

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re)
) Case No. 02-17658-TRC
ROCOR INTERNATIONAL, INC.,)
) Chapter 11
Liquidated Debtor.)
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AGREEMENT BETWEEN LIQUIDATION ESTATE AND OWNER-OPERATORS
FOR COMPLETE COMPROMISE OF CONTROVERSIES

COMES NOW the Rocin Liquidation Estate (“Estate”), on the one hand, and the Owner-Operator Independent Drivers Association, Inc. (“OOIDA”), Michael Parker, Willie F. Clairbush, Jr., Noel Stone, Brian Wilkerson, Robyne E. Fay and Robert E. Fogle, (collectively “Owner-Operators”), on the other hand, and hereby stipulate and agree to a full compromise of the claims and controversies between them as follows:

RECITALS

A. Rocor International, Inc. (“Rocor”) provided temperature-controlled freight hauling services throughout the continental United States, with its main terminal in Oklahoma City, Oklahoma.

B. On August 5, 2002, Rocor filed a voluntary petition pursuant to Chapter 11, title 11 of the United States Code, thereby commencing the above-captioned case (“Chapter 11 Case”).

C. On September 6, 2002, the Owner-Operators filed a class action complaint against Rocor, as debtor and debtor-in-possession, and several of its officers and directors in the Bankruptcy Court, which was assigned adversary proceeding number 02-1214 (“Adversary

Proceeding”). The Owner-Operators later dismissed the officers and directors from the Adversary Proceeding. OOIDA also filed a proof of claim in the Chapter 11 Case.

D. OOIDA, along with certain Owner-Operators, also brought two actions in the United States District Court for the Western District of Oklahoma (Case Nos. 00-640-HE (filed March 30, 2000) and 98-846-L (filed June 16, 1998)) (“District Court Actions”) against Rocor. Further, OOIDA and certain Owner-Operators appealed from the first of the District Court Actions to the United States Court of Appeals for the Tenth Circuit (Appeal No. 01-6361) (“Tenth Circuit Appeal”). The District Court Actions and Tenth Circuit Appeal remain pending.

E. The Owner-Operators assert in the Adversary Proceeding, *inter alia*, that:

(1) Rocor’s agreements with owner-operators required each owner-operator to maintain various reserve funds and required funds to be collected from owner-operator compensation for a maintenance reserve fund, a tire reserve fund, an excess mileage fund, and a security deposit, which may have been used to replenish any reserve funds.

(2) In the event Rocor’s agreement with an owner-operator terminated prior to the full expiration date, the entire amount in these funds was forfeited to Rocor.

(3) The various reserve funds constitute escrow funds as defined by the federal truth-in-leasing regulations, 49 C.F.R. §376.2(1), create a statutory trust for the benefit of owner-operator drivers, 49 C.F.R. §376.12(k), and are not property of the bankruptcy estate under 11 U.S.C. §541.

(4) The provisions in Rocor’s agreements with owner-operators which required the forfeiture of escrow funds in the event the agreement failed to run full term constituted an

early termination penalty in violation of the federal truth-in-leasing regulations, 49 C.F.R. §372.12(k).

The Trustee does not admit or deny any of the factual allegations made or legal conclusions drawn by the Owner-Operators, including those set forth herein, and enters into this compromise and Agreement solely to avoid the cost and uncertainty of continued litigation for the Estate.

F. The Bankruptcy Court approved the sale of substantially all of Rocor's assets to New Prime, Inc. That sale closed, and Rocor discontinued business operations, on October 17, 2002.

G. On July 24, 2003, the Bankruptcy Court confirmed Rocor's First Amended Plan of Liquidation ("Plan"), which Plan had been objected to by Owner-Operators. Pursuant to the Plan and confirmation order, the Rocin Liquidation Estate ("Estate") was created, all property of the bankruptcy estate was transferred to the newly-formed Estate free and clear of claims and interests, and Rocor's legal existence was terminated.

H. OOIDA filed a timely notice of appeal of the confirmation order ("BAP Appeal"). The Estate filed a motion to dismiss the appeal for lack of standing and appellate jurisdiction, and also based on mootness, which has been taken under submission. The appeal remains pending before the United States Bankruptcy Appellate Panel for the Tenth Circuit Court of Appeals ("BAP"). OOIDA's motions for a stay pending appeal were denied by the Bankruptcy Court and the BAP.

I. The Owner-Operators obtained leave of the Bankruptcy Court to substitute the Estate for Rocor as the party-defendant in the Adversary Proceeding. The Owner-Operators also

filed a motion for preliminary injunction to restrain Plan distributions until the Adversary Proceeding could be determined on its merits. The Estate filed a motion to allow a partial distribution on allowed administrative claims. Both motions were taken under submission by the Bankruptcy Court on October 20, 2003.

