

FILED 2/22/2019
DOCUMENT NO. 01195-2019
FPSC - COMMISSION CLERK

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Chapter 11

ADVANCED TELECOMMUNICATION
NETWORK, INC.,

Case No. 6:03-bk-00299-KSJ

Debtor.

/

**MOTION TO APPROVE COMPROMISE OF CONTROVERSY
WITH FLASTER GREENBERG, P.C. AND PETER R. SPIRGEL**

**NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within twenty-one (21) days from the date set forth on the attached proof of service, plus an additional three (3) days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at the George C. Young Federal Courthouse, 400 W. Washington Street Suite 5100 Orlando, FL 32801 and serve a copy on the movant's attorney, Daniel R. Fogarty, Esquire, Stichter, Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Advanced Telecommunication Network, Inc. ("ATN"), as the reorganized debtor, files this Motion to Approve Compromise of Controversy with Flaster Greenberg, P.C. and Peter R. Spirgel (collectively, the "Flaster Defendants") and states:

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FEB 22 AM 8:21
COMMISSION
CLERK

Background

1. ATN filed a voluntary Chapter 11 petition on January 10, 2003.
2. The Reorganized Debtor filed its Amended Plan of Reorganization Submitted by Advanced Telecommunication Network, Inc., dated March 11, 2004 (Doc. No. 153) (the “**Plan**”). On June 22, 2004, the Court entered its Order Confirming Amended Plan of Reorganization submitted by Advanced Telecommunication Network, Inc. (Doc. No. 215).
3. Among other things, the Plan contemplated the pursuit by ATN of Causes of Action (as defined in the Plan). The Plan further provides for distribution of recoveries from Causes of Action as “Extraordinary Income” which the Plan defines as “the net funds received from the Causes of Action after payment of: (i) all Administrative fees; (ii) all costs of the litigation, including attorneys’ fees and costs; and (iii) after a distribution to Reorganized Debtor equal to 20% of any recovery for marketing and operations.” Plan, Art 1, Doc. 153, 8-9.
4. The Flaster Defendants have been engaged in litigation with ATN for more than 15 years over transfers that were made in 1999 to the Flaster firm and Daniel, David, and Stacy Allen. Over those years, this and all of the related litigation has included suits and actions in state and federal circuit, district, and bankruptcy courts in New Jersey and in Florida. Among many other suits involved in the litigation, on January 10, 2003, WATS/800 Holdings, Inc. (“**WATS/800**”) filed a civil action against Flaster Greenberg in the Superior Court of New Jersey, Camden County, Law Division, Docket No. L-000348-03 (the “**WATS/800 Action**”). Also on January 10, 2003, Investment Partners, LLP filed a civil action against Flaster Greenberg in the Superior Court of New Jersey, Camden County, Law Division, Docket No. L-000322-03 (the “**IP Action**”).
5. Before this Court, on January 7, 2005, following confirmation of the Plan, ATN commenced an adversary proceeding against the Flaster Defendants, Advanced

Telecommunication Network, Inc. v. Flaster Greenberg, P.C., Peter R. Spirgel, et al., Case No. 6:05-ap-00006-KSJ. On January 14, 2011, ATN commenced an adversary proceeding against Flaster Greenberg, P.C., Advanced Telecommunication Network, Inc. v. Flaster Greenberg, P.C., Case No. 6:11-ap-00008-KSJ. The two adversary proceedings were consolidated by the Bankruptcy Court on September 26, 2012. Most recently the pre-trial matters in the adversary proceedings were litigated in the Bankruptcy Court, at which time the reference to the adversary proceedings was withdrawn, and the case proceeded in the United States District Court for the Middle District of Florida, Advanced Telecommunication Network, Inc. v. Flaster Greenberg, P.C. and Peter R. Spirgel, Case No. 6:18-cv-1186-ORI-28GJK (the adversary proceedings and the district court action are collectively referred to as the “**Lawsuit**”).

6. As part of pursuing the Lawsuit, ATN was pursuing claims and causes of action against the Allens. Ultimately, that litigation, which in part resulted in certain settlements previously approved by the Court, made it possible for the Lawsuit to successfully proceed, bringing the parties to the settlement described below.

7. The litigation of the Lawsuit and actions related to the Lawsuit interrelated to the Flaster Defendants has been extensive, complex, and expensive. In the more than fourteen years of litigation throughout the nation, the costs of litigation have exceeded \$6 million.

