



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 08, 2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 24-14221-MKN
) Chapter 11
NAJAR TRUCKING INC.,)
)
Debtor.) Date: November 21, 2024
) Time: 9:30 a.m.
)

**MEMORANDUM DECISION ON CONFIRMATION OF DEBTOR'S
AMENDED SUBCHAPTER V CHAPTER 11 PLAN OF REORGANIZATION¹**

On November 21, 2024, a hearing was held on confirmation of the Amended Subchapter V Chapter 11 Plan of Reorganization ("Amended Plan") proposed in the above-captioned case. The appearances of counsel were noted on the record. After evidence was admitted and arguments were presented, the matter was taken under submission as of the filing of further briefing.

BACKGROUND

On August 16, 2024, Najar Trucking Inc. ("Debtor") filed a "skeleton" Subchapter V voluntary Chapter 11 petition. (ECF No. 1).² On this same date, a notice of the Chapter 11

¹ In this Memorandum Decision, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code ("Code"), 11 U.S.C. §§ 101-1532, unless otherwise indicated. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "NRCF" are to the Nevada Rules of Civil Procedure.

² Section 1181(a) specifies that various provisions applicable in standard Chapter 11 cases generally do not apply in Subchapter V proceedings. Among those provisions specified in

proceeding was issued scheduling a meeting of creditors to take place on September 19, 2024, pursuant to Section 341(a). (ECF No. 2). Additionally, Debtor filed an “Emergency Motion for Entry of: (I) an Interim Order Authorizing Continued Use of Existing Pre-Petition Bank Account, and Honoring of Certain Pre-Petition Service Charges; (II) Scheduling a Final Hearing (“First Day Motion”), along with a Declaration of Martin A. Najar, as well as a request to have the First Day Motion heard on shortened time. (ECF Nos. 5, 6, and 7).

On August 19, 2024, Debtor filed a Verified Statement of Martin A. Najar in Support of Voluntary Petition Re: Documents Required Pursuant to 11 U.S.C. §§ 1187(a), 1116(1)(A), and 1116(1)(B). (ECF No. 9).

On August 19, 2024, notice was filed that Edward Burr had been appointed as Subchapter V trustee (“Trustee”) in the Chapter 11 proceeding. (ECF No. 14).

On August 19, 2024, an application was filed to approve the Debtor’s employment of Larson & Zirzow, LLC (L&Z”), as Chapter 11 counsel, along with the supporting declaration of attorney Matthew C. Zirzow (“Zirzow Declaration”). (ECF Nos. 15 and 16).³

Section 1181(a) are the Chapter 11 plan content requirements under Section 1123(a)(8) and (c), as well as the Chapter 11 confirmation requirements specified in Sections 1129(a)(15), 1129(b), 1129(c) and 1129(e). Notably, Section 1181(a) does not exclude Section 1124 (impairment of claims and interests) and Section 1126 (acceptance of plan) from application in Subchapter V. Section 1191 sets forth the requirements to confirm a proposed plan of reorganization in Subchapter V. Section 1191(a) reiterates that Section 1129(a)(15) does not apply in Subchapter V cases. Section 1191(b) specifies that if all other the requirements of Section 1129(a) are met, other than Sections 1129(a)(8), 1129(a)(10) and 1129(a)(15), then the debtor may request confirmation of the proposed Subchapter V plan over the objection of any impaired creditor class that has not accepted the plan. Upon such a request, the court shall confirm the proposed Subchapter V plan over the objection of an impaired secured class under one of the options specified in Section 1129(b)(2)(A). Upon such a request, the court shall confirm the proposed Subchapter V plan over the objection of an impaired unsecured class “if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.” In other words, Section 1129(b) generally does not apply in Subchapter V cases, except as to cramdown of dissenting impaired secured classes. Section 1129(b) has been supplanted in Subchapter V cases with respect to dissenting impaired unsecured classes, the most important aspect of which is the elimination of the so-called “absolute priority rule.”

³ Zirzow attests that the law firm received a prepetition retainer of \$30,000, of which \$26,000 was from the Debtor and \$4,000 was provided by Cassandra Ramirez. Ramirez is the

On August 22, 2024, an order shortening time was entered for the First Day Motion to be heard on August 28, 2024. (ECF No. 22). On this same date, an order was entered to set an initial status conference in this Chapter 11 case, along with a deadline of September 11, 2024, for Debtor to file a “Pre-Status Conference Report.” (ECF No. 23).

On August 23, 2024, Debtor filed its Chapter 11 Small Business Subchapter V Plan (“Chapter 11 Plan”),⁴ along with an ex parte motion for approval of procedures. (ECF Nos. 25 and 26). On this same date, Debtor filed an errata to its Chapter 11 Plan.⁵ (ECF No. 27).

daughter of the Debtor’s principal, Martin Najar. See Zirzow Declaration at ¶ 8. See also Disclosure of Compensation of Attorney for Debtor(s). (ECF No. 29, page 26 of 34).

⁴ Attached to the Chapter 11 Plan as Exhibit 1 is a Liquidation Analysis. Attached as Exhibit 2 is a set of Plan Projections. Shortly after the Chapter 11 Plan was filed, an errata was submitted to correct the information set forth in the Liquidation Analysis. The Plan Projections represented that the Debtor’s average gross monthly income from November 2024 through June 2025 would be \$22,000 and its average monthly expenses would be \$20,961, resulting in net monthly income of \$1,039. At a monthly average of \$22,000, the average annual gross income would be \$264,000. The Plan Projections describe the Debtor’s average monthly expenses in sufficient detail. During that period, Debtor projects that it will pay a total of \$7,500 in administrative payments under the proposed plan and no funds to non-priority general unsecured claims. From July 2025 through October 2027, the Plan Projections represent that average gross income would remain at \$22,000 while average monthly expenses would increase to \$21,111 (due to an additional \$250 contingency reserve), resulting in net monthly income of \$889. During the latter period, Debtor projects that no additional payments of administrative claims will be required, and that quarterly payments of \$2,570 will be made to non-priority general unsecured Class 3.

