

Hearing Date : August 15, 2007 at 3:00 p.m.
Proposed Objection Deadline: August 8, 2007 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
: Chapter 11
THE CONSUMERS TRUST, :
: Case No. 05-60155 (REG)
Debtor. :
----- X

**JOINT MOTION OF THE DEBTOR AND OFFICIAL COMMITTEE
OF UNSECURED CREDITORS FOR AN ORDER (I) APPROVING DISCLOSURE
STATEMENT AND ABBREVIATED DISCLOSURE STATEMENT WITH RESPECT TO
THEIR JOINT PLAN OF LIQUIDATION; (II) AUTHORIZING SERVICE OF AN
ABBREVIATED DISCLOSURE STATEMENT AND PLAN SUMMARY ON CERTAIN
CLASSES; (III) FIXING A RECORD DATE FOR ELIGIBILITY TO VOTE ON THE
JOINT PLAN; (IV) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR
DISTRIBUTION THEREOF; (V) APPROVING THE FORM OF BALLOT AND FIXING A
DEADLINE FOR VOTING ON JOINT PLAN OF LIQUIDATION; AND (VI)
SCHEDULING A HEARING AND ESTABLISHING NOTICE AND OBJECTION
PROCEDURES IN RESPECT OF CONFIRMATION OF THE JOINT PLAN**

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE

The Consumers Trust, as debtor and debtor-in-possession (the “Debtor”), and the Official Committee of Unsecured Creditors of The Consumers Trust (the “Committee” and together with the Debtor, the “Plan Proponents”), file this Motion (the “Motion”), and respectfully represent:

Summary of Relief Requested

1. By this Motion, and pursuant to sections 105(a), 502, 1125, 1126 and 1128 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 3016, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 3017-1 and 3020-1 of the local rules of this Court (the “Local Rules”), the Plan Proponents seek entry of an order substantially in the form attached hereto (the “Disclosure Statement Approval Order”): (i) approving the Disclosure Statement for Plan Proponents’ Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, dated July 6, 2007 (as may be amended, modified or supplemented from time to time, the “Plan”), including all exhibits thereto (as may be amended, modified or supplemented from time to time, the “Disclosure Statement”) filed contemporaneously herewith; (ii) approving and authorizing a form of abbreviated disclosure statement and Plan summary (as may be amended, modified or supplemented from time to time, the “Abbreviated Disclosure Statement”), filed contemporaneously herewith and to be served in lieu of the full Plan and Disclosure Statement upon holders of Class 2 General Unsecured Claims (as defined below) and Class 3 Missouri Consumer Claims (as defined below); (iii) fixing a record date for purposes of voting on the Plan; (iv) approving the Solicitation Packages (as defined below) and procedures for distribution thereof relating to the Plan; (v) approving the form of ballot (the “Ballot”) substantially in the form attached hereto as Exhibit “A” and

establishing procedures for voting on the Plan; and (vi) scheduling a hearing and establishing notice and objection procedures in respect of confirmation of the Plan.

Jurisdiction

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On December 5, 2005, (the “Petition Date”), the Debtor filed with the Court its petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is currently managing its affairs as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Currently, all of the Debtor’s assets are under the control of Messrs. David Rubin and Henry Lan (referred to as the “Receivers” in the Plan).

4. No trustee or examiner has been appointed in this case. On December 29, 2005, the Office of the United States Trustee appointed the eleven-member Committee pursuant to sections 1102(a) and 1102(b) of the Bankruptcy Code. The Committee has engaged Fulbright & Jaworksi L.L.P. to act as its counsel.

5. The Debtor is a business trust formed under the laws of the United Kingdom on March 25, 2002 for the purpose of holding and paying out funds in connection with a sales promotion program called the “Cashable Voucher Program” which involved the issuance of rebate-like certificates called “Cashable Vouchers” in the United States and Canada. It also appears that the Debtor assumed responsibility for other rebate-like programs involving documents entitled “Cashable Bond,” “Cashable Rebate,” “3-Year Cashback,” “5-Year Cashback” and “Cashback Check.”

