UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

In re:	)	**Case No. 06-20586**
	)	
UNION STAMPING & ASSEMBLY, INC., an Ohio corporation,	)	**Chapter 11**
	)	
	)	
	)	**Judge Ronald G. Pearson**
Debtor.	)	
	)	
(Employer Tax I.D. No. 20-1449201)	)	
	)	

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTOR'S AMENDED LIQUIDATING CHAPTER 11 PLAN

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AND DEBTOR IN POSSESSION

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DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF
CONFIRMATION OF DEBTOR'S AMENDED LIQUIDATING CHAPTER 11 PLAN

PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of the above-captioned debtor and debtor in possession (the "Debtor"), in support of confirmation of the Debtor's Amended Liquidating Chapter 11 Plan, dated March 16[1], 2007, Docket No. 341 (the "Plan"),[2] pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

The Plan is the culmination of a series of negotiations throughout the Debtor's bankruptcy case among the Debtor, the Official Committee of Unsecured Creditors (the "Creditors' Committee"), the United States Trustee, GMAC Commercial Finance LLC ("GMAC/CF"), Park Corporation ("Park"), General Motors Corp. ("GM"), and Freightliner LLC ("Freightliner" and, with GM, the "Major Customers"). The Plan provides for, among other things, the orderly distribution of the proceeds from the sale of substantially all the Debtor's assets to holders of secured, priority and unsecured claims against the Debtor's estate.

[1] As modified following the disclosure statement hearing held on March 21, 2007.
[2] Unless otherwise defined herein, capitalized terms used have the meanings given to them in the Plan.

This Memorandum of Law first sets forth the burden of proof the Debtor is required to meet under section 1129 of the Bankruptcy Code. It then describes the elements of sections 1123 and 1129 of the Bankruptcy Code, which the Debtor must satisfy for the Plan to be confirmed, including the requirements for confirming the Plan in light of the deemed rejection of the Plan by the Debtor's equity holders classified in Class 5. Finally, this Memorandum of Law demonstrates that the Plan satisfies all applicable requirements of the Bankruptcy Code.

Of the hundreds of creditors, shareholders, and parties in interest in this case, no party has filed an objection to confirmation of the Plan. As discussed below, and as will be demonstrated at the Confirmation Hearing, the Plan satisfies all applicable requirements of the Bankruptcy Code. Objections to the Plan presented at the Confirmation Hearing, if any, should be overruled and the Plan should be confirmed.

FACTS

The pertinent facts are set forth in the Plan, the Disclosure Statement for Debtor's Amended Liquidating Chapter 11 Plan, Docket No. 342 (the "Disclosure Statement"), and any testimony that will be presented or proffered at the Confirmation Hearing. Such facts are incorporated herein by reference.

ARGUMENT

I. THE DEBTOR WILL SATISFY THE BURDEN OF PROOF UNDER SECTION 1129 OF THE BANKRUPTCY CODE

To obtain confirmation of the Plan, the Debtor must demonstrate, by a preponderance of the evidence, that the Plan satisfies the provisions of section 1129(a) of the Bankruptcy Code. See In re U.S. Airways Group, Inc., 2003 Bankr. LEXIS 2207 (Bankr. E.D. Va. 2003); In re Beaver Office Products, Inc., 185 B.R. 537, 541 (Bankr. N.D. Ohio 1995); In re Trevarrow Lanes, Inc., 183 B.R. 475, 479 (Bankr. E.D. Mich. 1995). As the United States Court of Appeals

for the Fifth Circuit in Heartland Federal Savings & Loan Association v. Briscoe Enterprises, Ltd. II (In re Briscoe Enterprises, Ltd. II) expressed it: "The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof under both § 1129(a) and in a cramdown." 994 F.2d 1160, 1165 (5th Cir. 1993), *cert. denied*, 510 U.S. 992 (1993); see also In re Kent Terminal Corp., 166 B.R. 555, 561 (Bankr. S.D.N.Y. 1994) ("Notwithstanding this time-sensitive evidentiary burden, the final burden of proof at both the relief from stay and confirmation hearings remains a preponderance of the evidence.").

Through testimony to be presented at the Confirmation Hearing, the Debtor will demonstrate, by a preponderance of the evidence, that all subsections of section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan.