⁵ Attached to the errata as Exhibit 1 is a revised Liquidation Analysis in support of the Chapter 11 Plan. The Liquidation Analysis represents that the liquidation value of all assets of the bankruptcy estate is \$51,165. The analysis estimates the total amount of general unsecured claims in Class 3 to be \$246,263, consistent with the amounts listed in Schedule E/F. See note 6, infra. It estimates that if the assets are liquidated in Chapter 7, an estimated \$37,500 would be paid in priority administrative claims due to the liquidation costs and trustee commissions required in Chapter 7, leaving \$13,665 available for general unsecured claims in Class 3. As a result, general unsecured claims would be paid 5.55% of their claim amounts if the case is converted to Chapter 7. The Liquidation Analysis further represents that under the proposed Chapter 11 Plan, the administrative expenses from conversion to Chapter 7 would be avoided, leaving \$25,704 for distribution to general unsecured claims. As a result, general unsecured creditors would be paid 10.44% of their claim amounts under the Chapter 11 Plan, i.e., an improvement of 4.89%.

On August 27, 2024, Debtor filed its schedules of assets and liabilities (“Schedules”),⁶ its Statement of Financial Affairs (“SOFA”),⁷ and a Profit & Loss Statement for January 1 through August 15, 2024.⁸ (ECF No. 29).

On August 27, 2024, Debtor filed a second errata to its Chapter 11 Plan.⁹ (ECF No. 30).

On August 29, 2024, an order was entered denying Debtor’s ex parte motion for approval of procedures regarding its Chapter 11 Plan without prejudice until after conclusion of the meeting of creditors. (ECF No. 32).

⁶ In secured creditor Schedule “D,” Debtor attests that it has no secured creditors with claims secured by any property of the estate. In unsecured creditor Schedule “E/F,” Debtor attests that it has no unsecured creditors whose claims are entitled to priority under Section 507. In the same Schedule, Debtor attests that it has three separate creditors having unsecured claims totaling \$246,262.21. Those three creditors are identified as Burch & Cracchiolo, P.A. [“B&C”] (\$93,543.49), the Nevada Department of Taxation [“NDOT”] (\$38,220.97), and Southwest Specialties, Inc. [“Southwest”] (\$114,497.75). Debtor does not specify that any of the three scheduled creditors are contingent, unliquidated, disputed or subject to offset. Under FRBP 3003(c)(2), all three creditors were permitted but not required to file proofs of claim.

⁷ Both the Schedules and the SOFA are signed under penalty of perjury by the Debtor’s principal. Part 1, Item 1 of the SOFA attests that the Debtor’s gross annual revenues were \$225,748 in 2022, \$199,882 in 2023, and \$154,819 for the first eight months in 2024. Part 6, Item 11.1 attests that \$30,000 was paid to L&Z on August 14, 2024, as a retainer for bankruptcy representation, of which \$4,000 was paid by Cassandra Ramirez. Part 13, Item 26a.1 identifies Consulting 89103, Inc. (Attn: Jose Arevalo), as the Debtor’s accountants and bookkeepers who maintained the debtor’s books and record from 2021 to the bankruptcy petition date.

⁸ The Profit & Loss Statement indicates that in the seven and a half months preceding commencement of the Chapter 11 proceeding, Debtor’s gross revenues were \$154,819.14, while its expenses were \$176,868.13. The result was a net loss of \$22,048.99.

⁹ Attached to the second errata as Exhibit 1 is a further revised Liquidation Analysis that represents the liquidation value of all assets to be \$66,457. The revised analysis again estimates the total amount of general unsecured claims in Class 3 to be \$246,263. It estimates that if the assets are liquidated in Chapter 7, an estimated \$49,100 would be paid in priority administrative claims due to the liquidation costs and trustee commissions required in Chapter 7, leaving \$17,357 available for general unsecured claims in Class 3. As a result, general unsecured claims would be paid 7.05% of their claim amounts if the case is converted to Chapter 7. The revised Liquidation Analysis further represents that under the proposed Chapter 11 Plan, the administrative expenses from conversion to Chapter 7 would be avoided, leaving \$25,704 for distribution to general unsecured claims. As a result, general unsecured creditors would be paid 10.44% of their claim amounts under the Chapter 11 Plan, i.e., an improvement of 3.39%.

1 On August 29, 2024, an initial order was entered granting Debtor's First Day Motion.
2 (ECF No. 33).

3 On August 30, 2024, the NDOT filed proof of claim 1-1 ("POC 1-1") in the total amount
4 of \$35,708.97, consisting of a priority unsecured amount of \$32,858.35 and a general unsecured
5 amount of \$2,850.62.

6 On September 11, 2024, Debtor filed its Pre-Status Conference Report. (ECF No. 36).

7 On September 19, 2024, creditor Southwest filed proof of claim 2-1 ("POC 2-1") in the
8 nonpriority unsecured amount of \$114,497.75. The statement attached to POC 2-1 represents
9 that the total amount consists of taxable costs of \$11,068.79, prejudgment interest on taxable
10 costs of \$1,076.46, and attorney fees of \$102,352.50, arising from a pre-bankruptcy judgment
11 entered against the Debtor on August 14, 2024. Also attached to POC 2-1 is a copy of a
12 judgment entered on August 14, 2024, by the Eighth Judicial District Court, Clark County,
13 Nevada ("State Court") in Case No. A-19-803625-C, styled as Najar Trucking, Inc. v. Southwest
14 Specialties, Inc. ("State Action"). That judgment included the State Court's Order re:
15 Defendants' Motion for Attorney's Fees and Interest ("State Fee Order") entered in the State
16 Action on August 7, 2024.

17 On September 25, 2024, a final order was entered granting the First Day Motion. (ECF
18 No. 41).

19 On October 1, 2024, Debtor filed its monthly operating reports ("MORs") for the periods
20 ending August 31, 2024, and September 30, 2024. (ECF Nos. 44 and 45).¹⁰

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26 ¹⁰ The August 2024 MOR encompassed the August 16, 2024 petition date through
27 August 31, 2024. For that period, it reflects cash receipts of \$11,433.45 and cash disbursements
28 of \$3,529.26, resulting in a net cash flow of \$7,904.19. The September 2024 MOR reflects cash
receipts of \$30,773.83 and cash disbursements of \$19,893.75, resulting in a net cash flow of
\$10,880.08.

