UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

IN RE: **CASE NO. 15-81004**
LOUISIANA SAFETY ASSOCIATION
OF TIMBERMEN - SELF INSURED FUND **CHAPTER 7**
DEBTOR

MOTION FOR ENTRY OF ORDER AUTHORIZING COMPROMISE UNDER BANKRUPTCY RULE 9019

Now into court, through counsel, comes T. BRETT BRUNSON, IN HIS CAPACITY AS TRUSTEE OF THE LOUISIANA SAFETY ASSOCIATION OF TIMBERMEN – SELF INSURED FUND ("**Trustee**"), who states:

Jurisdiction and Venue

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2.

Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3.

The statutory basis for relief is 11 U.S.C. §§ 105 and 704(a) and Bankruptcy Rule 9019.

Background

4.

The Trustee filed a class action ("**Class Action**"), known as *T. Brett Brunson as Trustee for Louisiana Safety Association of Timbermen – Self Insured Fund v. Ascension Ready Mix, Inc., O'Nealgas, Inc., E.A. Hinton Well Servicing Inc., and Alford Motors, Inc. (On behalf of themselves and others similarly situated)*, Case No. 17-08003, United States Bankruptcy Court, Western District of Louisiana, Lafayette Division on March 23, 2017.

5.

On August 22, 2018, the Court entered an order certifying the above-captioned matter as a defendant class action ("**Certification Order**") and defined the class ("**Class**"). Through the

Certification Order, the Court ultimately agreed with the Trustee's determination that the most efficient and effective course of action both for the Fund's Estate and for the former members of Timbermen was a defendant class action. The Certification Order named O'Nealgas, Inc., E.A. Hinton Well Servicing, Inc., Alford Motors, Inc., Cardiovascular Surgery Of Alexandria, LLC, Coastal Pipe Of Louisiana, Inc., and The Bank as class representatives ("**Class Representatives**") and named as class counsel ("**Class Counsel**") The Steffes Firm, LLC, and Roedel, Parsons, Blache, Fontana, Piontek & Pisano.

6.

After extensive discovery and negotiations, the Trustee and the Class Representatives have reached a tentative Class Action Settlement Agreement ("**Settlement Agreement**"), which is Document No. 230-4 on the docket of the Class Action and is incorporated herein by reference.

7.

The Settlement Agreement permits each member of the Class to: (a) pay a fixed amount, as set forth in the exhibits to the Settlement Agreement, and to share ratably, with other Class members, responsibility for payment of Court-approved Class Counsel fees and expenses incurred in defense of the Class Action. The Trustee and the Class Representatives believe that the terms of the Settlement Agreement are fair to Class members and reduce each participating Class member's exposure for the Fund's liabilities, while spreading the payment more equitably among Class members

8.

The Trustee and the Class Representatives have agreed, subject approval by this Court in this, the main bankruptcy case, and in the Class Action, to compromise the matter in order to avoid the lengthy and costly process of collection.

9.

This Court has the ability and power to approve this compromise. See 11 U.S.C. §105 and 363, FED.R. BANKR. P. 9019. Bankruptcy rule 9019(a) provides, in pertinent part, "On motion by the trustee and after notice and a hearing, the Court may approve a compromise or settlement." FED.R. BANKR. P. 9019(a). Section 105(a) of the Bankruptcy Code further provides:

> The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §105(a).

10.

The trustee believes that the Agreement is in the best interest of the estate and should be approved. The trustee believes that a consideration of the factors set forth in *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968), and cases decided thereunder, support approval of the Agreement. Settlements and compromises are a "normal part of the process of reorganization." *Id*. at 424 (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Settlements are "desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly." *Matter of Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

11.

The decision of whether to settle an estate claim is one that the Trustee exercises in his reasonable business judgment. *In re Heritage Org., L.L.C.,* 375 B.R. 230, 281 (Bankr. N.D. Tex. 2007). In turn, the decision whether to *approve* a particular settlement lies within the discretion of the bankruptcy court. *Jackson Brewing,* 624 F.2d. at 605. "It must be remembered that the evaluation of any lawsuit is quite problematic and calls for a significant degree of speculation." *In re Texas Extrusion Corp*., 844 F.2d 1142, 1159 (5th Cir. 1988), *cert. denied*, 488 U.S. 926 (1988). A reviewing court will uphold the approval of a settlement if it is the result of "an adequate and intelligent consideration of the merits of the claims, the difficulties of pursuing them, the potential harm to the debtor's estate caused by delay, and the fairness of the terms of the settlement..." *TMT Trailer Ferry, Inc*., 390 U.S. at 434.