AGREEMENT

The parties hereby agree to fully and finally compromise all issues between them on the following terms and conditions:

1. SETTLEMENT AMOUNT.

a. Administrative Claim.

In full and final satisfaction of the claims of the Owner-Operators, the Owner-Operators shall have an allowed administrative expense claim in the aggregate amount of one hundred thousand dollars (\$100,000.00) pursuant to 11 U.S.C. §503(b)(1)(A) (“Administrative Claim”). The Administrative Claim may not be transferred to any other person or entity, and the Claim may not be divided between the parties comprising the Owner-Operators or otherwise partitioned.

b. Distribution on Administrative Claim.

The Estate shall make distributions on the Administrative Claim to OOIDA, on behalf of the Owner-Operators, on a pro rata basis with other holders of allowed administrative claims and subject to the terms of the Plan (“Settlement Funds”). No representation or warranty is made regarding the amount of the Settlement Funds. Neither the amount of the Settlement Funds, the aggregate amount of administrative claims or a failure to pay the Administrative Claim in full shall affect the within compromise in any way. The Owner-Operators shall not have the right to

interfere with the exercise of the Estate's discretion in the amount or timing of the distributions on the Administrative Claim or allowed administrative claims in general. Notwithstanding the foregoing, no distribution shall be made on the Administrative Claim until the Bankruptcy Court order approving the within compromise becomes final and non-appealable.

2. OWNER-OPERATOR RELEASE AND DISMISSALS.

a. General Release.

The Owner-Operators, and each of them, shall release and discharge the Estate, the trustee of the Estate, the bankruptcy estate, Rocor, the attorneys and advisors of any of the foregoing, and each of them, from any and all claims and causes of action, of whatever type or nature, whether known or unknown, including but not limited to those claims asserted in the Chapter 11 Case, Adversary Proceeding, BAP Appeal, District Court Actions and Tenth Circuit Appeal. Said release shall be effective upon the date that the Bankruptcy Court order approving the within compromise become final and non-appealable.

The Estate shall release and discharge the Owner-Operators, their attorneys and advisors, and each of them, from any and all claims and causes of action, of whatever type or nature, whether known or unknown. Said release shall be effective upon the date that the Bankruptcy Court order approving the within compromise become final and non-appealable.

b. Dismissal of Pending Actions.

Within ten (10) days after the Bankruptcy Court order approving the within compromise become final and non-appealable, the Owner-Operators shall dismiss with prejudice the Adversary Proceeding, BAP Appeal, District Court Actions and Tenth Circuit Appeal. Each party shall bear their own attorneys' fees and costs in each of the dismissed actions.

c. Disallowance of Proofs of Claim.

Each proof of claim and/or request for payment previously or hereafter filed in the Chapter 11 Case by an Owner-Operator shall be disallowed without further action or order as of the date that the Bankruptcy Court order approving the within compromise become final and non-appealable.

3. **BANKRUPTCY COURT APPROVAL.**

The Agreement and within compromise are subject to Bankruptcy Court approval pursuant to Federal Rule of Bankruptcy Procedure 9019. The Estate may file a motion seeking Bankruptcy Court approval of the compromise prior to full execution of this Agreement. Notwithstanding any contrary statute or rule, the Bankruptcy Court may permit notice of the proposed compromise to fewer than all parties in interest and the scope and method of any notice approved by the Court shall be deemed adequate under the terms of this Agreement and compromise.

4. **CONTINGENCIES.**

The Agreement and within compromise are expressly contingent on: (a) full execution of this Agreement; (b) an order by the Bankruptcy Court approving this Agreement and compromise in their entirety, entered after adequate notice in the Chapter 11 Case, and which has become final and non-appealable.

5. **GENERAL TERMS.**

a. Representations.

The Owner-Operators each warrant and represent that they are authorized to release each of the claims to be released as part of this compromise. Each person signing this Agreement on

behalf of any person represents and warrants that it has full authority to do so. No other representations are made by any party.

b. No Admission of Liability.

Neither the Estate, the bankruptcy estate or Rocor admit to any liability on the claims alleged, or which could be alleged, by the Owner-Operators. The within compromise has been entered into by the Estate solely to avoid the expense of continued litigation and to maximize the return to creditors of the Estate.

c. Access to Records.

The records of Rocor in the possession of the Estate will be made available for review by the Owner-Operators prior to the entry of a final decree in the Chapter 11 Case at such times as the Owner-Operators may reasonably request, subject to the following terms. The Owner-Operators may not remove any document from its storage location. The Estate may, in its discretion, withhold from review by the Owner-Operators those records which are subject to the attorney-client, work product or other privilege, or which raise third-party privacy issues. The Estate may destroy or otherwise dispose of records following entry of a final decree or at such earlier time as the Bankruptcy Court may allow by written order. The Owner-Operators shall pay all costs of accessing, reviewing, copying and returning the records to storage and may be required to post a deposit for those estimated costs prior to accessing the records.

d. Miscellaneous Provisions.

i. Consultation with Counsel.