6. Since the Petition Date, the Receivers and the Committee have been conducting a joint investigation into the Debtor's assets and liabilities. In furtherance of that investigation, the Debtor's professionals and the Committee have examined several parties involved in the Debtor's pre-Petition Date activities, including the Debtor's four trustees and former attorneys. Additionally, the Debtor's professionals and the Committee have received and reviewed thousands of pages of documents produced by various parties. Based upon the testimony and other evidence obtained to date, the Plan Proponents believe the Debtor has viable causes of action against several third parties – identified as the "Potential Defendants" in the Plan.

7. In March of 2007, the Debtor, the Receivers, and the Committee, without having to start a lawsuit, reached a settlement, which was ultimately approved by the Court, with two of the four trustees and their law firm which resulted in a payment of \$3.2 million (the "Settlement Proceeds") to the Receivers for the benefit of the estate. Unless additional settlements can be reached, the Plan Proponents plan to commence lawsuits against certain other Potential Defendants to recover additional funds for the benefit of the Debtor's estate for eventual distribution to the Debtor's creditors.

8. The Plan is a plan of liquidation and contemplates that all of the Debtor's cash assets will be distributed to creditors in accordance with the priority scheme established by Congress in the Bankruptcy Code. First, all of the claims of administering the bankruptcy case, priority tax claims, priority non-tax claims, secured claims and compensation claims of the Debtor's and Committee's professionals will be paid in full. (With the exception of the professional fees, the priority claims are very minor.) Second, the Debtor and the Committee will set aside a portion of the cash held by the Debtor reserves needed to carry out the Plan – most notably a "Litigation Reserve" of \$2.5 million which will be used exclusively to fund the

planned litigation against the Potential Defendants. Any amounts in the Litigation Reserve not used for litigation will ultimately be distributed to creditors. There will also be a cash reserve for the expenses of administering and monitoring the cases while litigation is ongoing and, ultimately winding up the bankruptcy case, the receivership in England and the Canadian proceeding. Any cash in the expense reserve not used will also ultimately be distributed to creditors.

The Plan and Disclosure Statement

9. On July 6, 2007, the Plan Proponents filed with this court the Disclosure Statement, Plan and Abbreviated Disclosure Statement. The following table summarizes the classes of claims under the Plan.

<u>Class</u>	<u>Designation</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
N/A	Administrative Claims ¹	N/A	N/A
N/A	Priority Tax Claims	N/A	N/A
N/A	Professional Compensation Claims	N/A	N/A
1	Class 1 Priority Non-Tax Claims	No	No
2	Class 2 General Unsecured Claims	Yes	Yes
3	Class 3 Missouri Consumer Claims	Yes	No
4	Class 4 Secured Claims	No	No
5	Class 5 Attorney General Claims	No	No
6	Class 6 Equity Interests	Yes	No

As described in the Disclosure Statement and Plan, the Debtor's cash assets will be first used to pay in full all allowed Administrative Claims, Priority Tax Claims, Professional Compensation Claims and Class 1 Priority Non-Tax Claims. Similarly, Class 4 Secured Claims will be treated under section 1124 of the Bankruptcy Code and remain unimpaired. After the establishment of the Expense Reserve, the Claims Reserve (to hold funds in respect of disputed claims) and the

¹ Capitalized terms used and not otherwise defined in this Motion have the meanings ascribed to them in the Plan.

Litigation Reserve , the Debtor's residual cash assets will be distributed pro rata to holders of Class 2 General Unsecured Claims in the form of one or more Initial Distributions and a Final Distribution. Additionally, holders of Class 2 General Unsecured Claims who grant the Solicitor Trustee Release contained in section 8.2 of the Plan are entitled to receive their pro rata share of the \$3.2 million of Solicitor Trustee Settlement Proceeds.

10. Holders of Class 3 Missouri Consumer Claims are those Claimants who have received or will receive payments in respect of their vouchers from the Missouri Attorney General from the \$1.85 million paid to the Missouri Attorney General on or about September 2, 2005. Those Claimants may ultimately receive some additional payments under the Plan, but only if holders of Class 2 General Unsecured Claims receive an amount equal (as a percentage) to the amount that holders of Class 3 Missouri Consumer Claims have received or will receive from the Attorney General of Missouri.

