

Hearing Date: June 8, 2021, at 10:00 a.m.
Objection Deadline: June 1, 2021, at 4:00 p.m.

COLE SCHOTZ P.C.

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*Attorneys for William L. Transier, Plan Administrator
for Waypoint Leasing Holdings Ltd. and its Affiliated Debtors*

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

In re:	:	
WAYPOINT LEASING HOLDINGS LTD., <i>et</i>	:	Chapter 11
<i>al.</i> ,	:	
Debtors.	:	Case No. 18-13648 (DSJ)
	:	(Jointly Administered)
WILLIAM TRANSIER, as Plan Administrator	:	
for Waypoint Leasing Holdings Ltd. and its	:	
Affiliated Debtors,	:	Adv. Pro. No. 19-01448 (DSJ)
Plaintiff,	:	
– against –	:	
SUNTRUST BANK, MUFG UNION BANK,	:	
N.A., DEUTSCHE BANK AG, NEW YORK	:	
BRANCH, BARCLAYS BANK PLC, and	:	
GOLDMAN SACHS BANK USA,	:	
Defendants.	:	

**NOTICE OF PLAINTIFF'S MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR
AN ORDER APPROVING SETTLEMENT OF ADVERSARY PROCEEDING**

PLEASE TAKE NOTICE that William Transier ("Plan Administrator"), as Plan Administrator for Waypoint Leasing Holdings Ltd. and its affiliated debtors (collectively, "Waypoint" or the "Debtors")¹ under the *Third Amended Chapter 11 Plan of Liquidation of*

¹ A complete list of the Debtors is attached to the Plan (defined below) as Exhibit A.



Waypoint Leasing Holdings Ltd. and its Affiliated Debtors, dated July 22, 2019 (the “Plan”) and, in that capacity, plaintiff in the above-captioned adversary proceeding, hereby files *Plan Administrator’s Motion Pursuant To Bankruptcy Rule 9109 For An Order Approving Settlement Of Adversary Proceeding* (the “Motion”), which seeks the entry of an order, substantially in the form attached to the Motion as Exhibit A, approving that certain Stipulation dated April 16, 2021 (the “Settlement Agreement”), a copy of which is attached to the Motion as Exhibit B.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable David S. Jones, United States Bankruptcy Judge for the Southern District of New York, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 501, New York, New York 10004 (the “Bankruptcy Court”), on **June 8, 2021 at 10:00 a.m. (EDT)**.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion and the relief requested therein, if any, must be made in writing, shall conform to the Federal Rules of Bankruptcy Procedures and Local Rules of the Court, and shall be filed with the Court no later than **4:00 p.m. (EDT) on June 1, 2021** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Motion, with proof of service, is filed with the Bankruptcy Court and a courtesy copy delivered to the Honorable David S. Jones’s chambers by the Objection Deadline, Plan Administrator may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order attached to the Motion, which order may be entered with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that any parties wishing to appear telephonically must refer to Judge Jones’ guidelines for telephonic appearances and must make arrangements

with Court Solutions LLC in accordance with the Gen. Order. M-543 Coronavirus/COVID-19
Pandemic, Court Operations Under the Exigent Circumstances Created by COVID-19, a copy of
which is annexed hereto.

Dated: New York, New York
May 17, 2021

COLE SCHOTZ P.C.

/s/ Steven L. Klepper

Steven L. Klepper

David S. Gold

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19th Floor

New York, New York 10019

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Counsel to Plan Administrator

William Transier (“Plan Administrator”), as Plan Administrator for Waypoint Leasing Holdings Ltd. and its affiliated debtors (collectively, “Waypoint” or the “Debtors”)¹ under the *Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors*, dated July 22, 2019 (the “Plan”), hereby moves (the “Motion”) this Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), approving that certain Stipulation dated April 16, 2021 (the “Settlement Agreement”), a copy of which is attached hereto as **Exhibit B**, by and between the Plan Administrator, as plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), and defendants Truist Bank (successor by merger to SunTrust Bank), as administrative agent for Waypoint Asset Co 7 Limited (“WAC7”) and as a WAC7 secured lender, MUFG Union Bank, N.A., as a WAC7 secured lender, Deutsche Bank AG, New York Branch, as a WAC7 secured lender, Barclays Bank PLC, as a WAC7 secured lender, and Goldman Sachs Bank USA, as a WAC7 secured lender (collectively, the “WAC7 Lenders” or “Defendants”, and together with the Plan Administrator, the “Parties”). In support of the Motion, Plan Administrator submits the Declaration of William Transier dated May 17, 2021 (the “Transier Declaration”) attached hereto as **Exhibit C** and respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334. In addition, the Court expressly retained jurisdiction over this matter pursuant to Article 12.1 of the Plan. This is a core proceeding under 28 U.S.C. § 157(b). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

¹ A complete list of the Debtors is attached to the Plan (defined below) as Exhibit A.

