UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
RED RIVER TALC LLC,[1]	Case No. 24-90505 (CML)
Debtor.	

AD HOC COMMITTEE OF SUPPORTING COUNSEL'S RESPONSE TO COALITION'S OBJECTION TO MOTION FOR AN ORDER AUTHORIZING ONDERLAW, LLC TO SUBMIT A SUPPLEMENTAL MASTER BALLOT

The Ad Hoc Committee of Supporting Counsel (the "AHC"), by and through its counsel, Parkins & Rubio LLP, hereby submits this response (the "Response") to *The Coalition of Counsel for Justice for Talc Claimants' Objection to Ad Hoc Committee of Supporting Counsel's Motion For An Order Authorizing OnderLaw, LLC To Submit a Supplemental Master Ballot* [Dkt. 1373] (the "Objection"), filed by the Coalition of Counsel for Justice for Talc Claimants (the "Coalition") and in support of this Response the AHC respectfully states as follows:

PRELIMINARY STATEMENT

1. Jim Onder, principal of OnderLaw, testified at the confirmation hearing on the Debtor's initial prepackaged plan of reorganization (the "Initial Plan") that his firm used the "Gold Standard" conservative approach when casting votes under Option B for the Debtor's Initial Plan prior to July 26, 2024, the stated voting deadline in the Debtors plan solicitation materials.[2]

[1] The last four digits of the Debtor's taxpayer identification number are 8508. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

[2] Feb. 18, 2025 Hr'g Tr. at 252:23-253-13 (testimony of Jim Onder) ("[C]oming out of the Imerys bankruptcy and the issues raised by Judge Silverstein as to voting and so forth, I wanted to follow the absolute gold standard. . . . I didn't want to raise an issue with the Court like what happened in the Imerys bankrutpcy." So I did not vote them.").

While Mr. Onder testified that he believed he has authority under his engagement agreements to bind clients in settlement negotiations under Missouri law, and that such authority should be sufficient to cast votes on their behalf, he recognized that the gold standard for voting, as established in the *Imerys* case, required a written power of attorney.[3] Adhering to this high standard, OnderLaw only cast votes when it had the express consent of its clients or an executed, bankruptcy-specific power of attorney.

2. Due to this conservative approach, OnderLaw did not submit votes on behalf of 5,600 clients (the "Excluded Clients"). However, Mr. Onder testified that if the Court determines that his engagement letter and his demonstrated relationship with clients provide sufficient authority to vote on a client's claim, he wants to ensure those 5,600 client votes are cast.[4] Additionally, after learning of the opinions of the AHC's expert witness, Mr. Gentle, who suggested that attorneys may have an ethical obligation to vote on behalf of their clients, Mr. Onder sought to ensure these clients were not excluded from having their votes cast under Option B.[5] To that end, he worked with the AHC to file the Motion, seeking approval to submit the Supplemental Master Ballot.

3. The Coalition's objection to the Motion mischaracterizes the applicable legal standard for accepting the Supplemental Master Ballot. While it argues that OnderLaw's request should be evaluated under the "excusable neglect" standard of Fed. R. Bankr. P.

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[3] Feb. 18, 2025 Hr'g Tr. at 224:5-13 (testimony of Jim Onder) ("[At least in Missouri I have the ability -- if I'm negotiating with the defense, I have the ability to bind my client to a settlement or to make an agreement on their behalf. I thought that would be sufficient to vote. But, again, in Imerys it was suggested that the gold standard was to have a power of attorney.").

[4] Feb. 18, 2025 Hr'g Tr. at 322:20-22 (testimony of Jim Onder) ("[I]f the Court determines that a contract alone is enough, I want to vote these votes.").

[5] Feb. 18, 2025 Hr'g Tr. at 318:15-17 ("Gentle suggested that I might be violating ethical obligation by not voting these people.").

