

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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IN RE: Case No.: 12-30081-BKC-EPK
CLSF III IV, Inc., *et al.*, Chapter 7
Debtors. (Substantively Consolidated)

**TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT AND RELEASE
BETWEEN (I) DEBORAH C. MENOTTE, TRUSTEE; AND
(II) MAATSCHAP QI COLLECTIEF**

Deborah C. Menotte, the duly appointed and permanent Chapter 7 Trustee (the “Trustee”) for the substantively consolidated bankruptcy estates of CLSF III IV, Inc., *et al.* (collectively, the “Debtors”), by and through undersigned counsel, files this *Trustee’s Motion to Approve Settlement Agreement and Release Between (I) Deborah C. Menotte, Trustee; and (II) Maatschap QI Collectief* (the “Motion”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, seeking approval of a compromise and settlement between (i) the Trustee; and (ii) Maatschap QI Collectief (“MQIC”) (collectively, with the Trustee, “the Parties”), and in support states:

Background

1. On August 22, 2012 (the “Petition Date”), the above-captioned bankruptcy case was commenced by the filing of an involuntary petition for relief in this Court against CLSF III IV, Inc. (the “Debtor”) under Chapter 7 of the Bankruptcy Code.

2. Thereafter, thirty-two affiliates (the “Affiliates”) of the Debtor (together with the Debtor, collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012.

3. Deborah C. Menotte is the duly appointed and acting Chapter 7 Trustee of the Debtors' estates.

4. On October 2, 2013, the Court entered an *Order Granting Trustee's Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates* [ECF No. 561] (the "Sub Con Order"), which order served to substantively consolidate the Affiliates and certain non-debtor entities ("Non-Debtor Entities") with the Debtor, including Peck Associates Palm Beach, LLC d/b/a Deborah C. Peck, P.A. ("Peck PA").

5. On February 7, 2014, MQIC filed *MQIC's Renewed Motion for Allowance and Payment of Administrative Expense* [ECF No. 683] (the "Administrative Expense Claim Motion"), and the Trustee filed an objection to the Administrative Expense Claim Motion on April 18, 2014 [ECF No. 755] (the "Administrative Expense Claim Dispute").

6. On August 6, 2014, the Court entered an *Order Granting Trustee's Amended Motion for Substantive Consolidation of the Bankruptcy Estate of Deborah Catherine Peck, Debtor, [Case No. 14-14507-BKC-EPK], and Non-Debtor Deborah C. Peck, Esq., P.A., With the Substantially Consolidated Debtors and Memorandum of Law in Support* [ECF No. 857], which order served to substantially consolidate the Chapter 7 case of Deborah Catherine Peck (Case No. 14-14507-BKC-EPK) with the cases of the Debtors, Affiliated Debtors and Non-Debtor Entities.

7. The Parties attended mediation on July 14 and 15, 2014, pursuant to the Court's *Agreed Order of Referral to Mediation* [ECF No. 829], and the Parties have agreed to a settlement of their disputes. Accordingly, the Parties entered into a *Settlement Agreement and Release* (the "Settlement Agreement"), a copy of which is attached hereto as **Exhibit "A"** and is subject to the approval of this Court after notice and hearing.

8. Through this Motion, the Parties seek to resolve all disputes between them with respect to the Administrative Expense Claim Dispute, upon the following terms and conditions as set forth in the Settlement Agreement:¹

a. MQIC shall be entitled to an allowed administrative expense claim in the amount of Fourth Million Five Hundred Thousand Dollars (\$4,500,000.00).

b. MQIC shall be entitled to an allowed general unsecured claim in the amount of One Million One Hundred and Fifty Eight Thousand Eight Hundred and Twenty Eight Dollars and Forty Three Cents (\$1,158,828.43). The allowance of this claim does not affect the allowance of any other claim filed by MQIC or the ability of the Trustee to object to those claims.

c. The Parties intend the Settlement Agreement to be legally binding upon and shall insure to the benefit of, each of them and their respective successors, assigns, executors, administrators, beneficiaries, heirs and estates.

d. MQIC shall obtain approval of the Settlement Agreement by its Participants, as required by MQIC's bylaws and/or Articles of Incorporation. MQIC shall provide the Trustee with a certified translation of the documents or meeting minutes which evidences such approval by MQIC's Participants.

