

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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: **CHAPTER 11**
: **CASE NO. 08-22581 (ASH)**
: **Debtor**
: **EOS AIRLINES, INC.**
: **In re:**
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**ORDER CONFIRMING JOINT PLAN OF LIQUIDATION OF
EOS AIRLINES, INC. PURSUANT TO CHAPTER 11 OF THE
BANKRUPTCY CODE, DATED DECEMBER 18, 2008**

The *Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the “Joint Plan”) having been filed before this Court on December 18, 2008 [Doc. 384] by Eos Airlines, Inc., the debtor and debtor-in-possession (the “Debtor”) and the Official Committee of Unsecured Creditors of Eos Airlines, Inc. (the “Committee”) in the above-captioned chapter 11 case (this “Chapter 11 Case”); this Court having entered, after sufficient notice and a hearing, its *Order (A) Approving Adequacy of Disclosure Statement; (B) Fixing a Voting Record Date; (C) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (D) Approving Form of Solicitation Package and Notices; and (E) Scheduling Certain Dates in Connection Therewith* [Doc. 382] (the “Disclosure Statement Order”); the *Disclosure Statement Regarding Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the “Disclosure Statement”) [Doc. 383], as approved by the Disclosure Statement Order, and the Joint Plan filed before this Court on December 18, 2008 having been distributed to holders of Claims and Equity Interests¹ entitled to vote on the Joint Plan as provided in the Disclosure Statement Order; and due notice of (i)

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Joint Plan.



entry of the Disclosure Statement Order, (ii) the Confirmation Hearing, and (iii) the Voting Deadline having been provided to holders of Claims against and Equity Interests in the Debtor and other parties in interest in accordance with the Disclosure Statement Order, the Bankruptcy Code and the Bankruptcy Rules, as established by the affidavits of service filed with the Court (the “Notice Affidavits”)² and such notice having been sufficient under the circumstances and no further notice being required; and after full consideration of (i) the Debtor’s *Memorandum of Law in Support of Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code*, filed before this Court on January 26, 2009 [Doc. 417] (the “Memorandum”), (ii) the *Declaration of Karen M. Wagner Regarding Votes Accepting or Rejecting the Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code (December 18, 2008)*, filed before this Court on January 23, 2009 [Doc. 407] (the “Solicitation and Tabulation Declaration”), (iii) the *Objection of the United States Trustee Regarding Proposed Disclosure Statement Dated October 24, 2008* (the “UST Objection”);³ and the hearing to consider confirmation of the Joint Plan having been held before this Court on January 28, 2009 (the “Confirmation Hearing”); and the Court having reviewed and considered the Joint Plan, the Memorandum, the Solicitation and Tabulation Declaration, and the UST Objection and all related documents; and the appearance of all interested parties having been duly noted in the record of the Confirmation Hearing, including the testimony

² The Notice Affidavits include: (i) Affidavit of Service Regarding Solicitation of Votes Regarding Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code (Class 4) [Doc. 393]; (ii) Affidavit of Service Regarding Solicitation of Votes Regarding Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code (Creditor Matrix) [Doc. 394]; (iii) Affidavit of Service Regarding Solicitation of Votes Regarding Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code (CUD and Expunged) [Doc. 398]; and (iv) Affidavit of Service / Amended Affidavit of Service Regarding Solicitation of Votes Regarding Joint Plan of Liquidation of Eos Airlines, Inc. Under Chapter 11 of the United States Bankruptcy Code (Class 4) [Doc. 399].

