

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In re:	:	Chapter 11
	:	
SEPCO CORPORATION,	:	Case No. 16-50058
	:	
Debtor. ¹	:	Judge Alan M. Koschik
	:	

**DECLARATION OF RICHARD J. SZEKELYI IN SUPPORT OF
CONFIRMATION OF CHAPTER 11 PLAN**

Pursuant to 28 U.S.C. § 1746, Richard J. Szekelyi declares as follows:

1. I am the Chief Restructuring Officer of Sepco Corporation (the “Debtor” or “Sepco”), a corporation organized under the laws of the State of California with its principal place of business in Aurora, Ohio. In my capacity as the Chief Restructuring Officer, I have become familiar with the financial condition, books and records, and business affairs of the Debtor.

2. I submit this Declaration in support of confirmation of the *Second Amended Plan of Reorganization, as Modified, for Sepco Corporation Under Chapter 11 of the Bankruptcy Code* [Doc. No. 664] (as such has been or hereafter may be modified or supplemented, the “Plan”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are offered to the best of my knowledge, information, and belief based upon my personal knowledge and experience in the Chapter 11 Case, my review of various documents (including relevant documents maintained in the ordinary course of Sepco’s business), and information provided to me by Sepco’s management or professionals working with me or under my supervision. This proffer describes my recollection and analysis at this time based upon the information currently available to me. It

¹ The last four digits of the Debtor’s federal tax identification number are 7402.

² Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.



165005820032000000000009

does not attempt to capture every detail of every topic addressed. I reserve the right to revise, amend, and/or supplement my testimony as appropriate in my judgment to address other matters or to the extent additional or updated information becomes available to me.

4. I am authorized to submit this Declaration on behalf of the Debtor, and, if I were called upon to testify, I could and would testify competently to the facts set forth herein.

5. In this Declaration, I address certain aspects of the Plan, including events bearing on the Plan that have transpired since my *Declaration of Richard J. Szekelyi in Support of First Day Motions* [Doc. No. 16], which was filed at the outset of this Chapter 11 Case.

I. SETTLEMENTS WITH THE DEBTOR'S INSURERS

6. The Plan reflects the culmination of years of arm's-length negotiations. It embodies the agreements among the Debtor, the Asbestos Claimants Committee, the Futures Claimants' Representative (collectively, the "Plan Proponents"), as well as with certain other parties, for the resolution of disputed insurance coverage issues, the formulation of a consensual reorganization of the Debtor, and the distribution of value to its creditors.

7. Among those resolutions are two major settlements that the Plan Proponents achieved with various insurers. The first such settlement occurred with The Hartford Financial Services Group, Inc. (including First State Insurance Company and Twin City Fire Insurance Company, "Hartford"). The Asbestos Claimants Committee's special insurance counsel, Gilbert LLP, spearheaded the negotiations with Hartford that, in consultation with the Debtor, the Asbestos Claimants Committee, and the Future Claimants' Representative, culminated in that settlement. Under the settlement, Hartford agreed to pay \$17,500,000 to resolve any claims relating to insurance coverage and to "buy-back" all of Sepco's interests in the Hartford Policies that Hartford had issued. The Court approved that settlement in its *Order Approving Debtor's*

Settlement Agreement With The Hartford Financial Services Group, Inc. and Authorizing the Sale of Policy Interests . . . Free and Clear of Liens . . ., dated March 23, 2018 [Doc. No. 374].

8. Pursuant to its settlement agreement with the Debtor and the Affiliates, Hartford paid \$17,500,000 in cash, which has been deposited into a qualified settlement fund that was established pursuant to an order of the Court. *See Order Granting Debtor's Motion for an Order Establishing Qualified Settlement Fund Pursuant to IRC § 468B*, dated March 23, 2018 [Doc. No. 375]. As provided more fully in the Plan, upon the Plan's Effective Date the balance of those funds will be contributed from the qualified settlement fund into the Asbestos Personal Injury Trust and will be part of the Asbestos Personal Injury Trust Assets.