II. THE PLAN COMPLIES WITH SECTION 1129 OF THE BANKRUPTCY CODE

A. The Plan Satisfies the Requirements Under Section 1129(a) of the Bankruptcy Code

1. The Plan Complies with All Applicable Provisions of the Bankruptcy Code

Under section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." See 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 governing classification of claims and contents of a plan, respectively. See H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); see also In re Piece Goods Shops Company, L.P., 188 B.R. 778, 787 (Bankr. M.D.N.C. 1995); Kane v. Johns-Manville Corp., 843 F.2d 636, 648-49 (2d Cir. 1988); In re Drexel Burnham Lambert Group Inc.,

138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992). As demonstrated below, the Plan complies fully with the requirements of both sections.

a. Classification of Claims and Interests

Section 1122 of the Bankruptcy Code authorizes multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to other claims or interests in that class. See 11 U.S.C. § 1122. The Plan provides for the separate classification of Claims and Interests in five Classes based upon differences in the legal nature and/or priority of such Claims and Interests. Administrative Expense Claims and Priority Tax Claims are not classified and are separately treated. Class 1 provides for four sub-classes of unimpaired secured claims. Class 1A is comprised of the GMAC/CF Secured Claim, which was paid in full at the closing of the sale of substantially all of the Debtor's assets on or about December 13, 2006 (the "Sale"). Class 1B is comprised of the WVEDA Secured Claim, which was paid in full at the closing of the Sale. Class 1C consists of the Park Secured Claim, which was deemed fully satisfied pursuant to the Sale Order and the Bid Procedures Order. Class 1D includes other Secured Claims, which will be satisfied in full either from the net proceeds generated from the Sale or by other means.

Class 2 provides for the separate classification of Other Priority Claims against the Debtor, estimated to be between $400,000-$800,000; these claims will be paid in full. Class 3 is comprised of General Unsecured Claims against the Debtor, which claims will receive distributable amounts from the Liquidating Trust plus recoveries from certain designated Causes of Action. Class 4 is comprised of the Major Customers Claims, which will be paid only after holders of Class 3 Claims receive pro rata distributions equal to 50% on account of their allowed Class 3 Claims. Class 5 consists of all Interests in the Debtor, which will be terminated.

Each of the Claims or Interests in a particular Class is substantially similar to the other Claims or Interests in such Class. Accordingly, the classification of Claims and Interests in the Plan complies with section 1122 of the Bankruptcy Code.

b. Contents of Plan

Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which every chapter 11 plan must comply. As demonstrated below, the Plan fully complies with each such requirement. Article II of the Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code. Under the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims need not be expressly classified and must only be designated. Accordingly, Administrative Expense Claims and Priority Tax Claims are designated in Article III of the Plan. Article III of the Plan also specifies the Classes of Claims that are not impaired under the Plan, as required by section 1123(a)(2). The Plan sets forth the treatment of each Class of Claims or Interests impaired under the Plan, as required by section 1123(a)(3) of the Bankruptcy Code. The treatment of each Claim or Interest in each particular Class is the same as the treatment of every other Claim or Interest in such Class, as required by section 1123(a)(4) of the Bankruptcy Code.

Articles IV through XII and various other provisions of the Plan set forth the means for implementation of the Plan, as required by section 1122(a)(5) of the Bankruptcy Code, including the establishment of a Liquidating Trust, as described more fully herein. Section 1123(a)(6) of the Bankruptcy Code requires that the Debtor's organizational documents be amended to prohibit the issuance of non-voting securities. Because the Plan is a liquidating plan and because the Debtor anticipates that it will be dissolved after the Effective Date, section 1123(a)(6) is not applicable. Similarly, section 1123(a)(7), which requires certain provisions regarding the

selection of officers and directors, is also not applicable in light of the nature of the Plan. It should be noted, however, that as set forth below the Debtor has identified a candidate to serve as the trustee for the Liquidating Trust after the Effective Date. Finally, Article III, Section C.3 of the Plan provides that no property will be distributed to the holder of any Interest in the Debtor; such Interests will be deemed cancelled.

