

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:)
) Chapter 11
ORECK CORPORATION, et al) Case No. 13-04006
)
565 Marriott Dr., Suite 300) Judge Lundin
Nashville, TN 37214) (Jointly Administered)
)
Debtors.)

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: February 7, 2014
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: February 25,
2014 at 9:00am, Courtroom Two, Second Floor, Customs House, 701
Broadway, Nashville, Tennessee, 37203**

NOTICE OF JOINT MOTION TO APPROVE SETTLEMENT
WITH BLACK DIAMOND

Notice is hereby provided of the *Joint Motion of the Debtors and the Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Fed. R. Bankr. P. 9019 Approving a Compromise and Settlement with Black Diamond Capital Management, LLC; Black Diamond Commercial Finance, L.L.C.; GSC Acquisition Holdings LLC; Peter Frank; and Russell Spieler and Affiliates and Employees Thereof*, attached hereto.

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to enter the attached order, or if you want the court to consider your views on the order, then on or before **February 7, 2014**, you or your attorney must:

File with the court your written response or objection explaining your position. PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTIONS YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, TN (Monday – Friday, 8:00 a.m. – 4:00 p.m.).

Your response must state that the deadline for filing responses is **February 7, 2014**, the date of the scheduled hearing is **February 25, 2014**, and the motion to which you are responding is the Joint Motion to Approve Settlement with Black Diamond.

You must serve your response or objection **by electronic service through the Electronic Filing System** described above.

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's web site at <www.tnmb.uscourts.gov>.

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Respectfully Submitted:

/s/ William L. Norton, III

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**UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

ORECK CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 13-04006

Judge Lundin

(Jointly Administered)

**JOINT MOTION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR ENTRY OF AN ORDER PURSUANT TO FED. R.
BANKR. P. 9019 APPROVING A COMPROMISE AND SETTLEMENT WITH BLACK
DIAMOND CAPITAL MANAGEMENT, LLC; BLACK DIAMOND COMMERCIAL
FINANCE, L.L.C.; GSC ACQUISITION HOLDINGS LLC; PETER FRANK; AND
RUSSELL SPIELER AND AFFILIATES AND EMPLOYEES THEREOF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) and the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these cases, by and through their respective counsel, submit this motion (the “**Motion**”) for the entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving a compromise and settlement with Black Diamond (defined below), its affiliates and other related parties, including without limitation Peter Frank and Russell Spieler, who served as Directors of certain of the Debtors (the “**Oreck Directors**”). As part of the proposed settlement, the Debtors and the Committee have agreed to release all of the Debtors’ directors and officers from any potential claims against them by the Debtors’ estates. In support of the Motion, the Debtors and the Committee respectfully states as follows:

¹ The Debtors are as follows: Oreck Corporation, ASP Oreck, Inc., Oreck Direct, LLC, Oreck Merchandising, LLC, Oreck HomeCare, LLC, Vecteur, LLC, Oreck Holdings, LLC, Oreck Manufacturing Company, and Oreck Sales, LLC.

JURISDICTION AND VENUE

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

2. The statutory predicate for the relief sought herein is Bankruptcy Rule 9019(a).

BACKGROUND

A. General Background

3. On May 6, 2013 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

4. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ bankruptcy cases.

5. On May 16, 2013, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 103]. On May 17, 2013, the Committee selected Lowenstein Sandler LLP to serve as its counsel.

B. The Debtors’ Prepetition Capital Structure and Management of the Debtors

6. Oreck Corporation (“**Oreck**”) is a Delaware corporation wholly owned by ASP Oreck, Inc., a Delaware corporation (“**Parent**”). Oreck, in turn, is the sole member of each of the following subsidiaries (collectively, the “**Oreck Subsidiaries**”): Oreck Direct, LLC, a Delaware limited liability company (“**Direct**”); Oreck Merchandising, LLC, a Delaware limited liability company (“**Merchandising**”); Oreck HomeCare, LLC, a Delaware limited liability company (“**HomeCare**”); Oreck Manufacturing Company, a Delaware corporation

(“**Manufacturing**”); Oreck Sales, LLC, a Delaware limited liability company (“**Sales**”); Vecteur, LLC, a Delaware limited liability company (“**Vecteur**”); Oreck Holdings, LLC, a Delaware limited liability company (“**Holdings**”); Oreck Franchise Services, LLC, a Delaware limited liability company (“**Franchise Services**”); and Oreck (Shenzhen) Management Consulting Co. Ltd., a foreign limited liability company incorporated in China under Shenzhen China law (“**Shenzhen**”). Franchise Services and Shenzhen are not Debtors in these chapter 11 cases.