BACKGROUND

A. The Chapter 11 Proceedings.

2. On November 25, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code.

3. On February 14, 2019, the Court entered an *Order (I) Approving Purchase Agreement among Debtors and Macquarie, (II) Authorizing Sale of Certain of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [Docket No. 444] (the “Macquarie Sale Order”) authorizing an approving the sale of substantially all of the Debtors’ assets to Macquarie Rotorcraft Leasing Holdings Limited (“Macquarie”) pursuant to the terms of a Stock and Asset Purchase Agreement, dated December 7, 2018 (as amended, supplemented or otherwise modified), and the additional terms set forth in the Macquarie Sale Order.

4. The Macquarie Sale Order provided for, among other things, certain interim distributions to be made to each of the WAC Lenders (as defined in the Plan) in accordance with, and to implement, the terms of a Plan and Sale Support Agreement, dated January 14, 2019, among the Debtors, Macquarie, and certain WAC 7 Lenders and WAC 8 Lenders (as defined in the Plan) (the “Plan and Sale Support Agreement”).

5. Upon the closing of the Macquarie sale transaction, on or about March 14, 2019, the Debtors made an interim distribution to the WAC Lenders (the “March 14 Distribution”), including the WAC7 Lenders (the “WAC7 Distribution”), under the Macquarie Sale Order and Plan and Sale Support Agreement.

6. On July 31, 2019, the Court entered an Order [Docket No. 893] (the “Confirmation Order”) confirming the Plan, and on August 9, 2019, the Plan’s “Effective Date” (as defined in the Plan) occurred. [See Docket No. 914.]

7. Upon the Effective Date of the Plan, William Transier was appointed as Plan Administrator for each of the Debtors. (Plan at ¶ 5.4(a).)

8. Pursuant to the Plan and Confirmation Order, Plan Administrator was granted authority, subject to certain oversight, to carry out and implement all provisions of the Plan, including, *inter alia*, to (a) “make Distributions to holders of Allowed Claims in accordance with the Plan,” (Plan at ¶ 5.4(b)(ii)); (b) “exercise his reasonable business judgment to direct and control the winddown, liquidation, sale and/or abandoning of the remaining assets of the Debtors under the Plan and in accordance with applicable law as necessary to maximize Distributions to holders of Allowed Claims,” (Plan at ¶ 5.4(b)(iii)); and, (c) “prosecute all Causes of Action on behalf of the Debtors, elect not to pursue any Causes of Action, and determine whether and when to compromise settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Debtors[.]” (Plan at ¶ 5.4(b)(vi).)

B. The Parties’ Dispute and the Adversary Proceeding.

9. A dispute has arisen concerning the propriety of the WAC7 Distribution, and the WAC7 Lenders’ retention of a portion of the WAC7 Distribution (the “Disputed Amount”). Specifically, Plan Administrator alleges that, due to an accounting error, the Debtors made an inadvertent \$4,138,244 overpayment to the WAC7 Lenders (the “Partial Distribution Overpayment”).

10. On December 10, 2019, the Plan Administrator filed a Complaint [Adv. Pro. No. 19-01448, Docket No. 1] (the “Complaint”) against Defendants seeking, among other relief, to recover the Partial Distribution Overpayment.

11. On or about January 21, 2020, Plan Administrator informed the WAC7 Lenders that he was holding back a distribution of \$406,880.00 (the “Interim Distribution”) payable to the WAC7 Lenders on account of the WAC7 Lenders’ WAC Lender Secured Claim (as defined by the Plan) and WAC Lender Deficiency Claim (as defined by the Plan).

12. On March 13, 2020, Defendants filed a summary judgment motion seeking to dismiss the Complaint [Adv. Docket No. 22] (the “Dismissal Motion”), which was denied by the Court on August 25, 2020 [Adv. Docket No. 37].