1 On October 2, 2024, Debtor filed its proposed Amended Plan to which is attached an
2 Amended Liquidation Analysis¹¹ in addition to a set of Amended Plan Projections.¹² (ECF No.
3 46). Debtor also filed a redlined comparison of the Amended Plan to the initial Chapter 11 Plan,
4 in addition to an ex parte motion to set deadlines to confirm the Amended Plan, including the
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6

7 ¹¹ Under Article 2 of the Amended Plan, creditors and interest holders are placed in four
8 separate classes. Article 3 encompasses unclassified claims, administrative expense claims, and
9 priority tax claims. §3.03 addresses any allowed portion of a priority claim asserted by the
10 NDOT. Article 4 specifies that treatment of claims and interests under the proposed Amended
11 Plan. §4.01 provides that Class 3 non-priority general unsecured claims would be paid pro rata
12 from ten quarterly payments in the aggregate sum of \$3,173. The Liquidation Analysis filed in
13 connection with the original Chapter 11 Plan had estimated that \$25,704 would be available for
14 payment of general unsecured claims resulting in a 10.44% distribution. See note 5, supra. The
15 Amended Liquidation Analysis represents that the liquidation value of all assets of the
16 bankruptcy estate is \$65,207. The amended analysis estimates that there is an unclassified
17 priority unsecured tax claim in the total amount of \$38,081 and general unsecured claims in
18 Class 3 in the amount of \$210,893. The Amended Liquidation Analysis further estimates that if
19 the assets are liquidated in Chapter 7, an estimated \$50,250 would be paid in priority
20 administrative claims due to the liquidation costs and trustee commissions required in Chapter 7,
21 leaving only \$14,957 available to apply to the unclassified priority tax claim. As a result, there
22 would be no funds available to pay nonpriority general unsecured claims in Class 3 if the case is
23 converted to Chapter 7. The Amended Liquidation Analysis further represents that under the
24 proposed Amended Plan, the administrative expenses from conversion to Chapter 7 would be
25 avoided, leaving \$3,173 available for distribution to nonpriority general unsecured claims after
26 payment of the unclassified priority tax claim. As a result, general unsecured creditors would be
27 paid 1.5% of their claim amounts under the Amended Plan compared to zero if the case is
28 converted to Chapter 7. Consistent with the Amended Liquidation Analysis, Article 1 of the
Amended Plan states that non-priority unsecured creditors in Class 3 would receive a 1.5%
distribution.

¹² The Amended Plan Projections represented that the Debtor's average gross income
from November 2024 through October 2027 would be \$22,000 and its average monthly expenses
would be \$20,611, resulting in net monthly income of \$1,389. Like the original Plan Projections,
the average annual gross income would be \$264,000. As with the original Plan Projections, the
average monthly expenses are described in sufficient detail. From December 2024 through June
2025, Debtor projects that it will pay a total of \$8,750 in administrative expenses under the
proposed plan and no payment on any other claims. From July 2025 through October 2027,
Debtor projects that no additional payments of administrative claims will be required, and that
monthly payments of \$1,360 would be made to priority tax claims, and quarterly payments of
\$317.30 would be made to non-priority general unsecured Class 3.

1 deadline to submit evidence and to file confirmation objections governed by FRBP 3020(b)(1).¹³
 2 (ECF Nos. 47 and 48).

3 On October 7, 2024, an order was entered setting deadlines for confirmation of the
 4 Amended Plan and scheduling the plan confirmation hearing for November 21, 2024 (“Plan
 5 Confirmation Hearing”). (ECF No. 49).

6 On October 25, 2024, creditor B&C filed proof of claim 3-1 (“POC 3-1”) in the
 7 nonpriority unsecured amount of \$93,567.99.

8 On November 7, 2024, Southwest filed an objection to plan confirmation (“Southwest
 9 Objection”) along with a supporting declaration of its counsel James R. Christensen
 10 (“Christensen Declaration”).¹⁴ (ECF Nos. 56 and 57).

11 On November 14, 2024, Debtor filed a brief in support of plan confirmation
 12 (“Confirmation Brief”) along with a request for judicial notice (“RJN”),¹⁵ a ballot summary
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 15 ¹³ Under FRBP 3020(b)(1), a plan confirmation proceeding is a contested matter under
 16 FRBP 9014. Under FRBP 9014(c), parties that contest the relief requested may undertake
 discovery as permitted by FRBP 7026 and FRBP 7028-7037.

17 ¹⁴ Copies of three documents are attached as exhibits to the Christensen Declaration.
 18 Exhibit “1” includes a copy of Findings of Fact, Conclusions of Law, and Judgment (“State
 19 FFCL”) entered on June 14, 2024, by the State Court in the State Action. The State Court denied
 all of the claims alleged by the Debtor as well as all of the counterclaims alleged by Southwest.
 20 See State FFCL at 22:5-12. Exhibit “2” includes a copy of the State Fee Order. Exhibit “3” is a
 21 copy of excerpts from a transcript in the State Action for Day 3 of a bench trial conducted on
 November 27, 2023, before the Honorable Maria Gall (“Judge Gall”).

22 ¹⁵ Sixteen documents filed in the State Action are attached as exhibits to the RJN.
 23 Exhibits 1 through 12 were filed before commencement of the Chapter 11 proceeding, between
 24 October 30, 2019, and August 14, 2024. Exhibits 13, 14, 15 and 16 were filed after
 commencement of the bankruptcy case, between October 11, 2024, and October 31, 2024.
 25 Exhibit 1 is a copy of the Debtor’s amended complaint in the State Action filed on November 14,
 2019, by the law firm of Williams & Starbuck. Exhibit 7 is a copy of Southwest’s motion for
 26 attorneys fees and interest filed on June 26, 2024 (“State Fee Motion”). Exhibit 15 is a copy of
 the State Court order entered October 15, 2024, denying Southwest’s motion for reconsideration
 27 of the portion of the State Fee Order that denied an award of attorney’s fees against B&C.
 Exhibit 16 is a copy of Southwest’s notice of appeal to the Nevada Supreme Court filed October
 28 31, 2024, regarding the order denying its motion for reconsideration.