11. Each holder of a Class 5 Attorney General Claim, consisting of claims for fines and penalties against the Debtor for violation of applicable state or provincial consumer protection laws, will be offered the settlement and compromise contained in Class 5 of the Plan. Each holder agreeing to the settlement and compromise (i) shall have a claim for fines or penalties deemed Allowed in the amount filed, but not to exceed the total amount of Allowed Class 2 General Unsecured Claims held by residents of such Class 5 Attorney General Claim holder's state or Canadian province of representation; (ii) deemed unimpaired by the Plan; and (iii) subordinated in payment to the payment of other Claims. Additionally, each holder of a Class 5 Attorney General Claim that agrees to allow the net proceeds (after costs and expenses) from litigation relating to the programs that it commences against Potential Defendants to be distributed to Class 2 (and if appropriate Class 3) claimants, will receive the sum of \$5,000 to

defray the costs and expenses of effectuating service of process under the Hague Convention in connection with those actions. Finally, the Plan provides that all Equity Interests and interests of the remainderman will be canceled under the Plan.

Relief Requested

12. The Plan Proponents respectfully request that the Court (i) approve the Disclosure Statement and the Abbreviated Disclosure Statement; (ii) approve the service of an Abbreviated Disclosure Statement upon holders of General Class 2 Unsecured Claims and Class 3 Missouri Consumer Claims and determine that the Abbreviated Disclosure Statement constitutes a summary of the Plan; (iii) fix the record date for eligibility to vote on the Plan; (iv) approve the Solicitation Packages (as defined below) and procedures for their distribution; (v) approve the form of Ballot and establish procedures for voting on the Plan; and (vi) schedule a hearing and establish notice and objection procedures in respect of confirmation of the Plan.

A. Approval of the Disclosure Statement

13. Section 1125 of the Bankruptcy Code requires a plan proponent to provide holders of impaired claims with “adequate information” regarding a proposed plan of liquidation:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan

11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by impaired creditors entitled to vote on the plan. See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994); see also, In re Copy Crafters Quickprint Inc., 92

B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties”). The central requirement of a disclosure statement is that it “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” In re Ferretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

14. The bankruptcy court has broad discretion in determining whether a disclosure statement contains adequate information. See C.J. Kirk v. Texaco, Inc., 82 B.R. 678, 682 (Bankr. S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a.)”); see also In re Oxford Homes, Inc., 204 B.R. 264 (Bankr. D. Me. 1997) (Congress intentionally drew vague contours of what constitutes adequate information so that bankruptcy courts can exercise discretion to tailor them to each case’s particular circumstances.). This grant of discretion was intended to permit courts to tailor the disclosures made in connection with a plan of reorganization or liquidation to facilitate the reorganization or liquidation in a broad range of businesses and circumstances. See H.R. Rep. No. 595, at 408-09 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6364-5.

15. In that regard, bankruptcy court will consider a multitude of factors when examining whether the disclosure statement contains “adequate information” including, if applicable, the following: (i) the circumstances that gave rise to the filing of the chapter 11 petition; (ii) a complete description of the available assets and their value; (iii) the anticipated future of the debtor; (iv) the source of the information provided in the disclosure statement; (v) a disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement; (vi)

the condition and performance of the debtor while in chapter 11; (vii) information regarding claims against the estate; (viii) a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7; (ix) the accounting and valuation methods used to produce the financial information in the disclosure statement; (x) information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor; (xi) a summary of the plan of reorganization; (xii) an estimate of all administrative expenses, including attorneys' fees and accountants' fees; (xiii) the collectibility of any accounts receivable; (xiv) any financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan; (xv) information relevant to the risks being taken by the creditors and interest holders; (xvi) the actual or projected value that can be obtained from avoidable transfers; (xvii) the existence, likelihood and possible success of non-bankruptcy litigation; (xviii) tax consequences of the plan; (xix) and the relationship of the debtor with affiliates. See 7 COLLIER ON BANKRUPTCY ¶ 1125.02[2] at 1125-2 – 1125-3 (15th ed. rev. 2004) (citing In re United States Brass Corp., 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996)).

