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Re: In re: Lorax Corporation, Debtor; Case No. 02-48396-DML-11  
In the United States Bankruptcy Court for the Northern District of Texas  
Fort Worth Division

Gentlemen:

As you are aware, the Committee filed a Response and Partial Objection (the "Objection") to the Joint Motion to Compromise filed by the Trustee and the Brinkmann Group. The hearing on same was set for 2:30 p.m. on Monday, May 3, 2004, and has been reset to **9:00 a.m. on Monday, May 24, 2004.**

I did attend the May 3, 2004 hearing, at which the continuance was granted, as did Committee Member, Art Leerskov, and Megan Cooley, on behalf of Committee Member, Jim Cushman. The morning of May 3, 2004, I spoke with Peter Franklin, one of the counsel for the Chapter 11 Trustee, Shawn Brown, and before the hearing he spoke with Art Leerskov, Megan Cooley, and I. Following the hearing, all three of us talked with Shawn Brown, the Chapter 11 Trustee. They both gave us additional financial information on the administrative expenses and

costs estimated for the Estate, likely further recoveries, and agreed they would produce Ben Barnett to meet with us on the rent and property sale issues. Art Leerskov and I met with Ben Barnett, Shawn Brown, Peter Franklin, and Wade Carvell, one of the attorney's for the Brinkmann Group, on Thursday, May 6, 2004. Mr. Barnett was able to enlighten us quite a bit on the situation in connection with the property, particularly with respect to rental and sale issues.

I have set forth in this letter, the additional information we have now received as a result of our Objection, along with my recommendations, and a request that we hold a Committee meeting/conference call either next Tuesday, May 11, 2004, or Wednesday, May 12, 2004. I would appreciate it if, after you review this letter, you will e-mail me back to let me know your availability on one of those days to participate in a conference call/meeting so that we can vote on instructions for settlement discussions with HCPC and the rest of the Brinkmann Group.

First, the Trustee, his counsel, and counsel for the Brinkmann Group, each indicated their belief that the wording issues that we had included in our Objection should not be much of a problem for them to change, with slight modifications. The Trustee's counsel has already forwarded a draft of same to the Brinkmann Group's counsel, and is awaiting a response. I expect that those will be the easier changes for them to make, and that certainly seems to be the case.

The harder part, needless to say, is obtaining a change to the monetary make-up of the proposed settlement. Based on the additional information provided by the Trustee and the Brinkmann Group, as supplemented by discussion and disclosures made by Ben Barnett, it actually appears that the negotiated compromise between the Trustee and the Brinkmann Group is not far off, and, if we can do no better, it may still be satisfactory for reasons set forth below. Notwithstanding that, I think there are at least some areas where we can possibly make minor progress in increasing amounts put in and/or decreasing credits requested.

First, let's step back from where we want to go, and, with the additional information that we now have at hand, let's explore the monetary terms of the proposed compromise. You may want to look at the compromise or summary of the compromise contained in either the Joint Motion or in the Settlement Agreement attached to same to verify the numbers:

- The settlement contemplates an end to the litigation between the parties, and declaratory judgments being entered in all litigation with declarations that title to the property does rest with the Debtor, and the Debtor is not in default, and has all rights available to it to lease or sublease the property, and to try to sell it, along with its rights to exercise its option under the Lease and Environmental

Agreement with the Greenwall Liquidating Trust and/or the State of Texas (now owned by HCPC).

- The settlement contemplates the Trustee having a 250 day period to market the property for sale using Ben Barnett.
- The Brinkmann Group put in an initial purchase/settlement offer which, if they are the successful bidder/purchaser, equals a value of **\$2,884,458.71** to the Estate. This number is comprised of their credit amounts of \$2,115,458.71, which includes the amounts expended for purchase of the Enterprise Bank Note and Deed of Trust, interest that has accrued, insurance they have paid for, repairs they have paid for, attorney's fees, and the amounts that were paid to the State of Texas to acquire the State of Texas' position, all as set forth in the Settlement Agreement. They are putting in an additional \$685,000.00 of cash into the Estate, which, in the Settlement Agreement, is delineated as \$200,000.00 for rent and \$485,000.00 to go to the Estate. During our further discussions with the Trustee and the Brinkmann Group, they indicated that these were just arbitrary numbers to divide up the total number of \$685,000.00 that the Brinkmann Group was proposing to put in, and held no special significance, indicating that they could all be ascribed to payment of back rent, if needed.
- In addition, if the Brinkmann Group is the successful purchaser, they have agreed to pay up to \$84,000.00 of the Chapter 11 Trustee's administrative expense commission in the case.