³ The UST Objection contained objections to the initial disclosure statement of the Debtor dated October 24, 2008 as well as the initial plan filed on October 24, 2008.

therein and the exhibits admitted into evidence; and the Court being fully familiar with the Joint Plan and other relevant factors affecting the Chapter 11 Case; and the Court being fully familiar with, and having taken judicial notice of the entire record of the Chapter 11 Case since the commencement of the Chapter 11 Case on April 26, 2008 (the “Petition Date”); and upon all of the proceedings had before the Court and upon the entire record of the Confirmation Hearing; and the Court having determined based upon all of the foregoing that the Joint Plan should be confirmed, as reflected by the Court’s rulings made herein and on the record of the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefore:

NOW, THEREFORE, IT IS HEREBY FOUND THAT:

A. Jurisdiction and Venue

1. This Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. § 1408 and 1409.

2. This Court’s retention of jurisdiction pursuant to Section 12 of the Joint Plan comports with 28 U.S.C. § 157.

B. Contents of the Plan

3. In accordance with Bankruptcy Code § 1123(a), the Joint Plan: (a) designates Classes of Claims and Equity Interests, other than claims of a kind specified in Bankruptcy Code §§ 507(a)(2), 507(a)(3) and 507(a)(8), and the classification complies with Bankruptcy Code § 1122; (b) specifies Classes of Claims that are not impaired under the Joint Plan; (c) specifies the treatment of Classes of Claims and Equity Interests that are impaired under the Joint Plan; (d) provides the same treatment for each Claim or Equity Interest of a particular Class, unless the holder of a particular Claim or Equity Interest has agreed to less favorable treatment of the

particular Claim or Equity Interest; (e) provides for adequate means for the Joint Plan's implementation; and (f) contains only provisions that are consistent with the interests of creditors and equity security holders and with public policy.

4. As permitted by Bankruptcy Code § 1123(b), the Joint Plan: (a) impairs or leaves unimpaired Classes of Claims and Equity Interests; (b) provides for the assumption, rejection, or assumption and assignment of the Debtor's executory contracts and unexpired leases; (c) provides for the retention and enforcement by the Trust of all Causes of Action and any claim or interest belonging to the Debtor or its estate; and (d) includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code.

C. Notice, Solicitation and Acceptance

5. In accordance with Bankruptcy Rule 2002, and in reliance upon the Solicitation and Tabulation Declaration, this Court finds that adequate notice of the Objection Deadline, the Voting Deadline and the Confirmation Hearing were provided to all Creditors, holders of Equity Interests and all other parties in interest. No additional notice of the Confirmation Hearing or an opportunity to be heard with respect to confirmation of the Joint Plan is required or appropriate under applicable Bankruptcy Rules or the Disclosure Statement Order.

6. In accordance with Bankruptcy Code § 1126(b): (a) the solicitation of votes to accept or reject the Joint Plan complied with all applicable nonbankruptcy law, rules, and regulations governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation was conducted after disclosure of adequate information, as defined in Bankruptcy Code § 1125(a), and in accordance with the Disclosure Statement Order.

7. The Debtor and the Committee, through the Debtor's solicitation agent, and their respective counsel solicited votes to accept or reject the Joint Plan in good faith and in

compliance with the applicable provisions of the Bankruptcy Code and are, therefore, entitled to the protections afforded by Bankruptcy Code § 1125(e).

8. With respect to all Classes under the Joint Plan: (a) Classes 1 and 2 are not impaired and are deemed to have accepted the Joint Plan without voting under Bankruptcy Code § 1126(f); (b) Class 3 is impaired but deemed to have voted to accept the Joint Plan pursuant to the terms of the WARN Act Settlement Agreement; (c) Class 4 voted to accept the Joint Plan by satisfying the voting requirements in Bankruptcy Code § 1126(d); and (d) Class 5 is deemed to reject the Plan without voting under Bankruptcy Code § 1126(g).

D. Compliance with the Requirements of Bankruptcy Code § 1129(a)

9. In accordance with Bankruptcy Code § 1129(a)(1), the Joint Plan complies with the applicable provisions of the Bankruptcy Code.

10. In accordance with Bankruptcy Code § 1129(a)(2), the Debtor and Committee have complied with the applicable provisions of the Bankruptcy Code.

11. In accordance with Bankruptcy Code § 1129(a)(3), the Debtor and Committee proposed the Joint Plan in good faith and not by any means forbidden by law.

12. In accordance with Bankruptcy Code § 1129(a)(4), all payments made or to be made by the Debtor or by any person acquiring property under the Joint Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Case or the Joint Plan, have been approved by, or are subject to approval of, the Court as reasonable.