(“Ballot Summary”),¹⁶ a declaration of Martin Najar (“Najar Declaration”),¹⁷ and a declaration of Cassandra Ramirez (“Ramirez Declaration”).¹⁸ (ECF Nos. 60, 61, 62, 63, and 64).

On November 20, 2024, Debtor filed its MOR ending October 31, 2024. (ECF No. 65).¹⁹

On November 20, 2024, the Trustee filed a statement of position and recommendation regarding plan confirmation (“Trustee Confirmation Statement”).²⁰ (ECF No. 66).

¹⁶ According to the Ballot Summary all of the creditors that voted in non-priority general unsecured Class 3 rejected the proposed Amended Plan. There is no dispute that Southwest is the only creditor in Class 3 that voted and that voted to reject plan treatment. For Chapter 11 proceedings under Subchapter V, Section 1191(a) provides that all of the plan confirmation requirements of Section 1129 must be met other than Section 1129(a)(15). Section 1191(b) further provides that if all of the requirements of Section 1129(a) are met, other than Sections 1129(a)(8), (10) and (15), the Subchapter V debtor may request plan confirmation “if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims...that is impaired under, and has not accepted, the plan.” For a Subchapter V plan to be fair and equitable to a dissenting unsecured class, Section 1191(c)(2) requires that as of the effective date of the plan, any dissenting class receive the debtor’s projected disposable income not to exceed five years, or the value of such income. Section 1191(d)(2) defines “disposable income” to be the debtor’s income that is not reasonably necessary “for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.”

¹⁷ Najar is the principal of the Debtor, which is a family trucking business that employs his brother (Matias Najar) on a full-time basis as well as his daughter (Cassandra Ramirez) on a part-time basis. See Najar Declaration at ¶ 4.

¹⁸ Ramirez has worked part-time for the Debtor for approximately eight years, including assistance in bookkeeping, recordkeeping and other tasks. See Ramirez Declaration at ¶¶ 7.

¹⁹ The October 2024 MOR reflects cash receipts of \$25,857.60 and cash disbursements of \$24,880.64, resulting in a net cash flow of \$976.96.

²⁰ The trustee appointed in a Subchapter V case “shall...appear and be heard at...any hearing that concerns...confirmation of a plan under this subchapter.” 11 U.S.C. § 1183(b)(3)(B). In this instance, the Trustee supports confirmation of the proposed Amended Plan based on his review of Amended Liquidation Analysis as well as the Amended Plan Projections. See Trustee Confirmation Statement at ¶¶ 1, 3, and 4.

On November 21, 2024, Debtor filed a supplemental reply in support of plan confirmation (“Debtor Post-hearing Brief”) to address the liquidation value of any professional negligence claim against B&C.²¹ (ECF No. 67).

On November 27, 2024, Southwest filed a response to the Debtor’s supplemental reply (“Southwest Post-hearing Brief”). (ECF No. 68).

DISCUSSION

Southwest is the only creditor that objects to confirmation of the proposed Amended Plan and its ballot rejecting nonpriority unsecured Class 3 results in a dissenting unsecured class.²² As a further result, confirmation of the Amended Plan over dissenting Class 3 requires a determination that the plan does not discriminate unfairly, and is fair and equitable, with respect to Class 3. See note 2, supra. Separate from this determination, Southwest raises four specific

²¹ The assets listed in the initial Liquidation Analysis as well as the Amended Liquidation Analysis does not include a professional negligence claim. Apparently, the State Action was commenced by the Debtor in 2019 against Southwest to collect amounts allegedly owed for services provided on various projects by the Debtor. See Najar Declaration at ¶ 5. On August 9, 2021, B&C apparently substituted into the State Action to represent the Debtor. Id. at ¶¶ 6 and 7; State Fee Motion at 4:22-23. With respect to any potential professional negligence claim, Debtor’s principal attests as follows:

An alleged malpractice claim against Burch & Cracchiolo also has no probability of success in light of the fact that it was Najar Trucking’s own poor recordkeeping pre-petition in its dealings with Southwest that made it impossible for experienced counsel at Burch & Cracchiolo to prove the Debtor’s damages in the Litigation. Similarly, it was also ultimately Najar Trucking’s decision whether to pursue the Litigation, and whether to accept or reject Southwest’s offer of judgment made prior to trial in the case. In other words, and quite unfortunately for it, it was Najar Trucking’s own failures resulted in it losing any ability to recover more than \$250,000 that it should have against Southwest. By contrast, Southwest essentially seeks to have Burch & Cracchiolo held liable for its client’s own deficiencies in recordkeeping with respect to its dealings with Southwest, and its client’s own ultimate strategic choices in the Litigation, including whether to settle by accepting an offer of judgment. Burch & Cracchiolo did not guaranty the success of the underlying litigation, however, it merely acted as counsel.

Najar Declaration at ¶ 11.

²² Southwest, NDOT and B&C are the only creditors scheduled by the Debtor, see note 6, supra, and the only creditors that filed proofs of claim.

1 written arguments. First, it argues that the Debtor has not provided a sufficient disclosure
2 statement to support confirmation. See Southwest Objection at 5:15 to 7:16. Second, it objects
3 to the payment of Ramirez as an office employee to assist in the Debtor's bookkeeping. Id. at
4 7:17 to 8:15. Third, it maintains that the Debtor's projected disposable income is inadequately
5 explained. Id. at 8:16-24. Finally, it argues that the Debtor's monthly operating report for
6 August 2024 contains separate disbursements of \$20,000 and \$12,880 that are not explained. Id.
7 at 9:1-12.

8 At the Plan Confirmation Hearing, Southwest clarified that its first written argument is
9 properly characterized as an objection under the so-called "best interests of creditors" test, i.e.,
10 that creditors in the dissenting, impaired Class 3 must receive property of a value on the effective
11 date of the plan that is "not less than the amount such holder would so receive...if the debtor
12 were liquidated under chapter 7..." 11 U.S.C. § 1129(a)(7)(A)(ii).²³ Southwest essentially
13 argued that neither the initial Liquidation Analysis nor the Amended Liquidation Analysis listed
14 a potential professional negligence claim against the Debtor's counsel in the State Action, i.e.,
15 B&C, nor did it provide a potential value. Southwest maintained that such a claim could be
16 pursued by a Chapter 7 trustee, or perhaps would be subject to sale. It argued that the potential
17 claim could be liquidated in Chapter 7 and the proceeds included in a distribution to creditors,
18 including Class 3. In other words, rather than zero dollars being distributed to non-priority
19 unsecured creditors in Chapter 7 and the 1.5% distribution to Class 3 under the proposed
20 Amended Plan according to the Amended Liquidation Analysis, see discussion at note 11, supra,
21 Southwest argues that there may be additional funds recovered through pursuing a professional
22 negligence claim against B&C. The court permitted counsel for both the Debtor and Southwest
23 to submit legal memoranda addressing whether such claims could be sold or assigned by the
24 bankruptcy estate in a Chapter 7 proceeding.

