

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: MCG LIMITED PARTNERSHIP, (f/k/a Monitor Company Group Limited Partnership), <i>et al.</i> ¹ Debtors.	Chapter 7 Case No: 12-13042-CSS (Jointly Administered)
Alfred T. Giuliano, in his capacity as the Chapter 7 Trustee of MCG Limited Partnership, et al., Plaintiff, v. DUNHILL ASSET SERVICES III LLC, Defendant.	Adversary No: 14-50518 (CSS)

**TRUSTEE'S MOTION PURSUANT TO RULE 9019(a) FOR AUTHORITY TO
COMPROMISE CLAIM AGAINST DEFENDANT DUNHILL ASSET SERVICES III LLC**

¹ The Debtors in these chapter 7 cases, along with the last four (4) digits of each Debtor's federal tax identification number, where applicable, are: MCG Limited Partnership f/k/a Monitor Company Group Limited Partnership, a Delaware limited partnership (2729); MCG Network LLC f/k/a Global Business Network LLC, a Delaware limited liability company (3768); MCG International Holdings LLC f/k/a Monitor Company Group International Holdings LLC, a Delaware limited liability company (0382); TMC Investors, LLC, a Delaware limited liability company (8206); MCG Intl., LLC f/k/a Monitor Company Intl., LLC, a Delaware limited liability company (8207); MCG Latin America, LLC f/k/a Monitor Company Latin America, LLC, a Delaware limited liability company (9512); MCG Services, LLC f/k/a Monitor Company Services, LLC, a Delaware limited liability company (3371); MCG Asia Pacific, LLC f/k/a Monitor Company Asia Pacific, LLC, a Delaware limited liability company (7839); MCG Foreign Government Services, LLC f/k/a Monitor Group Foreign Government Services, LLC, a Delaware limited liability company (2731); MCG Government Services, LLC f/k/a Monitor Group Government Services, LLC, a Delaware limited liability company (0337); MCG International, Inc. f/k/a Monitor International, Inc., a Massachusetts corporation (8656); MCG-MS, LLC f/k/a Marketspace, LLC, a Delaware limited liability company (3314); MAST Services LLC, a Delaware limited liability company (7605); MCG CIS LLC f/k/a Monitor Group CIS LLC, a Delaware limited liability company (2967); New Strategic Oxygen, LLC, a Delaware limited liability company (7645); MCG Mexico LLC f/k/a Monitor Group Mexico LLC, a Delaware limited liability company (6723); MCG Institute, LLC f/k/a Monitor Institute, LLC, a Delaware limited liability company (3861); MCG Customer LLC f/k/a Market2Customer LLC, a Delaware limited liability company (7402); MCG Federal Government Services LLC f/k/a Monitor Federal Government Services LLC, a Delaware limited liability company (7471); MDOB Inc. f/k/a Doblin Inc., an Illinois corporation (9817). The Debtors' mailing address is Two Canal Park, Cambridge, MA 02141.

Pursuant to Rule 9019(a) and 2002(a)(3) of the Federal Rules of Bankruptcy Procedure, Alfred T. Giuliano, Chapter 7 Trustee (“Trustee”) moves the Court (this “Motion”) for Approval of a Settlement of the litigation initiated by the Trustee, under the Adversary Case Number 14-50518 (CSS) (“Adversary Case”):

In support of this Motion, the Trustee represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for relief sought herein are 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9019.

BACKGROUND

4. On November 7, 2012 (the “Petition Date”), the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) thereby commencing their bankruptcy cases under Case No 12-13042.
5. On August 5, 2013, the Court entered an order converting the case to a Chapter 7. [Docket No. 762]
6. On August 7, 2013, the Office of the United States Trustee for the District of Delaware appointed Alfred Thomas Giuliano as Chapter 7 Trustee.
7. Alfred T. Giuliano is the duly appointed, qualified, and acting Chapter 7 Trustee of the Estate of the Debtor pursuant to 11 U.S.C. section 701.
8. On October 1, 2013, the Court entered an order appointing Cooper Levenson, P.A. (“Cooper Levenson”) as counsel to the Trustee *nunc pro tunc* to August 7, 2013.

THE ADVERSARY PROCEEDING AND PROPOSED SETTLEMENT;

9. On or about February 20, 2014, the Trustee made a demand against Dunhill Asset Services III LLC. (“Defendant”), pursuant to Section 547(b) of the Bankruptcy Code, to avoid and recover certain payments in the aggregate amount of \$850,000.00 made by the Debtor to Defendant.

10. On or about August 1, 2014, the Trustee filed a Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547 and 550 and to Delay or Disallow Claims Pursuant to 11 U.S.C. §502 against Defendant, seeking to recover the aggregate amount of \$850,000.00, amongst other relief.

11. After filing the Adversary Case complaint, conducting settlement discussions with counsel for Defendant, and obtaining further records of the transactions between the Debtor and Defendant, the parties agreed to terms of a settlement of this Adversary Case, which is set forth in the Settlement Agreement and Release (“Settlement Agreement”) attached as Exhibit “1”. The Settlement Agreement will effectively end all litigation between the Adversary Case parties, release mutually each party, pending this Honorable Court’s approval by Order, for the payment by Defendant in the amount of ten thousand dollars (\$10,000.00) to the Trustee. (“Settlement Offer”).

12. The Trustee believes it is in the best interest of the creditors of this Estate to accept this Settlement Offer because Defendant has potential defenses to the claims enumerated in the Adversary Case including, without limitation, that the defendant provided new value to the debtor after receiving the preferential payments, that the defendant is entitled to recoupment of unpaid sums, and that the transactions occurred in the ordinary course of business between the parties.

