

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA**

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In re

THOUSAND ADVENTURES INC.,

Case No. 97-49385-DJ

Chapter 11

Debtor.

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**RENEWED MOTION FOR ORDER APPROVING SETTLEMENT IN
COMPROMISE OF CLAIMS BY AND AMONG PRINCETON CAPITAL
FINANCE COMPANY, THE TRUSTEE AND MEMBER CLASS**

The application ("Application") of Eric W. Lam, in his capacity as Chapter 7 Trustee (the "Trustee") of Thousand Adventures, Inc. ("TAI" or the "Debtor"), and not individually, through his undersigned counsel, for his motion for approval of the proposed Mutual Settlement Agreement (the "Agreement"), attached hereto as exhibit 1, by and between Princeton Capital Finance Company LLC ("PCFC"), the Trustee and Tony Ross, as class representative for the class of Thousand Adventures members (the "Member Class"), respectfully represents as follows:

Overview

1. This application represents a resolution of the claims the Trustee and Member Class have against PCFC, a secured creditor alleging significant claims against the Debtor's estate and liens and security interests in the assets of the Debtor and any claims PCFC may have against the Trustee and Member Class, as well as an integral precursor to the Trustee's proposed mechanism for providing a distribution to the consumer members of the Debtor's campground organization. Under the framework negotiated by and among the Trustee, the Member Class and PCFC, PCFC has agreed to the immediate payment of funds totally \$200,000 and the assignment to the Trustee of PCFC's liens, mortgages and interests in certain valuable property interests referred to as the Falconhead Property Interests, in exchange for a release by the Trustee and the Member Class of all claims held against PCFC. In connection with this settlement, the Trustee also seeks allowance of a consumer deposit priority to the Member Class under Bankruptcy Code Section 507(a)(6) as not only a necessary and integral component to the resolution of issues by and among the Trustee, the Member Class and PCFC, but also an appropriate classification under applicable statutory and case law authority.

Pre-Petition Arrangements

2. The Debtor is the parent corporation of a network of approximately twenty (20) wholly owned subsidiaries, which owned and operated approximately sixty (60) campgrounds located throughout the United States. The Debtor sold memberships in the campground network to consumers, which entitled the consumer members to use the campgrounds in the resort system.
3. The sale of memberships to consumers generally involved the execution by the consumer of a retail installment contract financing the membership purchase price. These retail installment contracts, which would have been originally executed in favor of the individual TAI-state entities (e.g. Thousand Adventures of Florida, Inc., Thousand Adventures of Kansas, Inc.). were assigned to the Debtor, as parent entity. The Debtor then sold or hypothecated these member contracts to various lenders, including PCFC, in order to obtain capital to fund operations. The capital which was advanced to the Debtor in exchange for the sale and hypothecation of the retail installment contracts (the "Member Paper") was used by the Debtor as parent to fund the operations of the various subsidiaries which owned and operated the individual campgrounds.
4. In the case of PCFC, funds were advanced to the Debtor and its subsidiaries not only in exchange for the sale and hypothecation of the Member Paper, but also on a term loan basis, secured by first or second mortgage interests in various of the real property and other assets comprising the campground network. On account of these loans and advances, PCFC asserts that the Debtor was indebted to PCFC for \$24,612,510, exclusive of interest and fees accruing prior to the petition filing date and other amounts properly chargeable to the Debtor, under the various loan and security agreements. PCFC has filed a proof of claim asserting this claim in this proceeding.

The Bankruptcy Proceedings

5. Commencing in the fall of 1996, various of the TAI subsidiaries were the subject of Chapter 11 or Chapter 7 proceedings in the various states in which the assets of these subsidiaries were located, including Florida, Ohio and Kansas. In these various proceedings, PCFC has been able to resolve issues with respect to its claim through stipulation and agreement with the relevant Debtor or the Chapter 7 trustee.
6. The Debtor was the subject of an involuntary Chapter 7 filing, which, by order for relief entered by this Court on February 4, 1998, was consolidated with a previously transferred voluntary Chapter 11 case filed in the United States Bankruptcy Court for the Southern District of Texas.

The Class Action

7. On July 10, 1997, the Iowa District Court for Lee County (the "State Court") certified the action of Tony Ross against the Debtor as a class action and Mr. Ross was certified as the class representative. (Lee

County, Case No. LALA003946) (the "Class Action"). The Trustee has acknowledged the Member Class and has dealt with Mr. Ross' legal counsel on a class basis. As set forth more fully herein, Mr. Ross has also asserted claims against Travel America, Inc. in Adversary Proceedings 99-99177 where a Motion to Certify the Class is presently pending. While PCFC is not specifically named as a defendant in the Class Action, Mr. Ross on behalf of the Member Class, through his counsel, has repeatedly indicated a basis for joining PCFC as a party therein. PCFC vigorously disputes that any such basis exists or is otherwise appropriate.