12.

The Fifth Circuit has held that in deciding whether to approve a settlement, courts should evaluate the following criteria:

(1) The probability of success in the litigation, with due consideration for the uncertainty in fact and law;

(2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and

(3) All other factors bearing on the wisdom of the compromise, including the difficulties to be encountered in the matter of collection, the extent to which the settlement is truly the product of arm's length bargaining, and not of fraud or collusion, and the interests of the creditors, with proper deference to their reasonable views.

See, Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414, 88 S. Ct. 1157, 20 L.Ed.2d 1 (1968); Matter of Cajun Elec., 119 F.3d at 349; In re Jackson Brewing Co., 624 F.2d at 599.

13.

Analysis of the first prong of the *Jackson Brewing* test supports approval of the proposed compromise. In this case, success is probable, but litigation of the issues and then collection of the amounts deemed to be owed by members of the Class would be costly and time consuming. The Trustee believes that collection of the amounts provided in the Settlement Agreement will result in quicker resolution of the case and earlier payment of claims against the bankruptcy estate.

14.

The second prong of the *Jackson Brewing* test also supports approving the compromise. The estate could endure greater litigation expense without a resultant financial benefit, depending on the solvency of the Class members.

15.

Under the third prong, further litigation and administration is not merited because of the difficulty of collecting from Class members cast in judgment. At the same time, the amounts to be paid by Class members are less than amounts for which they likely would be cast in judgment. The Settlement Agreement results from arm's length bargaining and not of fraud or collusion, and with proper deference to the differing views of the parties.

16.

The Fifth Circuit has made clear that "it is unnecessary to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement." *In re Cajun Elec. Power Corp*., 119 F.3d at 356. Rather, a settlement should be rejected only if it "falls below the lowest point in the range of reasonableness." *Ars Brook, LLC v. Jalbert*, 382 F.3d 68, 71-72 (1st Cir. 2004) ("the responsibility of the bankruptcy judge … is not to decide the numerous questions of law and fact … but rather to canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.").

17.

A reviewing court will uphold the approval of a settlement if it is the result of "an adequate and intelligent consideration of the merits of the claim, the difficulties of pursing them, the potential harm to the debtor's estate caused by delay and the fairness of the terms of the settlement..." *TMT Trailer Ferry, Inc.,* 390 U.S. 414 (1968). Under the facts of this case and applicable law, the proposed settlement is fair and equitable and clearly within the best interests of the estate and its creditors.

18.

When measured against the possible uncertain result after lengthy, costly enforcement and collections proceedings, under Louisiana law, Federal law or otherwise, the settlement of the Estate's interest in the litigation is more than fair and reasonable, falling well above "the lowest point in the range of reasonableness."

19.

In addition to all of the above, the Court presiding over the Class Action must approve the Settlement Agreement, first preliminarily, and then finally, and the Trustee and the Class Representatives have filed a Motion for Preliminary Approval [Doc. No. 230 on the Docket of the Class Action] seeking preliminary approval.

Relief Requested

208.

Movant believes the compromise to be in the best interest of the estate, and requests authority to compromise this matter as stated above, and to execute all documents necessary to effectuate said compromise.

WHEREFORE, movant prays for an order in consonance with these pleadings.

Respectfully submitted,

/s/ John W. Luster

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ATTORNEYS FOR T. BRETT BRUNSON AS TRUSTEE OF LOUISIANA SAFETY ASSOCIATION OF TIMBERMEN – SELF INSURED FUND

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the *Motion For Entry Of Order Authorizing Compromise Under Bankruptcy Rule 9019* has been served via Email through this Court's CM/ECF Electronic Notification System.

Shreveport, Louisiana, this 4th day of April, 2022.

/s/ M. Thomas Arceneaux

M. Thomas Arceneaux