13. In accordance with Bankruptcy Code § 1129(a)(5): (a) the Debtor and Committee have disclosed the identity and affiliations of the Liquidating Trustee; (b) the appointment of the Liquidating Trustee is consistent with the interests of the creditors, equity security holders and

with public policy; and (c) the Debtor and Committee have disclosed the identities of, and the nature of any compensation for, the Liquidating Trustee.

14. The Joint Plan does not provide for any rate change subject to governmental regulation for purposes of Bankruptcy Code § 1129(a)(6).

15. In accordance with Bankruptcy Code § 1129(a)(7), with respect to each impaired Class of Claims or Equity Interests, each holder of a Claim or Equity Interest of such Class has accepted the Joint Plan or will receive or retain under the Joint Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that the holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

16. With regard to Bankruptcy Code § 1129(a)(8), Classes 1 and 2 are not impaired under the Joint Plan and, therefore, are deemed to have accepted the Joint Plan pursuant to Bankruptcy Code § 1126(f). Class 3 is impaired but deemed to have accepted the Joint Plan pursuant to the terms of the WARN Act Settlement Agreement. Class 4 is impaired and voted to accept the Joint Plan. Class 5 is impaired and deemed to have rejected the Joint Plan pursuant to Bankruptcy Code § 1126(g). Accordingly, this Order addresses the requirements of Bankruptcy Code § 1129(b), below, with respect to Class 5 only.

17. In accordance with Bankruptcy Code § 1129(a)(9)(A), Section 2.2 of the Joint Plan provides that Allowed Administrative Claims and Allowed Professional Fee Claims incurred through the Effective Date shall be paid by the Liquidating Trustee within ten (10) days after the Allowance Date for such Claims.

18. In accordance with Bankruptcy Code § 1129(a)(9)(B), Section 4.2 of the Joint Plan provides that Allowed Priority Unsecured Non-Tax Claims shall be paid by the Liquidating Trustee from Trust Cash within ten (10) days from the Allowance Date.

19. In accordance with Bankruptcy Code § 1129(C), Section 2.3 of the Joint Plan, as modified and amended hereby, provides that Allowed Priority Unsecured Tax Claims shall be paid, at the Liquidating Trustee's discretion, either (i) in full by the Liquidating Trustee from Trust Cash within ten (10) days from the Allowance Date of such Priority Unsecured Tax Claim or (ii) in regular installments in Cash of the total value of such Claim as of the Effective Date over a period of not more than five (5) years from the Petition Date, and further provides that if the Liquidating Trustee elects to pay any Allowed Priority Unsecured Tax Claim in installments (x) to the extent any provision of the Bankruptcy Code requires the payment of interest on such Claim, or the payment of interest to enable the holder of such Claim to receive the present value of the Allowed Priority Unsecured Tax Claim, the rate of interest shall be determined pursuant to applicable non-bankruptcy law; and (y) the rate of interest shall be determined as of the date this Order becomes a Final Order.

20. In accordance with Bankruptcy Code § 1129(a)(10), at least one Class of Claims that is impaired under the Joint Plan has accepted the Plan, determined without including any acceptance of the Joint Plan by any insider. Specifically, Classes 3 and 4 are impaired under the Joint Plan and have voted to accept the Joint Plan.

21. In accordance with Bankruptcy Code § 1129(a)(11), except as proposed in the Joint Plan, confirmation of the Joint Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor.

22. In accordance with Bankruptcy Code § 1129(a)(12), if all fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6) have not been paid, the Joint Plan provides for the payment of all those fees on the Effective Date or as they come due after the Effective Date.

23. Bankruptcy Code § 1129(a)(13) is inapplicable in this Chapter 11 Case because the Debtor did not provide retiree benefits as of the Petition Date.

24. Bankruptcy Code §§ 1129(a)(14) through (16) are inapplicable.

25. The principal purpose of the Joint Plan is not the avoidance of taxes or the avoidance the application of Section 5 of the Securities Act, and no objection has been filed by any governmental unit asserting such avoidance. The Joint Plan, therefore, complies with Bankruptcy Code § 1129(d).

