

Conference Call Today re "Assignment"

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Patty Whittington

From: Kevin Padrick
Sent: Monday, February 09, 2009 11:48 AM
To: Ewan Rose; Patty Whittington; Ryan Norwood
Subject: FW: Conference Call Today re "Assignment"

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From: Susan S. Ford [mailto:Susanf@sussmanshank.com]
Sent: Friday, February 06, 2009 5:45 PM
To: Hedberg, Steven (Perkins Coie)
Cc: Thomas, Jeanette L. (Perkins Coie); Kevin Padrick; Thomas W. Stille; tbvancepdx@aol.com; Susan S. Ford; Janine E. Hume; Linda R. Scott; Kathy A. Moody; Martin P. Meyers
Subject: Conference Call Today re "Assignment"

Steve and all:

I wanted to let you know that Terry, Tom and I participated in a conference call today with the principals and their lawyers per their request to review the proposed terms of the "assignment" and employment of Obsidian. There were some fairly significant reservations and concerns discussed as well as an alternative plan to address those concerns.

The concerns relate to the overall structure, breadth, and, to some extent, the potential costs related to the transaction.

First, the principals and their lawyers are not willing to agree to the proposed structure for the assignment, because they believe it is unnecessarily complicated and costly to set up, without necessity.

Second, neither the principals nor Terry are comfortable with or see a need for a transfer of the equity interests or control over Three Sisters and Inland to Obsidian. They do not think Obsidian should necessarily have any involvement with Three Sisters or understand why it is doing anything further (if it is) with ongoing exchange completion. There does not appear to be any necessity for Obsidian to control Inland either. The individual's equity interests in these entities do not appear to be worth much, if anything. Everyone agreed that the Debtor needs to be able to control both these entities, however, so the proposal thought to be least expensive and simple to accomplish that is: A) file a bankruptcy for Three Sisters and jointly administer it with the Debtor; and B) make an assignment of all of Inland's assets to SAI.

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We are starting work on this revised plan now. We think it still accomplishes the shared goals of the UCC and the Debtor but is simpler. It will also not place us in the possibly untenable position of having assigned everything of value (including the interest in the Inland entity that owes the Debtor \$13 million plus) to a third party assignee to operate with little oversight and outside the jurisdiction of the bankruptcy court. There was significant concern that such a proposal would be "dead on arrival" and might even lead to a Motion by the UST to appoint a Trustee, which would not benefit the creditors.

This leaves what all at the meeting thought was the original plan for Obsidian -- to take an assignment of the individual's assets for the benefit of creditors and liquidate those assets. The principals want to do that, but with a direct assignment or assignments to a trust or trusts, and David Foraker had some further thoughts on how they want it structured to minimize tax consequences so that it will be neutral for all concerned. There may be some non-Inland related personal assets they want to place in a separate trust that would not be liquidated until the Inland-related assets are liquidated. If financial needs arise in managing the properties, the Trustee could borrow from SAI, subject to court approval. Obviously, SAI will facilitate if Obsidan needs to foreclose or make demand upon an Inland Note or Trust Deed. All thought these checks and balances appropriate and necessary. There was also discussion that there needs to be a structure for Obsidian to earn 15% only in the event that 100% of the assets transferred are in fact administered and liquidated. If it is something less than that, a lower percentage would apply. The other fee/cost limitations previously negotiated by the UCC with Obsidian would also apply. There was some discussion about a couple of carve-outs for property that is already getting offers without Obsidian's involvement, because those have Inland loans and the estate needs operating funds very soon.

We are undertaking the task of drafting this and obviously there will be more details, but this is the gist of it. We hope to accomplish everything except the Obsidian trust assignment prior to the PI hearing next Wednesday. Realistically, the meetings, exchange of drafts etc. to accomplish that will take more time. The principals are willing to extend the TRO to accommodate this and we can Move to continue the PI hearing to allow us to get this accomplished.

I wanted to let you know where the other parties to the transaction are on this. We will plan to move forward and continue working together to achieve a result that all can support.

Let me know if you want to discuss this weekend.

Thanks,
Susan

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