

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
DESA Holdings Corporation, *et al.*,¹)
) Case No. 02-11672 (WSS)
Debtors.) (Jointly Administered)
)
) [Related to Docket No. 1460]

**ORDER (A) APPROVING THE ADEQUACY OF THE
DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE
PLAN; (C) ESTABLISHING A PLAN OBJECTION DEADLINE; (D) APPROVING
FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES;
AND (E) APPROVING FORM AND MANNER OF NOTICES**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking entry of an order (a) approving the adequacy of the Second Amended Disclosure Statement for the Second Amended Joint Liquidating Plan of Reorganization of DESA Holdings Corporation and DESA International LLC Pursuant to Chapter 11 of the United States Bankruptcy Code, as amended or modified (the "Disclosure Statement"); (b) scheduling a hearing to confirm the Second Amended Joint Liquidating Plan of Reorganization of DESA Holdings Corporation and DESA International LLC Pursuant to Chapter 11 of the United States Bankruptcy Code, as amended or modified (the "Plan"); (c) establishing a Plan objection deadline; (d) approving form of ballots, voting deadline and solicitation procedures; and (e) approving form and manner of notices; and it appearing that this

¹ The Debtors consist of the following two entities: DESA Holdings Corporation and DESA International LLC (*f/k/a* DESA International, Inc.).

² Capitalized terms not defined herein shall have the same meaning as ascribed in the Motion.

Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief; and that the relief requested under the Motion is in the best interests of the Debtors' estates and creditors; it is hereby

ORDERED that the Motion is granted in its entirety except as otherwise set forth herein; and it is further

ORDERED that the Disclosure Statement is hereby approved; and it is further

ORDERED that a hearing to confirm the Plan (the "Confirmation Hearing") will commence on March 29, 2005 at 2:00 p.m., prevailing eastern time; and it is further

ORDERED that the Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties in interest; and it is further

ORDERED that the deadline to file and serve objections to the confirmation of the Plan (the "Plan Objection Deadline") shall be 4:00 p.m., prevailing eastern time, on March 7, 2005; and it is further

ORDERED that all objections to the confirmation of the Plan must be both (i) filed with the Court on or before the Plan Objection Deadline and (ii) served in a manner so that they are actually received on or before 4:00 p.m., prevailing eastern time, on the Plan Objection Deadline by the following parties (collectively, the "Notice Parties"):

<p><u>Counsel for the Debtors:</u> Kirkland & Ellis LLP c/o James H.M. Sprayregen, P.C. and James W. Kapp III, Esq. 200 East Randolph Drive Chicago, Illinois 60601 Telephone: (312) 861-2000 Facsimile: (312) 861-2200</p> <p>and</p> <p>Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. c/o Laura Davis Jones, Esq. and Curtis A. Hehn, Esq. 919 North Market Street, 16th Floor P.O. Box 8705 Wilmington, Delaware 19899-8705 (Courier 19801) Telephone: (302) 652-4100 Facsimile: (302) 652-4400</p>	<p><u>Counsel for the Creditors Committee:</u> Stroock & Stroock & Lavan LLP c/o Gerald C. Bender, Esq. and Karyn B. Zeldman, Esq. 180 Maiden Lane New York, New York 10038-4982 Telephone: (212) 806-5400 Facsimile: (212) 806-6006</p> <p>and</p> <p>Ashby & Geddes c/o William P. Bowden, Esq. 222 Delaware Avenue P.O. Box 1150 Wilmington, Delaware 19899 Telephone: (302) 654-1888 Facsimile: (302) 654-2067</p>
<p><u>United States Trustee:</u> Office of the United States Trustee c/o David L. Buchbinder, Esq. J. Caleb Boggs Federal Building 844 N. King Street Suite 2313 Lock Box 35 Wilmington, Delaware 19801</p>	<p><u>Counsel for the Prepetition Lenders:</u> Shearman & Sterling LLP c/o Fredric Sosnick, Esq. 599 Lexington Avenue New York, New York 10022-6069 Telephone: (212) 848-4000 Facsimile: (212) 848-7179</p>