9. After the settlement with Hartford was consummated, the Debtor and the Allianz Insurers (including Fireman's Fund Insurance Company, Interstate Fire & Casualty Company, and Associated Indemnity Corporation) (collectively, the "Allianz Settling Insurers") reached agreement concerning the disposition of various insurance policies involving the Debtor and the Allianz Settling Insurers. The Asbestos Claimants Committee's special insurance counsel also spearheaded negotiations with the Allianz Settling Insurers that, in consultation with the Debtor, the Asbestos Claimants Committee, and the Future Claimants' Representative, culminated in that settlement. Under the settlement, Fireman's Fund Insurance Company, on behalf of the Allianz Settling Insurers, agreed to pay \$2,250,000 to resolve any claims relating to insurance coverage and to "buy-back" all of Sepco's interests in the affected insurance policies.

10. After conducting a hearing on the motion, on February 7, 2019, the Court entered an order approving the settlement agreement among the Debtor, the Allianz Settling Insurers, and the Affiliates. *See Order Approving Debtor's Settlement Agreement With the Allianz Insurers and Authorizing the Sale of Policy Interests . . . Free and Clear of Liens . . .*, dated February 7, 2019

[Doc. No. 517]. Under that settlement, Fireman's Fund Insurance Company (on behalf of the Allianz Settling Insurers) paid \$2,250,000 in cash, which was deposited into the qualified settlement fund described above.

II. THE RESTRUCTURING TRANSACTIONS AND THE REORGANIZED DEBTOR'S NEW BUSINESS

11. Section 8.10 of the Plan (entitled "Restructuring Transactions") provides that, following confirmation of the Plan, Reorganized Sepco will engage in the commercial real estate business. Specifically, utilizing \$400,000 from the Net Reserve Funds, Reorganized Sepco will purchase 33.33% of the membership interests in Moores Commercial Unit, LLC, a Delaware limited liability company ("Moores"), and will be a non-managing member of Moores under that certain "Membership Interest Purchase Agreement" and "Amended LLC Agreement," the forms of which are Exhibits I and J to the Plan, respectively. Moores owns commercial real estate known as Unit 2 of the Moores Road Office Condominium (the "Property"), also known as Chester County UPI No. 42-402.3C and commonly known as 12 and 16 Moores Road, Malvern, Pennsylvania. The Property includes the real estate and structures located at that location, all fixtures, systems, improvements, topsoil, trees, shrubbery, and landscaping situated on, in, or under the real estate, all personal property located there (i.e., furniture), and all assignable agreements that are in force and effect which benefit the Condominium.

12. As set forth more fully in the Plan, as of the Effective Date, Moores, as landlord, and Saint-Gobain Corporation ("SGC") (which presently is one of the Debtor's Affiliates), as tenant, are or will be parties to a 60-month lease, under which SGC will lease the Property from Moores. The form of that Lease is Exhibit K to the Plan (the "Lease"). The Lease does not expire until March 2025. The Lease is a "triple-net lease," under which, in exchange for its use and occupancy of the Property, SGC, as tenant, is obligated to pay each month to Moores, as landlord,