13. Upon review of all pertinent information and legal authorities that were provided, and the possible defenses which Defendant could raise in the Adversary Case, the Trustee believes settlement for the sum of ten thousand (\$10,000.00) dollars is appropriate.

REQUESTED RELIEF

14. The Trustee seeks approval of the Settlement Agreement entered into by the Trustee with Dunhill Asset Services III LLC whereby Defendant would pay \$10,000.00 in exchange for mutual releases as attached hereto as Exhibit “1.”

BASIS FOR RELIEF

15. The Court has the authority to grant the relief requested in this Motion pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9019. Bankruptcy Code section 105(a) provides that “[t]he court may issue and order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. 105(a).

16. Approving the proposed Settlement Agreement is beneficial to the Debtors’ Estate and creditors because it will immediately resolve and liquidate the Adversary Case with Defendant without the need for further litigation.

17. Bankruptcy Rule 9019 grants the Court authority to approve settlement of claims in controversy after notice and a hearing. Fed. R. Bankr. P.9019(a). Under this authority, the Third Circuit has emphasized that “to minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises are favored in bankruptcy.’” In re Martin, 91 F.3d 389, 393 (3d Cir.1996). In addition, The United States District Court for the District of Delaware, this District, has recognized that the approval of a proposed compromise in settlement is committed to the sound discretion of the Bankruptcy Court. See In re Louise’s, Inc., 211 B.R. 798, 801 (D.Del. 1997).

18. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether “the compromise is fair, reasonable, and in the best interests of the estate.” In re Marvel Entm’t Grp., Inc., 222 B.R. 243, 249 (D.Del. 1998) (quoting In re Louise’s Inc., 211 B.R.798, 801 (D.Del. 1997)). To reach such a determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. In re Martin, 91 F.3d 389 at 393 (3d Cir.1996).

19. In striking this balance, the court enumerated the consideration of the following factors:

- a. The probability of success in the litigation;
- b. The complexity, expense and likely duration of the litigation;
- c. The possibilities of collecting on any judgment which might be obtained;
- d. All other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and
- e. Whether the proposed compromise is fair and equitable to the debtors, their creditors, and other parties in interest.

Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968); (cited in In re Martin, 91 F.3d 389, at 393 (3d Cir. 1996)).

20. Basic to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, at 425 (1968). This does not require the court to hold a full evidentiary hearing before a compromise can be approved, rather, the court’s obligation is “to canvas the issues and see whether the settlement ‘falls below the lowest point in a range of reasonableness.’” 10 Collier on Bankruptcy, ¶ 9019.2, 9019-4 (15th

ed.)(quoting In re Drexel Burnham Lambert Grp., Inc., 134 B.R. 493 (Bankr. S.D.N.Y. 1991)); see also, In re W.T. Grant Co., 699 F. 2d 599, 608 (2d Cir. 1983).

21. The proposed compromise is equitable, would best preserve the Estate's assets and will benefit the Estate in the following ways:

- a. The Trustee believes this amount is a fair resolution of the preference claim, considering the facts and circumstances;
- b. By accepting the above compromise, the Estate avoids the uncertainties regarding the risks and costs of protracted litigation with Defendant and any issues with collectability of a judgment against the Defendant;
- c. Approval of this compromise will prove a fair and reasonable settlement and an expeditious administration of this Estate.

22. The Trustee believes that the Settlement Offer is fair, reasonable and equitable and is in the best interest of the creditors and the Estate.

23. The Settlement Offer complies with the standard for approval of settlements and compromises as set forth in Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968), ("the Protective Committee standard"). The Protective Committee standard requires a Court to consider the probability of success in litigation involved, the expense, the likely duration of such litigation, inconvenience and difficulty of collecting a judgment. *See also* In re Drexel Burnham Lambert Grp., Inc., 134 B.R. 493 (Bankr. S.D.N.Y. 1991) and In re W.T. Grant Co., 699 F.2d 599 (2d Cir. 1983) cert. denied. The process of approving a compromise and settlement in a bankruptcy case is committed to the Court's sound discretion that is to be exercised with the best interest of the estate and its creditors in mind. In re Newman, (102 B.R. 3491 S.D. N.Y. 1989).

24. It is well-established that settlements are favored over continued litigation. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976); In re Hessinger Resources, Ltd., 67 Bankr. 378, 382 (Bankr. D.Ill. 1986). Courts particularly favor settlements in liquidating bankruptcies due to the paramount goal of the rapid liquidation of the estate's assets. Blair, supra, at 952, Hessinger, supra at 381.

25. It is not necessary for the Court to decide the numerous questions of law and fact with respect to the merits of the potential litigation, but rather to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness. Hessinger, supra 383; *see also* W.T. Grant Co., 699 F.2d 599 at 608 (2d Cir. 1983), cert. denied, 464 U.S. 22, 104 S. CT 89, 78 L.Ed. 2d 97 (1983).

26. After considering the foregoing factors, the Court should conclude that the terms of the Settlement Agreement are fair and equitable and within the range of reasonableness.

NOTICE

27. The Trustee has served notice of this motion on the United States Trustee, the Debtors' counsel, and those parties who are required notice under Bankruptcy Rule 2002.

28. No prior request for the relief sought herein has been made to any court.

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WHEREFORE, the Trustee hereby moves the Court to approve the compromise and settlement described herein and enter the attached Proposed Form of Order granting the Motion approving the Settlement Agreement and granting such other and further relief as the Court deems just and equitable.

COOPER LEVENSON, P.A.

Dated: February 13, 2017

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