ORDERED that, with regard to any timely-filed objection(s) to the Plan, the Debtors shall be allowed to file an omnibus reply on or before the date which is three (3) business days before the Confirmation Hearing; and it is further

ORDERED that the Court shall consider only written objections to the Plan that are timely filed and served by the Plan Objection Deadline; and it is further

ORDERED that all objections to the Plan must (a) state with particularity the legal and factual grounds for such objection, (b) provide, where applicable, the specific text that the objecting party believes to be appropriate to insert into the Plan and (c) describe the nature and amount of the objector's claim; and it is further

ORDERED that objections to the Plan not timely filed and served in accordance with the provisions of this Order shall not be heard and shall be overruled; and it is further

ORDERED that the date of the entry of this Order shall be the record date for purposes of determining which creditors are entitled to vote on the Plan (the "Voting Record Date"); and it is further

ORDERED that the Voting Record Date shall apply to (i) all holders of claims and creditors and (ii) all trustees, agents and Nominees that will collect votes of beneficial holders of claims; and it is further

ORDERED that the deadline for casting a Ballot or Master Ballot to accept or reject the Plan (the "Voting Deadline") shall be March 7, 2005; and it is further

ORDERED that all Ballots and Master Ballots accepting or rejecting the Plan must be received as appropriate by Bankruptcy Management Corporation (the "Solicitation Agent") by 4:00 p.m., prevailing eastern time, on the Voting Deadline at the following addresses:

If by U.S. Mail:
Bankruptcy Management Corporation
Attn. DESA Solicitation Agent
P.O. Box 926
El Segundo, CA 90245-0926

If by hand or courier other than U.S. Mail:
Bankruptcy Management Corporation
Attn. DESA Solicitation Agent
1330 East Franklin Avenue
El Segundo, CA 90245

and it is further

ORDERED that the Debtors or the Court may extend the period during which votes will be accepted by the Debtors, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended; and it is further

ORDERED that the deadline for holders of claims who are entitled to vote on the Plan to affirmatively reject participation in the mutual releases described in Articles X.F.1 and X.F.2 of the Plan (the "Mutual Releases") on their respective Ballots shall be 4:00 p.m., prevailing eastern time, on March 7, 2005; and it is further

ORDERED that if a holder of a claim who is entitled to vote on the Plan (i) does not return a Ballot or (ii) votes to reject the Plan on its Ballot, such creditor will be deemed to have rejected participation in the Mutual Releases; and it is further

ORDERED that the form of the Ballots, substantially in the forms attached hereto as Exhibit A, are hereby approved; and it is further

ORDERED that the form of the Master Ballot, substantially in the form attached hereto as Exhibit B, is hereby approved; and it is further

ORDERED that all votes to accept or reject the Plan must be cast by using the appropriate Ballot or Master Ballot; and it is further

ORDERED that the voting instructions, substantially in the forms respectively listed in Appendix A to the Ballots attached hereto as Exhibit A and Appendix A to the Master Ballot attached hereto as Exhibit B, are hereby approved; and it is further

ORDERED that the Solicitation Procedures are hereby approved; provided, however, the Debtors reserve the right to modify, amend or supplement the Solicitation Procedures subject to Court approval; and it is further

ORDERED that, within seven (7) business days after the entry of this Order, the Debtors shall distribute the following solicitation materials (the "Solicitation Package") to (i) all known holders of claims against the Debtors as of the Voting Record Date who are entitled to vote on the Plan (Classes 1, 2, 4 and 5), (ii) the Office of the United States Trustee for the District of Delaware and (iii) the Securities and Exchange Commission:

- (a) the Disclosure Statement (including exhibits);
- (b) the Plan (as an exhibit to the Disclosure Statement) or supplements thereto, if any;
- (c) the appropriate Ballot(s), Master Ballot(s) and voting instructions;