(a) base rent in amounts specified in the Lease, plus (b) charges for all operating expenses related to the Property (including, without limitation, the costs of services, materials, and supplies furnished or used in the operation, repair, maintenance, cleaning, management, and protection of the Property that SGC, as tenant, does not pay directly), (c) all real estate taxes attributable to the Property, (d) premiums for insurance against damage or loss to the Property, (e) all utilities serving the Property, and (f) all common expenses of the Condominium assessed to Moores (as landlord) as the unit owner of Unit 2. From any distributions of net profits that Moores makes from time-to-time to Reorganized Sepco (as the owner of 33.33% of the membership interests of Moores), Reorganized Sepco periodically shall set aside and reserve such amounts as Reorganized Sepco determines, in the reasonable exercise of its discretion, are or will be sufficient to fully satisfy (as and when due) all franchise taxes and other expenditures that are necessary to maintain Reorganized Sepco's corporate existence in good standing under the laws of the state of its formation or that otherwise are necessary for Reorganized Sepco to conduct the business for which Section 8.10 of the Plan provides (the "Operational Reserve"), and any balance of those distributions that remains (after the Operational Reserve is funded) shall be transferred as dividends by Reorganized Sepco to the Asbestos Personal Injury Trust (promptly after receipt by Reorganized Sepco) and will become part of the Asbestos Personal Injury Trust Assets. Accordingly, from and after confirmation of the Plan, Reorganized Sepco will be engaged in a business from which it will derive revenues to make future payments, including dividends, to the Asbestos Personal Injury Trust.

III. SELECTED ASPECTS OF THE PLAN

A. No executory contracts will be assumed under the Plan.

13. The Debtor is not aware of any Executory Contracts or unexpired leases, the assumption or assumption and assignment of which are integral to the Plan. There are no

Executory Contracts being assumed under the Plan and, therefore, there are no defaults under Executory Contracts that require cure.

B. The Plan Proponents' good faith regarding the Plan and solicitation process.

14. Based upon the facts and information known to me, in my opinion, the Debtor, as well as each of its directors, officers, employees, agents, owners, and professionals, acting in such capacity, have acted in "good faith" in soliciting acceptance of the Plan, as required by section 1125(e) of the Bankruptcy Code, and have not procured the Confirmation Order by fraud. Likewise, in my opinion, the Debtor, Asbestos Claimants Committee, and Future Claimants' Representatives proposed the Plan in good faith and not by any means forbidden by law, as required by section 1129(a)(3) of the Bankruptcy Code, based on the totality of the circumstances surrounding the filing of the Chapter 11 Case, the terms of the Plan, the process leading to the formulation of the Plan, and the solicitation of votes on the Plan.

15. Based upon the facts and circumstances known to me, I believe that the full record of the Chapter 11 Case, taken as a whole, demonstrates that the Plan has been proposed with the legitimate purpose of reorganizing the affairs of the Debtor and maximizing the returns available to creditors and other parties in interest. The Plan allows the Debtor to reorganize by resolving certain pending disputes and proceedings and providing Reorganized Sepco with a capital structure that will allow it to satisfy its obligations as provided in the Plan. In particular, I believe that the Plan achieves a global resolution of Asbestos Personal Injury Claims (including Demands). Moreover, the Plan itself and the arm's-length negotiations among the Debtor, the Asbestos Claimants Committee, and the Future Claimants' Representative leading to the Plan's formulation provide independent evidence of the Plan Proponents' good faith in proposing the Plan.

16. The overall fairness of the Plan and the acknowledgment by the Debtor's creditors that the Plan has been proposed in good faith and for proper purposes is further demonstrated by

(a) the significant settlements achieved with Hartford and the Allianz Insurers, as explained above, (b) the support of all of the Debtor's constituencies for the Plan and the lack of any objections to it, and (c) the voting creditors' unanimous acceptance of the Plan.

C. The Plan does not provide for the establishment of any regulated rates.

17. No establishment of rates is applicable to the Debtor over which any regulatory commission has or will have jurisdiction after Confirmation.

D. The Plan fulfills the "best interest of creditors" requirement.

18. I have been informed that all holders of Impaired Claims have voted to accept the Plan. Even if less than all holders had accepted the Plan, though, each holder of an Impaired Claim will, on account of such Claim, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated under chapter 7 or the Bankruptcy Code. As described further in the Disclosure Statement, the Debtor believes that there will be substantially more assets available to pay holders of Claims under the Plan than would be in the case of a hypothetical liquidation. The Plan incorporates a settlement of existing and potential litigation involving Asbestos Personal Injury Claims, satisfaction of the Intercompany Claims, and resolution of any potential claims held by the Debtor's Estate (which are released pursuant to Section 10.5 of the Plan).

