

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

ENVISTACOM, LLC,

Debtor.

Case No. 23-52696-jwc
Chapter 11

**OBJECTION OF ATLANTIC DIVING SUPPLY, INC.
TO FINAL APPROVAL AND CONFIRMATION OF DEBTOR'S MODIFIED FIRST
AMENDED COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF
LIQUIDATION, INCLUDING THE CARSONS SETTLEMENT**

Atlantic Diving Supply, Inc., t/a/ ADS, Inc. ("ADS"), a creditor and party-in-interest in the above captioned bankruptcy case, by counsel, files this Objection to Final Approval and Confirmation of Debtor's Modified First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation ("Amended Plan" or "Plan"), filed at Docket No. 166-1. In support of its Objection, ADS states as follows:

1. ADS is a creditor and party in interest in this Case. ADS is a government contractor that procures specialized equipment for U.S. military ("USM") programs. On January 26, 2019, ADS and Envistacom agreed to terms and conditions that governed a series of purchase orders that ADS issued to Envistacom for USM programs between 2019 and late 2022. The purchase orders required Envistacom to modify, retrofit and/or assemble equipment specially designed for use by the USM ("US Products"). By late 2022/early 2023, ADS had paid Envistacom over \$21 million for US Products that Envistacom had not delivered. On or around February 22, 2023, Envistacom notified ADS that it had ceased operations, was unable to complete the US Products and requested that ADS retrieve all parts that Envistacom had designated for the US Products ("US Parts"), as well as any equipment the government provided pursuant to the purchase orders. ADS believes

that Envistacom has identified and delivered to ADS most, if not all, US Parts in its possession; however, ADS has an unsecured claim for payments made for US Products that Envistacom failed to deliver, less credit for the US Parts delivered to ADS, plus all other damages ADS has incurred, and continues to incur, as a result of Envistacom's defaults, including all costs and expenses including attorneys' fees. ADS has filed Proof of Claim #10177 in the amount of \$12,616,025.67.

2. The Amended Plan is purportedly funded through a proposed global settlement, referred to as the "Carsons Settlement," among the Debtor, the Committee, Northern Trust, and the Carsons¹ that resolves, among other things, alleged claims by the Debtor against Northern Trust, ATG and the Carsons (and their affiliates), as well as the secured claim of Northern Trust and claims asserted by the Carsons (and their affiliates) against the Debtor in Proofs of Claim Nos. 10192 and 10193.²

3. The Amended Settlement Term Sheet ("Term Sheet"), attached as Exhibit B to the Amended Plan, outlines the Carsons Settlement. The Carsons Settlement is premised on broad releases of the Debtor, as well as a plethora of additional third parties, all referred to as the "Released Parties" in the Plan, including among others Northern Trust (including any and all of its affiliates, officers, directors, employees, and agents), as well as the Carsons and their affiliates (including ATG, Lite Coms, and Agrinzonis, LLC ("Agrinzonis")).

4. In consideration of these broad releases and the Committee's agreement to recommend the Carsons Settlement to unsecured creditors in Class 4 and suspend any investigation into any potential claims or causes of action that are to be released under the Amended Plan or

¹ Capitalized terms not otherwise defined herein are used as defined and referenced in the Amended Plan.

² Claim No. 10192 was filed on behalf of Alan and Alyssa Carson in an undetermined amount for personal guaranties of debts of the Debtor, plus over \$800,000 in credit extended to or advances purportedly made to or for the benefit of the Debtor. Claim No. 10193 was filed on behalf of the Alyssa R. Carson Family Trust in an undetermined amount for any funds paid Northern Trust pursuant to a security interest the Trust granted the bank as additional security for the Northern Trust Loan "in certain membership interests owned by the Trust and the proceeds thereof."

