

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

In re:)	
)	
JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i>,)	Case No. 16-21142
)	
Debtors.)	
)	

**MOTION FOR APPROVAL OF INTENDED COMPROMISE WITH THE UNITED
STATES DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS PURSUANT TO FED. R. BANKR. P. 9019**

NOW COME John Q. Hammons Hotels Management, LLC ("JQHBM"), one of the above-captioned debtors (collectively, the "Debtors"), and hereby requests the entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement and compromise between JQHBM and the United States Department of Labor Office of Federal Contract Compliance Programs (the "OFFCP"). In support of this motion, JQHBM represents as follows:

BACKGROUND

1. On June 26, 2016 and July 5, 2016, the Debtors commenced chapter 11 bankruptcy cases by filing their bankruptcy petitions in this Court. For purposes of this Motion, all the Debtors shall refer to June 26, 2016 as the "Commencement Date."

2. Since the Commencement Date, the Debtors have continued in possession of their property and control of their operations pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction of this motion. 28 U.S.C. § 1334(b). This is a core proceeding in that this motion affects the administration of these bankruptcy estates. 28 U.S.C. §§ 157(b)(1) & (2)(A). Venue is proper in this Court. 28 U.S.C. § 1409(a).

4. Prior to the Commencement Date, JQHBM managed a World Golf Village Resort

Hotel located in St. Augustine, Florida (the "World Golf Hotel"). At all relevant times, Atrium Hospitality, LP ("Atrium") owned the World Golf Hotel.

5. JQHHM terminated its management of the World Golf Hotel in October 2015.

6. On September 29, 2015, the OFFCP sent a Notice of Violation to JQHHM and Atrium, alleging violations of certain executive orders and regulations related to the World Golf Hotel's hiring practices.

7. JQHHM has denied these allegations; however, in an effort to avoid litigation and/or other further action from the OFFCP, JQHHM entered into settlement discussions with the OFFCP shortly after September 29, 2015.

8. As a result of those discussions, on January 27, 2017, JQHHM entered into a Conciliation Agreement with the OFFCP (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.¹

9. The Settlement Agreement contains the following material terms:²

a. The OFFCP agrees not to bring any administrative or judicial proceeding against JQHHM and Atrium;

b. JQHHM and Atrium agree not to engage in any discriminatory hiring practices with respect to positions at the World Golf Hotel;

c. JQHHM and Atrium must notify approximately 75 class members of the potential settlement and give each member 60 days to opt in to the settlement;

d. Atrium – not JQHHM – will pay \$47,000.00, which will be distributed in

¹ Two of the attachments to the Settlement Agreement have been redacted to remove the names of the individuals the OFFCP alleges were subject to discriminatory hiring practices. The purpose of the redactions is to protect the privacy of those individuals.

² This summary of the Settlement Agreement is for information and convenience purposes. To the extent there are any differences between the summary set forth in this Motion and the specific terms of the Settlement Agreement, the Settlement Agreement shall control.

equal shares to participating class members;

e. As positions become available at the World Golf Hotel, Atrium will use its best efforts to offer positions to the affected class members; and

f. Atrium will provide periodic reports to the OFFCP on its progress in complying with the Settlement Agreement.

RELIEF REQUESTED

10. JQHHM requests that the Court approve the compromise set forth above in accordance with Fed. R. Bankr. P. 9019, which provides in relevant part:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

11. Fed. R. Bankr P. 9019 vests the Bankruptcy Court with broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate.

12. A bankruptcy court's decision to approve a settlement must be an informed one based upon objective evaluation of developed facts. *Reiss v. Hagmann*, 881 F.2d. 890 (10th Cir. 1989). In reviewing a proposed settlement, the bankruptcy court considers the likelihood of success and the expected delay caused by the litigation. *Id.* Compromises are favored in bankruptcy. *In re Southern Medical Arts Cos., Inc.*, 343 B.R. 250, 256 (B.A.P. 10th Cir. 2006). In *Southern Medical Arts*, the 10th Circuit BAP established the following four-prong test for evaluating compromises: "(1) the chance of success on the litigation on the merits; (2) possible problems in collecting the judgment; (3) the expense and complexity of the litigation; and (4) the interest of the creditors." *Id.*; see also *In re Kopexa Realty Venture Co.*, 213 B.R. 1020 (B.A.P. 10th Cir. 1997).

13. "The purpose behind compromises is to allow the trustee and the creditors to avoid

the expenses and burdens associated with litigating sharply contested and dubious claims." *Southern Medical Arts*, 343 B.R. at 255. The decision of whether to approve a proposed settlement is within the sound discretion of the Bankruptcy Court. *In re Flight Transportation Corporation Securities Litigation*, 730 F.2d 1128, 1136 (8th Cir. 1984); *In re Revelle*, 259 B.R. 905 (Bankr. W.D. Mo. 2001).

14. In determining whether to approve a proposed settlement, the Court does not substitute its judgment for that of the debtor, but instead should canvas the issues to determine that the settlement does not fall below the lowest point in the range of reasonableness. *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988). The standard for approval of a compromise is whether the proposed compromise is "fair and equitable" and in the best interests of the estate. *Id.* The debtor's judgment in recommending a settlement should not be substituted as long as the settlement is reasonable. *Id.*; *see also In re Texas Extrusion Corp.*, 836 F.2d 217 (5th Cir. 1988).

15. JQHBM believes that the settlement set forth above is fair and equitable, in the best interest of creditors and the bankruptcy estate, and is an appropriate exercise of JQHBM's business judgment, after due consideration of alternative courses of action. The proposed compromise resolves substantial issues among the parties and avoids the risks and costs inherent in litigation. Most importantly, the Settlement Agreement resolves what could be substantial claims against the Debtors' estates without requiring payment by JQHBM.

WHEREFORE, JQHBM requests that, pursuant Bankruptcy Rule 9019, the Court enter an order (a) approving the proposed Settlement Agreement between JQHBM and the OFFCP; and (b) granting such other and further relief as is just and proper.

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