Section 1123(b) of the Bankruptcy Code sets forth the provisions that may be incorporated into a chapter 11 plan. Each provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code. Specifically, pursuant to Articles II and III of the Plan, Classes 3, 4 and 5 are impaired, as contemplated by section 1123(b)(1) of the Bankruptcy Code. Article VI of the Plan provides for the rejection of the executory contracts and unexpired leases of the Debtor not previously assumed, assigned, or rejected (or for which the motions for assumption or rejection are filed prior to the Effective Date) under section 365 of the Bankruptcy Code, as contemplated by section 1123(b)(2).

Further, Articles III, IV and VII provide for the distribution of any remaining proceeds from the Sale in accordance with section 1123(b)(4) of the Bankruptcy Code. Finally, Article III sets forth the modification of the rights of the holders of secured claims, unsecured claims or leases unaffected by the rights of any class of claims in accordance with section 1123(b)(5) of the Bankruptcy Code. Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies section 1129(a)(1) of the Bankruptcy Code.

c. Liquidating Trust

Article IV, Section D of the Plan provides for the establishment of the Liquidating Trust, which will be formed to distribute all Distributable Assets pursuant to the Liquidating Trust Agreement. The Liquidating Trust will be administered by a liquidating trustee (the Debtor has nominated Robert M. Johns to serve in this role) and will be established for the sole purpose of claims reconciliation and liquidating and distributing its assets with no objective to continue or engage in the conduct of a trade or business. The Plan also provides for the continued oversight of the Liquidating Trust through an Oversight Agent (the Creditors' Committee has nominated James Horgan to serve in this role) pursuant to Article IV, Section D of the Plan.

2. The Debtor Has Complied with the Provisions of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponents "compl[y] with the applicable provisions of [the Bankruptcy Code]." See 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126. H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); see also Piece Goods Shops, 188 B.R. at 787; In re PWS Holding Corp., 228 F.3d 224, 248 (3d Cir. 2000); In re Eagle-Picher Industries, 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996); In re Drexel Burnham, 138 B.R. at 759.

The Debtor submits that it has complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 regarding disclosure and plan solicitation. By order dated April 16, 2007, Docket No. 377 (the "Disclosure Statement Order"), after notice and a hearing, the Court approved the Disclosure Statement pursuant to section

1125(b) of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtor's creditors and equity holders to make an informed judgment whether to accept or reject the Plan. Pursuant to the Disclosure Statement Order, each holder of a Claim received solicitation materials as required, including, for holders of Claims entitled to vote, the Disclosure Statement (which includes as an exhibit a copy of the Plan) and a ballot (collectively, the "Solicitation Package"). The Solicitation Package was transmitted in connection with the solicitation of votes to accept the Plan in compliance with section 1125 and by order of the Court. The Debtor did not solicit acceptance of the Plan by any creditor prior to the transmission of the Disclosure Statement.

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of the Plan. Under section 1126, only holders of Allowed Claims in impaired Classes of Claims that will receive or retain property under the Plan on account of such Claims may vote to accept or reject the Plan. As set forth in the Voting Certification (defined below), and in accordance with section 1126 of the Bankruptcy Code, the Debtor solicited acceptances of the Plan from the holders of all Allowed Claims in each Class of impaired Claims that are entitled to vote to accept or reject the Plan. The Impaired Classes that were entitled to vote under the Plan are Classes 3 and 4. Based upon the foregoing, the requirements of section 1129(a)(2) have been satisfied.

3. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." See 11 U.S.C. § 1129(a)(3). Good faith "requires a fundamental fairness in dealing with one's creditors [and] that a plan will achieve a result consistent with the objectives and purposes of the Code." Crestar Bank v. Walker (In re Walker), 165 B.R. 994, 1001 (E.D. Va. 1994); see also In re Gillette Assocs., Ltd., 101 B.R. 866, 873

(Bankr. N.D. Ohio 1989) ("a plan is considered to be in good faith 'if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code'") (quoting In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)). The evaluation of good faith is based on the totality of the circumstances surrounding confirmation. See, e.g., U.S. Airways Group, 2003 Bankr. LEXIS at *18; In re Cellular Info. Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994). The good faith standard applies to chapter 11 plans of liquidation as well as plans of reorganization. See, e.g., In re River Village Assocs., 161 B.R. 127, 140 (Bankr. E.D. Pa. 1993); In re Jandous Elec. Constr. Corp., 115 B.R. 46 (Bankr. S.D.N.Y. 1990); In re Gillette, 101 B.R. at 873.