D. Compliance with the Requirements of Bankruptcy Code § 1129(b)

26. Class 5 is deemed to have rejected the Joint Plan pursuant to Bankruptcy Code § 1126(g). Accordingly, the Debtor and the Committee have requested that this Court confirm the Joint Plan notwithstanding the requirements of Bankruptcy Code § 1129(a)(8).

27. In accordance with Bankruptcy Code § 1129(b), this Court finds that the Joint Plan does not discriminate unfairly, and is fair and equitable, with respect to Class 5 based on, among other things, the following:

(a) Class 5 consists, in part, of Equity Interests that are junior to all other Classes, including Class 4 General Unsecured Claims. Because the Liquidation Analysis provided by the Debtor clearly shows that Class 4 General Unsecured Claims will not be satisfied in full, holders of Class 5 Equity Interests will receive no recovery under the Joint Plan. The Joint Plan is

consistent with the rules of priority among claims and equity interests and reflects the fact that the Debtor's estate is insolvent.

(b) Class 5 also consists, in part, of Equity Related Claims. These Claims are subject to subordination under Bankruptcy Code § 510(b) and, pursuant to the Joint Plan, are subordinated to Class 4 General Unsecured Claims. Because the Liquidation Analysis provided by the Debtor clearly shows that Class 4 General Unsecured Claims will not be satisfied in full, Class 5 Equity Related Claims will receive no recovery under the Joint Plan.

(c) The issue of liquidation priority is irrelevant because no Equity Interest holder will receive a Distribution under the Joint Plan, regardless of any liquidation priority among Equity Interests. There is no Class that is junior to Class 5. Therefore the criteria set forth in Bankruptcy Code § 1129(b)(2)(C) are deemed satisfied.

E. Release, Injunction and Exculpation Provisions

28. This Court finds that the release, injunction and exculpation provisions of the Joint Plan as set forth in Sections 10.2, 10.3 and 10.4 are necessary and appropriate under the circumstances, intended to aid in the implementation of the Joint Plan and do not violate any provision of the Bankruptcy Code, the Bankruptcy Rules or applicable non-bankruptcy law. None of the foregoing provisions contain unreasonably broad third party releases, injunctions or indemnification that require application of the criteria set forth in *Deutsche Bank AG, London Branchy v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136 (2d Cir. 2005).

F. Conditions to Confirmation

29. Upon entry of this Order, the conditions to confirmation set forth in Section 8.1 of the Joint Plan shall be deemed satisfied.

G. Implementation of the Joint Plan

30. Without further application to this Court, the Debtor, the Committee and the Liquidating Trustee are authorized to enter into, implement and effect all transactions contemplated by the Joint Plan, including, but not limited to, those actions described in Section 5 of the Joint Plan.

31. The assumption or rejection of executory contracts and unexpired leases under the Joint Plan is a reasonable exercise of the Debtor's business judgment and is in the best interests of the Debtor and the Estate.

H. Miscellaneous

32. Entry of this Order makes valid and enforceable each provision of the Joint Plan (as amended or modified herein) and the Trust Agreement in accordance with their respective terms.

33. In satisfaction of Bankruptcy Rule 3016(a), the Joint Plan is dated and the entities submitting it are identified.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:

A. Integration

34. The findings of this Court set forth in this Order constitute findings of fact and conclusions of law under Bankruptcy Rule 7052, applicable to this matter under Bankruptcy Rule 9014. If any findings of fact constitute conclusions of law, they are adopted as such. If any conclusions of law constitute findings of fact, they are adopted as such.

B. Confirmation

35. The Joint Plan, as modified or amended herein, is hereby CONFIRMED under section 1129 of the Bankruptcy Code.

36. Notwithstanding Bankruptcy Rule 3020(e) and any other applicable law, immediately upon entry of this Order the terms of the Joint Plan, the Trust Agreement and this Order will be binding on and inure to the benefit of the Debtor, all holders of Claims or Equity Interests and the Liquidating Trustee and the respective successors and assigns of the foregoing.

