

4UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In re:) Case No. 10-41902
)
US FIDELIS, INC.,) Chapter 11
)
Debtor.) [Related to Docket Nos. 1129, 1144,
1167, & 1182]

ORDER APPROVING CONFIRMATION OF THE PLAN

On July 16, 2012, the First Amended Plan of Liquidation, as Modified on July 13, 2012 (the “First Amended Plan, as Modified”) [Docket No. 1167], and the related supplements (the “Plan Supplements”) [Docket Nos. 1129 and 1144]¹ filed by the Official Committee of Unsecured Creditors (the “UCC”) came for confirmation hearing (the “Confirmation Hearing”). As of that date, the only objection to confirmation pending was a joint objection (the “High Objection”) [Docket No. 1135] filed by three consumer creditors, one of whom was Jackie L. High (the “High Objectors”). At the hearing, the First Amended Plan was further modified, without objection, by the inclusion of a carve-out (the “Carve-Out,” collectively, with the First Amended Plan, as Modified and the Plan Supplements, the “Plan”).² [Docket No. 1182]. Now, incorporating the findings of facts and conclusions of law set forth in the contemporaneously entered Order Overruling the Objection to Confirmation of the Plan and Memorandum Opinion

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan. Any term used in the Plan or in this Order that is not defined in the Plan or in the Order, but that is used in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

² At the confirmation hearing, Mepco Financial Corporation (“Mepco”) represented for the first time that it would not enforce certain releases in the First Amended Plan, as Modified on July 13, 2012. Those releases are related to third-party claims that the High Objectors assert against Mepco. Mepco later also made representation in writing [Docket No. 1182].

in Support of Confirmation (the “Objection Order”)³; and adopting the facts established by the declarations, affidavits, and certificates entered into evidence (including those at Docket Nos. 1148, 1149, 1153, 1157, 1161 and 1166); and accepting as true all other evidence adduced at the hearing; and upon review of the entire Case record; and upon consideration of the pleadings and memoranda filed in support of and against confirmation of the Plan and argument made on the papers and at oral argument; and upon finding that the record, including the applicable certificates of service, establishes proper notice and service of all confirmation-related documents, solicitations, notices, and disclosures, the Court **FINDS** the following facts and **MAKES** the following conclusions of law, and **ORDERS** that the Plan be **CONFIRMED**.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein and in the Objection Order constitute the Court’s findings of fact and conclusions of law related to the confirmation of the Plan, pursuant to Fed. R. Bankr. P. 7052, made applicable to the proceeding pursuant to Fed. R. Bankr. P. 9014. The procedural history of the Plan, including the filing and service of the Plan and other confirmation-related documents, is set forth in the Case Docket and the Objection Order, and is uncontested. It need not be memorialized here, and is accepted as fact. All necessary notice and service of the Plan and other confirmation-related documents has been properly and sufficiently accomplished upon all parties entitled to such notice and service. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact they are adopted as such.

³ All findings of fact and conclusions of law set forth in the Objection Order are incorporated in the instant Order.

B. **Incorporation of Declarations.** No objections were raised to the admission of any declaration, affidavit, or certificate entered into evidence at the Confirmation Hearing. No countervailing evidence was offered. The Court finds these documents to be true and persuasive, and adopts as a finding of fact the factual statements contained in each.

C. **Transmittal and Mailing of Materials, Notice.** The service of the various documents and materials and the posting of the materials on the website www.usfbankruptcy.com (the “USF Notice Website”) as described in the certificates of services [Docket Nos. 1108, 1110 and 1114], the affidavit of mailing [Docket No. 1110], and the affidavit of publication [Docket No. 1120] shall be deemed to have been transmitted and served in compliance with the solicitation order [Docket No. 1101], the Bankruptcy Rules, and the local Bankruptcy Rules for the Eastern District of Missouri. Such transmittal and service was adequate and sufficient, and no other or further notice is or shall be required.

D. **Balloting and Acceptances of the Plan.** The UCC did not solicit votes from Classes 1, 4, and 12 (because they are deemed to have accepted the Plan under § 1126(f)) or from Classes 9, 10, and 11 (because they are deemed to reject the Plan under § 1126(g)). The outcome of the voting by the remaining classes on the Plan was as follows:

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Class	Accept the Plan		Reject the Plan	
	Dollar Amount Voted/ Percentage of Total Dollar Amount	Number of Votes/ Percentage of Number of Votes	Dollar Amount Voted/ Percentage of Total Dollar Amount	Number of Votes/ Percentage of Number of Votes
2	\$57,974,530.03 /100%	1 /100%	\$0.00 /0%	0 /0%
3	\$19,999,996.00 /100%	4 /100%	\$0.00 /0%	0 /0%
5	\$4,851,958.71 /100%	31 /100%	\$0.00 /0%	0 /0%
6	\$2,062,916,244.00 / 99.9994%	412,586 / 99.9993%	\$12,575.00 / 0.0006%	3 / 0.0007%
7	\$1,019,428,000.00 / 100%	30 / 100%	\$0.00 / 0%	0 / 0%