The Trustee has prepared a proposed bidding process for the property wherein minimum additional bidding increments will be \$25,000.00 over and above the last offer received. As a result, another party interest in the property would have to pay at \$2,904,458.71, an amount which is \$25,000.00 above the \$2,884,458.71 number the Brinkmann Group is putting in, including partial payment of the Chapter 11 Trustee's fees.

The Committee specifically objected to the approximately \$505,000.00 legal fee component of the \$2,115,458.71 credit amount of the Brinkmann Group. The Trustee and his counsel, indicated that the Brinkmann Group had actually come in originally requesting over \$622,000.00 in fees, and provided back-up and detail for same, and that they had fought tooth and nail to get it lowered by approximately \$120,000.00. The Brinkmann Group's counsel added that, in fact, their fees were even higher than the \$622,000.00 number, but they had pared that down in preparation for negotiations with the Trustee. The Trustee and his counsel also confirmed that they had reviewed the underlying note documents of Enterprise Bank and the Lease and Environmental Agreement originally with the State of Texas, and had confirmed that

the owner and holder of those agreements would be entitled to recover their reasonable attorney's fees and costs incurred in litigation, whether prosecuting or defending it, on those agreements. The Trustee felt very comfortable that the Court would likely allow the amount requested as part of the credit.

The Trustee and his counsel also indicated that they had originally requested a one year marketing period and the Brinkmann Group had indicated an agreement to only 120 days at the start, resulting in the marketing period compromise of 250 days, or roughly half way between the two parties' positions. Again, they indicated that this was part of a vigorously contested negotiation to reach that point.

As a reminder to you all, the ordinary priority for payment of creditors in a bankruptcy case is that administrative expenses of the Estate get paid first, then priority creditors, then general unsecured creditors, and finally equity, if there is any money to reach that far. Secured creditors typically get repaid based on the collateral they hold, and income generated by or as a result of that collateral, and any shortfall deficiency they hold is treated as a general unsecured claim.

With this framework in mind, let's review the compromise proposal again. Over and above the credit amount of \$2,115,458.71, there is \$685,000.00 available to the Estate, plus approximately \$84,000.00 to be paid against the Trustee's administrative expenses. This latter amount does ultimately put money into unsecured creditors' pockets, since the Brinkmann Group has agreed to absorb part of an administrative expense that will have to be paid before any money flows to unsecured creditors.

The Trustee and his counsel analyzed likely offsets to the other \$685,000.00 as follows:

- Trustee's counsel, Locke, Liddell, has incurred approximately \$400,000.00 of fees and expenses to date.
- The Trustee's accountants, Lain Faulkner, have incurred only about \$1,500.00 to date, but, they anticipate that the amount to them will be approximately \$25,000.00 by the time the case is done, since they will have to prepare tax returns for the Debtors for several years. The Trustee estimates that the commission and the expense reimbursement of Ben Barnett will total \$150,000.00, based on \$30,000.00 owed to Mr. Barnett for his appraisal work and analysis done previously, with the remaining \$120,000.00 estimated to be a commission on the property. (You should note that a 6% commission on a \$2 million sale would equal \$120,000.00, and on a \$3 million sale, would equal \$180,000.00). I would

bet that Mr. Barnett is a little bit flexible on his commission rate and on how he gets reimbursed for his out-of-pocket expenses.

- Finally, the Trustee's commission, based on the current sale proposal, would be \$124,000.00. From that amount, you could subtract the \$84,000.00, if Brinkmann is the successful purchaser, for a net additional expense of \$40,000.00 allotted to Trustee fees.