- (d) the Confirmation Hearing Notice;
- (e) any supplemental solicitation materials the Debtors may file with the Court;
- (f) a pre-addressed return envelope, if applicable, at the Debtors' sole discretion; and
- (g) any other materials ordered by the Court to be included as part of the Solicitation Package; and it is further

ORDERED that creditors who have more than one claim shall receive only one Solicitation Package and one Ballot for each claim; and it is further

ORDERED that the following rules shall be used to determine the claim amount associated with a creditor's vote:

- (a) If the Debtors do not object to a claim, the claim amount for voting purposes shall be the claim amount contained on a timely filed proof of claim or, if no proof of claim was filed, the non-contingent, liquidated and undisputed claim amount listed in the Debtors' Schedules of Assets and Liabilities (the "Schedules");
- (b) Ballots cast by creditors whose claims are not listed on the Schedules, but who timely file proofs of claim in unliquidated or unknown amounts that are not the subject of an objection filed before the commencement of the hearing to consider the confirmation of the Plan (the "Confirmation Hearing"), will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as ballots for claims in the amount of \$1.00 solely for the purpose of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code;
- (c) If the Debtors object to a claim, such creditor's Ballot shall not be counted in accordance with Bankruptcy Rule 3018(a), unless temporarily allowed by the Court for voting purposes, after notice and a hearing;
- (d) If a creditor casts a Ballot and (i) is listed on the Schedules as holding a claim that is contingent, unliquidated or disputed and (ii) has not filed a proof of claim, such creditor's Ballot shall not be counted in accordance with Bankruptcy Rule 3018(a), unless temporarily allowed by the Court for voting purposes, after notice and a hearing;

- (e) Creditors seeking temporary allowance of their claims for voting purposes must serve on the Debtors and file with the Court a motion for an order pursuant to Bankruptcy Rule 3018(a) (a "Rule 3018(a) Motion") seeking temporary allowance for voting purposes. Such Rule 3018(a) Motion, with evidence in support thereof, must be filed by the Plan Objection Deadline. It shall be the responsibility of each creditor filing a Rule 3018(a) Motion to schedule a hearing on such Rule 3018(a) Motion to occur not less than ten (10) days prior to the Confirmation Hearing;
- (f) Unless otherwise provided herein, a claim will be deemed temporarily allowed for voting purposes in an amount equal to (i) if no proof of claim was filed, the amount of such claim as set forth in the Debtors' Schedules as not contingent, unliquidated or disputed or (ii) if a proof of claim was filed, the amount of such claim as set forth in such filed proof of claim; and
- (g) In the case of publicly traded securities, the principal amount or number of shares according to the records of the transfer agent for the particular series of securities, including, in the case of The Depository Trust Company ("DTC"), a further breakdown of the individual Nominee holders which are DTC participants, as of the Voting Record Date, shall be the claim or interest amount. In no event shall a Nominee holder be permitted to vote in excess of its position in DTC as of the Voting Record Date

and it is further

ORDERED that creditors seeking temporary allowance of their claims for voting purposes must serve on the Debtors and file with the Court a Rule 3018(a) Motion; and it is further

ORDERED that it shall be the responsibility of each party who files a Rule 3018(a) Motion to (a) file such Rule 3018(a) Motion with evidence in support thereof by the Plan Objection Deadline, (b) schedule a hearing on such Rule 3018(a) Motion (the "Rule 3018(a) Hearing"), and (c) schedule the Rule 3018(a) Hearing on a date that is not less than ten (10) days prior to the Confirmation Hearing; and it is further

ORDERED that to ensure that its vote is counted, each holder of a claim must:

- (a) Complete a Ballot;

- (b) Indicate the holder's decision either to accept or reject the Plan in the boxes provided in the respective Ballot; and
- (c) Sign and return the Ballot or Master Ballot, as appropriate, so that it is received by the Solicitation Agent, at the addresses set forth above, on or before the Voting Deadline; and it is further

ORDERED that the following general voting procedures and standard assumptions be used in tabulating ballots:

- (a) Except to the extent the Debtors otherwise determine, or as permitted by the Court, Ballots and Master Ballots received after the Voting Deadline will not be accepted or counted by the Debtors in connection with the Debtors' request for confirmation of the Plan;
- (b) Creditors shall not split their vote within a claim; thus, each creditor shall be deemed to have voted the full amount of its claims either to accept or reject the Plan;
- (c) Creditors holding claims in more than one Class under the Plan may receive more than one Ballot coded for each different Class; however, each Ballot votes only those claims indicated on that Ballot;
- (d) The method of delivery of Ballots and Master Ballots to be sent to the Solicitation Agent is at the election and risk of each holder of a claim, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot or Master Ballot is actually received by the Solicitation Agent;
- (e) Delivery of the original, executed Ballot or Master Ballot to the Solicitation Agent on or before the Voting Deadline is required. Delivery of a Ballot or Master Ballot by facsimile, email or any other electronic means will not be accepted;
- (f) No Ballot or Master Ballot sent to the Debtors, any indenture trustee or agent, or the Debtors' financial or legal advisors shall be accepted or counted;
- (g) The Debtors expressly reserve the right to amend at any time and from time to time the terms of the Plan (subject to compliance with section 1127 of the Bankruptcy Code and the terms of the Plan regarding modification). If the Debtors make material changes in the terms of the Plan or the Debtors waive a material condition, the Debtors will disseminate additional solicitation materials and will

extend the solicitation, in each case to the extent directed by the Court;

- (h) If multiple Ballots or Master Ballots are received from or on behalf of an individual holder of a claim with respect to the same claims prior to the Voting Deadline, the last ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior ballot;
- (i) If multiple Ballots or Master Ballots are received from or on behalf of an individual holder of a claim with respect to the same claims prior to the Voting Deadline, the decision with respect to the Mutual Releases reflected on the last valid ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior ballot;
- (j) If a Ballot or Master Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person shall be required to indicate such capacity when signing and, unless otherwise determined by the Debtors, must submit proper evidence satisfactory to the Debtors to so act on behalf of a beneficial interest holder;
- (k) The Debtors, in their sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot or Master Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein, the Debtors may, in their sole discretion, reject such defective ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
- (l) Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots or Master Ballots will be determined by the Debtors in their sole discretion which determination shall be final and binding;
- (m) If a designation is requested under section 1126(e) of the Bankruptcy Code, any vote to accept or reject the Plan cast with respect to such claim or interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
- (n) Any holder of impaired claims who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);

- (o) The Debtors' interpretation of the terms and conditions of the Plan and Disclosure Statement shall be final and binding on all parties, unless otherwise directed by the Court;
- (p) Subject to any contrary order of the Court, the Debtors reserve the absolute right to reject any and all Ballots and Master Ballots not proper in form, the acceptance of which would, in the opinion of the Debtors or their counsel, not be in accordance with the provisions of the Bankruptcy Code;
- (q) The Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot or Master Ballot, unless otherwise directed by the Court;
- (r) Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots or Master Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots or Master Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots and Master Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
- (s) Neither the Debtors, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots or Master Ballots, nor will any of them incur any liabilities for failure to provide such notification;
- (t) No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
- (u) The Ballot or Master Ballot is not a letter of transmittal and may not be used for any purpose other than to (i) vote to accept or reject the Plan and (ii) elect not to participate in the Mutual Releases pursuant to the Plan; and
- (v) The Ballot or Master Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a claim

and it is further

ORDERED that the following procedures, as well as the aforementioned procedures, apply to holders of claims derived from or based on publicly traded securities (collectively, the "Beneficial Holder Claims"):