26 ²³ The test essentially addresses whether the benefit of approving a Chapter 11
27 reorganization is contrary to an expedited distribution to creditors in a Chapter 7 liquidation. As
28 long as creditors receive as much as they would in a Chapter 7 liquidation, then the anticipated
benefit of a plan of reorganization theoretically does not unduly prejudice creditors. None of
these benefits will be realized, of course, unless the proposed plan of reorganization is feasible.

1 The court has reviewed the record in this Subchapter V proceeding and has considered
 2 the written and oral arguments of counsel. The court also has considered the written testimony
 3 admitted into evidence as well as the materials for which judicial notice has been requested.
 4 Based on that review and consideration, the court overrules the plan confirmation objections
 5 presented by Southwest and separately has considered whether the requirements for confirmation
 6 under 1191 have been met for a proposed Subchapter V plan of reorganization. Based on the
 7 latter consideration, the court concludes that confirmation of the Amended Plan is warranted.

8 **I. Southwest's Initial Confirmation Objections are Overruled.**

9 Southwest challenges the adequacy of Debtor's disclosures accompanying the proposed
 10 Amended Plan but ignores that neither the disclosure statement requirement under Section
 11 1125(b) nor the adequate information requirement under Section 1125(a)(1) apply in a
 12 Subchapter V proceeding unless otherwise ordered by the court. See 11 U.S.C. § 1181(b).²⁴
 13 There are only three creditors in this Subchapter V proceeding, and only Southwest suggests that
 14 the Debtor has not provided adequate information. Southwest has been in litigation with the
 15 Debtor since 2019 and was able to conduct discovery in connection with the proposed Chapter
 16 11 Plan as well as the Amended Plan. Southwest also could have sought to examine the Debtor's
 17 principal and its employees and to obtain other information under FRBP 2004(a).²⁵ The
 18 Amended Plan describes the Debtor's prepetition operating history, the history of the State
 19 Action, and the Debtor's history in Chapter 11. It also describes its financial impact through in
 20 the form of the Amended Liquidation Analysis attached as Exhibit 1 to the Amended Plan, as
 21 well as a cash flow projection that is attached as Exhibit 2. This information is sufficient and
 22 proportional to the needs of the case.

23
 24 ²⁴ Even if adequate information is required, the disclosure and solicitation language of
 25 Section 1125 provides that "the court shall consider the complexity of the case, the benefit of
 26 additional information to creditors and other parties in interest, and the cost of providing
 additional information..." 11 U.S.C. § 1125(a)(1).

27 ²⁵ FRBP 2004(a) allows a party in interest to examine any entity upon order of the court.
 28 In Chapter 11 proceedings, the examination may relate to the operation of any business, the
 desirability of continued operations, the source of any funds for consummating a plan, and any
 other matter relevant to the case or formulating a plan. See FED.R.BANKR.P. 2004(b)(2).

Southwest's challenge to the payment of \$1,200 per month to Ramirez for future services to the revested debtor is without merit. Southwest does not dispute that such services are required for the Debtor's operations, nor does Southwest provide any evidence or suggestion that similar services could be provided for less than the proposed amount.²⁶ The proposed rate of compensation is reasonable and necessary.

Southwest's challenge to the Debtor's projection of disposable income also fails. It argues that the income figures appearing in the August and September MORs reflect a projected net monthly income far exceeding the \$1,389 amount stated in the Amended Plan Projection. See note 12, supra. The MOR for October, however, reflects a net income of only \$976.96. See note 19, supra. According to the Debtor, these fluctuations from month to month during the Chapter 11 proceeding are not inconsistent with the Debtor's historical performance over the past three years. See Najar Declaration at ¶¶ 2, 3, and 9; Ramirez Declaration at ¶¶ 2, 3, and 9. The \$22,048.99 net loss shown in the Profit & Loss Statement for the eight-month period before the commencement of the Chapter 11 proceeding, see note 8, supra, also suggests that the net income reflected in the August and September MORs is not indicative of the Debtor's overall history. Other than by referring to the August and September MORs, Southwest offers no evidence to dispute the Debtor's projections that might have been obtained through discovery or from other sources. No contrary testimony was offered, nor were Najar or Ramirez cross-examined at the Plan Confirmation Hearing. Although the Debtor disclosed its accountant and bookkeeper, see note 7, supra, there is no indication that he or she was deposed or that records

²⁶ Southwest apparently disputes whether Ramirez is credible or has competence to provide the necessary bookkeeping and other services to the Debtor, based on her testimony in the State Action. See State FFCL at ¶¶ 109 to 117. Of course, nothing prevents the Debtor from attempting to locate an affordable replacement for Ramirez if the deficiencies raised in the State Action persist. Inasmuch as the State Action sought damages that allegedly occurred no later than 2019 and that could not be proven at trial, it is unclear whether Ramirez's bookkeeping and administrative experience and practices are better today than they were five years ago. There is no dispute that the Debtor and Southwest stopped doing business with each other on or about October 15, 2019. See State FFCL at ¶¶ 87-94. There is no evidence in the record that the Debtor suffers similar bookkeeping and recordkeeping difficulties in its business with other contractors. Neither Ramirez nor Najar were cross-examined at the Plan Confirmation Hearing, nor was any discovery offered into evidence.

were subpoenaed.²⁷ Under these circumstances, a preponderance of the evidence supports the disposable income analysis found in the Amended Plan Projections.