7. Upon information and belief, Black Diamond Capital Management, LLC (“**Black Diamond Capital**”) manages GSC Recovery III, L.P. and GSC Recovery III Parallel Fund, L.P. (collectively with Black Diamond Capital, the “**Black Diamond Funds**”) which, in turn, own or control a majority of the voting stock of Oreck Holdco 1, Inc. (“**Holdco 1**”), the ultimate parent company of the Debtors.

C. **The Debtors’ Prepetition Financing and Debt**

(i) **Prepetition First Lien Credit Facility**

8. Oreck and the Oreck Subsidiaries (collectively, “**Wells Fargo Borrowers**”); Parent, as parent and Guarantor; and Wells Fargo Bank, National Association (“**Wells Fargo**”), as Lender, entered into a Credit and Security Agreement, dated as of August 29, 2012 (the “**Prepetition First Lien Credit and Security Agreement**”) with respect to a revolving line of credit in the maximum amount of \$20,000,000 (the “**Prepetition First Lien Credit Facility**”).

9. On February 12, 2013, the Wells Fargo Borrowers, Parent, and Wells Fargo entered into that First Amendment to Wells Fargo Credit and Security Agreement (the “**Amendment to the Prepetition First Lien Credit Facility**”), wherein the Maturity Date for

Wells Fargo's obligations was changed, in part, from August 29, 2016 to August 11, 2014, three new subsections were added to the "Affirmative Covenants" section of such Agreement (including the requirement of the Sponsors, as defined in such agreement, to maintain an aggregate undrawn amount of at least \$6,500,000), the definition of "Borrowing Base" was revised, and the amount of \$20,000,000 in the definitions of "Maximum Credit" and "Maximum Revolver Amount" were respectively replaced with \$19,500,000.

10. In connection with the Amendment to the Prepetition First Lien Credit Facility, the Black Diamond Funds agreed to guarantee a portion of the Prepetition First Lien Credit Facility (as increased) and post additional collateral for the Prepetition First Lien Credit Facility. Specifically, the Black Diamond Funds agreed to post one or more irrevocable standby letters of credit in the aggregate stated amount of at least \$6,500,000 in connection with Holdco 1's issuance of warrants under which the Black Diamond Funds would be entitled to purchase 7,600,000 shares of common stock (\$.01 par value per share) of Holdco 1 upon exercise of the warrants. The Black Diamond Funds received a fee in the amount of \$1,500,000 from the Company for providing the guaranty and the Amendment to the Prepetition First Lien Credit Facility.

11. Upon information and belief, GSC Recovery III, L.P. (the "**Prepetition First Lien Lender**") (as successor in interest to Wells Fargo), managed by Black Diamond Capital, asserts a lien secured by all of the Debtors' assets in connection with the Prepetition First Lien Credit Facility. According to the Debtors' schedules of assets and liabilities, as of the Petition Date, \$5,467,897.00 remained outstanding under the Prepetition First Lien Credit Facility.

(ii) **Prepetition Second Lien Credit Facility**

12. On March 19, 2010, Broadpoint Products Corp., as Administrative Agent; Oreck (as Borrower); Parent (as a Guarantor); the Subsidiary Guarantors (as defined in such agreement); the Equity Conversion Investors (as defined in such agreement); and the other banks and financial institutions listed on Schedule 2.1 of such agreement entered into a credit agreement (the “**Prepetition Second Lien Credit Agreement**”) with respect to a revolving line of credit in the original amount of \$5,467,897 (the “**Prepetition Second Lien Credit Facility**”). According to the Schedules and Statements, as of the Petition Date, \$4,230,716.00 remained outstanding under the Prepetition Second Lien Credit Facility.