conveyed to the Liquidating Trust—

- a. Northern Trust agreed to reduce the amount of its secured claim against the Debtor by \$1,500,000; and
- b. The Carsons agreed to the following:
 - i. To satisfy the \$1,500,000 balance of the Northern Trust secured claim on or before January 31, 2024, which is already secured by the Carsons' pledges of their direct or indirect interests in other collateral, including an interest in Agrinzonis;
 - ii. To cause ATG to pay the Debtor \$1,600,000 on the Effective Date;
 - iii. To pay the Liquidating Trust \$900,000 within the earlier of 12 months of the Effective Date or five business days after receipt by Agrinzonis of its share of the proceeds of the sale of all or substantially all of the assets of (or equity interests in) Lite Coms;
 - iv. To backstop the actual net cash received by the Debtor or Liquidating Trust for the Government Claim³ not to exceed \$4 million, by the later of final determination of the Government Claim or 24 months after the Effective Date; and
 - v. To secure the \$1.5 million payment to Northern Trust and payment to the Liquidation Trust of the \$900,000 and the Backstop Payment (collectively the "Carson Cash Promises") with a pledge of the Carsons' interests in the proceeds related to the sale of all or

³ The Debtor has asserted the Government Claim in the amount of \$8,567,301.00, including a "good faith reduction" of 8%. ADS is not aware of any updates to the representations in the Amended Plan that "the Government Claim Counterparty indicated that it expected its analysis would be complete by the week of September 11, 2023." Amended Plan, Article III.B.4.

substantially all the assets of (or equity interests in) Lite Coms and referred to in the Plan as the “Agrinzonis Proceeds.”

5. The Carsons Settlement is further described on page 37 of the Amended Plan, as well as in Section A of Article IX in the “Means for Implementation” section:

a. As part of the Carsons Settlement:

the Carsons have agreed to cause the sale, on or before the Effective Date, of substantially all of the assets of ATG (or their direct or indirect equity interests therein) to an unrelated third-party for consideration that *includes* the ATG Payment in full and final satisfaction of the ATG Receivable. The foregoing transaction is currently documented [only] by a letter of intent between the Carsons and the prospective buyer of ATG. The Carsons and ATG intend to proceed expeditiously in the coming days to paper the remaining documents associated with the sale of ATG’s assets or the Carsons’ interests therein.

Doc. No. 166-1 at 43.

b. With respect to the pledge of the Agrinzonis Proceeds from the sale of Lite Coms, the Debtor noted the following, at the request of Lite Coms:

Neither Ms. Carson, Agrinzonis, nor anyone on their behalf have the right to cause Lite Coms to be sold and Lite Coms’ managing member and majority equity owner has advised Ms. Carson that Lite Coms is not pursuing a sale and has no current intent to do so. Lite Coms asserts that the proposed pledge of the interests in Agrinzonis to the Liquidating Trustee is prohibited under the Lite Coms operating agreement (Lite Coms similarly contends that the pledge of such interests to Northern Trust violated the Lite Coms operating agreement) and Lite Coms asserts that it has and continues to be damaged by the inclusion of the proposed pledge. Lite Coms and its managing member reserve all of their rights and intend to object to the Amended Plan and have threatened to block such pledge on this basis.

Doc. No. 166-1 at 43.

6. As noted in the Class 4 Ballot, “The Plan contains a series of releases that are part of the overall liquidation and wind-down set forth in the Plan. In that respect, parties should be aware that, if the Plan is confirmed and the Effective Date occurs, certain parties will be getting

releases and certain parties will be giving releases as set forth in Article XIV of the Plan.”

7. Due to the lack of detail provided regarding the justification for the Carsons Settlement and the basis for the expansive Debtor Releases, ADS will vote to reject the Plan and opt out of the Third-Party Releases, release of the Exculpated Parties, and the Injunction as provided on the ballot.

8. ADS also objects to the proposed Carsons Settlement and the basis for the expansive, reciprocal releases within the Debtor Releases of non-Debtor third parties because the Debtor has not disclosed sufficient information that allows ADS, as the largest unsecured creditor, and certainly not this Court, to consider effectively the factors that guide Bankruptcy Courts in their determination whether a proposed settlement is fair, reasonable and adequate:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990); *In re Marvelay, LLC*, No. 18-69019-LRC, 2019 Bankr. LEXIS 2275, at *15 (Bankr. N.D. Ga. July 23, 2019), citing *Chira v. Saal (In re Chira)*, 567 F.3d 1307, 1312-13 (11th Cir. 2009).