Southwest's challenge to separate transfers of \$20,000 and \$12,880 appearing in the August monthly operating report is without merit. There is no dispute that these transfers occurred prior to the commencement of the Chapter 11 proceeding. Debtor explains that these transfers were made to partially fund the retainer for L&Z's service as Chapter 11 counsel²⁸ and to meet business rent and payroll expenses. See Najar Declaration at ¶¶ 15 and 16; Ramirez Declaration at ¶¶ 10 and 11. Southwest offers no evidence contrary to these explanations, nor has it suggested any reason why confirmation of the proposed Amended Plan should be denied.

For these reasons, Southwest's initial written objections will be overruled.

II. Southwest's Best Interests of Creditors Objection is Overruled.

Southwest asserts that nonpriority unsecured creditors in Class 3 would receive more if all assets are liquidated in a Chapter 7 instead of the proposed Amended Plan. It does not dispute the amounts set forth in the Amended Liquidation Analysis, but maintains that the Debtor has a professional negligence claim against B&C arising from B&C's deficient representation of the Debtor in the State Action. It asserts that the Debtor rejected a \$40,000 offer of judgment from Southwest in December 2022 that led to a multi-day trial resulting in a final judgment entered against the Debtor and in favor of Southwest on June 14, 2024.²⁹

²⁷ That the Debtor had an outside accountant other than Ramirez as a bookkeeper was known during the trial of the State Action. See State FFCL at ¶ 58.

²⁸ The balance of the retainer for L&Z was provided by Ramirez. See notes 3 and 7, supra.

²⁹ There is no dispute that a bench trial of the State Action commenced before Judge Gall on November 20, 2023. See State Fee Motion at page 303 of 542, ¶ 12. There is no dispute that due to an evidentiary ruling that morning, Southwest made a "walk-away" offer to the Debtor, presumably for the Debtor to abandon its claims for relief and for Southwest to abandon its counterclaims. There is no dispute that the walk-away offer was rejected on the morning of the next day of trial (November 21, 2023). Id. at 304 of 542, ¶ 13. There is no dispute that when day three of the trial resumed on November 27, 2023, Debtor rejected a renewed walk-away offer and instead demanded \$100,000 to settle. Id. It appears that the trial proceeded for an additional four days.

Rejection of the offer of judgment separately resulted in entry of the State Fee Order against the Debtor in the total amount of \$114,497.75.³⁰ Southwest also asserts that B&C was paid \$135,743 for its services in the State Action. See Southwest Post-hearing Brief at 4:21-24. Along with the fees and costs incurred in this Chapter 11 proceeding, Southwest suggests that the Debtor sustained more than \$250,000 in damages³¹ because B&C committed legal malpractice by pursuing a meritless claim on behalf of its client. Id. at 4:3-24 and 7:3-8.³²

In connection with its motion for allowance under NRCP 68, Southwest also requested that the State Court award attorney's fees against Debtor's counsel, i.e., B&C. The State Court denied the request and concluded as follows:

The court disagrees that an award of attorney's fees against Najar Trucking's counsel is proper. The court has no information before it to suggest that the extraordinary sanction of imposing fees on counsel personally and individually is appropriate here. There is no indication that counsel knew of his client's motivations in bringing this case and/or was complicit in maintaining their claims beyond providing representation. The court declines to sanction counsel merely for representing his client.

³⁰ The State Court considered whether Southwest was entitled to an allowance of its attorney's fees and costs under NRCP 68 based on Debtor's refusal to accept the offer of judgment in December 2022. See State Fee Order at 2:13 to 6:3. Among other things, the State Court found that "Najar Trucking's shifting damage estimates in the midst of trial suggests that Najar Trucking had no competent evidence of damages at any point in the case." Id. at 5:8-11 (emphasis added). Applying the Nevada Supreme Court's guidance in Beattie v. Thomas, 99 Nev. 579, 588-89 (1983), Judge Gall concluded that attorney and paralegal fees of \$102,352.50 incurred by Southwest should be allowed. Id. at 5:16-25. The State Court also allowed an additional \$11,068.79 in costs, prejudgment interest on costs, and postjudgment interest. Id. at 7:9 to 8:2.

³¹ \$114,497.75 under State Fee Order plus \$135,743 in attorney fees paid to B&C for representation in State Action.

³² Curiously, the outcome of the State Action was no better for Southwest on its counterclaims against the Debtor. See note 14, supra. The State Court was not persuaded by the evidence produced at trial on Southwest's counterclaims. See State FFCL at ¶¶ 127 to 137. The State Court's judgment determined that both parties "shall take nothing" from the other and that their respective claims "are denied in their entirety." See State FFCL at 22. Like B&C, Southwest's counsel substituted into the State Action well into the litigation but the efforts suffered a similar fate: denial of the counterclaims based a failure to persuade the trier of fact.

1 Id. at 7:1-9. Having been denied recovery of attorney’s fees against B&C in State Court,³³
 2 Southwest essentially alleges that B&C may be pursued for professional negligence by its client
 3 through the Chapter 11 proceeding.

4 There is no dispute that the State Action was commenced by prior counsel in 2019, see
 5 note 15, supra, and that B&C did not substitute into that litigation until later in 2021. See note
 6 21, supra. In connection with its motion under NRCP 68, Southwest apparently demonstrated to
 7 the State Court that “Najar Trucking had no competent evidence of damages at any point in the
 8 case.” See note 29, supra. Moreover, as indicated above, the State Court expressly rejected
 9 Southwest’s effort to shift fees to B&C and found no indication that B&C “was complicit in
 10 maintaining [Najar Trucking’s] claims beyond providing representation.” Southwest’s
 11 suggestion that B&C breached its duty of professional care to the Debtor faces a glaring legal
 12 and evidentiary hurdle: causation and proximate causation. There is no dispute that B&C’s
 13 representation was preceded by at least one prior law firm that similarly must have had no
 14 competent evidence of any damages at any point in the case. There is no dispute that Southwest
 15 presented no evidence indicating that B&C was complicit in maintaining the Debtor’s claims.
 16 Thus, there is little to suggest that B&C caused the State Action to be commenced or was the
 17 proximate cause of the State Action to proceed through trial.