Settlement Terms

8. By this Motion, and to avoid continued expense of further litigation, ATN and the Flaster Defendants (together, the “**Parties**”) have agreed to a compromise as set forth in the demand and acceptance (together, the “**Settlement Agreement**”), by and between ATN, Freeman, and WATS/800, on the one hand, and the Flaster Defendants, on the other hand. A copy of the Settlement Agreement is attached hereto as Exhibit “A,” and incorporated in full by

reference. In summary, ATN requests approval of the settlement on the following summarized terms (the “**Settlement Terms**”):

- a. The Flaster Defendants shall pay a total of \$6,950,000 to ATN within one week of a final, non-appealable order from the bankruptcy court approving the settlement.
- b. ATN shall provide a general release to the Flaster Defendants (and all affiliates, agents, and insurers).
- c. WATS/800 shall provide a general release to the Flaster Defendants (and all affiliates, agents, and insurers).
- d. WATS/800, ATN, and Damian Freeman personally shall wholly and unconditionally indemnify and hold harmless the Flaster Defendants (and all affiliates, agents, and insurers) from any loss, including any cost of defense arising hereafter, arising from or relating to the IP Action.
- e. This proposed settlement and any acceptance by Defendants are conditioned upon bankruptcy court approval of the reimbursement of approximately \$4.6 million [\$4,674,589.79] that ATN incurred to prosecute all of the ATN bankruptcy litigation to date. (Such reimbursement would be funded from the \$6.95 million recovery described above.)
- f. If any person or entity successfully opposes any term or portion of this proposed settlement between the parties, Defendants and ATN shall promptly withdraw their conditional acceptance of this proposed settlement.

9. To the extent of a conflict between the Motion and the description of the settlement terms and the Settlement Agreement, the Settlement Agreement shall control.

Applicable Law

10. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). Pursuant to Federal Rule of Bankruptcy Rule 9019(a), approval of a compromise settlement is within the sound discretion of this Court. *In*

re Foster Mortg. Corp., 68 F.3d 914, 917 (5th Cir. 1995); *In re American Reserve Corp.*, 841 F.2d 159, 162 (7th Cir. 1987); *In re Walsh Construction, Inc.*, 669 F. 2d 1325, 1328 (9th Cir. 1992). The standard for approval of a compromise settlement is whether the proposed settlement is “fair and equitable” and “in the best interest of the estate.” *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Thus, when a bankruptcy court decides whether to approve or disapprove a proposed settlement, it must consider:

(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; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re Justice Oaks II, Ltd., 898 F. 2d 1544, 1549 (11th Cir. 1990). Moreover, to approve a compromise, the Court need not determine which party would ultimately prevail, but only that the matter was open to reasonable doubt. *Id.*

11. Here, the *Justice Oaks* factors weigh in favor of approving the Settlement Terms, and the compromise of disputes pursuant to the terms of the Compromise Motion is in the best interest of the estate.

12. The Compromise Motion resolves the Lawsuit, without the need for further expense and delay. ATN believes strongly, for the substantial reasons stated in the Bankruptcy Court’s summary judgment order and as recognized in the District Court’s ruling, that it has a high probability of success in the litigation. But, the avoidance of additional expense at trial, and especially the benefit of satisfying or reimbursing the Litigation Costs now, with agreed-upon reductions described below as part of the overall Settlement Terms, weighs in favor of approving the compromise and the Settlement Terms. Finally, the terms of the Settlement

Agreement favors the paramount interest of the creditors because it resolves long-standing litigation and frees money that will ultimately provide a recovery to creditors under the Plan.

13. As stated above, the costs to date of the bankruptcy litigation resulting in the Settlement Agreement have been significant. Those incurred costs have created the common fund available through the Settlement Agreement, subject to its terms and conditions. Ultimately, the Plan provides for payment of creditors from causes of action recoveries after payment of “(i) all Administrative fees; (ii) all costs of the litigation, including attorneys’ fees and costs; and (iii) after a distribution to Reorganized Debtor equal to 20% of any recovery for marketing and operations.” Plan, 8-9. Here, the costs of the litigation (the “**Litigation Costs**”) exceeded \$6 million, as summarized on Exhibit B.¹ However, to reach a settlement, ATN and various holders of the Litigation Costs have separately agreed as part of and contingent upon approval of the overall compromise to reduce and compromise their recovery related to the Litigation Costs to the extent necessary to reach the approximate \$4.6 million agreed to in the Settlement Agreement.