9. Although settlements may be favored in bankruptcy, settlements should not be approved when the Debtor does not make available “facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim[s] be litigated” that allows the Court to make an “informed and independent judgment as to whether a proposed

compromise is fair and equitable.” *In re Marvelay, LLC*, No. 18-69019-LRC, 2019 Bankr. LEXIS 2275, at *15 (Bankr. N.D. Ga. July 23, 2019), quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424-25, 88 S. Ct. 1157, 1163 (1968).

10. Based on the limited information disclosed, compared to other information available in the filings in this case and information in the public domain, ADS is concerned that the fear of an administratively insolvent estate drove the Debtor and the Unsecured Creditors Committee to accept an inadequate resolution that includes a release of an overly broad array of third parties, without adequate investigation of the extent of claims being released, consideration of their collectability, or any deference to interests of other creditors and their views.

**Expansive Release of Insider “Released Parties” is
Unreasonable, Inadequate, and Not in the Interest of Unsecured Creditors**

11. Based on what appears to be an extremely limited investigation, the Debtor proposes unusually broad releases of the Released Parties without any limitation on the nature of claims being released or consideration given in exchange for such expansive releases.

12. The definition of the “Released Parties” in Article II.A of the Plan includes—

- (a) The Debtor;
- (b) The Assignee;
- (c) The Committee;
- (d) Northern Trust;
- (e) each of the Carsons and any entities they own or control;
- (f) ATG;
- (g) Agrinzonis;
- (h) Lite Coms;
- (i) As well as other releasees with respect to any such Entity described as “such

Entity's current and former directors, managers, officers, equity holders, affiliated investment funds or investment vehicles, predecessors, successors, assigns, subsidiaries, affiliates, partners, principals, members, management companies, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors" (collectively, **"Entity Releasees"**).

13. Under the Plan, "the Debtor its Estate, and the Debtor's current and former Affiliates, successor, and assigns, including any successor to the Debtor or any Estate representative appointed or selected pursuant to Bankruptcy Code section 1123(b)(3), including the Liquidating Trustee" are releasing all Released Parties are released and discharged from—

any claim, Claim, Cause of Action, obligation, suit, judgment, damages, debt, right, remedy, liability, action, proceeding, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to payment, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising in law, equity, or otherwise, for any act or omission in connection with, relating to, the Debtor, the Debtor's operations, the ABC Proceeding, the Involuntary Case, the Chapter 11 Case, the De Minimis Asset Sales, or the First Amended Combined Disclosure Statement and Plan, and the administration, formulation, preparation, dissemination, solicitation, negotiation, omission taking place on or prior to the Effective Date; consummation, and implementation of any of the foregoing or any contract, instrument, release, or other agreement, understanding, accord, course of dealing, or document created or entered into in connection with or evidencing any of the foregoing, whether or not accrued, arising or having occurred, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, mixed, or otherwise, that may be based in whole or part on any act, omission, transaction, agreement, understanding, course of dealing, event or other occurrence or omission taking place on or prior to the Effective Date.

14. Among other concerns, the Amended Plan has very limited information, if any, regarding any investigation of the Released Parties and the nature and extent of claims against them, potential for recovery, and consideration provided in exchange for the Debtor Releases.

15. As to the Carsons, the Amended Plan does not provide—
- a. Any information about the value of the Carsons’ assets and liabilities;⁴
 - b. Identification of all entities the Carsons own or control or the identity of such Entity Releasees, including without limitation—
 - i. All members with the Debtor in the consolidated group for tax purposes under the parent corporation Agrinzonis Management Group, LLC (Amended Statement of Financial Affairs, Docket # 106 (“SFA”), ¶ 31 at p. 25); and
 - ii. All entities with “Agrinzonis” as part of their name and listed with the Georgia Corporations Division.
 - c. Disclosure of the investigation, if any, regarding any direct or indirect distributions or other transfers that may have been made to such entities or other transfers made to or for the benefit of the Carsons or other Released Parties by the Debtor of cash or other assets, especially beginning any time around or after November 5, 2019, when federal agents executed a warrant to search the Debtor’s Atlanta office;
 - d. Any investigation or comparison of (i) financial information the Carsons provided the Debtor or the Unsecured Creditors Committee to (ii) information reported in related tax returns or information they provided the Probation Office for the Criminal Proceeding related to the preparation of the Debtor’s and Alan Carson’s Pre-Sentence Report;⁵