13. On September 10, 2020, Defendants filed their Answer to the Complaint. [Adv. Docket No. 38], and soon thereafter, a stipulated discovery schedule was entered [Adv. Docket No. 39].

C. The Settlement Agreement.

14. Following the Court’s denial of the Dismissal Motion, the Parties entered into confidential settlement discussions in an effort to resolve the Plan Administrator’s claims before undertaking significant, time-consuming, and costly discovery. The Parties later engaged the Honorable Raymond T. Lyons, U.S.B.J. (Ret.) (the “Mediator”) to mediate the dispute. The Mediator conducted a mediation session on April 14, 2021, which resulted in the Settlement Agreement.

15. Pursuant to the Settlement Agreement, the WAC7 Lenders shall pay to Plan Administrator a total sum of \$2,700,000 (the “Settlement Amount”), to be satisfied as follows:
(a) a set off of the Interim Distribution against the Settlement Amount effective at the time of

payment of the Remaining Settlement Amount (defined below); and (b) payment of \$2,293,120 (the “Remaining Settlement Amount”) within ten (10) business days of the Court entering a final non-appealable order approving the settlement. Furthermore, as more particularly set forth in the Settlement Agreement, the WAC7 Lenders shall: (i) waive any right to assert any claims (including any claim under section 502(h) of the Bankruptcy Code) in connection with the Remaining Settlement Amount; and (ii) not share in any distribution of the Remaining Settlement Amount should such amounts be distributed to creditors under the Plan.

16. In exchange therefore: (a) the Plan Administrator shall dismiss the Adversary Proceeding with prejudice within fourteen (14) days of the settlement’s effective date; and (b) the Parties shall exchange mutual releases with respect to the claims alleged in the Complaint, all as more particularly described and set forth in the Settlement Agreement. Notably, the releases provided for in the Settlement Agreement, while comprehensive, are expressly limited to the claims alleged in the Complaint. Furthermore, except with respect to WAC7 Lenders’ claim waiver relative to the Remaining Settlement Amount, the releases do not impair or otherwise affect their entitlement to any remaining, final distribution on their proofs of claim.

17. As set forth in the Transier Declaration, the Settlement Agreement was the result of extensive, good faith negotiations among the Parties and their advisors. Plan Administrator determined in his business judgment that execution of the Settlement Agreement was in the best interests of the Debtors’ estates, creditors, and all stakeholders, after considering, among other factors, the significant time, expense, and risks associated with continued litigation.

RELIEF REQUESTED AND BASIS THEREFOR

18. By this Motion, Plan Administrator respectfully requests that the Court enter an order, substantially in the form of the Proposed Order, approving the Settlement Agreement pursuant to Bankruptcy Rule 9019.

19. Bankruptcy Rule 9019 provides, in relevant part: “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The standards for approval of a settlement are well established. In considering whether to approve a settlement, the court should:

apprise [itself] of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); *see also In re Adelpia Commc’ns Corp.*, 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005) (decision to accept or reject settlement lies within sound discretion of bankruptcy court).

20. Courts in this district have considered the following “interrelated” factors when determining whether a proposed settlement or compromise is in the best interests of a debtor’s estate: “(1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation, ‘with its attendant expense, inconvenience, and delay,’ including the difficulty in collecting on the judgment; (3) ‘the paramount interests of the creditors,’ including each affected class’s relative benefits ‘and the degree to which creditors either do not object to or affirmatively support the proposed settlement’; (4) whether other parties in interest support the settlement; (5) the ‘competency and experience of counsel’ supporting, and ‘[t]he experience and knowledge of the bankruptcy court

judge’ reviewing, the settlement; (6) ‘the nature and breadth of releases to be obtained by officers and directors’; and (7) ‘the extent to which the settlement is the product of arm’s length bargaining.’” *See Motorola, Inc. v. Official Committee of Unsecured Creditors and JPMorgan Chase Bank, N.A. (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (quoting *In re Worldcom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006) (additional citations omitted)).