Litigation

8. On September 10, 1999, the Trustee commenced two actions naming *inter alia*, PCFC as defendant. Adversary Proceeding No. 99-99177 (the "Travel America Action") asserts claims against Travel America, Inc., Raymond Novelli and various assignees of the Member Paper, including PCFC (a) under theories of fraudulent conveyance, avoiding the transfer to Travel America, allegedly for the benefit of the various named lenders, of the Debtor's membership lists, rights in maintenance, dues and various other intangible interest (the "Transfer Avoidance Count"); (b) under a theory of breach of contract, against PCFC, based on PCFC's allegedly failure to honor certain alleged commitments to lend additional funds to the Debtor (the "Breach of Contract Count"); and (c) under a theory of equitable subordination, against the named lenders, based on allegedly inequitable conduct (the "Equitable Subordination Count").¹
9. Also on September 10, 1999, the Trustee commenced Adversary Proceeding No. 99-99178 (the "Falconhead Quiet Title Action") naming *inter alia* Falconhead Development Corporation, RV Holdings Corporation, Travel America, Inc, and various other parties in the property chain of title, including PCFC as the holder of a first mortgage, with respect to a certain parcel of real property located in Love County, Oklahoma commonly referred to as "Falconhead Development." The action seeks *inter alia* to (a) establish Falconhead Development as property of the Debtor's estate; (b) quiet title with respect to the various liens and claims against Falconhead Development; (c) reform PCFC's existing first mortgage on Falconhead Development on the ground of mistake; and (d) authorize the Trustee to sell Falconhead Development.
10. PCFC filed answers which denied liability and requested dismissal of the complaint. The Bankruptcy Court granted the Motion of the Member Class filed on February 24, 2000 for Leave to Intervene in the Travel America Adversary Proceeding, allegedly certain related or derivative causes of actions. Certain discovery and motion practice has taken place to date, which has been costly and time consuming for the Trustee, the Member Class and PCFC.

¹ The Complaint also alleges claims against Travel America under theories of conversion and trademark infringement, which are not addressed in this application in that they are not being settled or compromised as part of the proposed settlement agreement.

The Proposed Settlement With PCFC

11. The Trustee, on behalf of the Debtor's estate, the Member Class and PCFC have agreed, subject to this Court's approval and approval by the State Court as the Court in which the Member Class Claims are pending, to resolve all outstanding issues and disputes that exist between Trustee and PCFC and Members and PCFC, including all pending litigation with regard to such parties.

a. Scope of Releases

12. As indicated, under the terms of the Agreement, PCFC has agreed to the immediate payment of \$200,000 (the "Settlement Payment") to the Debtor's estate in exchange for general releases of PCFC and its various affiliates, agents, representatives and lenders received from the Trustee on behalf of the Debtor's estate and any debtor or non-debtor subsidiary of the Debtor. While the release contemplated by the Agreement is broad in scope and nature, the Trustee believes that this Court is fully authorized to grant the relief requested. To the extent a release is being granted by any non-debtor subsidiary, the Debtor is the parent corporation and owner of 100% of the equity of the various TAI subsidiaries. To the extent any such entities are not the subject of independent bankruptcy proceedings, the Trustee of the Debtor (as the holder of the equity of such subsidiaries) is authorized to act on their respective behalf and will release any claims held by those subsidiaries against the PCFC Releasees as more fully set out in Exhibit "B." To the extent such subsidiaries are the subject of independent bankruptcy proceedings, the Trustee has sent notice to such subsidiaries (or the trustees thereof) so as to provide such subsidiaries with the forum and ability to object to the release contemplated by the Agreement of potential claims held by such subsidiaries against PCFC.²

13. In addition, the Agreement contemplates that all claims held by Tony Ross as representative and on behalf of the members of the Member Class will be settled and released by virtue of the Agreement, which settlement and release was to be the subject of separate approval by the State Court having jurisdiction over the Member Class Action. On December 1, 2000, Mr. Ross filed a Motion for Conditional approval of the class settlement with PCFC, subject to notice to the members with an opportunity for members to opt out. The settlement with PCFC permitted PCFC to rescind the settlement if more than fifty (50) members opted out. On December 1, 2000, the court granted conditional approval of the settlement and prescribed notice to the members of the Member Class. A fairness hearing was scheduled for December 22, 2000, at which time members could appear in person or submit written objections to the settlement. No members appeared at the fairness hearing to object and no written objections were received. Less than five members opted out of the settlement, thus eliminating PCFC's rescission rights due to opt outs. After the fairness hearing, the

² In connection with the original motion for the requested relief filed in December 2000, only the Kansas Chapter 7 Trustee raised any issues with respect to the release. PCFC has since entered into independent settlement with the Kansas Trustee, which application is or will be presently pending approval in the Kansas Bankruptcy Court.