16. This list is not meant to be comprehensive; neither must a debtor provide all the information on the list; rather, the court must decide what is appropriate in each case. Ferretti, 128 B.R. at 18-19 (adopting similar list); see also Copy Crafters Quickprint, 92 B.R. at 979 (noting that the determination of whether a disclosure statement contains adequate information is to be made on a case-by-case basis, focusing on the unique facts and circumstances of each case).

17. Because the Plan is a plan of liquidation, not reorganization, certain types of information identified above do not apply. However, the Plan Proponents respectfully submit

that both the Disclosure Statement and the Abbreviated Disclosure Statement addresses each applicable type of information identified above in a manner that provides holders of impaired claims that are entitled to vote to accept or reject the Plan with adequate information to allow them to make an informed judgment about the Plan.

18. Specifically, the Disclosure Statement includes: (i) the circumstances that gave rise to the filing of the bankruptcy petition (Art. II.B.); (ii) a description of the assets available for distribution to creditors and their value on a liquidation basis (Art. II.C., III.B.5, III.B.8, III.C.4, III.C.5.); (iii) the anticipated future of the Debtor (Art. III.A.); (iv) the source of the information provided in the Disclosure Statement (Art. I and II.C); (v) a disclaimer indicating that no statements or information concerning the Debtor are authorized, other than those set forth in the proposed Disclosure Statement (Art. I); (vi) the condition and performance of the Debtor while in chapter 11 (Art. II.C.); (vii) information regarding claims against the Debtor's estate (Art. I.B.); (viii) a liquidation analysis setting forth the estimated return that creditors would receive under a hypothetical chapter 7 (Art. IV); (ix) information regarding the future administration of the Plan and the Debtor's current and future assets derived from Cause of Action proceeds (Art. III.C., D., E.); (x) a summary of the Plan (Art. III.A.); (xi) an estimate of all administrative expense claims, including professional compensation claims (Art. I.B); (xii) information relevant to the risks being taken by the creditors and interest holders (Art. IV); (xiii) the existence, likelihood, and possible success of nonbankruptcy litigation (Art. III.A., C.); and (xiv) the tax consequences of the Plan (Art. V).

19. The Disclosure Statement also provides, among other things, an analysis of the alternatives to the Plan (Art. IV), and concludes with a recommendation by the Debtor and the

Committee that creditors should vote to accept the Plan because it provides the highest and best recoveries to holders of claims against the Debtor (Art. I, VII, and VIII).

20. The Plan Proponents will continue to review the Disclosure Statement filed, and, based on their ongoing review, if there are further material development in the case, may make additional changes and disclosures prior to the scheduled hearing on the adequacy of the Disclosure Statement. In addition to filing any such amendments and notification of change with the Court, the Plan Proponents will endeavor to post any such amendments on the Committee Website. Based on the foregoing, the Plan Proponents submit that the Disclosure Statement contains all or substantially all information typically considered by courts in this context and respectfully submit that the Court should approve the Disclosure Statement as it clearly meets the “adequate information” requirement of section 1125 of the Bankruptcy Code.

B. Approval of the Abbreviated Disclosure Statement

21. Plan proponents typically prepare a single disclosure statement, such as the Disclosure Statement, detailing the plan, and mail a complete copy of the proffered plan and disclosure statement to each of its creditors and equity security holders.

22. With respect to such a mailing, section 1125(c) of the Bankruptcy Code provides, however, that “there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.” 11 U.S.C. § 1125(c). Section 1125(c) recognizes that the information needed for an informed judgment about a plan may differ among classes, and the legislative history makes clear that “[t]o save preparation, printing, and mailing costs, it might be appropriate to send different [disclosure] statements to the different classes.” H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 227 (1977). See also In re Monroe Well Service,

Inc., 80 B.R. 324 n. 9 (Bankr. E.D. Pa. 1987) (“[T]here need not be uniformity in disclosure to all classes of creditors.”).

23. The Plan Proponents respectfully submit that the expense of duplicating and mailing the 60-page Plan and Disclosure Statement to close to 60,000 parties who filed proofs of claim or whose claims are scheduled, combined with the added expense of postage, is clearly unwarranted and an unnecessary drain upon the Debtor’s already limited resources. Moreover, the vast majority of the Debtor’s creditors are relatively unsophisticated with respect to bankruptcy matters and are more likely to be confused by the Plan and Disclosure Statement than appropriately informed.