In addition to achieving a result consistent with the objectives of the Bankruptcy Code, the Plan also allows creditors to realize the highest possible recoveries under the circumstances. The Plan is the product of a consensus among the Debtor, the Creditors' Committee, the United States Trustee, Park, the Major Customers and GMAC/CF as to the manner in which the Debtor's assets should be distributed. If not already, the Debtor's secured, administrative and priority creditors will be paid in full. Moreover, support of the Plan by the Creditors' Committee reflects its acknowledgement that the Plan is fundamentally fair to general unsecured creditors. General unsecured creditors are projected to recover between 22% to 50% of their claims, which is a very favorable result in light of all the uncertainties facing the Debtor at the outset of the bankruptcy case. In addition, no party has argued that the Plan was not filed in good faith. Accordingly, the Plan has been filed in good faith and the requirements of section 1129(a)(3) are satisfied.

4. The Plan Provides that Payments Made by the Debtor for Services or Costs and Expenses Are Subject to Court Approval

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, the debtor, or a person receiving distributions of property under the plan, be subject to approval by the court as reasonable. See 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees made from estate assets be subject to review and approval as to their reasonableness by the court. See U.S. Airways Group, 2003 Bankr. LEXIS 2207 at *18-19; River Village Assocs., 161 B.R. at 141; In re Future Energy Corp., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); In re Resorts Int'l, Inc., 145 B.R. 412, 475 (Bankr. D.N.J. 1990).

Pursuant to the interim application procedures established by the Court, certain fees and expenses of professionals retained in the Debtor's chapter 11 case have been authorized and paid. All such fees and expenses, as well as all other accrued fees and expenses of professionals through the Effective Date, remain subject to final review for reasonableness by the Court under the Bankruptcy Code. As a result, the Plan complies with the requirements of section 1129(a) of the Bankruptcy Code.

5. The Requirement to Disclose All Necessary Information Regarding Directors, Officers, and Insiders Is Inapplicable

Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of any proposed officers and directors who will serve after plan confirmation; that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtors. See 11 U.S.C. § 1129(a)(5).

All of the Debtor's assets will vest with the Liquidating Trust on the Effective Date. Once that occurs, the Debtor will simply be a shell company and will continue with one director until dissolution. Additionally, the Debtor has disclosed the identity and proposed compensation structure of the Liquidating Trustee, and the United States Trustee and Creditors' Committee each support the Debtor's choice of the Liquidating Trustee. The Liquidating Trustee will also be subject to supervision by the Oversight Agent. The Plan, as a result, satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

6. The Requirement that a Plan Not Contain Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission Is Inapplicable

Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the rates charged by a reorganized debtor in the operation of its businesses approve any rate change provided for in the plan. See 11 U.S.C. § 1129(a)(6). This provision is inapplicable to the Debtor's case.

7. The Plan Is in the Best Interests of All Creditors of and Interest Holders in the Debtor

Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and interest holders. The best interests test focuses on individual dissenting creditors rather than classes of claims. See Bank of America National Trust & Savings Assn. v. 203 N. LaSalle Street Partnership, 526 U.S. 434 (1999). It requires that each holder of a claim or equity interest either accepts the plan or will receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

Under the best interests test, the court "must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were

liquidated." 203 N. LaSalle, 526 U.S. at 440; United States v. Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213, 228 (1996). As section 1129(a)(7) makes clear, the liquidation analysis applies only to nonaccepting impaired claims or interests. If a class of claims or equity interests unanimously accepts a plan, the best interests test automatically is deemed satisfied for all members of that class.