21. A bankruptcy court need not determine that all of the foregoing criteria favor approval of a compromise, and the proposed compromise need not be the best agreement that the debtor could have achieved under the circumstances. *See Adelphia Commc’ns*, 327 B.R. at 159 60; *Penn Cent.*, 596 F.2d at 1114. Instead, the bankruptcy court’s “role is to determine whether the settlement as a whole is fair and equitable,” *In re Lee Way Holding Co.*, 120 B.R. 881, 890 (Bankr. S.D. Ohio 1990), and to ascertain whether the settlement falls “within the reasonable range of litigation possibilities.” *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994). To that end, bankruptcy courts should not substitute their own judgment for that of the debtor, but rather should “canvass the issues” to affirm that the proposed settlement falls above “the lowest point in the range of reasonableness.” *Adelphia Commc’ns*, 327 B.R. at 159 (quoting *W.T. Grant Co.*, 699 F.2d at 608 (2d Cir. 1983)); *accord Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d sub nom. Sobchack v. Am. Nat’l Bank & Trust Co.*, 17 F.3d 600 (2d Cir. 1994).

22. Here, the relevant *Iridium* factors clearly demonstrate that the Settlement Agreement is fair, reasonable, in the best interests of the Debtors’ estates and stakeholders, and falls well above “the lowest point in the range of reasonableness.” The Settlement Agreement was extensively negotiated in good faith through mediation and at arms’ length by sophisticated parties and their professionals. Absent the settlement, the Parties would be required to resume

costly and time-consuming discovery and protracted litigation, which would quickly erode any potential recovery in excess of the Settlement Amount. As such, Plan Administrator determined that the Settlement Agreement is value accretive to the Debtors' estates and all other parties in interest given that it will expeditiously resolve the pending litigation and eliminate escalating litigation fees and costs, including costly discovery, which has not yet fully commenced. Furthermore, while the Plan Administrator is confident in his position, there is inherent risk associated with litigating the matter to judgment and no guarantee that the outcome would be successful. Accordingly, the Settlement Agreement is well above the lowest range of reasonableness – the relevant inquiry with respect to Bankruptcy Rule 9019 settlements – and therefore, should be approved under Bankruptcy Rule 9019(a).

NOTICE

23. Notice of this Motion will be provided in accordance with the procedures set forth in the *Final Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures*, entered on December 21, 2018 [Docket No. 155]. Plan Administrator respectfully submits that no further notice is required.

NO PRIOR REQUEST

24. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

For all the foregoing reasons, Plan Administrator respectfully requests that the Court enter an order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 17, 2021
New York, New York

COLE SCHOTZ P.C.

By: /s/ Steven L. Klepper
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*Attorneys for William L. Transier, Plan
Administrator for Waypoint Leasing
Holdings Ltd. and its Affiliated Debtors*

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

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,

Debtors.

WILLIAM TRANSIER, as Plan Administrator
for Waypoint Leasing Holdings Ltd. and its
Affiliated Debtors,

Plaintiff,

– against –

SUNTRUST BANK, MUFG UNION BANK,
N.A., DEUTSCHE BANK AG, NEW YORK
BRANCH, BARCLAYS BANK PLC, and
GOLDMAN SACHS BANK USA,

Defendants.

Chapter 11

Case No. 18-13648 (DSJ)

(Jointly Administered)

Adv. Pro. No. 19-01448 (DSJ)

**ORDER GRANTING PLAN ADMINISTRATOR’S
MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR
AN ORDER APPROVING SETTLEMENT OF ADVERSARY PROCEEDING**

Upon the motion (the “Motion”)¹ of William Transier (“Plan Administrator”), as Plan Administrator for the Debtors² under the *Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors*, dated July 22, 2019 (the “Plan”), for an order approving the Settlement Agreement attached to the Motion as Exhibit B pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon the Declaration of William Transier; and due and sufficient notice of the Motion having been given

¹ Capitalized terms used but not defined herein shall have the meanings assigned to them in the Motion.

² A complete list of the Debtors in this Chapter 11 case is attached to the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors [Docket No. 871] as Exhibit A.

under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; and after due deliberation thereon, and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED to the extent set forth herein.
2. The Settlement Agreement is hereby approved pursuant to Bankruptcy Rule 9019.
3. Any settlement or compromise by Plan Administrator contained within the Settlement Agreement is approved under Bankruptcy Rule 9019.
4. Plan Administrator is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

HONORABLE DAVID R. JONES

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New York, New York 10019

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*Attorneys for William L. Transier, Plan Administrator
for Waypoint Leasing Holdings Ltd. and its Affiliated Debtors*

