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Objection Deadline: July 11, 2012 at 4:00 p.m. (Eastern)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re :
ADELPHIA COMMUNICATIONS CORP., et al., : Case No. 02-41729 (REG)
 : Jointly Administered
 :
Debtors. :
 :
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**MOTION OF THE ADELPHIA RECOVERY TRUST FOR
ORDER APPROVING AND AUTHORIZING SETTLEMENT
AGREEMENT WITH BUCHANAN INGERSOLL & ROONEY PC**

The Adelfhia Recovery Trust (the "Trust"), by its undersigned counsel, hereby moves the Court for entry of an order approving and authorizing its entry into the "Settlement Agreement and Release" (the "Settlement") among the Trust and Buchanan Ingersoll & Rooney PC and its shareholders (collectively, "Buchanan"), annexed hereto as Exhibit 1, and in support thereof represents as follows:

INTRODUCTION AND BACKGROUND

1. Pursuant to the confirmed chapter 11 plan in these cases,¹ certain causes of action, including the potential causes of action that can be asserted against Buchanan, were transferred by the Debtors to the Trust on the Effective Date (the “Designated Litigation”). Pursuant to section 9.4(a) of the Plan, the Trust has the right to settle any of the Designated Litigation, including potential causes of action against Buchanan.

2. The Trust and Buchanan have entered into a Settlement that resolves the multiple potential causes of action and other issues pending among them. As detailed in Exhibit 1 and summarized below, the essential elements of the Settlement, which is the product of mediation sessions conducted by the Honorable Daniel Weinstein, include (i) an initial payment in the amount of \$20 million to be made by Buchanan to the Trust upon the finality of an order approving this Motion, and (ii) a share of an additional \$40 million to be distributed in a binding Alternate Dispute Resolution proceeding (the “ADR Proceeding”) among the Trust and other parties that have timely asserted claims against Buchanan.

3. Inasmuch as the Designated Litigation was transferred out of the above-captioned Debtors’s estates and placed in the Trust, the Settlement involves only Trust assets, and the Plan and the Trust documents authorize the Trust to settle any of the Disputed Litigation at its own reasonable discretion, arguably the Trust does not need Bankruptcy Court approval of the Settlement. Nevertheless, in an abundance of caution and cognizant of the need for transparency, particularly in light of the Trust’s numerous stakeholders, as well as Buchanan’s

¹ On January 5, 2007, this Court entered an order (the “Confirmation Order”) confirming the First Modified Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain of its Affiliated Debtors, dated as of January 3, 2007 (as confirmed, the “Plan”). On February 13, 2007, all conditions to consummation of the Plan were satisfied or waived in accordance with the Plan and the effective date of the Plan occurred.

desire for certainty with regard to the Settlement, the Trust seeks approval of the Settlement by this Court pursuant to Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9019.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and pursuant to Article XV of the Plan. Venue is proper under 28 U.S.C. §§ 1408 and 1409. The predicate for this motion includes Bankruptcy Rule 9019.

POTENTIAL CAUSES OF ACTION AGAINST BUCHANAN

5. On or about June 25, 2002 (the "Petition Date"), shortly after the disclosure of massive fraud committed by Adelphia's President and Chief Executive Officer, John Rigas, and certain members of the Rigas family (the "Rigas Family"), the above captioned debtors (collectively, the "Debtors") filed for protection under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). For many years, prior to the Petition Date, Buchanan represented the Debtors in connection with various matters, including various related-party transactions involving Adelphia and the Rigas Family. Several of those transactions are alleged to have enabled the Rigas Family to loot tens and even hundreds of millions of dollars from the Debtors.

6. Since the Petition Date, several groups of holders (the "Securities Holders") of securities of Adelphia Communications Corporation ("ACC") have filed suit against Buchanan in various courts. A list of the currently pending claimants and pending litigations is attached as Exhibit B to the Settlement annexed hereto.

7. On June 11, 2004, Adelphia and the Buchanan entered into a tolling agreement tolling the running of the statute of limitations to bring causes of action against Buchanan arising out of Buchanan's representation of the Debtors. The parties have agreed to a number of

extensions of the tolling agreement and, currently, the statute of limitations for the Trust to bring causes of action against Buchanan is tolled until September 26, 2012.