Although the Plan's proposed liquidation and a chapter 7 liquidation would have the same goal of liquidating the Debtor's assets for the benefit of creditors, the Debtor believes that the Plan provides a more efficient vehicle to accomplish this goal. While a chapter 7 trustee could complete the liquidation of the Debtor's assets, resolve disputed Claims and distribute funds to creditors, he would not have the benefit of the historical knowledge of the Debtor's prepetition and postpetition affairs that is possessed by the Debtor and the Creditors' Committee, and thus would likely have to complete substantial due diligence of the Debtor's affairs to complete the process. Additionally, the conversion of this case to chapter 7 would require additional trustee fees, the retention of new professionals, a new layer of administrative expense, and the likely duplication of work already performed by current professionals. Furthermore, a conversion to chapter 7 would take time and would likely delay distribution to creditors (potentially a couple of years), which could lead to further costs and litigation.

On the other hand, the Plan and Liquidating Trust provide quicker and more efficient distribution provisions with fewer administrative costs. Accordingly, creditors will receive greater and more prompt distributions under the Plan than they would receive through a hypothetical chapter 7 liquidation. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(7).

8. The Plan Is Deemed Accepted by Impaired Classes 3 and 4 and, as to such Classes, the Requirements of Section 1129(a)(8) Have Been Satisfied

Section 1129(a)(8) of the Bankruptcy Code requires either that each class of claims or interests is not impaired under the plan or that each has accepted the plan. Pursuant to section 1126(c) of the Bankruptcy Code, a class of claims has accepted the plan "if such plan has been accepted by creditors. . .that hold at least two-thirds in amount and more than one-half in number of allowed claims of such classes held by creditors. . .that have accepted or rejected such plan." Additionally, pursuant to section 1126(f) of the Bankruptcy Code, a class of claims is deemed to have accepted the plan if it is unimpaired under the plan.

Classes 1 and 2 are unimpaired under the Plan and are deemed to have accepted the Plan. As set forth in the Affidavit of DeBorah G. Marshall of McDonald Hopkins LLC Regarding the Methodology For the Tabulation of and Results of Voting with Respect to the Debtor's Amended Liquidating Chapter 11 Plan, Docket No. 421 (the "Voting Certification"), approximately 96% of the Class 3 votes cast and 99.99% of the amount of Class 3 votes cast have voted to accept the Plan. No holders of Class 4 Claims voted, but neither have holders of Class 4 Claims objected to confirmation of the Plan. Non-objecting, non-voting creditors are deemed to have accepted a plan. In re Ruti-Sweetwater, 836 F.2d 1263 (10th Cir. 1988); In re Campbell, 89 B.R. 187 (Bankr. N.D. Fla. 1988); In re Adelphia Communications Corp., 2007 Bankr. LEXIS 890 (Bankr. S.D.N.Y. 2007). Accordingly, Classes 3 and 4 are deemed to have accepted the Plan by the margins required by section 1126 of the Bankruptcy Code and case law.

Class 5 of the Plan is deemed, pursuant to section 1126(g) of the Bankruptcy Code, to have rejected the Plan because no holder of a Class 5 Interest will receive any recovery under the Plan. As a result, the Debtor will utilize the "cram down" provisions of section 1129(b) of the Bankruptcy Code with respect to Class 5 Interests.

9. The Plan Provides for Payment in Full of All Allowed Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under the plan, unless the holder of a particular claim agrees to a different treatment with respect to such claim. See 11 U.S.C. § 1129(a)(9). Pursuant to Article III of the Plan, and in accordance with section 1129(a)(9)(A) and (B) of the Bankruptcy Code, the Plan provides that all Allowed Administrative Expense Claims and Allowed Other Priority Claims will be paid in full, in Cash, on the Effective Date or as soon thereafter as is reasonably practicable.

The Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code with respect to the treatment of Priority Tax Claims under section 507(a)(8). Pursuant to Article III, Section A.2 of the Plan, and except as otherwise may be agreed, holders of Allowed Priority Tax Claims will be paid in full, in Cash, as soon as is reasonably practicable after the Effective Date or, if the Priority Tax Claim is not allowed as of the Effective Date, as soon as practicable after 30 days after the date on which an order allowing such Claim becomes a final order. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Class of Impaired Claims Has Accepted the Plan

Section 1129(a)(10) of the Bankruptcy Code requires the acceptance of the Plan by at least one Class of impaired Claims, "determined without including any acceptance of the plan by any insider." See 11 U.S.C. § 1129(a)(10). As set forth in the Voting Certification, the Plan clearly satisfies this requirement because two non-insider Classes of impaired Claims—Classes 3 and 4—have accepted the Plan.