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

In re:	:	
WAYPOINT LEASING HOLDINGS LTD., <i>et</i>	:	Chapter 11
<i>al.</i> ,	:	
Debtors.	:	Case No. 18-13648 (DSJ)
	:	(Jointly Administered)
WILLIAM TRANSIER, as Plan Administrator	:	
for Waypoint Leasing Holdings Ltd. and its	:	
Affiliated Debtors,	:	Adv. Pro. No. 19-01448 (DSJ)
Plaintiff,	:	
– against –	:	
SUNTRUST BANK, MUFG UNION BANK,	:	
N.A., DEUTSCHE BANK AG, NEW YORK	:	
BRANCH, BARCLAYS BANK PLC, and	:	
GOLDMAN SACHS BANK USA,	:	
Defendants.	:	

**STIPULATION BY AND BETWEEN WILLIAM TRANSIER, AS PLAN
ADMINISTRATOR FOR WAYPOINT LEASING HOLDINGS LTD. AND ITS
AFFILIATED DEBTORS, AND TRUIST BANK (SUCCESSOR BY MERGER TO
SUNTRUST BANK), MUFG UNION BANK, N.A., DEUTSCHE BANK AG, NEW YORK
BRANCH, BARCLAYS BANK PLC, AND GOLDMAN SACHS BANK USA**

Plaintiff William Transier (“Plan Administrator”), as Plan Administrator for Waypoint
Leasing Holdings Ltd. and its Affiliated Debtors¹ (collectively, “Waypoint” or the “Debtors”)

¹ A complete list of the Debtors in this Chapter 11 case is attached to the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors [Case No. 18-13648 (SMB) (the “Bankr. Case” or the “Bankruptcy Cases”), Doc. 871] as Exhibit A.

under the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors, dated July 22, 2019 (as confirmed by the Court's order [Bank. Case, Doc. 893], the "Plan"), and Defendants Truist Bank (successor by merger to SunTrust Bank), as administrative agent for Waypoint Asset Co 7 Limited ("WAC7") and as a WAC7 secured lender, MUFG Union Bank, N.A., as a WAC7 secured lender, Deutsche Bank AG, New York Branch, as a WAC7 secured lender, Barclays Bank PLC, as a WAC7 secured lender, and Goldman Sachs Bank USA, as a WAC7 secured lender (collectively, the "WAC7 Lenders"; together with Plan Administrator, the "Parties"), hereby enter into this stipulation (the "Stipulation") and agree as follows:

RECITALS

WHEREAS, on November 25, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"); and

WHEREAS, on February 14, 2019, the Court entered an Order (I) Approving Purchase Agreement among Debtors and Macquarie, (II) Authorizing Sale of Certain of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief (the "Macquarie Sale Order") [Bankr. Case, Doc. 444]; and

WHEREAS, the Macquarie Sale Order authorized and approved the sale of substantially all of Waypoint's assets, including certain executory contracts and unexpired leases, to Macquarie Rotorcraft Leasing Holdings Limited pursuant to the terms of a Stock and Asset Purchase Agreement, dated December 7, 2018 (as amended, supplemented or otherwise modified), and the additional terms set forth in the Macquarie Sale Order; and

WHEREAS, the Macquarie Sale Order provided for, among other things, certain interim distributions to be made to each of the WAC Lenders; and

WHEREAS, on or about March 14, 2019, the Debtors made a distribution to the WAC Lenders (the “March 14 Distribution”), including the WAC7 Lenders (the “WAC7 Distribution”); and

WHEREAS, a dispute has arisen concerning the propriety of the WAC7 Distribution, and the WAC7 Lenders’ retention of a portion of the WAC7 Distribution (the “Disputed Amount”); and

WHEREAS, on December 10, 2019, Plan Administrator filed Adv. Pro. No. 19-01448 (the “Complaint”) seeking, among other relief, to recover the Disputed Amount; and

WHEREAS, on or about January 21, 2020, Plan Administrator informed the WAC7 Lenders that he was holding back a distribution of \$406,880.00 (the “Interim Distribution”) that was otherwise due and payable to the WAC7 Lenders on account of the WAC7 Lenders’ WAC Lender Secured Claim (as defined by the Plan) and WAC Lender Deficiency Claim (as defined by the Plan).