24. Because the Class 2 General Unsecured Claims and Class 3 Missouri Consumer Claims are entitled to, at a minimum, a summary of the Plan, the Plan Proponents have prepared the Abbreviated Disclosure Statement which provides the background information on the Debtor and its bankruptcy case, a summary of the provisions of the Plan, a clear statement identifying the claimants’ treatment under the Plan, their voting rights (or lack thereof for holders of Class 3 Missouri Consumer Claims), and information on where a complete copy of the Plan and Disclosure Statement may be obtained or viewed at no expense.

25. The Plan Proponents have endeavored in creating the Abbreviated Disclosure Statement to develop a document that contains adequate information without needless confusion and burden for the 60,000 voucher holders to whom it is proposed to be mailed. The Plan Proponents, however, have also asked the consumer protection specialists in the offices of the attorneys general that have been active in the case to review the Abbreviated Disclosure Statement and provide their views as to its adequacy and appropriateness for the intended audience. It is the Plan Proponents’ intention to incorporate into the final version of the

Abbreviated Disclosure Statement comments and suggestions from the attorneys general who are more experienced than we in communicating with consumer claimants. The Plan Proponents respectfully submit that, under the circumstances presented and subject to such modifications as the attorneys general may recommend, the Abbreviated Disclosure Statement contains adequate information to permit the Class 2, Class 3 and Class 4 Claimants to make an informed decision about the Plan, and constitutes an acceptable “summary of the plan” pursuant to Bankruptcy Rule 3017(d).

C. Fixing a Voting Record Date

26. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan of liquidation, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

27. Although the Plan Proponents are not aware of any significant claims trading activity in this case, in an abundance of caution they seek a record date. In accordance with the Bankruptcy Rules, the record date is typically the date on which an order approving the disclosure statement is entered. Therefore, the Plan Proponents propose that the record date for purposes of voting on the Plan (the “Voting Record Date”) be August 15, 2007, the date of the Disclosure Statement Hearing, for purposes of determining the creditors that are entitled to vote on the Plan. The establishment of a Voting Record Date herein is for voting purposes only and shall have no effect with respect to who is entitled to receive distributions under the Plan.

D. Approval of Solicitation Packages and Procedures for Distribution Thereof

28. Bankruptcy Rule 3017(d) identifies the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of liquidation:

Upon approval of a disclosure statement, - except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders – the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of such plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

29. After this Court has approved the Disclosure Statement and the Abbreviated Disclosure Statement as containing adequate information required by section 1125 of the Bankruptcy Code and in no event no later than 35 days before the scheduled confirmation hearing on the Plan (the “Solicitation Date”), the Plan Proponents propose to distribute or cause to be distributed solicitation packages (the “Solicitation Packages”) as follows:

- (i) for each holder of an Administrative Claim, Priority Tax Claim, Class 1 Priority Non-Tax Claim, Class 4 Secured Claim, Class 5 Attorney General Claim, and

Class 6 Equity Interests, the Internal Revenue Service and the Office of the United States Trustee: (a) a copy of the Plan and Disclosure Statement, and (b) a copy of the Disclosure Statement Approval Order;

- (ii) for each holder of a **Class 2 General Unsecured Claim** who has filed a Proof of Claim prior to the Record Date²: (a) a copy of the Abbreviated Disclosure Statement, (b) a proposed letter from the Committee containing its recommendations with respect to the Plan in the form annexed hereto as Exhibit “B” and with respect to which the Court’s approval is sought, (c) a Ballot substantially in form as Exhibit A, and (d) a pre-addressed return envelope for voting on the Plan; and
- (iii) for each holder of a **Class 3 Missouri Consumer Claim** who has filed a proof of Claim: a copy of the Abbreviated Disclosure Statement.

30. The Plan Proponents further propose that, prior to distribution of the Solicitation Packages, they be permitted to fill in any missing dates and other information, correct any typographical errors and make such other non-material, non-substantive changes to either of the Disclosure Statement or the Abbreviated Disclosure Statement, the Plan, the Ballot or any notices approved by this Court pursuant to the Disclosure Statement Approval Order as they deem appropriate and necessary.