13. According to the Second DIP Motion, Gleacher Products Corp., as administrative agent, and certain institutions from time to time party thereto as lenders (“**Prepetition Second Lien Lenders**” and together with the Prepetition First Lien Lender, the “**Prepetition Secured Parties**”) asserts a junior lien securing the Prepetition Second Lien Credit Facility.

D. The Debtors’ Post-Petition Financing

14. On the Petition Date, the Debtors filed the *Motion for Interim and Final Orders (I) Authorizing (A) The Debtors To Obtain Postpetition Financing On A Senior Secured Superpriority Basis Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, and 364; (B) To Utilized Cash Collateral Pursuant To 11 U.S.C. § 363; (II) Granting Adequate Protection To Prepetition Secured Lenders Pursuant To 11 U.S.C. § 361, 363, and 364; (III) Scheduling Final Hearing Pursuant To Bankruptcy Rules 4001(b) and (c) and (IV) Granting Related Relief* [Docket No. 10] (the “**First DIP Motion**”).

15. On May 10, 2013, the Court entered the *Order Denying Debtors’ Motion For Interim and Final Orders Authorizing Postpetition Financing, Use Of Cash Collateral And*

Granting Adequate Protection [Docket No. 56], denying the First DIP Motion for the reasons set forth during a hearing held on May 8, 2013.

16. On May 17, 2013, the Debtors filed the *Debtors' Second Motion for Interim and Final Orders (I) Authorizing (A) The Debtors To Obtain Postpetition Financing On A Senior Secured Superpriority Basis Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, and 364; (B) To Utilized Cash Collateral Pursuant To 11 U.S.C. § 363; (II) Granting Adequate Protection To Prepetition Secured Lenders Pursuant To 11 U.S.C. § 361, 363, and 364; (III) Scheduling Final Hearing Pursuant To Bankruptcy Rules 4001(b) and (c) and (IV) Granting Related Relief* [Docket No. 120] (the “**Second DIP Motion**”).

17. On June 20, 2013, the Court entered the *Final Order Authorizing (A) the Debtors to Obtain Postpetition Financing on Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364; (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 363 and 364; (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c); and (IV) Granting Related Relief* [Docket No. 358] (the “**Final DIP Order**”).

18. Pursuant to the Final DIP Order, the Debtors were authorized to borrow up to the aggregate principal amount of \$9,500,000 (the “**DIP Facility**”) from Black Diamond Commercial Finance, L.L.C. (“**Black Diamond Commercial**”) and together with Black Diamond Capital and the Black Diamond Funds, “**Black Diamond**”), acting as administrative agent, for itself and lenders (the “**DIP Lenders**”) that are party from time to time thereto. Further, by the Final DIP Order, the Debtors were authorized to use Cash Collateral (as defined therein) to pay down their obligations under the Prepetition First Lien Credit Facility (defined below) through roll-up payments and then the DIP Facility in a manner consistent with the Final DIP Order.

19. Pursuant to paragraph 19 of the Final DIP Order, the Committee retained the right to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses that the Debtors' estates may have against the Prepetition Secured Parties (defined below) or their affiliates, representatives, attorneys or advisors in connection with matters related to the Prepetition Secured Credit Documents, the Prepetition Secured Obligations, or the Prepetition Collateral (each as defined in the Final DIP Order).

E. Sale of the Debtors' Assets

20. On May 16, 2013, the Debtors filed the *Motion by Debtors Pursuant to U.S.C. §§ 363(B), (F), (K), and (M), and 365 and Fed. R. Bankr. P. 2002, 6004, to (I) Approve (A) The Sale Transaction Pursuant To The Asset Purchase Agreement with Oreck Acquisition Holding LLC, Free and Clear of Claims, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) (A) Establish Sale And Bidding Procedures; and (B) Schedule a Sale Approval Hearing* [Docket No. 93] (the "**Sale Motion**"). On June 20, 2013, the Court entered an order authorizing the sale procedures proposed by the Debtors [Docket No. 361] (the "**Sale Procedures Order**"). Pursuant to the Sale Procedures Order, the Debtors conducted a sale process and auction, the result of which was the selection of the bid of OAC Acquisition Company, LLC (together with any of its assignees or designees, the "**Purchaser**") as the winning bidder for the Debtors' assets.