9006(b)(1)(B), its reliance on this standard is misplaced. OnderLaw did not fail to act due to oversight, carelessness, or neglect but rather as a result of a conservative approach in casting votes on the Initial Plan. OnderLaw's 5,600 clients should not be disenfranchised from having their vote heard on the Initial Plan. At the confirmation hearing the Debtor, through its chief legal officer John Kim, clarified its position that while authority of an attorney to vote under Option B is required, such authority need not necessarily be evidenced by a separate "power of attorney" document.[6] Further, to the extent the Court determines that the excusable neglect standard applies, the AHC and OnderLaw respectfully submit that OnderLaw meets the standard. Courts assessing excusable neglect consider factors such as the reason for the delay, the length of delay, the potential impact on proceedings, and the movant's good faith. Here, the Motion was brought in good faith. As the Court itself observed after hearing Mr. Onder's testimony, there was no "ill intent" in how he approached the voting process.

4. Permitting the submission of the Supplemental Master Ballot ensures that the Excluded Clients have the opportunity to participate in the chapter 11 voting process. The Court has broad discretion under 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3018(a) to approve the submission, and doing so would serve the fundamental goal of fairness in mass tort bankruptcy proceedings. For these reasons, the AHC respectfully requests that the Court overrule the Coalition's objection and approve the submission of the Supplemental Master Ballot.

[6] Feb. 19, 2025 Hr'g Tr. at 617:2-14 (testimony of John Kim) (Q: "How did the Debtors scrutinize the powers of attorney for all those people who voted 'yes' by Option B?" . . . A: "Well, whatever – first of all, I know there is debate about what power of attorney is, whether you actually need a piece of paper or not. Our position is that you don't need an actual piece of paper. You just need authority.").

RESPONSE

A. The Coalition Applies the Incorrect Legal Standard Under the Circumstances

5. The Coalition's objection is premised on the incorrect assumption that OnderLaw's request must be analyzed under the excusable neglect standard of Bankruptcy Rule 9006(b)(1)(B). However, that standard applies only when a party seeks relief from a deadline imposed by the Court or the Bankruptcy Rules. Here, no such deadline exists, and both the Debtor and the Court retain authority to accept the Supplemental Master Ballot as timely under the governing tabulation procedures and applicable Bankruptcy Rules. Therefore, the Coalition's reliance on the excusable neglect standard is misplaced.

6. The Debtor has confirmed that it will extend the voting deadline to accept the Supplemental Master Ballot. See Dkt. 1401, ¶ 1. The authority to do so is expressly provided in the tabulation procedures. Specifically, Section 3.d. of the tabulation procedures authorizes the Debtor, as successor to LLT, to extend the voting deadline for any ballot. See Dkt. 47-9 at 3.d. (stating that ballots must be "duly and timely submitted" by the Voting Deadline "unless LLT has granted an extension of the Voting Deadline with respect to such ballot"). Since the Debtor possesses the authority to extend the deadline and has chosen to do so, the Court need not assess whether the delay was excusable—the votes should simply be counted as timely.

7. Even if the Debtor had not extended the deadline, the Court has independent authority to accept the Supplemental Master Ballot under Bankruptcy Rule 3018(a), which provides that: "[a] plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017 . . . ." Fed. R. Bankr. P. 3018(a). This rule, in conjunction with Bankruptcy Rule 3017(c), grants the Court broad discretion to set and adjust voting deadlines at any time prior to approval of the disclosure statement: "[o]n 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 . . . .” Fed. R. Bankr. P. 3017(c). Here, the Court has not yet ruled on the adequacy of the Debtor’s disclosure statement, meaning it retains full authority to set and modify voting deadlines as necessary. Accordingly, the Court is well within its discretionary authority to approve the submission of the Supplemental Master Ballot, without the need to apply an excusable neglect analysis.

8. Further, no order was ever entered by this Court setting a specific voting deadline for the prepackaged plan. The cases cited by the Coalition suggesting that the excusable neglect standard should apply in this circumstance are incorrect. The law cited by the Coalition applying the excusable neglect standard involved the failure to timely comply with court-ordered deadlines—which is not the case here with OnderLaw. Because this Court did not establish any such deadline here—either through a bar date or a voting deadline order—the excusable neglect standard cited by the Coalition does not apply. Thus, the Coalition's reliance on these cases is misplaced.

