQUESTED

12. By and through the Motion and pursuant to Bankruptcy Rule 9019, the Trustee respectfully requests the Court to approve that certain Agreement attached hereto as Exhibit A.[2]

A. Terms of the Settlement Agreement

13. By and through the Agreement, the Trustee and Harrison and Coughlin will settle and otherwise resolve certain claims. The following is a summary of the salient terms and conditions of the Agreement:

a. Within thirty (30) business days after both an order approving the Agreement and Judgment are entered pursuant to the SEC Settlement, Defendant Harrison has agreed to pay $850,000 into the account of Dennis L. Roossien, Jr., Receiver (the "***Receiver***").[3]

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[2] This Motion, along with a Notice of Hearing thereon, will be served on all remaining creditors of the Debtors on or about February 23 or 24, 2012.

[3] Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

b. Within thirty (30) business days after both an order approving the Agreement and Judgment are entered pursuant to the SEC Settlement, Defendant Coughlin has agreed to pay $1,450,000, into the account of the Receiver.[4]

c. Upon receipt of the $2,300,000 Settlement Amount, the Receiver will transfer the Settlement Amount to the PR Liquidating Trust.

d. Dismissal of the Adversary Proceeding. Within 5 business days of the Receiver's receipt of the Settlement Amount, the Trustee will dismiss the Adversary Proceeding with prejudice as to Harrison and Coughlin.

e. Release Granted to the D&O Defendants. Effective upon receipt of the Settlement Amount, the Trustee, in his capacity as the Liquidating Trustee of the PR Liquidating Trust, for and on behalf of the Trust, will release all claims held by the Trust on behalf of the Debtors, Debtors' Bankruptcy Estate as well as his/their respective agents, attorneys and any successors, and on behalf of any investors in the Debtors who assigned their claims to the Trust, fully, generally, unconditionally, and irrevocably release to Harrison and Coughlin and all of their respective successors and attorneys. Even if an investor did not assign his claims to the Trust, this settlement by law may eliminate that investor's ability to bring any shareholders' derivative action against Harrison and Coughlin for the type claims brought in the Adversary.

f. Release Granted to the Trustee, the Trust, the Debtors and the Debtors' Estate and Investors Who Assigned Their Claims to the Trust. Upon the Trustee's receipt of the Settlement Amount, Harrison and Coughlin as well as their respective agents, attorneys and any successors, fully, generally, unconditionally, and irrevocably release the Trustee, the Receiver, the Trust, the Debtors and the Debtors' Estate and all of their respective successors and attorneys, and all investors who assigned their claims to the Trust.

g. Effect of Failure to Obtain Court Approval. In the event the Court elects not to approve the Motion and the Agreement, the Agreement shall be null and void and of no further force or effect whatsoever. In such circumstances, neither the fact of the Parties' negotiation of, nor their entry into the Agreement, nor any of the Parties' statements made in connection therewith, shall be utilized by any Party, offered or admitted into evidence at any trial or hearing, disclosed to persons other than the Parties, or used in any other fashion except as may be required by applicable law or permitted by court order.

h. Effect of a Reversal on Appeal of Order. If, after exhaustion of all appeals, any order approving the Motion and the Agreement is reversed in whole or in any material part, the Agreement shall be null and void and of no further force or effect whatsoever. In such circumstances, neither the fact of the Parties' negotiation of, nor their entry into the Settlement Agreement, nor any of the Parties' statements made in connection therewith, shall be utilized by

[4] The $850,000 payment and the $1,450,000 payment are collectively referred to herein as the "Settlement Amount."

any Party, offered or admitted into evidence at any trial or hearing, disclosed to persons other than the Parties, or used in any other fashion except as may be required by applicable law or permitted by court order.

14. The Agreement represents a negotiated, arm's length resolution of any and all past, current, and future disputes and claims between the Parties.

III. BASIS FOR RELIEF REQUESTED

15. Bankruptcy Rule 9019 grants a court the authority to approve a compromise or settlement after notice and a hearing. FED. R. BANKR. P. 9019. Under this authority, courts have routinely approved compromises and settlements that minimize litigation and benefit the bankruptcy estate. *See In re Mirant Corp.*, 334 B.R. 800, 811 (Bankr. N.D. Tex. 2005) (stating "[o]ne of the goals of Congress in fashioning the Bankruptcy Code was to encourage parties in a distress situation to work out a deal among themselves"); *see also Marandas v. Bishop* (*In re Sassalos*), 160 B.R. 646, 653 (D. Or. 1993) (stating that "compromises are favored in bankruptcy"). Whether to approve or deny a compromise involving the bankruptcy estate is committed to the discretion of the bankruptcy court; an appellate court will reverse the bankruptcy court's decision only when the bankruptcy court abused its discretion. *In re Jackson Brewing Co.,* 624 F.2d 599, 602-03 (5th Cir. 1980).

16. In deciding whether to approve a proposed settlement agreement or compromise of controversy, a court should consider the following factors:

a. the probability of success on the merits and the resolution of the dispute;

b. the complexity of the litigation being settled;

c. the expense, inconvenience, and delay associated with litigating the dispute; and

d. all other factors bearing on the wisdom of the compromise, such as the paramount interests of creditors with proper deference to their reasonable views.

Conn. Gen. Life Ins. Co. v. United Companies Fin. Corp. (*In re Foster Mortgage Corp*.), 68 F.3d 914, 917 (5th Cir. 1995); *see also Jackson Brewing*, 624 F.2d at 602 (*citing Protective Comm. for*

Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968); *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929)).

17. When considering these factors, a court should determine whether the settlement is "fair and equitable" as a whole instead of focusing on one factor in particular. *Jackson Brewing Co.,* 624 F.2d at 602. Finally, settlements should be allowed unless they fall below the lowest point of the range of reasonableness. *See In re W.T. Grant Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); *see also In re Nw. Corp.*, 2004 WL 1661012 at *3 (Bankr. D. Del. July 23, 2004).

18. Applying the foregoing standards, the Court's approval of the Agreement is warranted under the circumstances. Altough the Trustee believes that he would ultimately prevail on his claims against Harrison and Coughlin, the outcome of the Adversary Proceeding, like the outcome of all litigation, is uncertain. Moreover, litigating the Trustee claims against Harrison and Coughlin to final conclusion would a lengthy, expensive endeavor, which could include multiple appeals.

19. Additionally, the approval and consummation of the Agreement is in the best interests of all parties-in-interest. The Agreement provides for a total of $2,300,000 to be paid to the Trustee for the benefit of the Trust, which was created to benefit the numerous investors harmed by Harrison and Coughlin's actions.

20. Therefore, the Trustee believes, in his business judgment, that the Agreement and the terms thereof are fair and equitable and in the best interests of all parties-in-interest under the circumstances and should be approved.

IV. PRAYER

WHEREFORE, the Trustee respectfully requests entry of an order: (i) approving the Agreement and all terms contained therein; and (ii) granting related relief as is just and proper.

DATED: February 22, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on February 22, 2012, pursuant to the Federal Rules of Bankruptcy Procedure, the foregoing instrument was served on the parties listed below via e-mail and ECF/PACER.

/s/ Jerry C. Alexander
Jerry C. Alexander

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