37. In accordance with Bankruptcy Code § 1123(b)(3)(B), the Liquidating Trustee is appointed as the representative and agent of the Estate to prosecute, compromise or abandon any Causes of Action in accordance with the Joint Plan and the Trust Agreement.

C. Amendments to the Plan

38. The following amendments to the Joint Plan meet the requirements of Bankruptcy Code § 1127(a) and (c), such amendments do not adversely change the treatment of the Claim of any Creditor or Equity Interest of any equity security holder within the meaning of Bankruptcy Rule 3019, and no further solicitation of votes is required.

39. The Joint Plan is amended as follows:

(a) The date of the Joint Plan shall be December 18, 2008.

(b) Section 2.3 is replaced in its entirety by the following:

2.3 Payment of Allowed Priority Unsecured Tax Claims. Any Allowed Priority Unsecured Tax Claim shall, at the Liquidating Trustee's discretion, either: (i) be paid in full by the Liquidating Trustee from Trust Cash within ten (10) days from the Allowance Date of such Priority Unsecured Tax Claim, or (ii) receive in regular installments payments in Cash of the total value of such Claim as of the Effective Date over a period of not more than five (5) years from the Petition Date. If the Liquidating Trustee elects to pay any Allowed Priority Unsecured Tax Claim in installments (x) to the extent any provision of the Bankruptcy Code requires the payment of interest on such Claim, or the payment of interest to enable the holder of such Claim to receive the present value of the Allowed Priority Unsecured Tax Claim, the rate of interest shall be

determined pursuant to applicable non-bankruptcy law; and (y) the rate of interest shall be determined as of the date that the Confirmation Order becomes a Final Order.

(c) Sections 6.1 and 6.2 are replaced in their entirety by the following:

6.1 Executory Contracts and Unexpired Leases. Unless otherwise provided for in this Plan, on the date that is sixty (60) business days following the Effective Date, all executory contracts and unexpired leases not previously rejected by the Debtor during the Chapter 11 Case or for which a motion for rejection is pending on the Confirmation Date shall be deemed rejected.

6.2 Rejection Damage Claim Bar Date. All Rejection Damage Claims arising by operation of Section 6.1 of this Plan shall be filed with the Bankruptcy Court no later than ninety (90) business days after the Effective Date. Any Rejection Damage Claim not filed by such date shall be forever barred and shall not be entitled to any Distribution under this Plan. The Liquidating Trustee shall have the right to object to any Rejection Damage Claim.

(d) Section 10.7 is replaced in its entirety by the following:

10.7 Preservation of Insurance. Nothing in this Plan or confirmation of this Plan diminishes or impairs the enforceability of any insurance policy that may cover Claims against the Debtor or any other Person, including but not limited to any D&O Policy, all of which insurance policies, including without limitation, any D&O Policies, shall continue to remain in effect and enforceable against the insurer in accordance with their terms.

(e) Section 15.18 is added as follows:

15.18 Additional Provisions. The following provisions are incorporated into the Plan:

15.18.1 Notwithstanding anything to the contrary set forth in the Plan or the Confirmation Order, but subject to any other order of the Court addressing the Claims or rights of National City Bank (“National City”), successor by merger to National City Bank of the Midwest:

(i) Nothing in the Plan will impact, modify, impair, affect or waive:

(a) any of National City's claims, defenses, counterclaims and/or crossclaims in any existing or future adversary proceedings to which National City is a party (collectively, the "Escrow Adversary Proceedings")

(b) any of National City's rights, liens or claims under any agreements between the Debtor and National City or under applicable law, provided, however, the Liquidating Trustee may move at any time on notice to National City to reject any such agreements.

(ii) The Escrow Adversary Proceedings shall not be enjoined or impaired by the Plan and all claims, counterclaims, crossclaims and defenses therein can proceed unimpaired by the Plan.