31. The Plan Proponents submit that they have shown good cause for implementing the proposed notice and service procedures.

² Although there are approximately 27,000 claims that are scheduled by the Debtor in addition to the claims represented by proofs of claim, all but a handful of those scheduled claims are scheduled as “contingent.” Under an agreement reached with the attorneys general with whom the Plan Proponents have been in negotiations, as set forth in section 1.18 of the Plan, attorneys general and their Canadian counterparts will have the right to assert claims on behalf of the scheduled creditors who did not file proofs of claim and whose claims are scheduled as contingent. Accordingly, the Plan Proponents propose to provide Ballots only to Class 2 Claimants who filed a proof of claim and to the attorneys general or Canadian authorities in their representative capacities.

E. Continuation of Bankruptcy Services LLC as Solicitation Agent

32. Pursuant to an order of this Court dated December 13, 2005 (Docket No. 21), the Debtor retained Bankruptcy Services LLC (“BSI” or “Solicitation Agent”) to, among other things, assist the Plan Proponents as their official claims and noticing agent, maintain the official claims register, and assist the Plan Proponents with the solicitation and the tabulation of votes and the distribution as required in furtherance of confirmation of their joint plan of liquidation. Accordingly, the Plan Proponents intend to have BSI serve as solicitation and tabulation agent with respect to soliciting votes on the Plan. The Plan Proponents propose that BSI perform all services relating to the solicitation and tabulation of votes to assume or reject the Plan (collectively, the “Balloting Services”), including, without limitation:

- (i) printing and mailing the notice of hearing to consider confirmation of the Plan;
- (ii) coordinating the design and printing of the Ballots;
- (iii) identifying voting and non-voting creditors and equity security holders;
- (iv) preparing voting reports by voting amount, as well as maintaining all such information in an appropriate database;
- (v) coordinating and/or printing Ballots specific to each creditor, indicating voting class under the Plan, voting amount of claim and other relevant information;
- (vi) coordinating the mailing of Ballots and providing an affidavit verifying the mailing of Ballots;
- (vii) receiving Ballots and tabulating and certifying the votes on the Plan; and
- (viii) providing any other plan solicitation related services as the Plan Proponents may, from time to time, request, including, without limitation, providing testimony at the Confirmation Hearing (as defined below) with respect to the Balloting Services and the results of the vote on the Plan.

F. Approval of Form of Ballot and Establishment of Procedures for Voting on the Plan

33. Bankruptcy Rule 3017(d) requires the Plan Proponents to mail a form of ballot, which substantially conforms to the Official Form No. 14, only to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). The Plan Proponents propose to distribute to certain creditors, as described below, the Ballot substantially in the form annexed to the proposed Disclosure Statement Approval Order as Exhibit A. The form for the Ballot is based upon Official Form No. 14, but has been modified to take into account that the vast majority of those voting will be consumers and to address the particular aspects of this Debtor’s chapter 11 case and include certain additional information that the Plan Proponents believe to be relevant and appropriate for voting to accept or reject the Plan. This information includes notifying each holder of a Class 2 General Unsecured Claim that it has the option of granting a general release to the Solicitor Trustees to receive their pro rata share of an additional \$3.2 million of Solicitor Trustee Settlement Proceeds as part of the Initial Distribution under the Plan.

34. The Ballot will be distributed to holders of Class 2 General Unsecured Claims. All other classes – Class 1 (Priority Non-Tax Claims), Class 3 (Missouri Claims), Class 4 (Secured Claims), Class 5 (Attorney General Claims), and Class 6 (Equity Interests) – are either unimpaired and conclusively presumed to have accepted the Plan, or will receive no distribution and are deemed to have rejected the Plan. Claims in Class 1 (Priority Non-Tax Claims), Class 4 (Secured Claims) and Class 5 (Attorney General Claims) (the “Unimpaired Class”) are designated as unimpaired under the Plan and, therefore, are conclusively presumed to accept the Plan. See 11 U.S.C. § 1126(f). Class 3 (Missouri Claims) and equity/remainderman interests in Class 6 (Equity Interests) (the “Impaired Classes”) are not receiving distributions under the Plan

and, thus, are conclusively presumed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. See 11 U.S.C. § 1126(g).

