

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: :
: Chapter 11
Abeinsa Holding Inc., *et al.*,¹ :
: :
: :
Reorganized and Liquidating Debtors. : Case No. 16-10790 (KJC)
: (Jointly Administered)
: (Re: D.I. 1939)
: _____ :
:

MEMORANDUM ORDER²

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE

Before the Court is the Responsible Person’s Motion to Compel the Litigation Trustee to Complete, Sign, and Deliver IRS Form W-9 and Wire Instructions.³ The Responsible Person, on behalf of the EPC Reorganizing Debtors, negotiated a settlement with Mojave Solar, LLC (“Mojave Solar”) with respect to a subordinated loan, referred to as the Teyma Receivable.⁴ The Teyma Receivable arose pre-petition and provided that Mojave Solar would repay the

¹ The Reorganized Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Abeinsa Holding Inc. (9489) and Abengoa Solar, LLC (6696). The Liquidating Debtors in these chapter 11 cases, together with the last four digits of each Liquidating Debtor’s federal tax identification number, are as follows: Inabensa USA, LLC (2747); and Abengoa Bioenergy Holdco, Inc. (8864).

² This Court has jurisdiction over this contested matter under 28 U.S.C. § 1334 because there is a close nexus between the Plan and the Litigation Trustee’s refusal to deliver the relief requested. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1), (b)(2)(A) and (b)(2)(O). It is also important to note that a bankruptcy court’s related to jurisdiction is limited post-confirmation. *See In re Resorts Intl, Inc.*, 372 F.3d 154, 168-69 (3d Cir. 2004)(Post-confirmation, a bankruptcy courts jurisdiction is limited to matters in which there is a close nexus to the bankruptcy plan or a proceeding, as when a matter affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement.).

³ D.I. 1939. The Responsible Person, Jeffrey Bland, serves pursuant to the Debtor’s Modified First Amended Plan of Reorganization and Liquidation (D.I. 1033), confirmed on December 15, 2016 (D.I. 1042).

⁴ The Teyma Receivable arose out of a contract between Mojave Solar and one of the EPC Reorganizing Debtors for the engineering, procurement and construction of Mojave Solar’s concentrating solar power plant in San Bernardino County, California.

subordinated loan to the Debtors if certain conditions were met. The contracted receivable was valued at approximately \$22.9 million. However, the Responsible Person determined that Mojave Solar would not be obligated to repay the Teyma Receivable and agreed to a much smaller recovery. In doing so, the Responsible Person claims to have exercised his reasonable business judgment, as required by the Plan, in making this settlement.

The Settlement Agreement provides for a payment of \$1 million from Mojave Solar to the Litigation Trust, following receipt of the Litigation Trustee's signed W-9 form and confirmation of wiring instructions.⁵ The Responsible Person notified the Litigation Trustee of the settlement and made written requests for the completed W-9 and confirmation of wire instructions on numerous occasions. But the Litigation Trustee has refused to accept the \$1 million settlement payment on account of the Teyma Receivable and filed a Response to the Responsible Person's Motion to Compel.⁶ The Court also received a late response from MMC Contractors National, Inc. ("MMC").⁷

Under the Plan, all of the assets of the EPC Reorganized Debtors Estates' vested in the EPC Reorganized Debtors, excepting only limited causes of action vesting in the Litigation Trustee. Each EPC Reorganized Debtor retained its assets and was authorized to ***“operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.”***⁸ The Plan provides that the Responsible Person would represent the EPC Reorganizing Debtors, including pursuit of

⁵ Under the confirmed Plan, the Litigation Trust is entitled only to 25% of the recovery, however, to obtain necessary consent from the Department of Energy, the Responsible Person agreed to give 100% of the settlement proceeds to the Litigation Trust.

⁶ D.I. 1949.

⁷ D.I. 1969.

⁸ Plan, Art. IV.L.

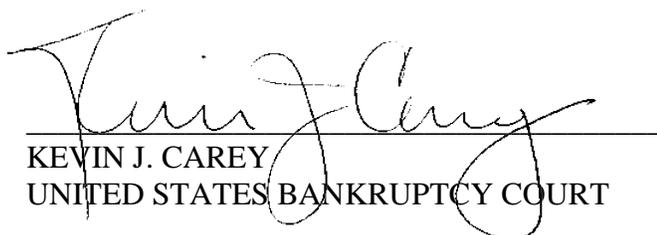
any causes of action transferred to them, whether known or unknown, disclosed or undisclosed. The Plan further provides that the EPC Reorganized Debtors shall have unlimited rights, powers, and duties, among other things, in the Responsible Person's *reasonable business judgment*, to investigate, prosecute, settle, liquidate, dispose of, or abandon the Reorganized Debtor's assets.⁹ The Litigation Trustee contends that the Responsible Person's "reasonable business judgment" and the basis of the settlement should be explained to the parties. However, the Plan does not expressly require such action. Indeed, the Litigation Trustee's limited role is to investigate, prosecute, settle, liquidate or dispose of the Litigation Trust's Causes of Action. It is undisputed that the Teyma Receivable is not among the Litigation Trust's Causes of Action.

By its express terms, the Plan grants the Responsible Person the power to act on behalf of the EPC Reorganized Debtors, without supervision or approval by the Bankruptcy Court. Although the wisdom of such a provision may, in hindsight, be questioned, the Court must enforce the confirmed Plan as written. The Litigation Trustee must promptly deliver a W-9 and confirm wiring instructions so that the \$1 million payment may be made to the Litigation Trust. I must emphasize that the Responsible Person has not asked for, nor do I approve, the Settlement Agreement. Today, I direct only the undertaking of ministerial tasks by the Litigation Trust. It is so ordered.

BY THE COURT:

DATED: March 5, 2019

Cc: R. Craig Martin, Esquire¹⁰



KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT

⁹ Plan. Art. IV.R.

¹⁰ Counsel shall serve a copy of this Memorandum Order upon all interested parties and file a Certificate of Service with the Court.