e. Upon the entry of a final and non-appealable Order approving the Settlement Agreement, the Trustee shall pay MQIC the sum of Two Million Two Hundred and Fifty Thousand Dollars (\$2,250,000.00) on account of its allowed administrative expense claim. The balance of Two Million Two Hundred and Fifty Thousand Dollars (\$2,250,000.00) will be

¹ In the event of any inconsistency between the description of the Settlement Agreement in the body of this motion, and the Settlement Agreement itself, attached as Exhibit A, the terms of the Settlement Agreement shall control.

paid to MQIC at the closing of the Chapter 7 case of *In re CLSF III IV, Inc., et al.*, Case No. 12-30081-EPK (the “Case”), in conjunction with the final distribution to creditors in the Case.

f. As set forth in the Settlement Agreement, the Parties, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, release and discharge the other Party, together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from any claims or administrative claims arising only out of or relating to the Administrative Expense Claim Dispute up to and until the execution of the Settlement Agreement, including but not limited to any administrative claims in relation to MQIC’s counsel’s previous representation of the Trustee as special counsel. The release provisions as set forth in the Settlement Agreement are not intended to release any claim by MQIC under 11 U.S.C. § 503(b)(3) for an administrative claim arising from the filing of the involuntary proceedings commencing the Case, or any defenses to such a claim by the Trustee.

9. The Parties to the Settlement Agreement believe that the settlement set forth therein is in the best interests of the Debtors’ estates and MQIC. Accordingly, by this Motion,

the Trustee requests the entry of an Order approving the Settlement Agreement in its entirety, after notice to creditors and parties in interest.

Legal Analysis

10. The Trustee seeks approval of the Settlement Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

11. Rule 9019(a) provides that, after notice and a hearing, a court may approve a proposed settlement of a claim. The decision of whether or not to approve a compromise is within the sound discretion of the court. *In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio 1987); *In re Mobile Air Drilling Co.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985).

12. In passing on proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984). As stated by the United States Supreme Court in *Protective Committee v. Anderson*, 300 U.S. 414 (1968), under the Act, to approve a proposed settlement, a court must find that the settlement was “fair and equitable” based on an educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Protective Committee*, 300 U.S. at 424.

13. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), which provides additional guidance as to whether a compromise should be approved. *Justice Oaks* established a four-part test for approval:

- (a) The probability of success in 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.

14. The Settlement Agreement satisfies the *Justice Oaks* standard.

15. Applying the foregoing, the terms of the Settlement Agreement satisfy that four-part test relating to the Rule 9019 request. The Trustee believes that after full and careful consideration of the merits of the Administrative Expense Claim Dispute, settlement of the Administrative Expense Claim Dispute pursuant to the terms set forth herein and in the Settlement Agreement would be in the best interests of the Debtors' estates.

16. Additionally, counsel for the Trustee is mindful of the additional administrative expenses that will be incurred in the event that the Settlement Agreement is not approved. The Trustee believes that resolution of the above-referenced matters in the manner set forth herein and in the Settlement Agreement is reasonable and falls well within the range of reasonableness as required by Rule 9019 of the Federal Rules of Bankruptcy Procedure and applicable law.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order:

- a. Granting this Motion;
- b. Approving the Settlement Agreement in its entirety; and
- c. Granting such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the 30th day of September, 2014, via electronic transmission through the Court's CM/ECF system

upon all parties on the attached CM/ECF Service List.

Dated: September 30, 2014

Respectfully submitted,

BERGER SINGERMAN LLP
Counsel for the Trustee
350 E. Las Olas Boulevard
Suite 1000
Fort Lauderdale, FL 33301
Tel. (954) 525-9900
Fax (954) 523-2872