19. As described in the Disclosure Statement, the Plan Proponents expect that there will be substantially more assets available to pay holders of Claims under the Plan than would be the case in a hypothetical liquidation, including because (among other things in a chapter 7 case) the Estate would bear the costs of the chapter 7 trustee's compensation pursuant to section 326 of the Bankruptcy Code, plus the fees of Chapter 7 professionals who would be unfamiliar with events in the Chapter 11 Case.

E. The Debtor does not owe any retiree benefits.

20. The Debtor does not have any continuing obligations in respect of retiree benefits.

F. The Debtor has not domestic support obligations.

21. The Debtor is not required by a judicial or administrative order, or by statute, to pay any domestic support obligations.

G. The Plan's principal purpose is not the avoidance of taxes.

22. The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, and there has been no filing by any governmental agency or other party in interest of which I am aware asserting such avoidance.

H. The Plan's release and exculpation provisions are reasonable.

23. The Plan contains certain release and exculpation provisions. Section 10.4 of the Plan provides that the Exculpated Parties (i.e., the Plan Proponents and their Professionals) will have no liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Case, the Plan, and related matters.

24. Similarly, Section 10.5 of the Plan provides that, except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, Sepco, Reorganized Sepco, and any Entity seeking to exercise the rights of the Estate, in each case, whether individually or collectively (including, without limitation, any successor to Sepco or any Estate representative appointed or selected pursuant to the applicable provisions of the Bankruptcy Code) shall, and shall be deemed to, completely and forever release, waive and discharge unconditionally the Released Parties (i.e., the Plan Proponents and their respective Representatives) from any and all claims, obligations, suits, judgments, remedies, damages, Demands, debts, rights, Causes of Action, and liabilities that are (or that at any time on or prior to the Effective Date were) property of the Estate, whether known or unknown, liquidated

or unliquidated, fixed or contingent, foreseen or unforeseen, matured or unmatured, now existing or hereafter arising, in law, equity or otherwise, whether direct, indirect, or derivative, based upon, attributable to, or arising out of, in whole or in part, any act or omission, transaction, or occurrence taking place on or prior to the Effective Date (including prior to the Petition Date); provided, however, that nothing contained in Section 10.5 of the Plan is intended to operate as a release of any liability based upon gross negligence or willful misconduct as determined by a Final Order. Sepco and its Estate have given the releases set forth in Section 10.5 of the Plan as part of the overall settlements contained in the Plan.

25. The release and exculpation provisions in Sections 10.4 and 10.5 were the subject of extended arm's-length negotiations among the Debtor, the members of the Asbestos Claimants Committee, and the Future Claimants' Representative in this Chapter 11 Case.

I. The Plan is financially feasible.

26. The financial projections for the Reorganized Debtor's performance based on its 33.33% ownership interest in Moores Commercial Unit LLC, annexed to the Disclosure Statement as Exhibit C (the "Projections"), establish that the Plan is feasible. Specifically, the Projections show that the Reorganized Debtor should have sufficient cash flow to fund its operations through at least 2025.

J. The Debtor should be permitted to consummate the Plan without delay

27. Under the circumstances of this Chapter 11 Case, and because no one has objected to the Plan, it is appropriate for the Bankruptcy Court to exercise its discretion to order that Bankruptcy Rule 3020(e) is not applicable and to permit the Debtor to consummate the Plan and commence its implementation without delay after the entry of the Confirmation Order. There is no cause to delay such actions, and the Debtor's creditors will benefit from proceeding quickly to obtain District Court approval of the Plan and thereafter to establish the Asbestos Personal Injury

Trust.

IV. CONCLUSION

Based on the foregoing, I support confirmation of the Plan and respectfully submit that the Court should enter an order confirming the Plan.

I declare under penalty of perjury that the foregoing is correct, to the best of my knowledge, information, and belief.

Dated: March 20, 2020



Richard J. Szekely