⁴ As an example, the Carsons’ assets may be worth far more than assumed given the Criminal Proceeding. A representative of Lite Coms informed the CFO of ADS that Alan Carsons had rejected an offer of \$25,000,000 to purchase the Carsons’ interests in Lite Coms.

⁵ See Supplemental Declaration of G. Scott Hulsey in support of Debtor’s Application for Entry of Order

- e. Justification for providing the Carsons such broad releases and discharge in consideration of seemingly shaky promises to pay the estate in a year or two as little as \$900,000, plus possibly the “Backstop Payment” (collectively, the “Cash Promises”); or
- f. Any explanation as to why no assets of the Carsons other than the Agrinzonis Proceeds are pledged to secure the Cash Promises, given Lite Coms’ insistence that Lite Coms is not for sale and the Agrinzonis Proceeds cannot be pledged. Furthermore, even if the Carsons agree to sell their equity interests in Lite Coms tomorrow, the proceeds of the sale of only the Carsons’ minority interests are not included in the pledge of the “Agrinzonis Proceeds” from the sale only of substantially all the assets of or equity interests in Lite Coms. (Article II.A.1.117.) Upon a sale of only the Carsons’ minority interests, the Cash Promises would arguably be unsecured; the Carsons Cash Payment would not be due until twelve months after the Effective Date; and the Backstop Payment for another twelve months thereafter.

16. With respect to the release of ATG and its Entity Releasees, the Amended Plan does not provide sufficient information that justifies settling a claim arising out of the Debtor’s transfers to ATG in 2022 for a third of the total amount transferred to ATG and releasing not only the Carsons, but all other Entity Releasees who benefited from the ATG Receivable and have not contributed to the Carsons Settlement.

- a. The representation that ATG disputes the amount of the ATG Receivable of approximately \$4.4 million, when ATG shares common ownership with

Authorizing the Retention and Employment of Barnes & Thornburg LLP as Special Counsel at Docket # 173, ¶ 7.

Envistacom, is not credible. The Debtor has provided insufficient information to justify settlement of the ATG Receivable for roughly a third of its value by accepting \$1.6 from proceeds of a possible sale of ATG to an undisclosed “unrelated third-party” documented only by “a letter of intent between the Carsons and the prospective buyer.” No information has been disclosed about the prospective buyer, the current status of ATG, its employees or financial condition, or other consideration that has been offered the Carsons or the other equity holders of ATG who are provided the Debtor Releases.

b. Envistacom’s equity holders, common with ATG, were disclosed first in this Case in the schedules of interested parties attached to the Declaration appending the application to employ Epiq Corporate Restructuring, LLC:

- i. Alyssa Carson, CEO and member of the board of Envistacom, “a Disadvantaged Woman-Owned Small Business (DWOSB);” *see* <https://www.businesswire.com/news/home/20220316005761/en/Envistacom-To-Divest-Its-Technology-Development-Business-Unit>;
- ii. Alyssa Carson Trust;
- iii. Alan Carson Trust; Alan Carson was President and Board member of Envistacom from 2019 until 5/26/2022, when he became an “Executive Advisor;” *see* <https://www.linkedin.com/in/alancecarson/>
- iv. Kevin Purcell, CFO, member of the board until 12/23/22;
- v. Michael Geist, Envistacom SVP of Strategy & Technology, tapped to lead ATG as President; *see* <https://www.businesswire.com/news/home/20220316005761/en/Envistacom-To-Divest-Its-Technology-Development-Business-Unit>;