Court issued an order for final approval of the PCFC settlement. The Court also entered a final order certifying the Member Class with regard to PCFC and certifying the class representative and class counsel. Although certain parties have removed the State Court matter to the United States District Court for the Southern District of Iowa and have sought to invalidate State Court approval, no appeal has been taken from the approval order and the Trustee and Mr. Ross believe that the State Court approval remains valid at this time.

b. Real Property Interests

14. In addition to the Settlement Payment, PCFC has agreed to assign to the Trustee all of PCFC's liens, mortgages and interests in certain properties of the Debtor in which PCFC holds a mortgage referred to as the Red River Ranch, Falconhead Properties or other properties owned by Falconhead Development Corporation (all interests collectively, the "Falconhead Property Interests"). The Falconhead Property Interests are generally described as Phase I, Phase II and Phase III. Falconhead Development Corporation's ownership in Phase I and II consists mainly of unsold and undeveloped building lots and some common areas and structures in a subdivision located on the northern part of the property. Phase III consists of a tract of land of approximately 1100 contiguous acres on the southern part of the Falconhead property.
15. Under the Agreement, the Trustee will sell Phase III and from the Net Proceeds generated from such sale, (a) the Trustee and Members will receive the first \$1,250,000 (the "First Net Proceeds"), (b) PCFC shall receive the next \$750,000, and (c) the Trustee and Members shall receive the balance. In addition, the Trustee will be entitled to use Phase I and Phase II lots or properties to settle any claims, liens, easements or other defects in title or may otherwise dispose of Phase I and II, including, but not limited to, assigning his interest to the Member Class. From the First Net Proceeds, the Members shall receive the first \$180,000, and the Trustee and the Members shall share equally in the remaining First Net Proceeds until all administrative expenses have been paid in full.
16. As additional consideration, PCFC has agreed as part of the Agreement (a) to release and turn over all retail installment contracts held by PCFC or any of its affiliates, assigns, or successors; and (b) to reduce its \$24 million proof of claim, filed as a partially secured and partially unsecured claim, to a \$10 million general unsecured claim.

c. Consumer Priority

17. As a final integral element of the Agreement, the claims of the Member Class are to be allowed a consumer deposit priority under Section 507(a)(6). The Trustee believes that ample authority exists for the grant of the Section 507(a)(6) priority to the consumers constituting the Member Class. First, precedent exists in the TAI-Florida proceeding for the grant of a consumer priority to the precise types of consumers constituting

the member of the Member Class. Second, the legislative history behind Section 507(a)(6) indicates that this priority is to be broadly interpreted. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 188 (1977); Collier on Bankruptcy ¶507.08 at 507-48. Finally, ample case law exist to support the grant of such priority under these circumstances. *See In re Tart's T.V., Furniture and Appliance Co.*, 165 B.R. 171(Bankr. E.D.N.C. 1994); *In re Terra Distributing*, 148 B.R. 598 (Bankr. D. Idaho, 1992).³ Accordingly, the Trustee believes that this Court has ample authority to grant the consumer priority requested herein. Finally and as a practical matter, without the grant of Section 507(a)(6) priority, the Member Class could and would not agree to any feasible settlement terms and the Trustee would, accordingly, be unable to deliver the global releases which were critical to any payment of consideration by PCFC.

18. The grant of a consumer priority to the Member Class only comes at the expense of the general unsecured creditors to the extent it can be demonstrated that general unsecured creditors would otherwise be entitled to distribution. It is respectfully submitted that while this settlement as proposed will not provide any funds for general, unsecured creditors of the Debtor, even a full litigation recovery from PCFC would not do so in that in addition to the member priority claims under Section 507(a)(6), the Internal Revenue Service appears to have a claim in excess of \$5 million, entitled to priority under Section 507(a)(8). Therefore, it seems unlikely that any claims, other than those entitled to priority, could ever be paid in this case.

Cause Exists for this Court to Approve the Proposed Settlement

19. A proposed settlement subject to bankruptcy court review pursuant to Bankruptcy Rule 9019(a) should be approved unless the settlement “falls below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert. denied*, 464 U.S. 822 (1983). In making this determination, the bankruptcy court should “canvass the issues”, *Id.*, to consider factors such as (a) the probability of success in litigation, with due consideration for the uncertainty in fact and law, compared to the benefits offered by the settlement, (b) the prospect of complex and protracted litigation if the settlement is not approved, and (c) the interests of the creditors of the estate. *See TMT Trailer Ferry v. Anderson*, 380 U.S. 414, 424-25 (1968); *Nellis v. Shugrue*, 165 B.R. 115 (S.D.N.Y. 1994); *In re Cellular Information Systems, Inc.*, 171 B.R. 926, 947-48 (Bankr. S.D.N.Y. 1994). The Trustee respectfully submits that good

