

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Central Division)

In re

BROOKFIELD GROUP, L.L.C., et al,

Debtor.

Chapter 7
Case No. 04-40413-HJB

**TRUSTEE'S MOTION FOR AUTHORITY TO
PAY CERTAIN RETIREMENT PLAN PARTICIPANTS**

Anne J. White, the duly appointed chapter 7 trustee (the "Trustee") in the bankruptcy case of Brookfield Group, L.L.C. (the "Debtor"), hereby moves this Court for entry of an Order authorizing payment to certain retirement plan participants. The Trustee has received funds totaling approximately \$16,000.00 which are attributable to or relate to a certain terminated SCITECH Plastics Group 401k Plan. As set forth in more detail below, the Trustee seeks authority to give notice to potentially interested plan participants and establish a procedure to permit distribution to same. In support of this Motion, the Trustee submits the following:

Background

1. On January 28, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts (Central Division). The case was subsequently converted to a case under chapter 7 on December 13, 2007.

2. By order of the Court dated February 11, 2008, the Trustee was appointed as chapter 7 trustee in the Debtor's bankruptcy case and continues to serve in that capacity.

3. Based on investigations, the Trustee has ascertained that one of the Debtor's several related entities, namely, SCITECH Plastics, maintained a retirement fund known as SCITECH Plastics Group 401K Plan or SCITECH Plastics 401K Plan (the "Plan"). Upon information and belief, the Plan was administered by Feingold Employee Benefit Services and/or Feingold Investment Planning Trust which are part of the Feingold Companies ("Feingold") located in Worcester, Massachusetts, that furnish financial services to businesses such as the Debtor.

4. Shortly after the Petition Date, the Debtor began the process of terminating the Plan. The Trustee, through counsel, has received confirmation that the Plan was duly terminated in 2007.

5. In the course of the investigation into and administration of the estate, the Trustee discovered that although the Plan had previously been terminated, the MFS Qualified Settlement Fund Administrator issued a check payable to the Plan in the amount of \$15,972.55 (the "Settlement Funds").¹ The Settlement Funds had been issued by a check dated November 18, 2010. However, because the Settlement Funds were initially misdirected, the Trustee did not receive the check for the Funds until January 6, 2011. This payment was essentially made four years after the Plan had been terminated.

6. Thereafter, the Trustee, through counsel, commenced an inquiry into the nature and appropriate disposition of the Settlement Funds. Investigations included inquiry of the Debtor, inquiry of accountants, review of documentation, requests and examination of proofs of claim, and repeated requests for information from Feingold, including the names, addresses and

¹ The Settlement Funds are described in more detail in Paragraph 12 below.

other identities of the Plan participants. The Trustee was repeatedly advised by Feingold that documents were difficult to retrieve or unavailable.

7. On June 13, 2013, the Trustee, through counsel, filed a *Motion for Authority to Conduct Rule 2004 Examination of Kenneth Henault* (the "Motion For 2004 Exam"). Mr. Kenneth Henault, who works for Feingold, had failed or refused to furnish requested information to the Trustee.

8. While the Motion For 2004 Exam was allowed by the Court on July 8, 2013, and Feingold promised cooperation, months passed without receiving appropriate information from Feingold.

9. The Trustee, through counsel, explained to Feingold the importance of the requested information and discussed the costs associated with further court motions to compel production of the requested information. Finally, on February 3, 2014, as a result of continued requests, Feingold delivered correspondence to Trustee's counsel which reflected that the necessary information, including plan participant names, addresses, etc., was currently held by a retirement service outsourcing entity named Reliance Trust Company of Atlanta, Georgia.

10. The Trustee immediately contacted Reliance Trust Company and found that a third entity, namely, MassMutual Retirement Services, was familiar with and responsible for the termination of the subject Plan.

11. The Trustee is now in possession of the names, addresses and social security numbers of the thirty-eight (38) plan participants who received final distributions when the Plan was terminated in 2007 (the "Plan Participants").

12. Based on further investigation, the Trustee, through counsel, has also ascertained that the Settlement Funds received by the Trustee are a one-time lump sum payment to the Plan

as a result of a class action law suit in connection with a global settlement of certain alleged financial improprieties of a certain group of investment entities. These entities were entitled (1) Massachusetts Investors Growth Stock Fund, (2) Massachusetts Investors Trust, (3) MFS Value Fund, (4) MFS Government Mortgage Fund, (5) MFS Research Fund and/or (6) MFS Total Return Fund (collectively, the “MFS Funds”).

13. The Trustee has been advised that each Plan Participant had held MFS Funds.

14. With respect to the termination of the Plan, the Trustee is now also in possession of a monetary breakdown of the cash amounts that each Plan Participant received upon final termination of the Plan (the “Final Distribution”). These Final Distribution amounts for each of the thirty-eight Plan Participants varied dramatically from as little as approximately \$400.00 to over \$49,000.00.

15. The Trustee has concluded that each Plan Participant is entitled to some portion of the subject Settlement Funds. The Trustee has been unable, however, to obtain information which would explain exactly how the Settlement Funds amount was calculated or how much of the Settlement Funds were attributable to each Plan Participant.