The total of all of those deductions is \$615,000.00, so the Trustee analyzes from the Brinkmann deal, not counting any other assets of the Estate, that there is approximately \$70,000.00 left over. At this time, they have already reached an agreement with ATCO for payment of an additional \$165,000.00, bumping additional funds available for distribution to creditors to \$235,000.00, and have received a settlement offer from Texas Ragtime of \$100,000.00, well below the amount outstanding from Texas Ragtime, but indicating that there will be at least \$335,000.00 available after the Trustee related expenses. At this time, my firm's fees and expenses, which are also administrative expenses of the Estate, are approximately \$30,000.00, and that would have to be deducted out as well.

The Trustee and his counsel estimate that, after all claims work is done and claims shake out, there will be approximately \$2 million in allowed unsecured claims, and, thus, they currently estimate around a 15% distribution on unsecured creditors' claims, based just on current numbers and the settlement. The Trustee and his counsel both believe that there will be a much higher amount than \$100,000.00 recovered from Texas Ragtime, and they have already countered the \$100,000.00 offer from Texas Ragtime at \$356,976.38, plus payment of rent in the amount of \$17,848.82 per month hereafter. I enclose herewith a copy of correspondence e-mailed to me earlier today from the Trustee's counsel's assistance, enclosing Texas Ragtime's original letter and Peter Franklin's letter to Texas Ragtime's counsel with respect to same, which I received today.

Our discussion with Ben Barnett was particularly enlightening. Ben does believe there can be a market for the property, both for leasing and for sale, and also indicated his belief that there is a market above Brinkmann Group's bid for the property. **He made it very clear, however, that there is no way for him to sell the property nor to get replacement leases on the property while the title question is in dispute.** Thus, for any continued period that title litigation continues between the Trustee and the Brinkmann Group, he does not believe there is any viable way to get a real purchaser of the property, and for any lessee, while leases could be entered into, there clearly would be no way for the creditors to know that that money would be coming into the Estate.

As I explained to Rudy earlier in the week, who indicated he had not heard the explanation before, if the Trustee and the Debtor lose in the litigation with Brinkmann, there will be nothing for creditors, neither from a sale of the property nor from past or future leases, since all of those will be property of whatever Brinkmann Group entity owns the property and is beneficiary of the Greenwall Trust. That is obviously the worst case scenario, and, you should recall that, not only would there not be any money to distribute to unsecured creditors, there would still be hundreds of thousands in administrative expenses ahead of unsecured creditors before they are ever in the money. That holds true even at the present date, and those administrative fees continue to accrue as long as the Trustee and his counsel continue to fight in the litigation or take other actions with respect to administration of the Estate.

Ben Barnett's concerns were echoed by the Trustee and his counsel who indicated that they believed that the compromise was hard fought and was a good deal, and, even more importantly, allowed the title dispute to end now, instead of years from now after many levels of appeal and far more money is spent, which they felt would greatly enhance the ability to market the property before it deteriorated further. The Trustee indicated that one of his greatest fears is that even if they win the litigation and have a final judgment, which will not likely be before three to four years from now, based on the ability and likelihood of the Brinkmann Group in contesting any decision, the building will be in such disrepair that there will be no market for it at that time. Putting an end to the litigation, particularly with a favorable result declaring that clear title is held by the Debtor, and will allow the Debtor to ensure it gets all funds over and above the credit amount from any sale, as well as all separate funds it can get from current lessee's on the property, and any new lessees that it can add. Ben Barnett indicated that are a lot of leaks and poor areas at the property, but that ATCO's former space is dry, lit, and in good shape, and there is no reason why it could not be re-rented. Again, to the extent that can be accomplished prior to the end of the Marketing Period, all funds derived from same would flow into the Estate for creditors, not to Brinkmann or any other purchaser.

The Trustee and his counsel admit that their settlement is not perfect, and point out that no settlement ever is; all settlements involve a little pain on both sides, and they felt that the ability to get title back to the Estate and get marketing and leasing efforts going right away provided great consideration and justification to them for the deal they negotiated, all after a hard fight, in their own words. Ben Barnett agreed that Dallas Manufacturing was and is using more space than just the amount covered under their lease, and that for the building as a whole, specifically parts that are usable, a range of likely rates for the area would be \$1.95 to \$2.10 per sq. foot per year.

