

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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In re:

CERTIFIED HR SERVICES COMPANY,
f/k/a THE CURA GROUP, INC.,

CASE NO. 05-22912-BKC-RBR

Chapter 11

Debtor.

**MOTION OF JAMES S. FELTMAN, THE CHAPTER 11 TRUSTEE,
TO APPROVE SETTLEMENT AGREEMENT BETWEEN THE TRUSTEE AND
LAURUS MASTER FUND, LTD.**

NOW COMES James S. Feltman, the duly appointed and acting chapter 11 trustee (the “Trustee”) for the estate of Certified HR Services Company, f/k/a The Cura Group, Inc. (the “Debtor”), by and through undersigned counsel, and requests that this Court enter an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the settlement and compromise between the Trustee and Laurus Master Fund, Ltd. (“Laurus”) contained in that certain Settlement Agreement, dated April 24, 2006 (the “Settlement Agreement”)¹ by and between the Trustee and Laurus (the “Motion”). In support of the Motion, the Trustee states as follows:

BACKGROUND

1. On May 12, 2005 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”)(the “Chapter 11 Case”). From the Petition Date through May 25, 2005, the Debtor operated as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. On May 25, 2005, in response to certain motions filed by creditors in this Chapter

¹A true and correct copy of the executed Settlement Agreement, together with all exhibits, is attached hereto and made a part hereof as Exhibit A. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Settlement Agreement.

11 case and with the consent of the Debtor, the Court entered an order directing the appointment of a chapter 11 trustee for the Debtor. On May 26, 2005, the Court entered an order approving the selection of James S. Feltman as the chapter 11 trustee.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. On September 13, 2005, Laurus filed a claim against the Debtor's estate, Claim No. 98, asserting a secured claim in the amount of \$1,534,501.49 (the "Laurus Proof of Claim").

5. On February 28, 2006, the Trustee filed an adversary proceeding in the Bankruptcy Court against Laurus, Adv. Pro. No. 06-01237-BKC-RBR-A, seeking, among other things, to avoid and recover certain pre-Petition liens, security interests and transfers as fraudulent, objecting to secured claim, for an accounting, and for declaratory relief (the "Laurus Litigation").

6. The Trustee and Laurus have been engaged in settlement discussions since prior to the commencement of the Laurus Litigation in an effort to settle all matters in the Chapter 11 Case between them, including but not limited to, the issues raised in the Laurus Litigation, the Laurus Proof of Claim and to maximize the assets available to the Debtor's estate for the benefit of its creditors. Pending the Court's consideration of the Settlement Agreement, Laurus and the Trustee have agreed to extend the deadline for Laurus to respond to the Laurus Litigation.

7. On February 24, 2006, the Trustee entered into a separate settlement agreement (the "Midwest Settlement Agreement") with each of Certified Services, Inc., O2HR, LLC, Midwest Merger Management, W. Anthony Huff, Danny Leo Pixler, Brentwood Capital Corporation, Charles Spinelli, the Certified Subsidiaries and the O2HR Subsidiaries.

8. On April 25, 2006, the Court conducted a hearing on the Trustee's motion to approve the Midwest Settlement Agreement (C.P. #407). At the conclusion of such hearing, the Court took the matter involving the Midwest Settlement Agreement under advisement and requested proposed orders from interested parties by May 8, 2006.

9. The statutory predicate for the relief requested herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

RELIEF REQUESTED

10. Pursuant to the Settlement Agreement, the Trustee and Laurus agreed to settle and compromise all matters in the Chapter 11 Case among them, including but not limited to, the issues raised in the Laurus Litigation and the Laurus Proof of Claim so as to maximize the assets available to the Debtor's estate for the benefit of its creditors claims. The material terms of the Settlement Agreement are as follows:²

- Laurus shall have an allowed secured claim against the Debtor's estate in the amount of \$400,000 (the "Laurus Allowed Claim").
- The Laurus Allowed Claim shall be paid in the following manner: (i) on or before July 7, 2006, an amount equal to \$200,000, which monies shall be paid from the monies received by the Trustee from or on behalf of O2HR, LLC and/or Huff under and pursuant to the Midwest Settlement Agreement through June 30, 2006, and (ii) on or before December 29, 2006, any amount equal to \$200,000, which monies shall be paid from the monies received by the Trustee from or on behalf of O2HR, LLC and/or Huff under and pursuant to the Midwest Settlement Agreement through December 20, 2006.
- Subject to the above payments being made to Laurus, Laurus agrees (i) to waive and

² Notwithstanding the recitation in this Motion of the material terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement in its entirety. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the Settlement Agreement, then the terms of the Settlement Agreement shall control.

release any and all Liens against the assets of the Debtor and /or Certified Services, Inc., and (ii) that the Liens granted by O2HR, LLC to the Trustee under the Midwest Settlement Agreement shall be senior and superior to the Liens that Laurus may have in the assets of O2HR, LLC, including specifically in the payments to be made to the Trustee under the Midwest Settlement Agreement.

