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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

RECEIVER'S TWENTIETH MOTION
FOR APPROVAL TO CONSUMMATE
SETTLEMENT WITH PLASKOLITE

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer
Magistrate Judge Daphne A. Oberg

R. Wayne Klein, the court-appointed receiver ("Receiver") of the Receivership Entities and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this Twentieth Motion for Approval to Consummate Settlement with Plaskolite, LLC. In support hereof, the Receiver states as follows:

BACKGROUND AND ANALYSIS

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order (the "Order").¹ The Order authorizes and empowers the Receiver to, among

¹ Docket No. 490. A Corrected Order was filed the next day on November 1, 2018. See Docket No. 491.

other things, investigate, prosecute, and compromise actions to recover Receivership Property.²

On May 24, 2019, the court granted the Receiver leave to commence litigation against designated categories of persons.³

2. The court has granted nineteen prior motions by the Receiver seeking approval to consummate settlements.

3. The Receiver has entered into an additional settlement agreement ("Settlement Agreement") with Plaskolite, LLC ("Plaskolite").

4. The Receiver originally filed suit against Plaskolite on October 29, 2019. On June 6, 2024, the court denied Plaskolite's motion for summary judgment and on September 20, 2024, the court granted the Receiver's motion for summary judgment. On October 21, 2024, the court entered judgment against Plaskolite in the amount of \$515,362.64 plus \$166,045.42 in prejudgment interest.

5. Plaskolite expressed an intent to appeal the judgment and also a willingness to settle for an amount lower than the judgment. To bring an end to the case, the Receiver negotiated a settlement with Plaskolite. The October 28, 2024 Settlement Agreement provides that Plaskolite will pay \$515,362.64 to the Receivership Estate. The Receiver agrees to waive payment of prejudgment interest. Plaskolite will pay \$200,000.00 by October 31, 2024. A second installment of \$150,000.00 will be paid by May 31, 2025 and the final installment of \$165,362.64 will be paid by December 31, 2025. The Settlement Agreement includes mutual

² *Id.* at ¶ 59.

³ Docket No. 673, filed May 24, 2019.

releases of the parties, subject to court approval and subject to payment of all amounts required by the Settlement Agreement.

6. The Settlement Agreement permits Plaskolite to file a notice of appeal on or before November 15, 2024 in the event the court has not approved the Settlement Agreement before that date. In that event, the Receiver and Plaskolite will jointly move the Court of Appeals to stay the appeal until this court has ruled on this motion.

7. The Settlement Agreement: (a) was negotiated at arm's length and in good faith by the Receiver and Plaskolite, (b) will avoid the delay and expense of an appeal, and (c) will result in the collection of significant funds for the benefit of the Receivership Estate. If approved by the Court, this Settlement Agreement will bring \$515,362.64 into the Receivership, prevent an appeal, and end litigation in this matter. Based on the above, the Receiver believes the Settlement Agreement with Plaskolite is in the best interest of the Receivership Estate.⁴ The terms of the settlement have been approved by counsel for the United States.

CONCLUSION

The Receiver moves the court to approve, and authorize the Receiver to finalize, the Settlement Agreement. A proposed order is attached.

DATED this 1st day of November, 2024.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Attorneys for R. Wayne Klein, Receiver

⁴ "In evaluating proposed settlements in equity receiverships . . . the Court should inquire whether the action to be taken is 'in the best interest of the receivership.'" *SEC v. Am. Pension Servs., Inc.*, No. 214CV00309RJSDBP, 2015 WL 12860498, at *10 (D. Utah Dec. 23, 2015) (quoting *SEC v. Capital Consultants, LLC*, No. Civ. 00-1290-KI, 2002 WL 31470399 (D. Ore. March 8, 2002)).

CERTIFICATE OF SERVICE

I hereby certify that the above RECEIVER'S TWENTIETH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT WITH PLASKOLITE was filed with the court on this 1st day of November, 2024 and served via ECF on all parties who have requested notice in this case. Copies were also sent by mail to:

Neldon Johnson
1309 N. 550 West
Pleasant Grove, UT 84062
Pro se Defendant

/s/ Wendy V. Tuckett