16. In this connection, after seeking advice from financial consultants, the Trustee proposes issuing a distribution of the Settlement Funds, less certain expenses as defined below, to each Plan Participant according to a *pro rata* formula. The *pro rata* formula shall be calculated to mirror the *pro rata* amount that each Plan Participant received as a Final Distribution when the Plan was terminated in 2007. The Trustee has concluded that the more MFS Funds that a Plan Participant had held, the more damages that Plan Participant incurred as a result of the MFS Funds financial improprieties. In connection with the Final Distribution upon termination of the Plan, the more MFS Funds that a Plan Participant held, the higher his or her

pro rata Final Distribution. Accordingly, the Trustee proposes distribution of the Settlement Funds using the same *pro rata* amounts that were used for the Final Distribution. A list of Plan Participants with *pro rata* percentages is attached hereto as *Exhibit A*.

17. The Trustee also proposes giving newspaper notice of this Motion in the Worcester Telegram and Gazette with a notation to the effect that “any and all former participants of the SCITECH Plastics 401K Plan who assert any interest in the MFS Qualified Settlement Fund must file a response with the United States Bankruptcy Court, 595 Main Street, Worcester, MA 01608-2076 within thirty days.” The newspaper notice would also include reference to the Trustee’s dedicated web page which will contain a digital copy of this Motion.

18. The Trustee proposes deducting from the Settlement Funds the reasonable and necessary expenses that have been incurred by the Trustee’s counsel in pursuing information regarding the Settlement Funds and effectuating the proposed distribution. The Trustee will file herewith under separate cover, an *Interim Application of Demeo LLP for Compensation for Services in Connection with Administration of Certain Retirement Related Funds*.

19. If any Plan Participant shall fail to cash the distribution authorized by this Motion within 60 days of issuance, the Trustee seeks authority to disallow that particular Plan Participant’s right to any share of the Settlement Funds. Once disallowed, this particular distribution amount shall constitute funds relinquished to the bankruptcy estate.

WHEREFORE, the Trustee respectfully requests that this Court enter an order:

1. Authorizing the Trustee to give newspaper notice of this Motion as set forth in paragraph 17 above;

2. Authorizing the Trustee, after notice and hearing, as the court shall deem appropriate, to issue a *pro rata* distribution of the Settlement Funds to the Plan Participants according to the *pro rata* share set forth in *Exhibit A*;

3. Authorizing the Trustee to deduct from the Settlement Funds such reasonable and necessary expenses as are approved by this Court pursuant to a separately filed *Interim Application of Demeo LLP for Compensation for Services in Connection with Administration of Certain Retirement Related Funds*;

4. Disallowing the rights of any Plan Participant to a share of the Settlement Funds if that Plan Participant shall fail to timely cash the distribution check within sixty (60) days;

5. Deeming any such distribution amounts which have been disallowed as sums relinquished to the bankruptcy estate; and

6. Granting such other and further relief as is just and necessary.

ANNE J. WHITE
CHAPTER 7 TRUSTEE

Dated: March 28, 2014

/s/ Anne J. White
Anne J. White (BBO#524960)
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EXHIBIT A

PLAN PARTICIPANTS	Percentage
CAROL A. ASHFORD	0.007564
CAROL DUARTE	0.001069
CLYDE J. SANGER III	0.107826
DANA GOULET	0.014974
DANIEL FERGUSON	0.009110
DEBORAH J MCINERNEY	0.022600
DEREK M BACHAND	0.007515
EDWARD VALLEY III	0.095486
FULGENCE M. KAGE	0.001030
GLAISTER PINGUE	0.007711
HENRY CROCHIER	0.033678
JAMES FURIONI	0.097095
JAMES WILSON	0.002449
JANE T. PATENAUDE	0.084386
JUAN E. MALDONADO	0.007102
LEON A SISCO JR.	0.001074
LESLIE FELLER SR.	0.000861
LUCY E. GILMAN	0.013997
MARIA MANUELA PAIVA	0.001274
MARK COLEMAN	0.002227
MARK DUARTE	0.006421
MARY KIM FORNANGO	0.023802
MATTHEW WOOD	0.001583
MICHAEL BRISEBOIS	0.020807
NGOC TRAN	0.016395
PETER E. MCINERNEY	0.023638
RICHARD H. WINSKI	0.014376
RICHARD JACKSON	0.036868
RICHARD L. BURNS	0.026925
ROBERT D. OSSENE	0.013019
RONALD E WHEELER JR	0.004251
STEVEN E BURKE	0.005953
TERRY W. LENKOWSKI	0.065914
THOMAS A. STUCK	0.061173
TIMOTHY A. MARTIN	0.127803
TODD JAMISON	0.000928
VICTOR SILVEIRA	0.022533
WANDA I. DELEON	0.008582

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1.000000

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CERTIFICATE OF SERVICE

I, Anne J. White, hereby certify that, on this 28th day of March 2014, I caused to be served a copy of the foregoing Trustee's Motion for Authority to Pay Certain Retirement Plan Participants to all appearing on the attached Service List via first-class mail, postage-prepaid, unless electronically served by the Court as indicated thereon.

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