B. Although Excusable Neglect Does Not Apply, OnderLaw Would Still Meet this Standard

9. While the excusable neglect standard under Bankruptcy Rule 9006(b)(1) should not apply to the acceptance of the Supplemental Master Ballot, if the Court were to determine that it does, OnderLaw would still meet the standard. The Supreme Court in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993), interpreted “excusable neglect” as a flexible, equitable standard that considers all relevant circumstances, including: (1) the danger of prejudice to the debtor, (2) the length of delay and its impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. Applying these factors here, OnderLaw satisfies the required criteria.

10. No Prejudice to the Debtor. The first factor considers whether allowing the Supplemental Master Ballot would prejudice the Debtor. Here, the Debtor itself has agreed to extend the deadline to accept the votes, demonstrating that it does not view the submission as prejudicial. See Dkt. 1401.

11. Minimal Delay and No Disruption to Judicial Proceedings. The second factor examines the length of the delay and its potential impact on the case. Here, the AHC filed the Motion prior to the commencement of the confirmation hearing, which afforded all parties an opportunity to examine Mr. Onder with respect to his decision to submit the Supplemental Master Ballot. The Court still has ample time to consider these votes as part of its analysis in connection with confirmation. Therefore, in light of the foregoing, this factor favors granting relief.

12. Justifiable Reason for the Delay. The third factor—the reason for the delay and whether it was within OnderLaw's reasonable control—also supports granting the relief. As Mr. Onder testified at the confirmation hearing, OnderLaw initially employed the most conservative approach possible, adhering to what it considered the "gold standard" for voting by requiring an explicit power of attorney for any Option B vote not affirmatively directed by a client. This approach was based on prior experience in the *Imerys* bankrutpcy case, where strict documentation requirements were emphasized. At the time of voting, Mr. Onder was exercising extreme caution, ensuring that every vote cast met the highest possible standard.

13. However, after OnderLaw became aware that other counsel had asserted authority to vote under Option B based solely upon their client engagement letters and in light of the opinions provided by Edgar Gentle, OnderLaw reconsidered its initial conservative position on Option B voting. Recognizing that the Court might deem the combination of client engagement letters, consistent client communication and contacts as sufficient authority for casting votes under

Option B, OnderLaw sought approval to submit the Supplemental Master Ballot to ensure the previously Excluded Clients would not be disenfranchised from the plan voting process due to the good faith conservative voting approach of Mr. Onder. This circumstance does not result from oversight, carelessness, or inattention, but rather, and very simply, from a good faith effort to comply with what was perceived as the most stringent Option B voting standard at the time.

14. Good Faith Conduct by OnderLaw. The final factor considers whether the movant acted in good faith. There is no indication that OnderLaw acted in bad faith or sought to manipulate the process. To the contrary, Mr. Onder's testimony confirmed that he sought to adhere to the most conservative voting approach to avoid any question of improper authority. The Court itself noted there was "no ill intent" in his voting decisions. Upon learning of expert opinions supporting broader authority to vote, and learning that most other counsel voted for clients, including under Option B, based on their engagement letters and the relationship with their clients, Mr. Onder sought the same for his clients so that their vote can be heard. This demonstrates good faith and a commitment to ensuring that his clients have an opportunity to participate in the chapter 11 voting process.

15. Even if the Court were to apply the excusable neglect standard, which the AHC and OnderLaw urge should not apply in his circumstance, OnderLaw's actions clearly satisfy its criteria. There is no prejudice to the Debtor, the delay is minimal and does not disrupt proceedings, the initial act resulted from a conservative approach rather than negligence, and OnderLaw has acted in complete good faith throughout. As a result, the Court should allow the submission of the Supplemental Master Ballot and ensure that the Excluded Clients' votes are properly counted.

CONCLUSION

WHEREFORE, the AHC respectfully requests that the Court enter an order substantially in the form submitted with the Motion to authorize OnderLaw to submit the Supplemental Master Ballot; and grant such other and further relief to the AHC as the Court may deem just and proper.

Dated: March 20, 2025

Respectfully submitted,

/s/ DRAFT

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