

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

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In re:

CHAPTER 11

**Isaacson Steel, Inc.**  
**Isaacson Structural Steel, Inc.**

Case No. 11-12415-JMD  
Case No. 11-12416-JMD

Debtors

Jointly Administered  
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**ORDER CONFIRMING PLAN OF REORGANIZATION**

Pursuant to the First Amended Joint Plan of Reorganization for Isaacson Steel, Inc. and Isaacson Structural Steel, Inc. Dated September 25, 2013, as Modified by Motion dated October 18, 2013, and granted by the Court on October 28, 2013 (the “**Plan**”) and disclosure statement (Court Doc. Nos. 1225 and 1184) filed by the Debtors (the “**Debtors**” or “**Proponents**”), and after notice having been transmitted to all creditors, equity security holders, parties in interest and other persons entitled to notice in accordance with Bankruptcy Rules 2002 and 3017; and after having reviewed the Plan, the showing made by parties who attended the confirmation hearing held on October 28, 2013, and the Objections thereto, and with the Objections having been withdrawn or having been adequately addressed with the modifications to the Plan as set forth herein in paragraph 15, and the Court having determined that good cause has been shown for entry of this Order,

**IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. The Plan, which is incorporated herein by reference, complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. See 11 U.S.C. § 1129(a)(1).
2. Proponents’ Plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. See 11 U.S.C. § 1129(a)(2).
3. The Plan has been proposed in good faith and not by any means forbidden by law. See 11 U.S.C. § 1129(a)(3).

4. Any payment made or to be made by the Proponents, by the Debtors, by the Trustees of the Liquidating Trust established to administer the Plan (the “**Liquidating Trustees**” and the “**Trust**”), or by any entity acquiring property under the Plan, for services or for costs and expenses in the case or in connection with the case, or in connection with the Plan and incident to this case, has been approved by, or is subject to the approval of, the Court as reasonable. See 11 U.S.C. §1129(a)(4).

5. The Proponents of the Plan have disclosed the identity and affiliations of the Liquidating Trustees and any individual proposed to serve after confirmation of the Plan as a director, officer, or voting trustee of the reorganized debtor, an affiliate of the Debtors participating in a joint Plan with the Debtor, or a successor to the Debtors under the Plan and the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of compensation for such insider. See 11 U.S.C. § 1129(a)(5).

6. With respect to each impaired class of claims or interest of such class, being Classes One, Two, Three and Four, each holder of a claim or interest of such class has accepted the Plan or will receive or retain under the Plan, on account of such claim or interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter.

7. If § 1111(b)(2) of the Bankruptcy Code applies, such class will receive or retain under the Plan, property of a value, as of the Effective Date of the Plan, that is not less than the value of such holder’s interest in the estate’s interest in the property securing such claim. See 11 U.S.C. § 1129(a)(7).

8. The Certificate of Vote attached as Exhibit A hereto discloses, as applicable, those classes that have accepted the Plan, those classes that have rejected the Plan, those classes that are not impaired under the Plan, and those classes which have rejected the Plan but are being treated by Plan treatment permitted under § 1129(b)(1) and 1129(b)(2) of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(8).

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that, with respect to a claim of a kind specified in § 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim. See 11 U.S.C. § 1129(a)(9)(A).

10. With respect to a class of claims of a kind specified in § 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) and 507(a)(8) of the Bankruptcy Code, each holder of a claim of such class will receive, cash on the Effective Date of the Plan equal to the allowed amount of such claim, or such other treatment to which the holder of such claim has agreed. See 11 U.S.C. § 1129(a)(9)(B).

11. If a class of claims is impaired under the Plan, at least one class of claims that is impaired under the Plan, being Classes One through Three, has accepted the Plan, determined without including any acceptance of the Plan by an insider. See 11 U.S.C. § 1129(a)(10).

12. Confirmation of this Plan is not likely to be followed by liquidation, or the need for further financial reorganization, of these debtors or any successor to the debtors under the Plan, unless, as in this case, such liquidation or reorganization is proposed in the Plan. See 11 U.S.C. § 1129(a)(11).

13. All fees due and all quarterly fees payable to the United States Trustee have been paid as of the confirmation date or the Plan provides for the payment of all such fees on the Effective Date of the Plan. See 11 U.S.C. § 1129(a)(12) and LBR 3020-1(c).