21. On July 22, 2013, the Court entered an order approving the sale of the Debtors' assets to the Purchaser [Docket No. 617] (the "**Sale Order**"). Pursuant to the Sale Order, the Debtors were authorized to pay the DIP Facility in full.

F. The Proposed Settlement

22. In its capacity as a fiduciary to unsecured creditors of the Debtors' estates, the Committee undertook an investigation into claims the Debtors' estates may hold against third parties, including but not limited to the claims reserved by Paragraph 19 of the Final DIP order. Through this process, the Committee identified certain potential claims that the Debtors' estates may hold against Black Diamond and the Oreck Directors (the "**Claims**"), including claims: (a) against the Oreck Directors for potential breaches of fiduciary duty; and (b) against Black Diamond Funds to recover potential fraudulent transfers and preferential transfers related to the Prepetition First Lien Credit Facility.

23. Black Diamond, in turn, has filed proofs of claim (the "**Filed BD Claims**") against the Debtors' estates relating to asserted indemnification rights under the Prepetition First Lien Facility as well as several million dollars in accrued but unpaid management fees owing under a management agreement among the Debtors and Black Diamond Funds.

24. The Committee and Black Diamond, through their respective counsel, have engaged in good-faith negotiations and reached a proposed global settlement and compromise (the "**Settlement**") with respect to both the potential Claims against Black Diamond and its affiliates and the Oreck Directors and the Filed BD Claims against the Debtor. The Debtors also support the Settlement.

25. As part of the Settlement, Black Diamond has requested and the Committee has agreed that the Settlement include a release in favor of all the Debtors' directors and officers, not just those associated with Black Diamond. This additional release is not viewed by the Committee as likely to disadvantage the Debtors' estates as the Committee's investigation did not uncover any strong claims against these individuals. Hence, making this concession as

an incentive for Black Diamond to settle at the dollar figure of the Settlement, strikes the Committee as a net benefit to the Debtors' estates. The terms of the Settlement are as follows:

Cash Payment: Within three (3) business days of the date the order approving this Motion becomes a final order (the date of such payment, "**Effective Date**"), the Black Diamond Funds shall pay \$401,500 (the "**Cash Payment**") to the Debtors' estates for ultimate distribution to unsecured creditors pursuant to the terms of a plan or further order of this Court.

Waiver of Black Diamond's Unsecured Claims: On the Effective Date, Black Diamond shall waive any and all unsecured claims it may have against any of the Debtors, including, without limitation, any deficiency claims it may have in connection with the Prepetition First Lien Credit Facility and/or the DIP Facility, and the Filed BD Claims. On the Effective Date, all of the Filed BD Claims shall be deemed expunged without further order of the Court.

Release: On the Effective Date, the Committee and each of the Debtors and their estates, and their respective affiliates, successors and assigns (collectively, the "**Releasing Parties**"), shall unconditionally, absolutely and irrevocably remise, release, acquit, waive and forever discharge Black Diamond and its direct and indirect past, present and future directors, officers, managers, employees, agents, members, partners, representatives, affiliates, subsidiaries, parents, advisors, attorneys, insurers, including without limitation the Oreck Directors, and the respective successors and assigns thereof, Wells Fargo, as predecessor with respect to the Prepetition First Lien Credit Facility, and all of the Debtors' current and former directors and officers (collectively, the "**Released Parties**") of, from and against any and all claims, demands, debts, obligations, costs, liabilities, promises, duties, agreements, warranties, damages, and consequential damages, actions and causes of action whatsoever, of every kind or nature, whether in law or in equity, or whether in tort or in contract, pursuant to statute or law, actual or contingent, suspected or claimed, accrued or unaccrued, contingent or vested, known or unknown, that the Releasing Parties now have or ever had against any or all of the Released Parties prior to and through

the Effective Date (collectively, the “**Released Claims**”).

RELIEF REQUESTED

26. By this Motion, the Debtors and the Committee respectfully request that the Court enter an order, substantially in the form submitted herewith, approving the settlement and effectuating the release of the BD Filed Claims and the release in favor of the Released Parties described above.