8. Shortly after the Trust settled its extensive litigation against the various banks that participated in the Rigases' co-borrowing scheme, which resulted in a payment to the Trust of \$175 million in February 2010, the Trust participated in preliminary ADR sessions with Buchanan and the Securities Holders (collectively, the "Parties"), overseen by Judge Weinstein, to determine whether a global settlement of all claims against Buchanan could be reached through an ADR Proceeding. The Trust also engaged in extensive mediation sessions in an effort to resolve certain disputes concerning the resources available to Buchanan to respond to the Trust's claims, including issues of collectability of any judgments or settlements against Buchanan. During the course of those negotiations, the Trust outlined the scope of its various causes of action against Buchanan arising out of its representation of the Debtors, including the co-borrowing facilities, the acquisition of cable television assets from Prestige Communications (which is more fully described in the action entitled set forth in the action entitled *Adelphia Recovery Trust v. Prestige Communications of NC, Inc., et al.*, 07 Civ. 11152 (LMM) (S.D.N.Y.)), the settlement of a dispute with ML Media Partners LP, the filing of misleading materials with the Securities and Exchange Commission, and the issuance of public securities based on misleading offering materials and public filings. As a result of these discussions, and with the assistance of Judge Weinstein's mediation efforts over the past year and a half, the Trust was able to reach an agreement with Buchanan that included the settlement of certain of the Trust's claims outside the ADR process and the Trust's commitment to resolve the remainder of its claims in the binding ADR Proceeding.

THE SETTLEMENT

9. After these extensive negotiations, the Parties reached an agreement concerning payments to be made to the Trust and a process for a global settlement. On or about June 22, 2012, the Trust and Buchanan executed, subject to this Court's approval, the Settlement annexed hereto. The Settlement is designed to bring a final resolution to all of the potential causes of action and issues between Buchanan and the Trust upon terms that include a substantial cash payment to the Trust. The primary terms of the Settlement are summarized as follows:²

Settlement Payment. Upon execution of the Settlement, Buchanan together with its insurers agree to deposit \$20 million into an escrow account for the benefit of the Trust, which sum will be released in full to the Trust upon approval of the Settlement by this Court and the finality of that order after any appeals or the passage of time without any appeals being filed (the "Approval Order"). In addition, Buchanan and its insurers agree to fund a \$40 million payment in connection with the ADR Proceeding (the "ADR Funds"). The ADR Proceeding will commence upon the finality of the Approval Order and is scheduled to be completed by November 16, 2012. Under the procedures for the ADR Proceeding, Judge Weinstein will act as the arbitrator to determine how to divide the ADR Funds among all of the participating claimants, based on the nature and relative merits of their claims against Buchanan. The insurance carriers and Buchanan have agreed that the ADR Funds will be fully distributed (less any fees and expenses) in the ADR Proceeding without any reductions for or consideration of potential defenses to coverage under the relevant insurance policies. Buchanan has agreed to participate in the ADR Proceeding even if some or all of the other claimants (other than the Trust) decide

² The Court and interested parties are referred to the Settlement for its complete terms, which are intended to govern in the event there is any inconsistency between such terms and the summary contained in this motion.

not to participate and to pursue their claims in some other forum. In that event, the ADR Funds will still be distributed in full in the ADR Proceeding. The ADR Proceeding results will be final and binding on all participants and the Trust will receive its share of the ADR Funds within 10 days after the Trust's ADR award is issued. The Trust's ADR award is incremental to the direct payment of \$20 million described above.

Releases. The Trust and Buchanan have agreed to full, mutual releases from all claims as part of the Settlement. Upon receipt of the first \$20 million Settlement payment, the Trust will release all claims against Buchanan arising out of the Prestige transaction. All of the Trust's other claims against Buchanan will be released upon the completion of the ADR Proceeding and the payment of any award.

Certain Contribution Claims. The Trust agrees that if it enters into a settlement with any person, it shall obtain from such person a full release of any claim for contribution the settling party may have against Buchanan arising out of the Trust's claims against the settling person. Buchanan has agreed to release any contribution claims it may have against persons who have already settled with the Trust.