14. All transfers of property of the Plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. See 11 U.S.C. § 1129(a)(16).

15. The Plan is hereby determined to be fair and equitable and does not discriminate unfairly with regard to any class of claims or interests that is impaired under, and has not accepted, the Plan. See 11 U.S.C. § 1129(b)(1).

16. Special provisions:

(a) Subject to the provisions of this Paragraph 16, which addresses certain objections made by Steven Griffin, the Massachusetts Department of Revenue, and the United States Trustee, all objections to the Confirmation of the Plan shall be, and hereby are overruled in their entirety.

(b) The Global Settlement Agreement (the “**GSA**”) entered into by and among the Debtors, the Official Committee of Unsecured Creditors (the “**Committee**”), New Hampshire

Business Finance Authority (“**BFA**”), Turner Construction, Inc. (“**Turner**”) and Passumpsic Savings Bank (together with its participating lenders, “**PSB**”), which is the basis of the Plan confirmed hereby, is hereby approved in all respects. The Liquidating Trust Agreement adopted pursuant to the GSA, as the Liquidating Trust Agreement has been modified by the Plan and/or this Order (hereinafter, said trust, as so modified, is referred to as the “**Trust**”), is hereby approved in all respects.

(c) The **Trustees** of the Liquidating Trust are identified as follows:

PSB Appointee: Robert M. Bishop, Senior Vice President.

BFA Appointee: Jack Donovan, Chief Executive Director Officer.

Committee Appointee: Charles B. Fenderson, President of Charles Leonard Construction Co., Inc.

Annexed to this Order **confirming** the Plan is a fully executed copy of the Liquidating Trust Agreement. The trustees shall serve without compensation but may receive compensation for out of pocket expenses. No bond shall be required of any Liquidating Trustee.

(d) Consistent with the terms of the GSA all assets of the Debtors required to be transferred to the Trust shall be deemed transferred to the Liquidating Trustees of the Trust, in their capacities as such, as of the Effective Date, pursuant to the Plan. Without limiting the generality of the foregoing, the Debtors’ Chapter 5 Actions and/or Other Actions shall be transferred to the Liquidating Trustees of the Trust, in their capacities as such, for for administration, collection, prosecution, and distribution, as provided in the Plan. To the extent that the Debtors transfer cash to the Trust, the Trust shall be responsible to utilize such cash, to the extent required, for the payment of allowed Administrative and Priority Claims pursuant to the provisions of the GSA and Article II of the Plan.

(e) With respect to this Court’s Order on Joint Motion For Interim Protective Order and Final Order Approving Global Settlement Agreement Filed By Debtors, Creditors’ Committee, New Hampshire Business Finance Authority, Passumpsic Savings Bank, and Turner Construction, Inc., dated September 25, 2013 [Doc. No. 1186] (the “**Approval Order**”), that portion of the Approval Order by which this Court approved the GSA shall be and hereby is vacated, and superseded by the approval of the GSA provided by this Order. In all other

respects, the Approval Order is ratified and confirmed. Notwithstanding the vacation of a portion of the Approval Order by this Order, no person or entity shall have liability to any other person or entity by reason of actions undertaken, or omitted in reliance upon the terms of the Approval Order.

(f) The Stipulation entered into by and among Massachusetts Department of Revenue (“**MDR**”), Turner and Debtor [Doc. No. \_\_\_\_] (the “**MD-Debtor Turner Stipulation**”), which resolves by agreement MDR’s objections to the confirmation of the Plan shall be, and hereby is approved. The Plan shall be and hereby is deemed modified by the MDR-Debtor-Turner Stipulation insofar as the treatment of the MDR Administrative and Priority Tax Claims are concerned. The Debtors or the Liquidating Trustees of the Trust shall pay MDR’s Allowed Priority Tax Claim in accordance with the MDR-Debtor-Turner Stipulation.

(g) The Debtors, or the Liquidating Trust, shall pay the quarterly fees due the United States Trustee as of the date of entry of this Order, in full, on the Effective Date, and thereafter, shall timely pay such additional quarterly fees as may become due and payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). In addition, the Debtors or the Liquidating Trustees shall timely pay the fixed, monthly fees due Morgan Storage (\$312/mo. plus an additional fee for delivering and picking up boxes of materials) and Spectra Access (\$375/mo) for storing the Debtors’ business and financial records for so long as the Liquidating Trustees determine that it is necessary to maintain, store, and/ or retrieve such records.