14. Additionally, the Settlement Agreement requires separate releases by WATS/800 and Freeman. As part of the settlement, those parties have agreed to release their claims and indemnify the Flaster Defendants against other claims upon approval of the terms of the Settlement Agreement.

15. ATN requests that as part of the order granting this motion the Court retain jurisdiction to interpret and enforce the Settlement Agreement.

WHEREFORE, ATN requests that this Court enter an order that (i) grants this motion to compromise controversy; and (ii) authorizes and directs the Parties to consummate the

¹ The costs listed on Exhibit B consist of the expenses accounted for as part of the documentation for the Settlement Agreement amount. Additional Litigation Costs have been incurred, but ATN believes that the expenses associated with accounting for those additional costs exceed the benefit, in light of the compromise on the amounts of the Litigation Costs sought here.

settlement according to its terms.

/s/ Daniel R. Fogarty
Russell M. Blain, Esq. (FBN 0236314)
Daniel R. Fogarty (FBN 0017532)
Stichter, Riedel, Blain & Postler, P.A.
110 East Madison Street, Suite 200
Tampa, Florida 33602
rblain@srbp.com
dfogarty@srbp.com
(813) 229-0144 – Phone
(813) 229-1811 – Fax
Attorneys for Reorganized Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 2019, a true and correct copy of the foregoing **MOTION TO APPROVE COMPROMISE OF CONTROVERSY WITH FLASTER GREENBERG, P.C. AND PETER R. SPIRGEL** was forwarded by CM/ECF, or U.S. Mail to:

All Creditors and Parties Listed on the Local Rule 1007-2 List.

/s/ Daniel R. Fogarty
Daniel R. Fogarty (FBN 0017532)

Exhibit "A"

From: Jason.Baruch@hkllaw.com
To: jmc@jmcohenpa.com; dwaggoner@hwhlaw.com
Cc: rod.anderson@hkllaw.com; joe.varner@hkllaw.com; Daniel Fogarty; David.Cannella@hkllaw.com; Mark.Criser@hwhlaw.com
Subject: RE: Flaster Greenberg
Attachments: [1.16.19 settlement demand signed by Damian Freeman.pdf](#)

Gentlemen,

The signed proposed settlement demand is attached.

Jason Baruch | Holland & Knight
Partner
Holland & Knight LLP
100 North Tampa Street, Suite 4100 | Tampa FL 33602
Phone 813.227.6607 | Fax 813.229.0134
jason.baruch@hkllaw.com | www.hkllaw.com

-----Original Message-----

From: Jay Cohen <jmc@jmcohenpa.com>
Sent: Wednesday, January 16, 2019 10:02 AM
To: Baruch, Jason (TPA - X36607) <Jason.Baruch@hkllaw.com>
Cc: dwaggoner@hwhlaw.com
Subject: Flaster Greenberg

Jason,

Dennis Waggoner has been in touch with me this morning on behalf of his client, Flaster Greenberg, with regard to the settlement proposal contained in your email to him of the other day (a copy of which I have seen). He advises me that his client will promptly respond to the offer contained in that email when and if: (1) that proposal is signed by Damien Freeman individually and on behalf of both ATN and WATS/800, so that his client can be absolutely certain that Damien, ATN and WATS/800 are unconditionally agreeing to be bound by the terms of any proposal they make; and, (2) the first paragraph of the proposal is revised to reflect that payment will be made within one week of a final, non-appealable order from the bankruptcy court approving the proposed compromise.

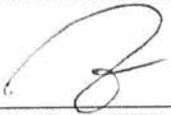
If you have any questions about this, I am off today and tomorrow and can be reached at 407-701-5281.