By: /s/ Leslie Gern Cloyd

Leslie Gern Cloyd
Florida Bar No. 303305
lcloyd@bergersingerman.com

CM/ECF SERVICE LIST

- Thomas L Abrams tabrams@tabramslaw.com, fcolumbo@tabramslaw.com;dabrams@tabramslaw.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.com;atty_furrcohen@bluestylus.com
- Michael E. Baum mbaum@schaferandweiner.com, jburns@schaferandweiner.com
- Eyal Berger eyal.berger@akerman.com, jeanette.martinez@akerman.com
- Leyza F. Blanco leyza.blanco@gray-robinson.com, jceide@gray-robinson.com;lnegron@gray-robinson.com;Ileana.Christianson@gray-robinson.com;Annika.Miranda@gray-robinson.com
- Daniel F Blanks dblanks@mcguirewoods.com, aabbott@mcguirewoods.com;WTravis@mcguirewoods.com;sfox@mcguirewoods.com
- Daniel F Blanks dblanks@mcguirewoods.com, aabbott@mcguirewoods.com;WTravis@mcguirewoods.com;sfox@mcguirewoods.com
- Jacqueline Calderin jc@ecclegal.com, bankruptcy@ecclegal.com;nsocorro@ecclegal.com
- Robert P. Charbonneau rpc@eccounsel.com, nsocorro@ecclegal.com;bankruptcy@ecclegal.com
- Leslie Gern Cloyd lcloyd@bergersingerman.com, kgoins@bergersingerman.com;mnewland@bergersingerman.com;efile@ecf.inforuptcy.com;efile@bergersingerman.com;kbeck@bergersingerman.com
- Leslie Gern Cloyd lcloyd@bergersingerman.com, kgoins@bergersingerman.com;mnewland@bergersingerman.com;efile@ecf.inforuptcy.com;efile@bergersingerman.com;kbeck@bergersingerman.com
- Brett A Elam belam@brettelamlaw.com, info@brettelamlaw.com;deanna@brettelamlaw.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Julianne R. Frank fwbbnk@fwbpa.com, jrfbnk@gmail.com
- Julianne R. Frank fwbbnk@fwbpa.com, jrfbnk@gmail.com
- Kevin C Gleason kgpaecmf@aol.com
- Daniel L. Gold dgold@eccounsel.com, bankruptcy@ecclegal.com,nsocorro@ecclegal.com
- Daniel L. Gold dgold@eccounsel.com, bankruptcy@ecclegal.com,nsocorro@ecclegal.com
- Gregory S Grossman ggrossman@astidavis.com, ngonzalez@astidavis.com
- Andrew R Herron aherron@herronortiz.com, ndrubin@herronortiz.com
- Zachary P Hyman zhyman@bergersingerman.com, clamb@bergersingerman.com;efile@bergersingerman.com;efile@ecf.inforuptcy.com;efile@ecf.inforuptcy.com
- Craig I Kelley craig@kelleylawoffice.com, martha@kelleylawoffice.com,kelleyecfsouthern@gmail.com,veronica@kelleylawoffice.com,brittany@kelleylawoffice.com
- Brian J Lechich blechich@herronortiz.com
- James P.S. Leshaw Jim@LeshawLaw.com
- Deborah Menotte menottetrustee@gmail.com, FL43@ecfcbis.com

- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- Kenneth B Robinson krobinson.ecf@rprslaw.com
- David R Rothenstein drr@ecclegal.com,
nsocorro@ecclegal.com;ecala@ecclegal.com;bankruptcy@ecclegal.com;jbetancourt@ecclegal.com;parboleda@ecclegal.com
- Norman L. Schroeder II nschroeder@nlsbankruptcy.com,
mnewman@nlsbankruptcy.com;dfinegold@nlsbankruptcy.com
- Bradley S Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;vchapkin@sfl-pa.com;lrosetto@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com
- Deborah Talenfeld dtalenfeld@bergersingerman.com,
efile@bergersingerman.com;efile@ecf.inforuptcy.com
- P Benjamin Zuckerman bzuckerman@bergersingerman.com, efile@ecf.inforuptcy.com

EXHIBIT “A”

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) is entered into as of July 15 2014, by and between: (a) Maatschap QI Collectief (“**MQIC**”); and (b) Trustee Deborah C. Menotte (“**Trustee**”) (collectively, with MQIC, “**Parties**,” each a “**Party**”).

BACKGROUND

WHEREAS, in *In re CLSF III IV, Inc.*, Case No. 12-30081-EPK (the “**Case**”) MQIC filed a motion (“**Motion**”) [ECF No. 683] seeking allowance of an administrative expense claim of Five Million Six Hundred and Fifty Eight Thousand, Eight Hundred and Twenty Eight Dollars and Forty Three Cents (\$5,658,828.43) pursuant to 11 U.S.C. § 503(b)(1)(A) and the Trustee filed an objection to the Motion [ECF No. 715] in the Case (“**Administrative Expense Claim Dispute**”).