WHEREAS, the Parties have concluded that the compromise and settlement embodied herein is in the best interests of the Parties and the Debtors’ estates, considering, among other things, the cost, expense and delay associated with litigating the disputed matters and issues, the result of which is uncertain.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties:

STIPULATION

1. To settle the claims in the Complaint and in exchange for the releases provided herein, the WAC7 Lenders have agreed to pay to Plan Administrator a total sum of \$2,700,000 (the “Settlement Amount”), to be satisfied as follows: (a) a set off of the Interim Distribution against the Settlement Amount effective at the time of payment of the Remaining Settlement Amount (defined below); and (b) within ten (10) business days of the Court entering a final non-appealable order approving this Stipulation, the WAC7 Lenders shall pay \$2,293,120 (the “Remaining Settlement Amount”) via wire transfer in accordance with the following wire instructions:

Cole Schotz P.C.
Attorney Trust Account
1325 Avenue of the Americas, 19th Floor
New York, New York 10019-6079

Wire To:

Bank of America
100 West 33rd Street
New York, New York 10001
Account No. 483043523268
Wire Transfer No. 026009593
Swift Code (For International Wires): BOFAUS3N
ACH Credit No. 021200339

2. The WAC7 Lenders shall not: (i) receive any payment or distribution, and hereby waive any right to assert any claims (including any claim under section 502(h) of the Bankruptcy Code), solely in connection with the Remaining Settlement Amount; and (ii) share in any distribution of the Remaining Settlement Amount should such amounts be distributed to creditors in accordance with the terms of the Plan; provided, however, nothing in this Stipulation shall impair or otherwise affect the WAC7 Lenders’ entitlement to any distributions to creditors or the WAC Lenders made in accordance with the terms of the Plan or any Plan documents, including,

but not limited to, any amounts currently in the Debtors' estates or amounts that may later become part of the Debtors' estates, excepting only the Remaining Settlement Amount (the "Final Distributions"); provided further, however, for the avoidance of doubt, on the Settlement Effective Date, the Interim Distribution shall be setoff in accordance with Paragraph 1.

3. This Stipulation shall become effective (the "Settlement Effective Date") upon, and only upon, the satisfaction all of the following conditions: (a) execution and delivery of this Stipulation; (b) entry of a final non-appealable order by the Court approving this Stipulation in the Bankruptcy Cases; and (c) payment of the Remaining Settlement Amount as specified in Paragraph 1 above. For the avoidance of doubt, if the Settlement Effective Date does not occur, the Parties' rights shall be as if this Stipulation was never executed and: (a) the WAC7 Lenders shall have no obligation under this Stipulation to pay the Settlement Amount; and (b) Plan Administrator shall reserve all rights with respect to any and all claims asserted in the Complaint, including his claims with respect to the WAC7 Distribution.

4. As of the Settlement Effective Date, Plan Administrator, on behalf of himself, the Debtors, and the Debtors' estates, and each of their current, former and future administrators, agents, attorneys, consultants, insurers, representatives, predecessors, successors, assigns, affiliates, parents, partners, businesses and subsidiaries (the "Plan Administrator Releasors"), fully and completely releases, acquits, and forever discharges the WAC7 Lenders and their respective current and former officers, directors, members, employees, agents, attorneys, consultants, insurers, representatives, predecessors, successors, assigns, affiliates, parents, partners and subsidiaries, from any and all claims, demands, obligations, duties, liabilities, damages, expenses, claims of offset, indebtedness, debts, bonds, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action of any nature whatsoever, sums of money,

accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, choses in action, rights of indemnity or liability of any type, kind, nature, description, or character whatsoever, arising directly or indirectly, either now accrued or hereafter maturing and whether known or unknown, which any of the Plan Administrator Releasors now has or hereafter can, shall, or may have related to the Bankruptcy Cases from the beginning of time to the Settlement Effective Date—including specifically, but without limitation and to the fullest extent applicable to the WAC7 Lenders, the claims alleged in the Complaint.