As a result of the balloting described above, and applying the rules for determining the acceptance or rejection of a plan under § 1126(c), (d), (f), and (g), the Classes voted to accept or reject the Plan as follows:

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Class	Status	Voting Outcome
1- Non-Tax Priority Claims	Unimpaired	Deemed to accept
2 - Mepco Claims	Impaired	Accept
3 - Warrantech Claims	Impaired	Accept
4 – WARN Litigation Claims	Unimpaired	Deemed to accept
5 - Trade Claims	Impaired	Accept
6 - Consumer Claims	Impaired	Accept
7 - Subordinated Governmental Fines and Penalties Claims	Impaired	Accept
8- Prestige Claims	Impaired	Did not vote because it withdrew its proof of claim (ECF # 1133)
9 - WARN Litigation Class Exclusion Claims	Impaired	Deemed to reject
10 - Intercompany Claims	Impaired	Deemed to reject
11 - Equity Interests	Impaired	Deemed to reject
12 - Consumer Objectors' Claims	Unimpaired	Deemed to accept

E. **Compliance with the Bankruptcy Code.** Except as noted below, the Plan satisfies all applicable requirements for confirmation of a plan as set forth in § 1121 *et seq.* of the Bankruptcy Code. In particular, the Plan satisfies all applicable requirements for confirmation contained in § 1129(a) of the Bankruptcy Code, except for the requirement in § 1129(a)(8) of the Bankruptcy Code that every impaired class shall have voted to accept the Plan.

F. **Fair and Equitable: No Unfair Discrimination (11 U.S.C. § 1129(b)).** Class 9, Class 10, and Class 11 are deemed to reject the Plan. Based on the Master Disclosure Statement of June 5, 2012, the UCC's Confirmation Brief and Response, the Eisenberg Declaration, and the evidence adduced at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to Classes 9, 10, and 11, as required by § 1129(b)(1) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the failure to satisfy § 1129(a)(8) of the Bankruptcy Code. Upon Confirmation and occurrence of the Effective Date, the Plan shall be binding on the members of Classes 9, 10, and 11.

G. **Modifications to the Plan.** The modifications to the First Amended Plan [Docket # 1097] do not materially adversely affect or change the treatment of any Claims or Interests. The modifications to the Plan that added Class 12 for the Consumer Objectors' Claims did not adversely affect the treatment of the Consumer Objectors' Claims and included only a minor alteration to the treatment of Class 5 claims so that the change was so minor that it is not a materially adverse change. Accordingly, pursuant to Bankruptcy Rule 3019, such modifications do not require additional disclosure under § 1125 of the Bankruptcy Code or resolicitation of votes under § 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan, thereby satisfying § 1127 of the Bankruptcy Code.

H. **Objections.** All parties have had a full and fair opportunity to litigate all issues raised in any objection, or which might have been raised, and all objections have been fully and fairly litigated.

I. **No Opt-Out; No Objection to Releases by State Attorney General.** Neither Mepco nor Warrantech has exercised the Opt-Out rights described in Section 12.2 of the Plan. No State Attorney General objected to the releases described in Article XIII of the Plan. In fact, twenty-nine State Attorneys General and the Attorney General for the District of Columbia, representing over \$ 2 billion in Consumer Claims voted to accept the Plan.

J. **Qualified Settlement Fund.** The Consumer Restitution Fund shall be a qualified settlement fund within the meaning of §1.468B-1(c) of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code.

RELIEF

Therefore, the Court **ORDERS** as follows:

1. **Confirmation.** The Plan in the form attached hereto as Exhibit A, Exhibit B, Exhibit C,⁴ and Exhibit D (collectively, the “Exhibits”) is approved and confirmed under § 1129 of the Bankruptcy Code. The terms set forth in each of the Exhibits are incorporated by reference into and are an integral part of the Plan as a whole and this Confirmation Order. In particular, and without limiting the generality of the foregoing, the compromises, settlements, releases, exculpations, and injunctions described in Article XIII of Exhibit A are approved and confirmed.

⁴ The exhibits attached to Exhibit C (which are voluminous) also are fully incorporated and are available at Docket No. 1129].