- (a) The Debtors shall distribute a Ballot to each record holder of the Beneficial Holder Claims as of the Voting Record Date;
- (b) The Debtors shall also distribute an appropriate number of copies of Ballots to each bank or brokerage firm (or the agent or other Nominee therefor) identified by the Solicitation Agent as an entity through which beneficial owners hold the Beneficial Holder Claims. Each Nominee will be requested to immediately distribute the Ballots to all beneficial holders for which it holds the Beneficial Holder Claims;
- (c) Each Nominee must summarize on a Master Ballot the individual votes of its respective individual beneficial holders from the Ballots of such beneficial holders and return such Master Ballot to the Solicitation Agent;
- (d) A Nominee may also pre-validate a Ballot for holders of the Beneficial Holder Claims by completing all the information to be entered on the Ballot (the "Pre-Validated Ballot") and forwarding the Pre-Validated Ballot to the beneficial holder for voting;
- (e) Any beneficial holder of the Beneficial Holder Claims holding as a record holder in its own name, shall vote on the Plan by completing and signing the Ballot and returning it to the Solicitation Agent;
- (f) Any beneficial holder of the Beneficial Holder Claims who holds in "street name" through a Nominee shall vote on the Plan either (i) if the Nominee has provided a Pre-Validated Ballot, by completing and signing the Pre-Validated Ballot and returning it directly to the Solicitation Agent on or before the Voting Deadline or (ii) by promptly completing and signing a Ballot and returning it to the Nominee in sufficient time to allow the Nominee to process the Ballot and return a Master Ballot to the Solicitation Agent on or before the Voting Deadline;
- (g) Any Ballot returned to a Nominee by a beneficial holder will not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and timely delivers to the Solicitation Agent a Master Ballot that reflects the vote of such beneficial holder;

- (h) If a beneficial holder holds the Beneficial Holder Claims through more than one Nominee, such beneficial holder should execute a separate Ballot for each block of the Beneficial Holder Claims that it holds through any Nominee and (unless the ballot is a Pre-Validated Ballot) return the Ballot to the respective Nominee that holds the Beneficial Holder Claims; and
- (i) If a beneficial holder holds a portion of its Beneficial Holder Claims through a Nominee and another portion directly or in its own name as the record holder, such beneficial holder should follow the procedures described herein with respect to voting each such portion separately;

and it is further

ORDERED that the Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit C, is hereby approved; and it is further

ORDERED that the Debtors shall distribute the Confirmation Hearing Notice within seven (7) business days after entry of this Order to (i) the U.S. Trustee, (ii) counsel to the prepetition and postpetition lenders, (iii) counsel to the Official Committee of Unsecured Creditors, (iv) the Securities and Exchange Commission, (v) all creditors on the list of creditors maintained by the Debtors' Solicitation Agent in these Chapter 11 Cases and (vi) those parties who requested notice pursuant to Bankruptcy Rule 2002; and it is further

ORDERED that, within seven (7) business days after entry of this Order, the Debtors shall publish the Confirmation Hearing Notice one time in the national edition of The Wall Street Journal; and it is further

ORDERED that, consistent with section 1126 of the Bankruptcy Code and Bankruptcy Rule 3017(d), Solicitation Packages shall not be distributed to (i) holders of claims against the Debtors that are placed in a class under the Plan that is deemed to accept or reject the Plan under section 1126 of the Bankruptcy Code (Classes 3, 6 and 7), (ii) those persons requesting notice pursuant to Bankruptcy Rule 2002 who are not entitled to vote to accept or

reject the Plan or (iii) those persons listed on the master creditor matrix who are not entitled to vote to accept or reject the Plan (collectively, the "Non-Voting Parties"), but such Non-Voting Parties shall receive notice of the Plan, including instructions on how to obtain copies of the Solicitation Package, if so desired; and it is further


ORDERED that the Non-Voting Notices, substantially in the forms attached hereto as Exhibit D, are hereby approved; and it is further

ORDERED that the Debtors are excused from re-mailing Solicitation Packages or Notices, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtors' records as of the Voting Record Date; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions and execute such other documents as may be necessary to implement the relief granted herein; and it is further

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

Dated: Jan. 27, 2005



Honorable Walter Shapero
United States Bankruptcy Judge