18 This conclusion is buttressed by the evidence now before this bankruptcy court. As
 19 discussed at note 21, supra, the principal of B&C’s client expressly testifies that damages could
 20 not be proven at trial in the State Action due to the Debtor’s own recordkeeping. Moreover, the
 21 principal also expressly testifies that the decision to reject Southwest’s offer of judgment under
 22 NRCP 68 was the Debtor’s decision, not its counsel. This testimony was not contested at the
 23

24 ³³ It is not clear whether Southwest ever actually sought sanctions against B&C pursuant
 25 to NRCP 11(c)(2), including attorney’s fees and expenses under NRCP 11(c)(4). That provision
 26 allows sanctions to be entered against parties and their counsel for signing, filing, submitting, or
 27 later advocating a pleading, motion or other paper presenting factual contentions that do not have
 28 evidentiary support. See NEV.R.CIV.P. 11(b)(3). It appears that even after its damage claim
 were discredited during trial of the State Action, Debtor continued to advocate that damages had
 occurred.

1 Plan Confirmation Hearing through impeachment evidence or through cross-examination of the
2 Debtor's principal.³⁴

3 Under these circumstances, the court is not persuaded that pursuit of a professional
4 negligence claim against B&C in a Chapter 7 liquidation would result in an increased
5 distribution to creditors in Class 3. For that reason, the court concludes that the Debtor has
6 demonstrated by a preponderance of the evidence that the nonpriority unsecured creditors in
7 Class 3 will receive not less than the amount they would receive if the Debtor was liquidated in
8 Chapter 7. Accordingly, the requirements of Section 1129(a)(7) have been met.

9 **III. Debtor Has Met its Burden of Proof on the Applicable Requirements of**
10 **Section 1191(a).**

11 Having addressed the only objections to confirmation of the proposed Amended Plan, the
12 court considers the remaining applicable requirements for confirmation of a Subchapter V plan
13 over the objections of a dissenting class. See discussion at note 2, supra. A brief discussion of
14 Sections 1129(a)(1, 2, 3, 4, 5, 6, 9, 11, 12, 13, 14 and 16) is appropriate. See In re Cesaretti,
15 2023 WL 3676888, at *8 (Bankr. D. Nev. 2023).

16 **A. 1129(a)(1).**

17 This provision addresses whether a proposed Chapter 11 plan contains the terms required
18 or permitted under Section 1123, and whether the classes proposed in a plan comply with Section
19 1122. See In re Islet Sciences, Inc., 640 B.R. 425, 458 (Bankr. D. Nev. 2022, citing 7 COLLIER
20 ON BANKRUPTCY, ¶ 1129.02[1] (Richard Levin & Henry J. Sommer, eds. 16th ed. 2021). In this
21 instance, the required contents of the proposed Amended Plan are met, and the other contents are

22 ³⁴ In this instance, counsel for the Debtor and Southwest agree that if the Chapter 11
23 proceeding were converted to Chapter 7, a professional negligence claim under Nevada law
24 cannot be assigned to any party that purchases the claim from the Chapter 7 trustee assigned to
25 the case. Compare Debtor Post-hearing Brief at 2:1 to 3:23 with Southwest Post-hearing Brief at
26 2:1-6. If a Chapter 7 trustee was to pursue a professional negligence claim against B&C, there is
27 no dispute that retention of special counsel likely would be required. There is no apparent
28 dispute that Southwest's bankruptcy counsel could not be retained by a Chapter 7 trustee to
pursue the alleged claim. Compare Debtor Post-hearing Brief at 3:24-27 with Southwest Post-
hearing Brief at 6:17-24. There is no evidence presented of any qualified counsel offering to be
retained to pursue a professional negligence claim against B&C based on the record before this
court.

permitted. Moreover, the classes designated in the Amended Plan comply with Section 1122. Thus, the requirements of Section 1129(a)(1) are met.

B. 1129(a)(2).

This provision focuses on the disclosure and solicitation requirements of Sections 1125 and 1126. See In re Islet Sciences, 640 B.R. at 459-60, citing 7 COLLIER ON BANKRUPTCY, supra, ¶ 1129.02[2]. As previously discussed, Section 1125 is not applicable in this Subchapter V proceeding. Additionally, there is no dispute that the Debtor properly solicited acceptance of the proposed Amended Plan and provided notice of the Plan Confirmation Hearing. The requirements of Section 1129(a)(2) have been met.

C. 1129(a)(3).

This provision requires a determination that a proposed Chapter 11 plan “has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3).³⁵ There is no evidence in the record that the Amended Plan was negotiated and proposed in an unlawful manner, see Garvin v. Cook Investments NW, SPNWY, LLC, 922 F.3d 1031, 1035 (9th Cir. 2019), or that the plan does not “achieve a result consistent with the objectives and purposes of the Code.” In re Islet Sciences, 640 B.R. at 464, citing Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza), 314 F.3d 1070, 1074 (9th Cir. 2002). On this record, the court finds that the requirements of Section 1129(a)(3) have been met.

D. 1129(a)(4).

This provision requires that the fees of professionals employed by the Chapter 11 estate be approved by the court as reasonable. See In re Islet Sciences, 640 B.R. at 466-67. L&Z is the only professional employed in this Subchapter V proceeding whose employment has been approved by the court. Article 3, Section 3.02 of the Amended Plan sets a deadline for professionals to file requests for allowance of compensation and bars allowance of such requests if the deadline is not met. This provision satisfies the requirements of Section 1129(a)(4).

³⁵ Under FRBP 3020(b)(3), evidence need not be presented on the requirements of Section 1129(a)(3) if no objection is filed. In this instance, it does not appear that any good faith objection has been filed or presented. Notwithstanding the absence of an objection, the court otherwise concludes that good faith is established by the record.

E. 1129(a)(5).

This provision essentially prohibits plan confirmation if the court determines that continuation in management of the existing officers or managers is not in the interests of creditors and public policy. See In re Islet Sciences, 640 B.R. at 467. Article 8, Section 8.07 provides for the Debtor's principal, Martin Najar, to remain as the manager of the business, given his knowledge and experience. No evidence has been presented that Debtor's operations can continue financially without the limited compensation of its sole owner, and no evidence has been presented that a sufficient replacement is available. Given the size and scope of the Debtor's operations, continuation of existing management is in the interests of creditors and consistent with the policy of providing bankruptcy reorganization to small businesses. Section 1129(a)(5) has been met.