5. As of the Settlement Effective Date, the WAC7 Lenders, on behalf of themselves and each of their current, former and future administrators, agents, attorneys, consultants, insurers, representatives, predecessors, successors, assigns, affiliates, parents, partners, businesses and subsidiaries (the “WAC7 Releasors”), fully and completely release, acquit, and forever discharge Plan Administrator, the Debtors, and the Debtors’ estates, and each of their respective current and former officers, directors, members, employees, agents, attorneys, consultants, insurers, representatives, predecessors, successors, assigns, affiliates, parents, partners and subsidiaries, from any and all claims, demands, obligations, duties, liabilities, damages, expenses, claims of offset, indebtedness, debts, bonds, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action of any nature whatsoever, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, choses in action, rights of indemnity or liability of any type, kind, nature, description, or character whatsoever, arising directly or indirectly, either now accrued or hereafter maturing and whether known or unknown, which any of the WAC7 Releasors now has or hereafter can, shall, or may have related to the Bankruptcy Cases from the beginning of time to the Settlement Effective Date—including specifically, but without limitation and to the fullest extent applicable to the

WAC7 Lenders, the claims alleged in the Complaint; provided however, and notwithstanding anything in this Stipulation to the contrary, nothing in this Stipulation shall impair or otherwise affect the WAC7 Lenders' entitlement to the Final Distributions.

6. Within fourteen (14) calendar days of the Settlement Effective Date, Plan Administrator shall cause the Complaint to be dismissed and discontinued, with prejudice, with all parties to bear their own costs, including attorney's fees and expenses.

7. The signatories to this Stipulation represent and warrant that they have the full power, authority and legal right, and have obtained all approvals and consents necessary, to execute, deliver, and perform all actions required under this Stipulation.

8. This Stipulation is the entire agreement and understanding of the parties. All prior understandings, terms or conditions, written, oral, express or implied, are superseded by this Stipulation.

9. This Stipulation may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same agreement. Facsimile and electronically-transmitted signatures shall have the same force and effect as original signatures. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and their legal representatives, predecessors, successors, and assigns.

10. It is expressly understood and agreed that the terms of this Stipulation are contractual and that the agreement herein contained and the consideration contemplated hereby is to compromise disputed claims and avoid litigation, and that no statement made herein, payment, or release, or other consideration given shall be construed as an admission by any of the Parties hereto of any kind or nature.

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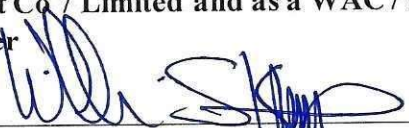
IN WITNESS WHEREOF, and intending to be legally bound thereby, each of the Parties
has caused this Stipulation to be executed.

Dated: New York, New York
April 16, 2021

**William L. Transier, Plan Administrator
for Waypoint Leasing Holdings Ltd. and its
Affiliated Debtors**



Truist Bank (successor by merger to SunTrust Bank), as administrative agent for Waypoint Asset Co. 7 Limited and as a WAC7 secured lender



Name: William S. Krueger
Title: Senior Vice President

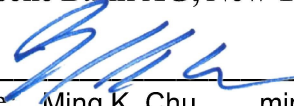
[SIGNATURE PAGE TO STIPULATION]

MUFG Union Bank, N.A.

Name: *John R. Lilly, Jr*
Title: John R. Lilly, Director

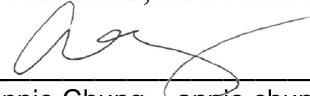
[SIGNATURE PAGE TO STIPULATION]

Deutsche Bank AG, New York Branch



Name: Ming K. Chu ming.k.chu@db.com
Title: Director +1-212-250-5451

Deutsche Bank AG, New York Branch



Name: Annie Chung annie.chung@db.com
Title: Director +1-212-250-6375

Barclays Bank PLC



Name: Ellen Hu

Title: Authorized Signatory

Goldman Sachs Bank USA

Darrell Cafasso

Name: Darrell Cafasso

Title: Managing Director, Litigation-Regulatory

[SIGNATURE PAGE TO STIPULATION]

COLE SCHOTZ P.C.

Steven L. Klepper

David S. Gold

1325 Avenue of the Americas, 19th Floor

New York, New York 10019

Telephone: (212) 752-8000

Facsimile: (212) 752-8393

*Attorneys for William L. Transier, Plan Administrator
for Waypoint Leasing Holdings Ltd. and its Affiliated Debtors*

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

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,

Debtors.

WILLIAM TRANSIER, as Plan Administrator
for Waypoint Leasing Holdings Ltd. and its
Affiliated Debtors,

Plaintiff,

– against –

SUNTRUST BANK, MUFG UNION BANK,
N.A., DEUTSCHE BANK AG, NEW YORK
BRANCH, BARCLAYS BANK PLC, and
GOLDMAN SACHS BANK USA.