- vi. Randy Futrell, employee who filed a priority Proof of Claim for employee PTO, plus “Series A Preferred Units;”
 - vii. Stuart C. Johnson IRA; Stuart Johnson was outside general counsel to Envistacom; *see* Supplemental Declaration of G. Scott Hulsey, Docket No. 173, ¶ 7;
 - viii. KYEM Investments LLC, a Georgia limited liability company with the same principal place of business address as the residence of Stuart Johnson; and
 - ix. Andrew & Penny Waguespack.
- c. The month following the spinoff of ATG, the Debtor closed on the financing with Northern Trust, which consisted of a loan of almost \$5 million, plus “a roll-up of a prior note in the amount of \$1 million between Northern Trust and the Carsons, as to which Envistacom had not previously been liable.” Plan, Docket No. 166-1 at 33. A month to the day after the date of the Northern Trust transaction the Debtor and Alan Carson were indicted.
- d. No financial information regarding ATG has been shared, but it seems the owners and operators of ATG did not raise any capital necessary to fund ATG’s operations. Instead, they caused the Debtor to transfer \$4.4 million to ATG between July and December 2022, even though Envistacom had divested itself of its interest in the ATG Business. Plan, Docket No. 166-1 at 32. *See also* SFA, ¶ 4.
- e. Not only was ATG an insider of the Debtor, so were their common owners. It appears most of the owners were involved in the day-to-day operations of

Envistacom and ATG and should have been aware that Envistacom continued to fund ATG, while ignoring its own liabilities.

17. The scope of the Debtor Releases is so broad, ADS cannot determine whether the Debtor Releases may impair ADS efforts to prosecute or defend any Causes of Action related to ADS's unsecured claims, including without limitation ADS's efforts before and during the ABC Proceeding in concert with Envistacom, the Assignee, Lite Coms and other "contract counterparties to ensure that ongoing government missions were uninterrupted." *See* Amended Plan, Article III.B.1.v at p. 31. As an example, after Envistacom notified ADS it had ceased operations in late February 2023, and without any knowledge of the Carsons' equity interest in Lite Coms, ADS engaged Lite Coms to complete the purchase orders related to the Phoenix Project. Representatives of the Debtor and the Assignee worked cooperatively with representatives of the DOD, ADS and Lite Coms to arrange delivery of some of the US Parts to Lite Coms in New York for completion of the US Products. The Debtor Releases should not impair any rights, claims or defenses ADS may have to any Causes of Action related to or arising out of ADS purchase orders with Envistacom, the delivery of US Parts to ADS related to such purchase orders, or agreements for substituted performance by parties who happened to be fortuitously released under the Amended Plan.

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WHEREFORE, because the Amended Plan does not disclose “facts necessary for an intelligent and objective opinion” that the Carsons Settlement is fair, reasonable and adequate, and extends the unnecessarily broad Debtor Releases to a wide array of undisclosed parties, Atlantic Diving Supply, Inc., t/a/ ADS, Inc., respectfully requests that this Court deny approval of the Carsons Settlement and grant such other and further relief as this Court deems appropriate under the circumstances.

DATE: October 13, 2023

By: /s/ Ann B. Brogan

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CERTIFICATE OF SERVICE

I certify that on October 13, 2023, a true copy of the foregoing Motion was electronically filed with the Clerk of Court using the CM/ECF system, which will send e-mail notice of and serve such filing on those parties currently listed on the Electronic Mail Notice List, including

- (a) Counsel to the Debtor, Daniel M. Simon and Emily C. Keil, McDermott Will & Emery LLP;
- (b) Counsel to The Northern Trust Company, Mark J. Wolfson, Foley & Lardner LLP;
- (c) Counsel to the Committee, Matthew W. Levin, Scroggins & Williamson, P.C.;
- (d) Counsel to the Carsons, Todd C. Meyers, Kilpatrick Townsend LLP; and
- (e) Office of the United States Trustee for Region 21;

And by separate mail to the following:

- (j) Thomas W. Dworschak, Office of the U. S. Trustee:
thomas.w.dworschak@usdoj.gov; and
- (g) Envistacom, L.L.C., c/o GGG Partners, LLC, Attn: Katie S. Goodman:
kgoodman@gggmgt.com.

/s/ Henry F. Sewell, Jr.

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