Jay

PROPOSED SETTLEMENT DEMAND PURSUANT TO MEDIATION PRIVILEGE

1. Defendants shall pay a total of \$6,950,000 to ATN within one week of a final, non-appealable order from the bankruptcy court approving this proposed settlement.
2. ATN shall provide a general release to Defendants (and all affiliates, agents, and insurers).
3. WATS/800 shall provide a general release to Defendants (and all affiliates, agents, and insurers).
4. WATS/800, ATN, and Damian Freeman personally shall wholly and unconditionally indemnify and hold harmless Defendants (and all affiliates, agents, and insurers) from any loss, including any cost of defense arising hereafter, arising from or relating to the Investment Partner lawsuit filed against Flaster Greenberg.
5. This proposed settlement and any acceptance by Defendants are conditioned upon bankruptcy court approval of the reimbursement of approximately \$4.6 million that ATN incurred to prosecute all of the ATN bankruptcy litigation to date. (Such reimbursement would be funded from the \$6.95 million recovery described above.)
6. If any person or entity successfully opposes any term or portion of this proposed settlement between the parties, Defendants and ATN shall promptly withdraw their conditional acceptance of this proposed settlement.

This offer automatically terminates at 11:00 a.m. on January 17, 2019.



DAMIAN T. FREEMAN,
Individually **and** as authorized agent
of Advanced Telecommunication Network, Inc.
And WATS/800 Holdings, Inc.

Date: 1/16/2019

From: dennis.waggoner@hwhlaw.com
To: Jason.Baruch@hklaw.com
Cc: rod.anderson@hklaw.com; joe.varner@hklaw.com; Daniel.Fogarty@hklaw.com; David.Cannella@hklaw.com; Mark.Criser@hwhlaw.com; jmc@jmcohenpa.com
Subject: RE: Flaster Greenberg [IWOV-FirmLive.FID635604]
Date: Thursday, January 17, 2019 9:14:00 AM

Jason:

I write to confirm that Flaster Greenberg and Peter Spirgel accept the Proposed Settlement Demand Pursuant to Mediation Privilege signed by Damian Freeman individually and as authorized agent of ATN and WATS/800 Holdings, Inc. on January 16, 2019.

Dennis

Dennis P. Waggoner
dennis.waggoner@hwhlaw.com

HILL WARD HENDERSON
3700 Bank of America Plaza Main: 813-221-3900
101 East Kennedy Boulevard Direct: 813-227-8426
Tampa, FL 33602 Fax: 813-221-2900
<http://www.hwhlaw.com>

From: Jason.Baruch@hklaw.com <Jason.Baruch@hklaw.com>
Sent: Wednesday, January 16, 2019 3:24 PM
To: jmc@jmcohenpa.com; Dennis Waggoner <dennis.waggoner@hwhlaw.com>
Cc: rod.anderson@hklaw.com; joe.varner@hklaw.com; dfogarty@srbp.com; David.Cannella@hklaw.com; Mark Criser <Mark.Criser@hwhlaw.com>
Subject: RE: Flaster Greenberg

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Jason Baruch | Holland & Knight
Partner
Holland & Knight LLP
100 North Tampa Street, Suite 4100 | Tampa FL 33602
Phone 813.227.6607 | Fax 813.229.0134
jason.baruch@hklaw.com | www.hklaw.com

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Cc: dwaggoner@hwhlaw.com
Subject: Flaster Greenberg

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If you have any questions about this, I am off today and tomorrow and can be reached at 407-701-5281.

Jay

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.



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Exhibit "B"

Litigation Costs

<u>name</u>	<u>category</u>	<u>total</u>
Jimmy Martin and his assigns	interest incurred on 2005 attorney fee loan	\$990,934.03
Holland & Knight	attorney's fees	\$961,329.68
Bingham McCutchen	attorney's fees	\$895,312.67
Trenam Kemker	attorney's fees	\$851,093.67
Karen Martin Trust	interest incurred on 2008 attorney fee loan	\$550,334.18
Gronek & Latham, LLP	attorney's fees	\$414,721.59
Damian Freeman	document retrieval and litigation management	\$331,264.80
Benjamin Yates	IT services for litigation	\$243,000.00
Schmidt & Tomlinson	attorney's fees	\$98,131.84
Neil Jacobs Esq. and Gary Carpenter	attorney's fees and cost for consent to Allen release	\$74,971.03
Akerman Senterfitt	attorney's fees	\$74,300.13
Thomson West/Westlaw	legal research	\$71,016.00
CV&RD, Inc.	document storage unit--Jan. 2003 to Jan. 2008	\$65,194.03
Kahn, Dees, Donovan & Kahn, LLP	attorney's fees	\$61,852.27
Mark Blake, Esq.	attorney's fees	\$58,155.33
EastGroup Properties and utilities	document storage unit year--Dec. 2007 to May 2016	\$46,822.86
U.S. Trustee	administrative fees	\$40,375.00
Quantum Consulting Group, LLC	expert report and witness	\$31,107.74
Sheldrick, McGehee & Kohler, LLC	expert report and witness	\$30,971.66
C. Timothy Corcoran, III, PA	attorney's fees	\$28,785.40
James Peck, Esq.	mediator	\$25,000.00
Dean Mead	attorney's fees	\$24,183.08
Stichter, Riedel, Blain & Prosser	attorney's fees	\$18,177.13
Law Office of Paul & Katz, P.C.	attorney's fees	\$13,717.95
New Jersey and Connecticut travel	air travel, meals and hotels	\$12,844.06
Thomas Durkee	expert report and witness	\$10,267.00
Pryor Cashman LLP	attorney's fees	\$10,000.00
Dilworth Paxson LLP.	attorney's fees	\$10,000.00
Jeffery Childers, Esq.	expert report and witness	\$6,000.00
Jay Cohen, Esq.	mediator	\$5,287.50
Rack & Shelving Depot	document storage	\$5,244.43
Daniel Allen	cost for stay pending appeal	\$5,000.00
Integra Reporting	transcript	\$3,247.50