Defendants.

**DECLARATION OF WILLIAM TRANSIER IN SUPPORT OF PLAN
ADMINISTRATOR’S MOTION PURSUANT TO BANKRUPTCY RULE 9019
FOR AN ORDER APPROVING SETTLEMENT OF ADVERSARY PROCEEDING**

I, William Transier, being duly sworn, deposes, and says:

1. I am the Plan Administrator for Waypoint Leasing Holdings Ltd. and its affiliated

debtors (collectively, “Waypoint” or the “Debtors”)¹ under the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors, dated July 22, 2019 (the “Plan”). I have personal knowledge of the information contained herein and submit this declaration (this “Declaration”) in support of the *Plan Administrator’s Motion Pursuant to Bankruptcy Rule 9019 for Order Approving Settlement of Adversary Proceeding* filed contemporaneously herewith (the “Motion”).²

2. Following the Court’s denial of the Dismissal Motion, the Parties entered into settlement discussions in an effort to resolve the Plan Administrator’s claims before undertaking significant, time-consuming, and costly discovery. The Parties engaged in confidential settlement discussions and, ultimately, participated in mediation before the Honorable Raymond T. Lyons, U.S.B.J. (Ret.). As a result of those discussions and mediation, the Parties reached an agreement, which was memorialized in the Settlement Agreement attached to the Motion.

3. Pursuant to the Settlement Agreement, in exchange for releases provided therein, the WAC7 Lenders shall pay a total sum of \$2,700,000 (the “Settlement Amount”), to be satisfied as follows: (a) a set off of the Interim Distribution against the Settlement Amount effective at the time of payment of the Remaining Settlement Amount (defined below); and (b) payment of \$2,293,120 (the “Remaining Settlement Amount”) within ten (10) business days of the Court entering a final non-appealable order approving the settlement. Furthermore, as more particularly set forth in the Settlement Agreement, the WAC7 Lenders shall: (i) waive any right to assert any claims (including any claim under section 502(h) of the Bankruptcy Code) in

¹ A complete list of the Debtors in this Chapter 11 case is attached to the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors [Case No. 18-13648 (SMB) (the “Bankr. Case” or the “Bankruptcy Cases”), Doc. 871] as Exhibit A.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

connection with the Remaining Settlement Amount; and (ii) not share in any distribution of the Remaining Settlement Amount should such amounts be distributed to creditors under the Plan.

4. In exchange therefore: (a) I will dismiss the Adversary Proceeding with prejudice within fourteen (14) days of the settlement's effective date; and (b) the Parties will exchange mutual releases with respect to the claims alleged in the Complaint, as more particularly described and set forth in the Settlement Agreement. Notably, the releases provided for in the Settlement Agreement, while comprehensive, are expressly limited to the claims alleged in the Complaint. Furthermore, except with respect to WAC7 Lenders' claim waiver relative to the Remaining Settlement Amount, the releases do not impair or otherwise affect their entitlement to any remaining, final distribution on their proofs of claim.

5. The Settlement Agreement was the result of extensive, good faith negotiations among the Parties and their advisors. In considering whether to enter into the Settlement Agreement, I considered numerous factors, including, but not limited to, the significant time, expense, and risks associated with continued litigation, as well as the advice of my professionals and advisors regarding these matters, and determined that the Settlement Agreement is in the best interests of the Debtors' estates, creditors, and all stakeholders. Absent the settlement, the Parties would be required to resume costly and time-consuming discovery and protracted litigation, which would quickly erode any potential recovery in excess of the Settlement Amount. Thus, the Settlement Agreement is value accretive to the Debtors' estates and all other parties in interest given that it will expeditiously resolve the pending litigation and eliminate escalating litigation fees and costs, including costly discovery, which has not yet commenced. Furthermore, while I am confident in my position in the litigation, I understand and appreciate, based upon the advice professionals and my review of the pleadings and relevant documents, that

there is inherent risk associated with litigating the matter to judgment and no guarantee that the outcome would be successful.

6. For all of the foregoing reasons and others, under the circumstances, I have concluded, in consultation with my advisors, that the Settlement Agreement is a fair and reasonable compromise of the claims in the Complaint and in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: May 17, 2021



William Transier