G. Establishing Voting Deadlines for Receipt of Ballots

35. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Plan Proponents anticipate commencing the solicitation period no later than the Solicitation Date, but not the potential for thousands of Ballots being cast. Based on this schedule, the Plan Proponents propose that in order to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and transmitted to BSI so as to be received by BSI no later than 5:00 p.m. (Eastern Time) on a date that is at least 10 days before the confirmation hearing (the “Voting Deadline”). The Plan Proponents submit that such solicitation period is a sufficient period within which creditors can make an informed decision to accept or reject the Plan.

H. Provisional Determination of Amounts and Classification of Claims

36. Bankruptcy Rule 3018(a) provides that the “court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a).

37. The Plan Proponents propose that each claim against the Debtor be allowed for purposes of voting on the Plan only (and not for any other purpose) in the amount of such claim as set forth on the Ballot, or, if the claim amount is left blank on the Ballot, in the amount of \$1. If the vote is sufficiently close with respect to the super-majority requirement in section 1126(c) of the Bankruptcy Code, the Plan Proponents and Solicitation Agent will review the claims voted for \$1 to attempt to determine accurate claim amounts for those Ballots. In addition, the Debtors

propose that attorneys general or their Canadian counterparts claiming on behalf of voucher holders who were scheduled by the Debtor, but did not file proofs of claim, be permitted to vote those claims in the amount of \$1 so as to allow the individual voucher holders in Class 2 to appropriately control the outcome of the vote for such Class. Although the Plan Proponents do not anticipate filing objections to claims, in the event that a Ballot is voted for an amount that appears unreasonably large in light of the nature of the claims in this case, the Plan Proponents reserve the right to object to the underlying claim and require the Claimant, if he or she desires, to seek to seek to have such claim allowed for voting purposes by motion decided before the Voting Deadline and/or, if appropriate, to seek to designate such Claim as having been cast in bad faith pursuant to section 1126(e) of the Bankruptcy Code.

38. The Plan Proponents believe that the foregoing proposed procedures provide for a fair and equitable voting process.

I. Provisional Determination of Amounts and Classification of Claims and Approval of Procedures for Vote Tabulation

39. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any equity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any equity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

40. The Plan Proponents request that this Court approve the following rules, standards and protocols for the voting and tabulation of Ballots:

- (i) The Voting Deadline: Ballots voting to accept or reject the Plan must be ACTUALLY RECEIVED by the Voting Deadline by the Solicitation Agent. Ballots may be transmitted to BSI by first class mail, overnight courier or hand

delivery. Failure to comply with the requirements of any of these methods will result in the nonconforming vote not being counted. Any Ballot submitted to BSI by facsimile or other electronic means shall not be counted or considered for purposes of accepting or rejecting the Plan.

- (a) Ballots must be timely delivered by returning an original executed ballot to the following address:

By Mail

The Consumers Trust Ballot Processing
c/o Bankruptcy Services LLC
Grand Central Station
P.O. Box 5295
New York, NY 10163-5295

By Overnight Courier or Hand Delivery

Bankruptcy Services LLC
757 Third Avenue, 3rd Floor
New York, New York 10017
Attn: The Consumers Trust, Balloting

- (b) Any Ballot ACTUALLY RECEIVED by the Solicitation Agent after the Voting Deadline shall not be counted unless the Plan Proponents jointly granted in writing an extension of the Voting Deadline with respect to such Ballot and the Plan Proponents shall advise the Court of any such extensions at the confirmation hearing;
- (ii) Submission of Multiple Ballots: Pursuant to Bankruptcy Rule 3018(a), if a holder of a Class 2 General Unsecured Claim submits more than one Ballot with respect to the same claim prior to the Voting Deadline, only the first such Ballot actually received by the Solicitation Agent shall count unless this Court orders that such holder has sufficient cause within the meaning of the Bankruptcy Rule 3018(a) to submit, or the Plan Proponents jointly consent to the submission of, a superseding Ballot;
- (iii) Submission of Duplicate Ballots: If a holder of a Class 2 General Unsecured Claim casts simultaneous duplicative Ballots voting inconsistently, then such Ballots shall be counted as one vote accepting the Plan;
- (iv) Authority of Ballot Signatory: The authority of the signatory of each Ballot to complete and execute the Ballot shall be presumed;
- (v) Unsigned or Illegible Ballots: Any Ballot that is not signed, is illegible or contains insufficient information to permit the identification of the claimant shall not be counted;