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00), the mutual exchange of promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, MQIC and the Trustee hereby agree as follows:

AGREED TERMS

1. Allowance of MQIC’s Administrative Expense Claim. MQIC shall be entitled to an allowed administrative expense claim in the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000). MQIC shall be entitled to an allowed general unsecured claim in the amount of One Million One Hundred and Fifty Eight Thousand Eight Hundred and Twenty Eight Dollars and Forty Three Cents (\$1,158,828.43).
2. Agreement is Legally Binding. The Parties intend this Agreement to be legally binding upon, and shall inure to the benefit of, each of them and their respective successors, assigns, executors, administrators, beneficiaries, heirs and estates.
3. Approval by MQIC Participants. MQIC shall obtain approval of this Agreement by its Participants, as required by MQIC’s bylaws and/or Articles of Incorporation. MQIC shall provide the Trustee with a certified translation of the document or meeting minutes which evidences such approval by MQIC’s Participants.
4. Court Approval of Settlement Agreement. Upon execution of this Agreement and receipt by the Trustee of the approval by MQIC described in paragraph 3 above, the Trustee will forthwith file a Motion pursuant to Bankruptcy Rule 9019 seeking approval of this Agreement. The Parties and their counsel shall use diligent efforts to cause the Court to approve this Agreement and to effectuate the settlement on the stated terms and conditions set forth herein.
5. Payment of MQIC’s Administrative Expense Claim. When the Order approving this Agreement becomes final and is no longer appealable, the Trustee will pay MQIC Two Million Two Hundred and Fifty Thousand Dollars (\$2,250,000) on account of its allowed administrative

expense claim. The balance of Two Million Two Hundred and Fifty Thousand Dollars (\$2,250,000) will be paid to MQIC at the closing of the Case in conjunction with the final distribution to creditors in the Case.

6. Mutual Release. The Parties, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby release and discharge the other Party, together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from any claims or administrative claims arising only out of or relating to the Administrative Expense Claim Dispute up to and until the execution of this Agreement, including but not limited to any administrative claims in relation to MQIC's counsel's previous representation of the Trustee as special counsel. This release is not intended to release any claim by MQIC under 11 U.S.C. § 503(b)(3) for an administrative claim arising from the filing of the involuntary proceedings commencing this Case, or any defenses to such a claim by the Trustee.

7. Preservation of Rights. This Agreement does not otherwise affect any rights, or defenses of the Parties including but not limited to the right to object to any unsecured claims or proofs of claim filed by members or Participants of MQIC or other third parties.

8. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the parties hereto.

9. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

10. Cooperation. The Parties shall cooperate in the consummation of the settlement and in the preparation and execution of any and all documents necessary to carry out the intent and purpose of this Agreement.

A handwritten signature in black ink, appearing to be 'J. Kelly', is located in the bottom right corner of the page.

11. No Admissions. This Agreement shall not be construed against either Party as an admission of liability or concession of any matters, except as to those specific agreements contained herein.

12. Governing Law and Choice of Forum. The Bankruptcy Court, Southern District of Florida, shall retain jurisdiction over enforcement and interpretation of this Agreement to the maximum extent permitted by law. The Parties shall request that the Bankruptcy Court retain jurisdiction to enforce and construe the provisions of this Agreement. The Parties consent to the Bankruptcy Court's exercise of personal and subject matter jurisdiction (including "core" jurisdiction) to adjudicate any disputes that might arise under this Agreement. This Agreement shall be construed and governed by the laws of the State of Florida to the extent state law is applicable.

13. Authority to Execute Agreement. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any By-law, Covenants and/or other restrictions placed upon them by their respective entities.

14. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**READ THE FOREGOING DOCUMENT CAREFULLY. IT INCLUDES A
RELEASE OF KNOWN AND UNKNOWN CLAIMS.**

[Signature Page Follows]

A handwritten signature in black ink, appearing to be a stylized 'J' or 'K' followed by a vertical line.Handwritten initials 'DM' in black ink.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

Deborah C Menotte, Justice
Deborah C. Menotte
Dated: July 15, 2014

Jean-Francois LYLOPS, administrator
For Maatschap QI Collectief
Dated: 15 July 2014