F. 1129(a)(6).

This provision requires governmental approval of any rates charged by a Chapter 11 debtor that are subject to regulation. See In re Islet Sciences, 640 B.R. at 467. No suggestion is made nor has evidence been adduced that this provision applies to the Debtor's operations. Accordingly, Section 1129(a)(6) does not apply and otherwise has been met.

G. 1129(a)(9).

This provision generally requires the payment of priority claims under Section 507(a) on the effective date of a proposed Chapter 11 plan unless the claimant agrees to a different treatment. See In re Islet Sciences, 640 B.R. at 469-70. In this instance, Article 3, Section 3.03 of the Amended Plan requires the unclassified priority tax claim of NDOT to be paid in full through periodic payments commencing on the ninth month after the effective date. NDOT does not object to such payment. As previously discussed, Article 3, Section 3.02 sets a deadline for professionals, as well as the Trustee, to file requests for allowance of compensation as an administrative expense under Section 503 and bars allowance of such requests if the deadline is not met. After allowance by the court, the amounts so allowed would then be paid in installments. Neither L&Z nor the Trustee object to such payment. These terms satisfy the requirements of Section 1129(a)(9).

H. 1129(a)(11).

This provision requires that confirmation of the Chapter 11 plan is not likely to be followed by liquidation or the need for further financial reorganization. See In re Islet Sciences, 640 B.R. at 470. Demonstration of a reasonable probability of success is sufficient to confirm a Subchapter V plan just as it is for a standard Chapter 11 plan. See Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1364-65 (9th Cir. 1986). In other words, the inevitability of success need not be proven, and a relatively low threshold of proof must be met. See Computer Task Group v. Brotby (In re Brotby), 303 B.R. 177, 191-92 (B.A.P. 9th Cir. 2003). 1129(a)(12).

For the reasons discussed, the court has overruled Southwest's objections to the Amended Plan Projections. Debtor contemplates continued operation of its trucking business and projects monthly gross revenue of \$22,000 that is not inconsistent with its historical projections. It also projects monthly expenses that are not inconsistent with its operating history. There is no evidence in the record of a declining or deteriorating market for similar trucking services. There is no evidence in the record of increasing costs of operations that will disrupt the disposable income projections offered by the Debtor. Does this evidentiary record demonstrate an inevitability of success? No. Does the evidentiary record demonstrate a reasonable probability of success? Yes. No more is required, and the Debtor has met its burden of proof. Thus, the court concludes that the so-called "feasibility" standard under Section 1129(a)(11) has been satisfied.

I. 1129(a)(12).

This provision requires that all fees payable under 28 U.S.C. §1930 be paid as a condition to confirmation of a standard Chapter 11 plan. This provision does not apply, however, in Subchapter V proceedings. See 28 U.S.C. §1930(a)(6)(A) and (B).

J. 1129(a)(13).

This provision requires the revested Debtor to continue payment of retiree benefits, if any. Nothing in the Amended Plan Projections suggests that the Debtor has such an obligation, and no evidence has been offered that the obligation exists. Accordingly, Section 1129(a)(13) does not apply and otherwise has been met.

1 **K. 1129(a)(14).**

2 This provision requires the plan proponent to pay all domestic support obligations it is
3 obligated to pay, if any, after the commencement of the Chapter 11 proceeding. No argument
4 has been made nor has evidence been offered that the Debtor is under an obligation to pay any
5 domestic support obligations on behalf of any employee. Accordingly, Section 1129(a)(14) does
6 not apply and otherwise has been met.

7 **L. 1129(a)(16).**

8 This provision restricts the transfer of property by any nonprofit entity in Chapter 11. As
9 the Debtor is not a nonprofit entity, this restriction does not apply.

10 **IV. Debtor Has Met its Burden of Proof on the Applicable Requirements of**
11 **Section 1191(b).**

12 To confirm the proposed Subchapter V plan over the objection of a dissenting unsecured
13 Class 3, Section 1191(b) requires a finding that the plan does not discriminate unfairly, and is
14 fair and equitable, with respect to the class. Fair and equitable with respect to an unsecured class
15 means that “all of the projected disposable income of the debtor to be received in the 3-year
16 period...beginning on the date of that the first payment is due under the plan will be applied to
17 make payments under the plan.” 11 U.S.C. § 1191(c)(2)(A).³⁶

18 The proposed Amended Plan does not discriminate unfairly with respect to Class 3. The
19 plan allocates the Debtor’s projected disposable income to pay the unclassified priority tax claim
20 of the NDOT as well as the priority administrative claims of bankruptcy counsel and the Trustee
21 under Section 1129(a)(9). The plan then allocates the remaining balance of the projected
22 disposable income to non-priority unsecured claims in Class 3 on a pro rata basis. Thus, all
23 substantially similar unsecured claims included in Class 3 are treated the same.

24 As previously discussed, the court has overruled Southwest’s objection to the Amended
25 Plan Projections. Also, as previously discussed, those Amended Plan Projections are sufficient
26 to demonstrate that confirmation of the Amended Plan is not likely to be followed by liquidation

27 ³⁶ Alternatively, fair and equitable treatment may occur through a distribution of property
28 other than disposable income as long as the value of the property is not less than the projected
disposable income of the debtor. See 11 U.S.C. § 1191(c)(2)(B).

1 or the need for further financial reorganization. The Amended Plan Projections appear to
2 encompass a sufficient period to satisfy the requirements of Section 1191(c)(2)(A). Accordingly,
3 the treatment of dissenting Class 3 also is fair and equitable within the meaning of that provision.

4 **CONCLUSION**

5 This Memorandum Decision constitutes the court's findings of fact and conclusions of
6 law in this matter under FRBP 9014 and 7052. For the reasons discussed, the plan confirmation
7 objections raised by Southwest are overruled and the requirements for plan confirmation under
8 Section 1191 have been established by a preponderance of the evidence. A separate order
9 confirming the Amended Plan has been entered concurrently herewith.

10
11 Copies sent via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to all parties

13 Copies sent via BNC to:
14 NAJAR TRUCKING INC.
15 2486 ALFA CIRCLE
LAS VEGAS, NV 89142

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