- (vi) Failure to Indicate Vote: Any Ballot that is timely received and duly executed but does not indicate whether the holder of a Class 2 General Unsecured Claim is voting to accept or reject the Plan shall be counted as a vote accepting the Plan; and
- (vii) Ballots by Claimants Not Entitled to Vote: Any Ballot cast by a person or entity that does not hold a Class 2 General Unsecured Claim shall not be counted. Any Ballot cast for a claim scheduled as unliquidated, contingent, or disputed for which no proof of claim was timely filed shall not be counted.

J. Establishment of Notice and Objection Procedures in Respect of Confirmation of The Plan

41. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. P. 3017(c).

42. In accordance with Bankruptcy Rule 3017(c) and in view of the Plan Proponents' proposed solicitation schedule outlined herein, the Plan Proponents request that a hearing on confirmation of the Plan (the "Confirmation Hearing") be scheduled, subject to this Court's calendar, on a date that is not less than 45 days from the date of entry of the Disclosure Statement Approval Order. The Confirmation Hearing may be continued from time to time by this Court or the Plan Proponents without further notice other than adjournments announced in open court. The proposed timing for the Confirmation Hearing is in compliance with Bankruptcy Rules 2002(b) and 3017(c) and will enable the Plan Proponents to pursue confirmation of the Plan in a timely fashion while giving holders of Class 2 Claims a reasonable amount of time to vote.

K. Establishment of Procedures for Notice of the Confirmation Hearing

43. Bankruptcy Rules 2002(b) and 2002(d) require not less than twenty-five days' notice to all creditors and equity security holders of the time fixed for filing objections and the

hearing to consider confirmation of a chapter 11 plan. Plan Proponents submit that the Disclosure Statement and Abbreviated Disclosure Statement set forth (i) the date of approval of the Disclosure Statement, (ii) the Record Date, (iii) the Voting Deadline, (iv) the time fixed for filing objections to confirmation of the Plan, (v) the time, date and place for the Confirmation Hearing and (vi) to comply with applicable Canadian law, the time and date of the hearing scheduled by The Supreme Court of British Columbia to “recognize and confirm” this Court’s confirmation order (the “Canadian Recognition Hearing”). The Plan Proponents submit that the foregoing procedures will provide adequate notice of the Confirmation Hearing and the Canadian Recognition Hearing and, accordingly, request that this Court approve such notice as adequate.

L. Establishment of Procedures for the Filing of Objections to Confirmation of the Plan

44. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). The Disclosure Statement and Abbreviated Disclosure Statement provide, and the Plan Proponents request that this Court direct that, objections to confirmation of the Plan or proposed modifications to the Plan, if any, must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection to the Plan; and (iv) be filed, together with proof of service, with this Court and served so that they are actually received by the parties identified in the Disclosure Statement and Abbreviated Disclosure Statement no later than seven days prior to the Confirmation Hearing. The proposed timing for filing and service of objections and proposed modifications, if any, will afford this Court, the Debtor, the Committee and other parties in interest sufficient time to consider the objections and proposed modifications prior to the Confirmation Hearing.

Notice

45. The Plan Proponents will provide notice of this Motion as set forth in the Order Prescribing the Form and Manner of Notice of Hearing on Adequacy of Disclosure Statement scheduled to be presented to the Court for signature on July 10, 2007. Accordingly, the Plan Proponents submit that no other or further notice need be provided.

Waiver of Memorandum of Law

46. Given that there are no novel issues of law presented herein and that the legal authority for the relief being sought is set forth herein, the Plan Proponents respectfully request that this Court waive the requirement that the Debtor file a memorandum of law in support of this Motion as provided in Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York.

No Prior Request

47. No prior motion for the relief sought herein has been made by the Plan Proponents to this or any other court.

WHEREFORE, the Plan Proponents respectfully request that this Court enter an order in

the form annexed hereto granting the relief requested herein, and such other and further relief as may be just.

Dated: New York, New York
July 6, 2007

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