11. The Plan Is Feasible

Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that a court find confirmation is not likely to be followed by liquidation of the debtor, unless such liquidation is proposed in the plan. See 11 U.S.C. § 1129(a)(11). Here, the Plan proposes an orderly liquidation of the Debtor. Substantially all of the Debtor's assets have already been liquidated, with the proceeds to be distributed to creditors. Therefore, to the extent feasibility is a concern, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

12. All Statutory Fees Have Been or Will Be Paid

Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 [title 28, the United States Code], as determined by the court at the hearing on confirmation of the plan." See 11 U.S.C. § 1129(a)(12). In accordance with section 1129(a)(12) of the Bankruptcy Code, Article III, Section A.1.b of the Plan provides that all fees and charges payable as of the Effective Date will be paid in Cash on the Effective Date by the Debtor, and quarterly thereafter by the Liquidating Trust as may be required until a final decree closing the chapter 11 case is entered.

13. The Plan Does Not Need to Treat Retiree Benefits

Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. During the course of the chapter 11 case, the Debtor worked with its union and its hourly and salaried retirees to settle globally all open issues with respect to the closure of the Debtor's plant, including buyouts of both active and retired union members' severance and healthcare obligations. By prior orders of the Court, all retiree benefits have been paid or modified under section 1114 of the Bankruptcy

Code, and the Debtor has received waivers from such retirees regarding any future claims. As a result, all potential retiree benefits have been addressed by prior orders of the Court, so section 1129(a)(13) is inapplicable.

B. The Plan Satisfies the "Cram Down" Requirements Under Section 1129(b) of the Bankruptcy Code

Section 1129(b) of the Bankruptcy Code sets forth the requirements for confirmation of a plan in cases in which all impaired classes of claims or interests have not accepted the plan, as required by section 1129(a)(8) of the Bankruptcy Code. See 11 U.S.C. § 1129(b); In re Bryson Properties, XVIII, 961 F.2d 496, 499 (4th Cir. 1992); In re United Marine, Inc., 197 B.R. 942, 949 (Bankr. S.D. Fla. 1996) ("The 'fair and equitable' requirement applies only in the context of cramdown under § 1129(b)…"); In re Dow Corning Corporation, 244 B.R. 678 (Bankr. E.D. Mich. 1999) ("Under § 1129(b), a finding that a plan is 'fair and equitable' is required only in the context of a cramdown…"). Under section 1129(b), the court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

1. The Plan Does not Discriminate Unfairly

The Plan does not discriminate unfairly with respect to Class 5, which is deemed to reject the Plan. Holders of Interests are not entitled to receive anything under the Plan, nor under the Bankruptcy Code's priority rules, if amounts remain due and owing to Classes of higher priority. Accordingly, the treatment afforded Class 5 is neither "unfair" nor "discriminatory" and is appropriate under the Bankruptcy Code.

2. The Plan Is Fair and Equitable

The Plan also satisfies the second part of the cram down test of section 1129(b) of the Bankruptcy Code: it is fair and equitable. Section 1129(b)(2)(C) provides that the "fair and equitable" test is satisfied if either (a) the holder of an interest in the subject class receives property of a value equal to the greater of any fixed liquidation preference, fixed redemption price or the value of such interest, or (b) the holder of any interest junior to the subject class will not receive any property on account of such junior interest. As to the fair and equitable test, the requirements of section 1129(b)(2)(C) are met with respect to Class 5. There is no liquidation preference or fixed redemption price associated with Class 5 Interests, nor is there any value associated therewith. Accordingly, Class 5 is not entitled to receive anything. In addition, there are no Classes junior to Class 5, so there can be no Class junior to Class 5 that is receiving anything under the Plan.

In short, to be confirmed pursuant to section 1129(b), the Plan must be fair and equitable and must not discriminate unfairly with respect to Class 5. The Plan clearly satisfies both of these requirements.

CONCLUSION

For the foregoing reasons, the Plan complies with and satisfies all of the requirements of section 1129 of the Bankruptcy Code and, therefore, should be confirmed.

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Respectfully submitted,

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