BASIS FOR RELIEF

27. Bankruptcy Rule 9019(a) provides, in pertinent part, that upon a motion, and after notice and a hearing, the Court may approve a compromise or settlement. Approval of a settlement is within the discretion of the Bankruptcy Court. *See In re West Pointe Properties, L.P.*, 249 B.R. 273, 282 (Bankr. E.D. Tenn. 2000). Compromises “are favored in bankruptcy in order to minimize the cost of litigation to the estate and expedite its administration, and [] the approval of a compromise is within the sound discretion of the bankruptcy judge.” *In re Edwards*, 228 B.R. 552, 568-69 (Bankr. E.D. Penn. 1998) (citing *In re Martin*, 91 F.3d 389, 392 (3d Cir. 1996)); *see also In re West Pointe Properties, L.P.*, 249 B.R. at 282.

28. In reviewing a proposed compromise and settlement under Bankruptcy Rule 9019, bankruptcy courts must consider “whether the proposed compromise is in the best interests of the estate.” *In re Media Central v. Jackson Family Television, Inc.*, 190 B.R. 316, 320 (E.D. Tenn. 1994). The court has “an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable.” *In re West Pointe Properties, L.P.*, 249 B.R. at 281 (quoting *Reynolds v. Commissioner of Internal Revenue*, 861 F.2d 469, 473 (6th Cir. 1988)). The bankruptcy court must give some deference to the trustee’s judgment regarding the proposed compromise and

must not substitute its judgment for the trustee's judgment. *In re Media Central*, 190 B.R. at 321.

29. Federal courts have determined that several factors should be considered when reviewing whether a settlement is in the best interests of the estate. This Court has stated that “the factors to consider are ‘the probabilities of ultimate success in the litigation, the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting any judgment that might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.’” *In re Media Central*, 190 B.R. at 320 (quoting *In re Tennol Energy Co.*, 127 B.R. 820, 828 (Bankr. E.D. Tenn. 1991)); *see also Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). When analyzing the factors “the bankruptcy court should canvass the issues and determine whether the settlement falls within the range of reasonableness in the case, but without trying the case or otherwise deciding the issues of law and fact presented.” *In re Media Central*, 190 B.R. at 321 (citing *Tennol Energy Co.*, 127 B.R. at 828); *see also In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983).

30. Each of these factors weigh in favor of approval of the Settlement. First, the Committee's success in litigating the Claims is uncertain. Thus, entry into and approval of the Settlement results in immediate benefits to unsecured creditors and certainty of outcome.

31. Second, any litigation resulting from the Claims will likely be complex and protracted, “with its attendant expense, inconvenience, and delay.” *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 461 (2d Cir. 2007). At this stage, the parties have merely engaged in settlement discussions regarding the facts and circumstances giving rise to the Claims, but the Committee has not conducted the

extensive discovery that will be required to prosecute an action against Black Diamond. The “expense, inconvenience, and delay” associated with any litigation, in addition to the risks previously articulated, are far outweighed by the certainty, immediacy, and cost-savings of a consensual resolution of the Claims. The waiver of the Filed BD Claims also provides meaningful benefit to the Debtors’ estates. Even if the Debtors were able to succeed on an objection to all of the Filed BD Claims – a result that is far from certain – there would likely be substantial cost incurred in achieving that result.

32. Third, the nature and breadth of the releases in the Settlement are fair and reasonable under the circumstances. The Committee has investigated the claims, causes of action, and/or counterclaims that may be asserted against Black Diamond and the Oreck Directors of the Debtors, and does not believe that claims, causes of action, and/or counterclaims exist that would outweigh the previously articulated benefits of entering into the Settlement.

33. Finally, the Settlement is the culmination of arm’s length negotiations between the Committee and Black Diamond. As demonstrated herein, the Settlement is a fair and reasonable resolution of the Claims, and represents an outcome more favorable to creditors than the risks, costs, and delay associated with any litigation.

34. Accordingly, the Debtors and the Committee submit that the Settlement is fair and prudent, is in the best interests of the Debtors’ estates and creditors, and falls within the “range of reasonableness” and therefore the Motion should be approved by this Court.