(h) The Professionals holding allowed or approved Administrative Claims shall be paid as and to the extent permitted by the GSA and further Order of this Court.

(i) Except as otherwise provided for herein, or by agreement with a holder of an Allowed Priority Claim, all other allowed Priority Claims shall be paid in full by the Debtor or the Liquidating Trustees on the later of the Effective Date or the date upon which a Priority Claim becomes an Allowed Priority Claim. The Debtors or the Liquidating Trustees may file objections to the Pre-petition Priority Claims asserted by the States of Vermont and Maine and David Payeur by December 15, 2013 and shall pay each such claimant the amount allowed by a final order. In the absence of a timely claim objection, the claims filed by Vermont, Maine, or Payeur shall be allowed in the amount of their respective Proofs of Claim, and paid by the Debtors or the Trust on or before January 15, 2014.

(j) The Debtors shall file all tax returns due the Internal Revenue Service, MDR or any other taxing authority when such returns are due, including any filing date extensions.

(k) Notwithstanding any language in the Plan or the GSA to the contrary, PSB shall retain its right, as Debtors' primary secured lender pursuant to cash collateral and other orders previously entered in this case, (a) to pursue, at its election and expense, any potential claims against John Moriarty & Associates, Inc. or others for monies owed for retainage or other pre-petition receivables on contracts with the Debtors and (b) to maintain, at its election and expense, its interest in the term life insurance policies on Debtors' principals that were assigned and delivered pre-petition to PSB in connection with Debtors' loan obligations.

(l) Notwithstanding any language in the Plan to the contrary, the Debtors shall not receive a discharge pursuant to the provisions of Code Section 1141(d)(3).

(m) Notwithstanding any language in the Plan to the contrary, holders of claims against the Debtors or either of them that arose on or after the Petition Date ("**Post-Petition Claims**") which have not previously been approved by the Court or are not addressed elsewhere in this Order shall file such claims on or prior to December 1, 2013. Any such Post-Petition Claim which is not filed on or prior to said date shall be deemed disallowed, without further order of the Court.

(n) Notwithstanding §8.5 or any other provision of the Plan, any Claims that arose prior to the Petition Date and which were not scheduled by the Debtor as contingent, unliquidated, or disputed, or as to which a valid proof of claim was filed on or before the Bar Date, shall be allowed in full unless the Debtors, the Trust and/or any party in interest pursuant to Section 502(a) of the Bankruptcy Code, file an objection to such claim on or before February 28, 2014.

(o) The Liquidating Trustees will commence distributions prescribed by the GSA (i) within ninety (90) days of the later of the final resolution of the prosecution of the D&O Claims or the Debtors' Causes of Action, provided, however, that in the event that the Liquidating Trustees have at any time accumulated a total of at least \$300,000 (net of any Trust expenses or necessary reserve, as determined by the Liquidating Trustees), the Liquidating Trustees shall make an interim distribution in accordance with the priorities prescribed by the GSA.

(p) This Order is not intended to be, and shall not be construed as an order relieving the Debtors or the Liquidating Trustees of the Trust from compliance with the automatic stay imposed by Section 362 of the Bankruptcy Code with respect to any entity that is a debtor in any proceeding currently pending under the Bankruptcy Code. This Order is not intended to, and shall not be construed to vacate, alter or amend the stay relief order previously obtained by PSB in connection with *Passumpsic Savings Bank v. D.J. Driscoll & Company, PLLC, David Driscoll, CPA and Steven Griffin*, Docket No. 215-2011-CV-00176 (Cheshire County Superior Court) or any other stay relief order or expand or contract the relief granted by any such order. Nothing contained in this Order shall limit or affect the right of the Debtors or the Liquidating Trustees to seek or obtain any necessary relief from the automatic stay in connection with any pending or future claim or proceeding pursued by the Debtors or the Liquidating Trustees.

(q) Subject to the direction of the Trustees, and with available funding provided by the Trustees, the Debtors and/or the Committee will be responsible for filing objections to claims, paying United States Trustee fees, filing tax returns and paying the taxes due thereon and filing operating reports with the United States Trustee, and filing the application for final decree.