Litigation Costs

<u>name</u>	<u>category</u>	<u>total</u>
Esquire Deposition Services	transcripts	\$2,755.72
Lathem, Shuker, Barker, Eden	attorney's fees	\$2,541.46
Jeffery Warren, Esq.	mediator	\$2,275.21
E.E.I. Security	document storage security	\$1,837.36
Pro Legal Discovery	transcripts	\$1,788.26
Matthew J. Wilson, Esq.	attorney's fees	\$1,623.38
Thomas N. Papadakos, Esq.	attorney's fees	\$1,500.00
Trenam Kemker	settlement of sanctions claim	\$1,500.00
Accredited Court Reporters	transcripts	\$1,136.95
Johnson Transcription Service	transcripts	\$924.00
Document Technologies, LLC	mailing services	\$920.66
Legallink	transcripts	\$789.75
IKON Office Solutions	copies	\$782.00
Realtime Reporters, Inc.	transcripts	\$640.02
Alliance Workforce	document storage relocation	\$513.00
First-Choice Reporting Services, Inc.	transcripts	\$442.96
Doyle Reporting, Inc.	transcripts	\$434.78
Barry, Corrado & Grassi	attorney's fees	\$431.50
Degan & Bateman	attorney's fees	\$413.10
Anthem Reporting	transcript	\$297.95
Keeley & Callahan, PC	lis pendens	\$200.00
Congress Title Division	title work	\$150.00
Cape May County Clerk	lis pendens	\$128.00
Camden County Clerk of the Court	lis pendens	\$120.00
		=====
	Total Expenses Incurred	\$6,092,788.62

Label Matrix for local noticing
113A-6
Case 6:03-bk-00299-KSJ
Middle District of Florida
Orlando
Fri Feb 15 13:56:46 EST 2019

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Peggy A Housner
Assistant Attorney General
Department of Attorney General
Revenue and Collections Div 1st Fl Treas
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Segal & Lewis, Llp
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Asst Atty Gen, c/o Martha M. Pena
Ofc of Atty Gen, Babkruptcy & Collection
POB 12548, Austin, TX 78711

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Worcester, MA 01608-1477

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Financial Services
7322 Sw Freeway Ste 1600r
Houston, TX 77074-2010

Profitec, Inc
c/o Ronald J. LoRicco, Sr.
216 Crown St Ste 502
Bew Haven, CT 06510-2705

Susan D. Cochran, Esq.
Assistant Attorney General
3030 W. Grand Boulevard, Suite 10-200
Detroit, MI 48202-6030

Verizon
PO Box 4832
Trenton, Nj 08650-4832

Xerox Corporation
Collections Svcs 1st Flr
800 Carllon Parkway
St Petersburg, FL 33716-1125

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Avci Inc
Undeliverable

(u)Comtelco
Undeliverable

(u)D. Scott Barash
V.P. & General Counsel
Undeliverable

(u)Intele-choice Communications
Undeliverable

(u)Telcordia Technologies
Church Street Station
Undeliverable

(u)Verizon Communications Inc
undeliverable

(u)Verizon North
undeliverable

(u)Xtracom
Undeliverable

End of Label Matrix	
Mailable recipients	31
Bypassed recipients	8
Total	39