³ Cases to the contra can be distinguished. For example, *Heritage Village Church and Missionary Fellowship, Inc.*, 137 BR 888 (Bankruptcy D.S.C. 1991) involved Jim Bakker’s efforts to raise money to build a hotel complex. In exchange for \$1,000 donation, donors were told that they would have access to this hotel for their lifetime. The court rejected the grant of priority status under §507(a)(6) on a variety of bases, including (a) the amounts paid were not for the purchase of goods or services, but rather were “gifts” or “investments”; (b) a large number of members received value from their gift in excess of the amount paid; (c) the donors were not promised any specific benefits; (d) the court did not believe a deposit relationship existed because the payments made were complete payments and not partial payments; and (e) the donors were not required to make any future payments. All of these factors are distinguishable in the instant case.

and sufficient cause exists for this Court to approve the Agreement, pursuant to Bankruptcy Rule 9019(a), on the grounds that the Agreement is fair and equitable, reasonable and in the best interests of the Debtor's estate and creditors, and well within the necessary "range of reasonableness."

20. As a result of the settlement, the bankruptcy estate will receive, immediately, an infusion of cash that will pay a portion of the accumulated administrative expenses. The settlement, when fully implemented, will also provide some funds for repayment to Member priorities and will allow the estate to continue efforts to recover against other parties and to recover and liquidate assets of the estate. Although the amount of money that may be received by Members from this settlement is not large, it would represent the first such recovery for Members in this case.
21. As indicated, in addition to the immediate cash being received as part of this Agreement, the Debtor's estate will receive substantial funds on the sale of the Falconhead Property Interests which is, currently, subject to the first mortgage lien of PCFC. This sale, when accomplished, will "clean up" title to property which is, currently, virtually unsaleable because of all the complicated, competing claims against it. Although the property has been valued, in the past, for campground purposes, at more than \$5 million, the best offer the Trustee has been able to obtain in over a year of concerted effort, has been less than that amount.
22. While it would be imprudent for the Trustee to set forth in explicit detail in this pleading what he believes to be the strengths and weakness of the estate's claims against PCFC, it is appropriate to make the following general comments. To the extent the Travel America Adversary Proceeding asserts claims against PCFC based under the Transfer Avoidance Count, it is unclear without significant and costly discovery to what extent PCFC was a beneficial transferee thereof, and therefore, to what extent damages could be recovered against PCFC. To the extent damages are alleged under the Equitable Subordination Count, the Trustee has received *de facto*, the relief requested by the reduction by PCFC of its claim by approximately 60% and PCFC's agreement to subordinate to the grant of a consumer priority to the Member Class. To the extent that the Trustee seeks recovery under the Breach of Contract Count, the Trustee is aware that PCFC vigorously disputes any such contractual commitment and in light thereof and the complexities in any proof thereof, any recovery under such count would be costly and highly contested. With respect to Falconhead Quiet Title Action, the Trustee has effectively achieved vis-a-vis the Agreement, a large measure of the relief he was requesting as to PCFC, which was to establish and quantify the extent of PCFC's claims against the Falconhead Property Interests so as to facilitate a sale thereof.
23. In sum, it is the judgment of the Trustee that this settlement is in the best interest of the bankruptcy estate, not only because it provides both immediate and near term funds which are needed by the estate for the prosecution of other pending actions, but also because it reflects a reasonable return to the estate for claims

which the estate holds against PCFC and it also reflects a reasonable treatment of the claims of the Member Class, as evidenced by precedent by the TAI-Florida court. Furthermore, even were the Trustee to pursue a complete and total recovery against PCFC, any recovery must be substantially discounted because of the significant cost to litigate such a complicated and fact intensive case. The Trustee and his counsel have estimated that litigation against PCFC could take one to two years (or much longer with likely appeals) and cost several hundreds of thousands of dollars with no assurance of collectability at the end. Further, some of the key third party witnesses for the case against PCFC may either be unavailable or may refuse to testify, asserting the Fifth Amendment right. Finally, this settlement represents the first incidence of a major lender of the Debtor agreeing to pay substantial amounts to settle claims. This should enhance the Trustee's ability to either settle with other lenders or prevail against them in litigation.

24. Under the circumstances, The Trustee, as supported by the Member Class and PCFC, respectfully submits that the Agreement is well within the "range of reasonableness", is beneficial to the estate and creditors, and should be approved by this Court.

Conclusion

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests that this Court enter an order approving the terms of a settlement and assignment of the claims and interests of PCFC against the Trustee and the Debtor's estate on the terms and conditions set forth in the Agreement, and grant such other and further relief as may be just and proper.

Dated: Des Moines, Iowa
April 23, 2001

Respectfully submitted,
ELDERKIN & PIRNIE, P.C.

By: _____ //s//
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