Judgment Reduction. If the Trust obtains a judgment against any other Person (a "Judgment Defendant") on a claim for which the Judgment Defendant has or may have a claim for contribution against Buchanan (a "Joint Claim"), the Trust will reduce the amount of the Joint Claim judgment by the percentage of Buchanan's responsibility, if any, as determined in the action in which the judgment against the Judgment Defendant is obtained, as contemplated by section 8327 of the Pennsylvania Uniform Contribution Among Tortfeasors Act;³ provided, however, that the Trust may seek to establish that the

³ 42 Pa. C.S.A. § 8327 provides, "[a] release by the injured person of one joint tort-feasor does not relieve him from liability to make contribution to another tort-feasor, unless the release is given before the right of the other tort-

Judgment Defendant has no right of contribution against Buchanan that should result in a reduction of the judgment, or that Buchanan's pro rata share of the judgment is equal to or lower than the Settlement payment, in which event, the judgment shall be reduced only if it does not already reflect a reduction for the Settlement payment, and the maximum amount by which it may be reduced is the amount of the Settlement payment.

REQUEST FOR RELIEF

10. In the exercise of its business judgment, the Trust believes the Settlement is fair and reasonable. Accordingly, the Trust seeks this Court's approval of the Settlement.

Bankruptcy Rule 9019(a) provides in relevant part that "after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the "best interests of the estate." *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993).

11. In *TMT Trailer Ferry*, 390 U.S. at 414, the Supreme Court held that approval of a settlement requires a finding that the settlement is "fair and equitable" based on

[an] educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

See also Purofied Down Prods., 150 B.R. at 523; *In re International Distribution Centers, Inc.*, 103 B.R. 420, 422 (S.D.N.Y. 1989) (a determination as to whether a proposed compromise is fair

feasor to secure a money judgment for contribution has accrued and provides for a reduction to the extent of the pro rata share of the released tort-feasor of the injured person's damages recoverable against all the other tort-feasors."

and equitable requires the exercise of informed, independent judgment by the court). A settlement need not be the best that the debtor could have obtained. *See In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979). Rather, the settlement must fall “within the reasonable range of litigation possibilities.” *Id.* at 1121.

12. It is not necessary for the court to conduct a “mini trial” of the facts or the merits underlying the dispute. *Purofied Down Prods.*, 150 B.R. at 522; *International Distribution Centers*, 103 B.R. at 423. Rather, the court only need be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. *See Purofied Down Prods.*, 150 B.R. at 523; *In re Energy Cooperative, Inc.*, 886 F.2d 921, 924-25 (7th Cir. 1989). In doing so, the court is permitted to rely upon “opinions of the trustee, the parties, and their attorneys.” *International Distribution Centers*, 103 B.R. at 423.

13. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” The rule empowers bankruptcy courts to approve settlements “if they are in the best interests of the estate.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (S.D.N.Y. 1991). The settlement need not be the best possible outcome for a debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *Id.*

14. In determining whether a proposed settlement falls within the range of “reasonableness” this court has articulated the standard as follows:

Guided by the factors listed in *TMT Trailer Ferry*, 390 U.S. at 424, 88 S.Ct. 1157, the courts have identified several factors to be considered when evaluating whether a proposed settlement is within the reasonable range of litigation possibilities and in the

best interest of the estate and creditors: (a) the probability of success in the litigation, (b) the difficulties, if any, to be encountered in the matter of collection, (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (d) the paramount interest of creditors and a proper deference to their reasonable views. Other potentially relevant factors include (e) the competency and experience of the trustee and trustee's counsel (although their recommendation alone is not dispositive), (f) the nature and breadth of releases to be issued as a result of the settlement, (g) the extent to which the settlement is not the product of fraud or collusion, and (h) whether the proposed settlement is supported by an adequate record.