- Notwithstanding anything in the Settlement Agreement to the contrary, Laurus agrees to waive and release its Liens on the CD Account maintained by the Debtor at Wachovia Bank, N.A.
- The Settlement Agreement is contingent upon (i) the Court approving the terms and conditions of the Settlement Agreement, (ii) the Court approving the Midwest Settlement Agreement, and (iii) Laurus, O2HR, LLC and Huff entering into a separate settlement agreement addressing the balance of the Laurus Proof of Claim, which settlement agreement must be in a form acceptable to the Trustee.
- Pursuant to the Settlement Agreement, Laurus shall have no further claims against the Debtor's estate and the parties shall exchange mutual releases, except for the obligation under the Settlement Agreement.

11. Based on the terms and conditions of the Settlement Agreement, including as outlined above, the Trustee believes, in the exercise of his best business judgment, that the Settlement Agreement is in the best interest of the Debtor's estate and all of its creditors. Among other reasons, the Trustee asserts that the Settlement Agreement (i) eliminates and resolves in favor of the Debtor's estate the risk, expense and delay associated with pursuing the various claims and causes of action against Laurus, including in particular the Laurus Litigation, (ii) eliminates and resolves a large secured claim against the Debtor's estate and reduces said claim by in excess of \$1,000,000, (iii) facilitates the Midwest Settlement Agreement, which allows the estate to, among other things, realize significant value for the benefit of the estate's creditors, and (iv) provides a mechanism for the Debtor's estate to recover value in excess of \$1,000,000 in funds presently held in the CD Account.

LEGAL ANALYSIS

A. Settlement under Bankruptcy Rule 9019.

12. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that, after notice and a hearing, a court may approve a proposed settlement of a claim. In deciding whether to approve a proposed settlement, the Court is required to exercise its sound discretion in assessing the reasonableness of a proposed settlement. *See In re Honeywell*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988); *In re Jackson Brewing Co.*, 624 F.2d 599 (5th Cir.1980); *In re Teltronics Services, Inc.*, 762 F.2d 185 (2d Cir.1985).

13. The standards for approval of settlements under Bankruptcy Rule 9019 are well settled. 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), *aff'd* 50 B.R. 764 (S.D.N.Y. 1985). As stated by the Supreme Court in *Protective Committee v. Anderson*, 300 U.S. 414 (1968), under the Act, in order to approve a proposed settlement, a court must have found that the settlement was “fair and equitable” based on an educated estimate of the complexity, expense and likely duration of the 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. *Id.* at 424.

14. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990). In *Justice Oaks*, the Eleventh Circuit established a four part test for the approval of settlements, which test was as follows:

- (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.

15. In addition, a court considering the approval of a settlement need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988); *In re Martin*, 91 F.3d 389 (3rd Cir. 1996);

16. Applying the foregoing standard to the Settlement Agreement, the Trustee believes that the settlement and compromise contained therein should be approved. In negotiating the Settlement Agreement, the Trustee carefully evaluated the costs and risks of litigation, the defenses raised, the risk and cost of collection on any judgments and other factors in his sound business judgment. As a result, the Trustee believes in the exercise of his business judgment that the Settlement Agreement falls well above the lowest point in the range of reasonableness and is in the best interest of the Debtor's estate and its creditors.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order (i) approving the Settlement Agreement and the terms and conditions of the settlement and compromise contained in the Settlement Agreement, (ii) authorizing the Trustee to execute and deliver any and all documents and take any and all action necessary or appropriate to consummate the terms and conditions of the Settlement Agreement, and (vi) for such other and further relief as this Court deems necessary.

Dated this 28th day of April, 2006.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A)

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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing was served via U.S. Mail, facsimile and/or e-mail to all parties on the attached service list this 28th day of April 2006.

/s/ Paul J. Battista

Paul J. Battista