2. **Global Settlement Agreement.** The Global Settlement Agreement is approved and upon the occurrence of the Effective Date terms of the Global Settlement Agreement shall be binding upon the parties in accordance with the terms thereof. Pursuant to Section 2.1(a)(i)(b) of the Plan, on the Effective Date, Debtor shall assign to Mepco Finance PM, LLC all of its right, title and interest in and to the Sale and Purchase Agreement with Darain and Mia Atkinson dated November 30, 2010 for the Caymans House, and Darain and Mia Atkinson shall transfer to Mepco Finance PM, LLC all of their right, title and interest in and to the Caymans House.

3. **Objections.** As of the date of the Confirmation Hearing, only the High Objector's objection remained pending. It was overruled as set forth in the Objection Order. All other objections are or were waived, settled, untimely or otherwise unmeritorious.

4. **Bar Dates for Certain Claims.**

(a) As previously ordered in the Solicitation Order, October 5, 2012 shall be fixed as the final date for filing Consumer Claims. All Consumer Claims shall be filed in accordance with the procedures and processes approved in the Solicitation Order.

(b) All Holders of Claims arising as a result of the rejection of a prepetition executory contract or unexpired lease hereunder shall File with the Bankruptcy Court proofs of Claim on or before (30) days after the Effective Date or forever be barred from doing so;

(c) All Holders of asserted Administrative Claims, except for Professional Fee Claims, not paid prior to the Confirmation Date shall File with the Bankruptcy Court an application for allowance of an administrative expense claims or before thirty (30) days after the Confirmation Date. or forever be barred from doing so; and

(d) All Professionals and other entities requesting compensation or reimbursement of Professional Fee Claims pursuant to section 327, 328, 330, 331, or 503(b) of

the Bankruptcy Code for services rendered prior to the Effective Date shall File with the Bankruptcy Court an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date, or forever be barred from doing so.

5. **Confidentiality Provisions.** Any documents provided to the Consumer Restitution Fund, its agents, any Office of the Attorney General or any member of the Consumer Restitution Fund Advisory Committee that contains personally identifiable information as defined in 11 U.S.C. § 101(41A), (41B) shall be treated as confidential and not subject to public disclosure under state and federal laws. The Consumer Restitution Fund, its agents, any Office of the Attorney General or any member of the Consumer Restitution Fund Advisory Committee that possesses personally identifiable information made confidential and privileged shall not delete information from a document so as to permit its disclosure. Consumers' personally identifiable information, however, may be disclosed to the obligor, the Administrator, or the financing company associated with the Consumer's Vehicle Service Contract for the purpose of determining the Consumer's claim value. Consumers' personally identifiable information related to a Consumer Claim may also be disclosed to an obligor if the Consumer Restitution Advisory Committee determines the obligor has potential liability for a Consumer Claim. Notwithstanding anything in the foregoing to the contrary, the Consumer Restitution Fund shall disclose documents in response to a valid subpoena and upon the request of a member of the Consumer Restitution Advisory Committee.

6. **Releases, Exculpations and Injunctions.** Pursuant to applicable law, the releases, exculpations and injunctions set forth in the Plan and implemented in this Order shall be and hereby are approved as proper, lawful and permissible. They are an integral part of the Plan and as fair, equitable, reasonable and in the best interests of the Debtor, the Estate and the

holders of Claims. The releases, exculpations and injunctions set forth in the Plan and implemented in this Order shall be and hereby are effective, binding and enforceable in accordance with their terms against and upon all persons and entities who may have had standing to assert such claims or causes of action against any of the parties protected by the releases, exculpations or injunctions. Notwithstanding the foregoing, the releases, exculpations, and injunctions with respect to Mepco contained in the Plan do not apply to the High Objectors (Jackie High, Loretta Alva, and Travis Peavy).

7. **Notice of Entry of Confirmation Order.** On or before the fourth (4th) business day following the date of the entry of this Confirmation Order, the UCC shall (a) serve notice of entry of this Confirmation Order (which, in the UCC's discretion, may be combined with the Notice of Effective Date) (the "Confirmation Notice") pursuant to Bankruptcy Rule 2002(f)(7), 2002(k), and 3020(c) by mail on all holders of all Non-Consumer Claims, the United States Trustee, and any other parties-in-interest entering their appearance in the Court's ECF Notice System, (b) cause the Confirmation Notice to be published on the USF Notice Website, and (c) cause the Notice of Confirmation to be published in the *St. Louis Daily Record*.

8. **Immediate Effectiveness.** Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), 7062, and 9014, the terms and provisions of the Confirmation Order shall be immediately effective and enforceable upon its entry, and shall become effective immediately upon occurrence of the Effective Date. The Bankruptcy Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Confirmation Order.

Further, the Court **ORDERS** the UCC to serve a copy of this Order upon all parties entitled to such service, and to file a Certificate of Service evidencing such service within four (4) business days.

DATED: August 28, 2012
St. Louis, Missouri 63102
mtc


CHARLES E. RENDLEN
U.S. Bankruptcy Judge