(r) The Debtors may file an Application for Final Decree with Limited Retention of Jurisdiction upon or at any time after substantial consummation, which shall occur upon the Effective Date.

(s) The Debtors' Motion for Order Granting Leave to Modify First Amended Joint Plan of Reorganization Dated September 25, 2013 with the Assent of the Settling Parties [Doc. No. 1225] shall be, and hereby is granted as of the start of the combined hearing on the adequacy of the Debtors' Disclosure Statement and Confirmation of Plan held on October 28, 2013 when this Court made its bench ruling thereon.

17. There are no other Plans that have been proposed in this case.

18. The Plan is hereby confirmed, upon and subject to the terms and provisions of this Order.

19. The provisions of the Plan and this Order are and shall be binding upon the Debtors and any creditor or equity security holder of the Debtors whether the claim or interest of such

creditor or equity security holder is impaired under the Plan and whether such creditor or equity security holder has accepted the Plan.

20. Confirmation of the Plan does not discharge the Debtors of debts provided for in the Plan.

21. Except as otherwise provided herein, in the GSA or in the Plan, and effective as of the Effective Date of the Plan, in accordance with § 1141(b) and 1141(c) of the Bankruptcy Code, all property of the Debtors' estate and all property dealt with by the Plan is hereby vested in the Liquidating Trustees free and clear of all claims and interest of creditors, equity security holders, and general partners of the debtors. See 11 U.S.C. § 1141(c) and (d).

22. Except as provided in the Plan, and subject only to the occurrence of the Effective Date of the Plan, any judgment at any time obtained, to the extent that such judgment is determination of the liability of the Debtors with respect to any debt or claim discharged hereunder, is hereby rendered null and void.

23. As of the Effective Date of the Plan, the commencement or continuation of any action, the employment of process or any act to collect, recover or offset any claim or interest dealt with by the Plan or this Order is hereby permanently enjoined, stayed and restrained.

24. Any claim for damages arising from the rejection of any executory contract or unexpired lease pursuant to the Plan shall be forever barred unless a proof of claim therefor in proper form is filed with the Court within thirty (30) days after the later of the date of entry of (i) an order by the Court approving the rejection of such executory contract or unexpired lease or (ii) this order.

25. Notwithstanding §8.6 of the Plan or any other contrary provision of the Plan, all applications or requests for compensation or the reimbursement of any expenses or costs incurred by any professionals retained with Court approval in this chapter 11 case (other than fees incurred in connection with the prosecution of Chapter 5 Actions by counsel retained for that purpose or ' accountants retained solely for the purposes of preparing and filing the Debtors' tax returns following confirmation) and any other application or request for professional fees and expenses by any party in interest must be filed with the Court on or before December 15, 2013.

26. In accordance with the provisions of *LBR 3020-1*, the Court shall retain exclusive jurisdiction for the following purposes:

(a) To hear and determine objections to claims and claims for relief of the kind provided for in F.R.B.P. 7001 and compromises and settlements thereof;

(b) To hear and determine adversary proceedings to subordinate claims asserted by insiders of the Debtors, including Arnold Hanson, Barbara Hanson, Steven Griffin and Cynthia Griffin.

(b) To approve any stipulations and/or settlements entered into by the Debtors and/or the Liquidating Trustees, with any other parties;

(c) To hear and determine any dispute arising under the Plan, its implementation and execution of any necessary documents thereunder, and any requests to amend, modify or correct the Plan, provided such matters are brought before the Court prior to the point of substantial consummation;

(d) To grant extension of any deadlines set forth in this order as may be appropriate;

(e) To enforce all discharge provisions under the Plan; and

(f) To consider and rule upon requests for final compensation.

(g) To hear and determine such other matters as may properly come within the subject matter jurisdiction of the Court.

27. The Debtors shall be permitted to file a motion requesting additional retention of jurisdiction for specific matters within sixty (60) days of the date of this order. Any such further retention of jurisdiction granted by the Court shall be provided for in a supplementary order on such motion.

28. For the reasons given in this Court's Memorandum Opinion and Order dated September 25, 2013, the overwhelming support of the creditors that voted to accept the Plan and other good cause shown, this order shall become effective immediately.

**ENTERED** at Manchester, New Hampshire.

Date: November \_\_\_\_, 2013

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J. Michael Deasy, Bankruptcy Judge