WHEREFORE, the Debtors and the Committee respectfully request entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Respectfully submitted,

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*Counsel for the Official Committee of
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Dated: January 17, 2014
Nashville, TN

**UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

ORECK CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 13-04006

Judge Lundin

(Jointly Administered)

**ORDER PURSUANT TO FED. R. BANKR. P. 9019 APPROVING
COMPROMISE AND SETTLEMENT WITH BLACK DIAMOND CAPITAL
MANAGEMENT, LLC; BLACK DIAMOND COMMERCIAL FINANCE, L.L.C.; GSC
ACQUISITION HOLDINGS LLC; PETER FRANK; AND RUSSELL SPIELER AND
AFFILIATES AND EMPLOYEES THEREOF AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the Debtors and the Committee for entry of an order for the entry of an order, pursuant to Bankruptcy Rule 9019, approving a compromise and settlement with Black Diamond, the Oreck Directors and the related parties identified in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2) in which the Court may enter a final order; and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that granting the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and any

¹ The Debtors are as follows: Oreck Corporation, ASP Oreck, Inc., Oreck Direct, LLC, Oreck Merchandising, LLC, Oreck HomeCare, LLC, Vecteur, LLC, Oreck Holdings, LLC, Oreck Manufacturing Company, and Oreck Sales, LLC.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

objections filed with respect to the Motion having been withdrawn or overruled by the Court; and notice of the Motion being sufficient under the circumstances; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Settlement is authorized and approved as follows:

(a) Within three (3) business days of the date this order becomes a final order (the date of such payment, “**Effective Date**”), the Black Diamond Funds shall pay \$401,500 (the “**Cash Payment**”) to the Debtors’ estates for ultimate distribution to unsecured creditors pursuant to the terms of a plan or further order of this Court.

(b) On the Effective Date, Black Diamond hereby waives any and all unsecured claims it may have against any of the Debtors, including, without limitation, any deficiency claims it may have in connection with the Prepetition First Lien Credit Facility and/or the DIP Facility, and the Filed BD Claims. On the Effective Date, all of the Filed BD Claims are hereby deemed expunged without further order of this Court.

(c) On the Effective Date, the Committee and each of the Debtors and their estates, and their respective affiliates, successors and assigns (collectively, the “**Releasing Parties**”), does hereby unconditionally, absolutely and irrevocably remise, release, acquit, waive and forever discharge Black Diamond and its direct and indirect past, present and future directors, officers, managers, employees, agents, members, partners, representatives, affiliates, subsidiaries, parents, advisors, attorneys, insurers, including without limitation the Oreck Directors, and the respective successors and assigns thereof, Wells Fargo, as predecessor with respect to the Prepetition First Lien Credit Facility, and all of the Debtors’ current and former directors and officers (collectively, the “**Released Parties**”) of, from and against any and all claims, demands, debts, obligations, costs, liabilities, promises, duties, agreements, warranties, damages, and consequential damages, actions and causes of action whatsoever, of every kind or

nature, whether in law or in equity, or whether in tort or in contract, pursuant to statute or law, actual or contingent, suspected or claimed, accrued or unaccrued, contingent or vested, known or unknown, that the Releasing Parties now have or ever had against any or all of the Released Parties prior to and through the Effective Date (collectively, the “**Released Claims**”).

(d) Each Oreck Party further agrees that it, she or he will not institute any claim, controversy, demand, suit or action against any of the Released Parties with respect to any Released Claim, and covenants and agrees not to (i) join, assist, aid or act in concert in any manner whatsoever with any other person or other entity in the making of any claim or demand or in the bringing of any proceeding or action in any manner whatsoever against the Released Parties in relation to any of the Released Claims or (ii) make any claim or to take any proceedings in respect of the Released Claims against any other person or entity who might claim contribution, indemnity or declaratory or other relief from and of any of the Released Parties.

3. The Court hereby retains jurisdiction to the fullest extent permitted by applicable law to enforce the waiver of claims, release and covenant not to sue provided for in this Order

4. The form and manner of notice of the Motion is hereby determined to be sufficient and adequate.

5. This Order shall be effective immediately upon its entry by the Court.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS
INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

[/s/William L. Norton III

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