The last issue that we discussed with the Trustee and his counsel, after the others had left, was the Trustee's indication that he has prepared a liquidating plan and disclosure statement in addition to the bid procedures order I referenced above, and, if we could not reach an agreement

with the parties on their compromise, they would simply include it in a Plan of Reorganization, which they believe they have the votes to cram down on unsecured creditors. For a plan to get confirmed over an objecting group, there has to be at least one class of impaired creditors, that is, a class of creditors not being paid in full, or not being paid in the same time frame as they are contractually entitled to. The Trustee asserts that the Brinkmann Group, which holds the Enterprise Note and the rights of the State of Texas qualify for same, and would vote in favor of the Plan. Off the top of my head, I would guess that they are probably right that the Brinkmann Group would be considered an impaired class, and that cram down of the settlement on the unsecured creditors is possible. It may be that the Judge would still have some reservations, although he could certainly find that, in a liquidation, the unsecured creditor class do no better.

That said, the Trustee and his counsel indicated that their preference was for a consensual settlement being reached by all parties, so we discussed areas where we might be able to make at least slight headway in improving the current settlement, while not delaying the ability of the Trustee to market the property for sale and for lease free and clear of the current clouded title situation.

I came away from the conversations we had at the beginning of the week and with Ben Barnett with a much clearer picture of the parties' analysis, and appreciation of the business-oriented result that the Trustee is hoping to achieve in increasing the recovery for unsecured creditors. The Trustee and his counsel suggested, based on the vigorous and hard fought negotiations they said they already had with the Brinkmann Group, that we would not make much headway in getting them to reduce the attorney's fees portion of the credit amount. We also discussed that, as a compromise, Dallas Manufacturing pay rent on a go-forward basis through the marketing period, and that any amount of rent paid would not count toward their settlement/purchase bid amount, so that (a) those amounts would be paid to the Estate regardless and (b) any other interested buyer of the property would not have to also add those rent payments amount they would have to bid to top Brinkmann's bid. We further discussed extension of the marketing period in accordance with the time frame requested by the Committee in its Objection. Our thought before had been to try to get him up to the 300 day period to give him an additional 50 days. Ben Barnett indicated it was his preference to have up to a year, but indicated that the property could be properly marketed within a six month to one year time frame.

Based on my analysis, and the concerns that have been expressed by the Trustee, I recommend that the Committee attempt to resolve its Objection to the Joint Compromise by proposing the following three terms to modifying items included in the Settlement Agreement filed with the Court:

1. Dallas Manufacturing pay rent for the space it is using and the additional space at the property of \$7,500.00 per month during the Marketing Period (with a further

recommendation that, during negotiations, that amount can be dropped to \$5,500.00 per month, rent amount stated in the lease, if needed), and the agreement that the additional rent paid would not be part of Brinkmann's bid for purchase of the property, but a separate recovery for the Estate regardless of whether the Brinkmann Group was the successful purchaser of the property or not;

2. The marketing period be increased from 250 to 300 days, to give Ben Barnett a little more time (with the understanding that, even if he has no more than 250 days, that may be adequate); and
3. The request for a reduction of the attorney's fee portion of the credit amount from \$505,000.00 to \$475,000.00 (with an understanding that, even if it remains as it is, the total credit amount for Brinkmann will not ever increase under the Settlement Agreement, and that Ben Barnett has indicated his belief that with clear title, he believes that he can locate a purchaser who will top Brinkmann's total current proposal on the property of \$2,884,458.71).

I have those listed in order of descending importance to me based first, on items that would benefit the creditors by increasing money in; second, give the proposed broker time to get a deal done should that kind of time be needed for this type and size of project; and third, to the area I think will be most contentious and problematic for the Brinkmann Group to give up room on, so that we can agree to drop that request, if needed, while still preserving the other economic enhancements to the benefit of unsecured creditors as a whole.

Please get back to me at your earliest convenience with your availability next Tuesday and Wednesday for our Committee conference call/meeting, and we can flush these issues out further and get a vote. I would like to get back to Wade Carvell before the end of next week to see if we can negotiate a settlement so that we can see if we can get the property marketed and leased back up with the money gained to be for no one's benefit but the unsecured creditors.

Sincerely,

/s/ Marc W. Taubenfeld

Marc W. Taubenfeld

MWT/cdp  
enclosure