In re Remsen Partners, Ltd., 294 B.R. 557, 565 (Bankr. S.D.N.Y. 2002) (citations omitted). See also *In re Mrs. Weinberg's Kosher Foods, Inc.*, 278 B.R. 358, 362 (Bankr. S.D.N.Y. 2002); *In re Ashford Hotels, Ltd.*, 226 B.R. 797, 804 (Bankr. S.D.N.Y. 1998); *In re Best Prods. Co.*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994). The "reasonableness" of a settlement depends upon all of these factors. *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994).

15. The court may consider the opinions of the trustee that the settlement is fair and reasonable. *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the Court may also exercise its discretion "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41 (Bankr. S.D.N.Y. 1998); see also *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). Analysis of these factors demonstrates that the Settlement falls well within the range of reasonableness and therefore should be approved.

16. The Settlement easily meets the *TMT Trailer* standards. First, there can be no debate that the Settlement was negotiated at arms' length. Not only was it negotiated among parties with no affiliation and separate professionals, it was the product of extensive mediation sessions conducted by Judge Weinstein.

17. Second, the litigation is, potentially, immensely complex. Factually, the causes of action could entail the production of millions of pages of documents, the deposition of dozens of witnesses, as well as dealing with the issues involving several unavailable witnesses (*e.g.*, John and Tim Rigas). Although there has been extensive discovery in connection with the Trust's litigation against Deloitte, the co-borrowing lenders, and Prestige, Buchanan was not a party to those actions and much of the discovery would have to be repeated. The causes of action also potentially require resolution of complex and appealable legal issues involving the extent to which misconduct by a debtor's prepetition management limits claims against its prepetition professionals brought by a debtor's estate seeking recoveries for good faith creditors. There has been much activity in connection with these legal issues under Pennsylvania law in this and other courts over the past several years, leading to uncertainty in the ultimate outcome. In addition, there are substantial issues regarding the liability of the counsel to a public company for statements made in connection with that company's securities offerings. While the Trust believes it has the stronger argument on these key legal issues, the matter is not free from doubt.

18. There are also substantial issues of collectability in connection with a judgment if and when one is entered. First, there would be questions concerning issues of insurance law, all of which are being waived as part of the Settlement. In addition, Buchanan is a defendant in complaints brought by the Securities Holders, who could potentially dilute any recovery by the Trust on a judgment against Buchanan. One would have to speculate as to Buchanan's financial condition at the time a judgment in favor of the Trust were to become final, but the Court can certainly take notice that a law firm's most substantial assets are its future income to be generated from its continuing operations. The entry of a substantial malpractice judgment would certainly have a negative impact on such future income, assuming that the litigation process itself

does not already cause such difficulties prior to a judgment. By entering into this Settlement before embarking on an expensive litigation battle, which would itself dissipate the available insurance proceeds, the Trust avoids such collection issues.

19. Furthermore, given that the complaint against Buchanan is not yet filed and the likely appeals that would follow any trial, it is likely that the Trust would not be able to make a recovery, absent settlement, for many years. Under the Settlement, all of the payments should be received before the end of this year.

20. The Trust believes it has a high probability of success in the litigation. However, Buchanan also has expressed confidence in its defenses and, in light of the significant litigable and possibly appealable issues with respect to causation, damages, and *in pari delicto*, and the substantial issues of collectability and insurance coverage, the Trustees, in their respective independent judgment, have concluded that the \$20 million Settlement payment plus the opportunity for an additional amount in the ADR Process adequately reflects the potential risks and rewards of continuing the litigation in view of their analyses of the likelihood of success on the merits and issues relating to collectability.

PROCEDURE

21. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) Buchanan; and (c) all parties that have served a written request on the Debtors on or after the date of the Confirmation Order for service of pleadings. Additionally, electronic copies of the Motion and the Notice of Motion shall be available and posted on the "Important Documents-Adelphia Recovery Trust" page of Adelphia's website at www.adelphiarestructuring.com Under the circumstances, the Trust submits that no further notice is required.

22. No previous motion has been made for the relief sought herein.

CONCLUSION

WHEREFORE, the Trust requests the Court enter the order approving and authorizing the Settlement attached hereto as Exhibit 2, and granting such other and further relief as the Court may deem necessary and proper.

Dated: June 27, 2012
New York, New York

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