(iii) Any proposed amendment to the Plan which affects National City's rights, claims or defenses shall be on notice to National City with an opportunity to object thereto

(iv) Pending further order of the Court, National City shall retain its lien, if any, and the extent, validity and priority thereof on all monies subject to any agreements between the Debtor and National City, whether such monies are held by National City or are hereafter transferred by National City to the Debtor and/or any representative of the bankruptcy estate.

D. Bar Dates

40. All requests for payment of an Administrative Claim (other than a Professional Fee Claim) must be filed before this Court on or prior to the Effective Date and served on the Debtor, the Committee and the Liquidating Trustee, or, unless otherwise agreed by the Oversight Committee and approved by the Court, the holders of such Administrative Claims shall be forever barred from asserting such Administrative Claims and shall not be entitled to any Distributions under the Joint Plan.

41. All requests for payment of Professional Fee Claims arising on or before the Effective Date shall be filed with this Court and served on the Debtor, the United States Trustee, the Liquidating Trustee and the Committee within thirty (30) business days following the Effective Date. Any Professional Fee Claims for which an application or request for payment is not filed within that time period shall be deemed released and forever barred, and shall not be entitled to any Distribution under the Joint Plan.

42. All Rejection Damage Claims arising by operation of Section 6.1 of the Joint Plan shall be filed with the Bankruptcy Court no later than ninety (90) business days after the Effective Date. Any Rejection Damage Claim not filed by such date shall be forever barred and shall not be entitled to any Distributions under the Joint Plan. The Liquidating Trustee shall have the right to object to any Rejection Damage Claim.

E. Retention of Jurisdiction

43. This Court's retention of jurisdiction as set forth in Section 12 of the Joint Plan is APPROVED. Such retention of jurisdiction does not affect the finality of this Order, which the Court shall direct the Clerk of the Bankruptcy Court to enter immediately.

F. The Liquidating Trust, Trust Agreement and Liquidating Trustee

44. The terms of the Trust Agreement are hereby approved in their entirety and the Trust Agreement is hereby binding upon all Creditors and all current or future holders of Beneficial Interests.

45. Pursuant to Section 5.5 of the Plan, on the Effective Date, all Estate Property shall be conveyed and transferred by the Debtor to the Trust, free and clear of all interests, claims, Liens and encumbrances, including, but not limited to, all Trust Assets currently located in the United Kingdom and subject to that certain ancillary UNCITRAL proceeding pending before the Supreme Court of England and Wales having court reference 3439/08.

46. Turnaround Advisors, L.L.C. is hereby appointed to serve as the Liquidating Trustee on the terms set forth in section 3.9 of the Trust Agreement and further described in the *Notice of Disclosure Identifying Liquidating Trustee Candidate Pursuant to the Joint Plan of Liquidation*, filed before this Court on January 23, 2009 [Doc. 408].

G. Miscellaneous

47. Pursuant to Bankruptcy Code § 1146, any transfers pursuant to or in conjunction with the Joint Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment. All state or local governmental officials or agents are directed to forego the collection of any such tax or governmental assessment and to

accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

48. Under Bankruptcy Code §§ 1123(a) and 1142(a), this Order and the Joint Plan apply and are enforceable notwithstanding any otherwise applicable non-bankruptcy law.

49. The failure to include specifically any particular provision of the Joint Plan in this Order does not diminish or impair the efficacy of that provision; the Court intends by this Order to confirm and approve the entire Joint Plan and all its provisions in their entirety, as modified only by this Order. Any inconsistencies between the Joint Plan and this Order or the Trust Agreement and this Order shall be resolved in favor of this Order.

50. The Debtor, Committee and their respective counsel are authorized and directed to do any acts and to execute any documents necessary and appropriate to implement the terms of the Joint Plan.

51. All objections to confirmation of the Joint Plan, to the extent not already withdrawn or resolved by this Order and its revisions to the Joint Plan, are OVERRULED.

52. The provisions of this Order are non-severable and mutually dependent.

Dated: White Plains, New York
January 28, 2009

/s/ Adlai S. Hardin, Jr.
UNITED STATES BANKRUPTCY JUDGE