Each of the parties hereto has had the opportunity to consult with legal counsel of its choosing regarding the terms of the within compromise and its consequences. The Agreement

has also been reviewed by legal counsel for each party. After receiving such legal advice each party enters into the Agreement and within compromise of its own will and without coercion or duress from any other party. Each party and its counsel have participated in the drafting of the Agreement and therefore no inference should be drawn, or burden shifted, based on the identity of the drafter of the Agreement or any other document related to the compromise.

ii. Binding Effect.

The parties acknowledge that each and every covenant, warranty, release and agreement contained herein shall insure to the benefit of, and be binding upon, the agents, subsidiaries, employees, officers, directors, assigns, and successors in interest of the parties.

iii. Captions.

The captions appearing herein are inserted solely for reference purposes, and shall not be deemed to define, limit, expand or otherwise affect the scope or intent of the provisions herein.

iv. Integration.

The parties acknowledge that this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior negotiations, agreements and understandings with respect to the subject matter are incorporated in or superseded by this Agreement.

v. Modification.

This Agreement may not be modified, except by a written instrument of subsequent date executed by all parties.

vi. Waiver.

The parties agree that no breach of any provision may be waived except in a writing signed by the non-breaching parties. The waiver of a breach of any provision shall not be deemed to be a waiver of a breach of any other provision.

vii. Counterparts and Facsimile.

The parties agree that this Agreement may be executed in counterparts and all such counterparts taken together shall constitute one and the same Agreement. The parties further agree that this Agreement may be signed by any party and transmitted to another party by facsimile transmission and that a signature transmitted by facsimile shall bind the signing party to this Agreement the same as would an original signature.

viii. Attorneys' Fees and Costs.

Except as otherwise expressly provided herein, each party to the Agreement shall bear its own attorneys' fees and costs in the Chapter 11 Case, BAP Appeal, Adversary Proceeding, District Court Actions, Tenth Circuit Appeal and otherwise.

ix. Applicable Law.

This Agreement shall be governed by federal bankruptcy law and construed pursuant to the laws of the State of Oklahoma, notwithstanding its conflict of laws principles or any other rule, regulation or principle that would result in the application of any other body of law. Any action brought to enforce or construe the provisions of this Agreement shall be brought only in the United States Bankruptcy Court for the Western District of Oklahoma.

6. **NOTICES.**

All notices required or permitted to be given to the parties, or any of them, shall be sent by first class U.S. mail, postage pre-paid, addressed as follows:

IF TO THE OWNER-OPERATORS: Paul D. Cullen, Sr., Esq.
Joyce E. Mayers, Esq.
The Cullen Law Firm, PLLC
1101 30th Street NW, Suite 300
Washington, D.C. 20007

IF TO THE ROCIN LIQUIDATION ESTATE OR ITS TRUSTEE:

Nicholas A. Franke
Spencer Fane Britt Browne LLP
1 North Brentwood Boulevard, Suite 1000
St. Louis, MO 63105

AGREED TO BY:

DATED: _____, 2004.

OWNER-OPERATOR INDEPENDENT DRIVERS
ASSOCIATION, INC.

By _____

Its _____

AGREED TO BY:

DATED: _____, 2004.

MICHAEL PARKER

By _____

AGREED TO BY:

DATED: _____, 2004.

WILLIE F. CLAIRBUSH, JR.

By _____

AGREED TO BY:

DATED: _____, 2004.

NOEL STONE

By _____

AGREED TO BY:

DATED: _____, 2004.

BRIAN WILKERSON

By _____

AGREED TO BY:

DATED: _____, 2004.

ROBYNE E. FAY

By _____

AGREED TO BY:

DATED: _____, 2004.

ROBERT E. FOGLE

By _____

AGREED TO BY:

DATED: _____, 2004.

ROCIN LIQUIDATION ESTATE

By _____
Its _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____, 2004.

THE CULLEN LAW FIRM, PLLC

By _____
Paul D. Cullen, Sr.
Joyce E. Mayers
1101 30th Street NW, Suite 300
Washington, D.C. 20007
(202) 944-8600 - tel
(202) 944-8611 - fax

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WILKERSON, ROBYNE E. FAY AND
ROBERT E. FOGLE

APPROVED AS TO FORM AND CONTENT:

DATED: _____, 2004. HOLBROOK & TOFFOLI

By _____

L. Win Holbrook OBA #4284

Mark B. Toffoli OBA #9045

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APPROVED AS TO FORM AND CONTENT:

DATED: _____, 2004. SPENCER FANE BRITT & BROWNE LLP

By _____

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Daniel D. Doyle MO #36724

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St. Louis MO 63105

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