

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

IN RE:)	Chapter 11
)	
WORLDWIDE DIRECT, INC.,)	Case Nos. 99-108 (MFW)
et al.,)	through 99-127 (MFW)
)	
Debtors.)	(Jointly Administered Under
)	Case No. 99-108 (MFW))

MEMORANDUM OPINION¹

The instant case is before the Court on the objections filed by certain shareholders ("the SmarTalk Action Group") to confirmation of the Second Amended Consolidated Liquidating Chapter 11 Plan of Reorganization ("the Plan") filed by Worldwide Direct, Inc., SmarTalk TeleServices, Inc. and their other direct and indirect subsidiaries (collectively "the Debtors") and the Official Committee of Unsecured Creditors ("the Committee"). (The Debtors and the Committee are collectively referred to as "the Plan Proponents.") After consideration of the testimony and documentary evidence presented at the hearings held on July 26, July 27 and August 7, 2000, and the briefs submitted by the parties, we overrule the objections and confirm the Plan.

I. FACTUAL BACKGROUND

On January 19, 1999, the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. At the time of the

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is applicable to contested matters pursuant to Rule 9014.

filing, the Debtors had executed an asset purchase agreement with AT&T to sell substantially all the Debtors' assets for a gross sales price of \$192 million. That agreement was subject to higher and better bids, and an auction procedure was ultimately approved by this Court on February 26, 1999, for the sale of the Debtors' assets. The auction process resulted in no other alternative bids being submitted for the assets. The sale to AT&T was approved by the Court on March 18, 1999, and consummated shortly thereafter.

Pursuant to the sale process, substantially all of the Debtors' tangible assets were liquidated within two months of the filing of the petition. Consequently, the secured creditors were paid in full, and more than \$100 million is currently available for distribution to creditors. On January 18, 2000 (the Court-imposed deadline for filing), the Plan Proponents filed a Consolidated Liquidating Chapter 11 Plan. That Plan drew numerous objections. As a result, an Amended and a Second Amended Plan were filed.

The Second Amended Plan provides for the liquidation of the Debtors' remaining assets and the prosecution of substantial lawsuits against the Debtors' former officers, directors and auditors. A Liquidating Trust Board will be appointed (consisting of the four members of the Committee and a fifth member to be named by the Committee), which will direct the

liquidation, the prosecution of objections to claims and the distribution of the estate assets. The Second Amended Plan provides that, only after all creditors are paid in full, are shareholders given a beneficial interest in the Trust entitling them to a distribution.

After the Disclosure Statement was approved, the Second Amended Plan was mailed for voting. Every class of creditors entitled to vote on the Second Amended Plan accepted it. The sole dissenting class was the shareholders.

Numerous objections to confirmation were filed, many of which were resolved before or at the confirmation hearings, held on July 26, 27 and August 7, 2000. Briefs were filed after the hearings by the Plan Proponents and the two remaining groups of objectors: the SmarTalk Action Group representing certain shareholders and DLJ Diversified Partners and certain others ("the Contract Claimants"). The objections filed by the Contract Claimants were resolved by a settlement stipulation which was approved on May 30, 2001. We, therefore, address only the objections of the SmarTalk Action Group.

II. JURISDICTION

This Court has jurisdiction over these matters, which are core proceedings pursuant to 28 U.S.C. § 1334 and §157(b)(1) & (b)(2)(L).

III. DISCUSSION

The SmarTalk Action Group asserts that the Plan is flawed because there is no representative of the shareholders on the Liquidating Trust Board. It asserts that this provision violates section 1123(a)(7) which requires that provisions of a plan dealing with the selection of officers and directors of a reorganized debtor must be consistent with the interests of creditors and equity security holders and with public policy.

The SmarTalk Action Group specifically objects to the fact that the Liquidating Trust Board will consist of five members: the four members of the Committee and a fifth to be selected by the Committee. This, the SmarTalk Action Group asserts, insures that the Liquidating Trust Board will only act to benefit creditors, not shareholders. The SmarTalk Action Group asserts that the Liquidating Trust Board has an inherent conflict of interest and, in fact, will act only to protect the interests of creditors, not shareholders. For example, the SmarTalk Action Group posits that the Liquidating Trust Board will settle litigation in amounts that will produce a recovery for creditors, but not for shareholders. To remedy this defect, the SmarTalk Action Group argues that one of the five Board members should be a shareholder with a specific directive to represent the interests of the shareholders.

In response to the objection, the Plan Proponents assert that the Plan does not violate the Code. They assert that the Liquidating Trust Board will owe a fiduciary duty to all its constituents, including the shareholders. The Liquidating Trust Board will be charged with the obligation to object to claims and prosecute the litigation, all of which will inure to the interests of the beneficiaries of the Trust, including the shareholders. In the event that the Plan is not clear on this point, the Plan Proponents suggested a modification to the Plan and the Liquidating Trust Agreement (incorporated into their proposed Confirmation Order) which expressly states that the Liquidating Trust Board will have a fiduciary duty to all beneficiaries of the Trust, including shareholders.

Further, the Plan Proponents note that the Plan provides that any settlement or transaction involving an amount in excess of \$5 million is subject to approval of the Court after notice and an opportunity for a hearing. (See Second Amended Plan at § 9.3.6.1.) This, they assert, provides all beneficiaries of the Trust (including shareholders) the opportunity to assure that the Liquidating Trust Board does not settle objections to claims or the litigation on terms other than in the best interests of the Trust and its beneficiaries.

We conclude that the objections of the SmarTalk Action Group are without merit. The provisions of the Second Amended Plan and

the Liquidating Trust Agreement are not contrary to the public interest or to the rights of any of the interested parties in this case. The modifications to the Second Amended Plan expressly confirming that the Liquidating Trust Board is a fiduciary for all its beneficiaries (creditors and shareholders alike) are sufficient to provide that the interests of the shareholders are protected. Boards of directors are fully capable of fulfilling their fiduciary duties to numerous constituencies, even if they themselves are not members of that constituency. There has been no evidence presented in this case that the prospective Board members are unwilling or unable to fulfil their fiduciary duty to creditors and shareholders alike. Mere speculation that the members of the Liquidating Trust Board will not fulfill their fiduciary duties is not sufficient to find that the provision appointing them to that position of trust is against public policy.

The SmarTalk Action Group also asserts that there are inherent conflicts of interest between the Board members and their constituencies because the Board will be charged with the duty to review proofs of claim, including those of members of the Board. The Plan Proponents noted that the Second Amended Plan provides that any transaction which involves any of the members of the Liquidating Trust Board must be approved by the Court

after notice and hearing. (See Second Amended Plan at § 9.3.6.1.)

This issue has largely been mooted because the significant claims of the Committee members have been settled (on notice to all parties in interest) since the confirmation hearings were held. Even if they had not been, we conclude that the requirements that any such settlement be approved only after notice and opportunity for a hearing provides more than sufficient protection of the interests of creditors and shareholders.

IV. CONCLUSION

For the reasons given above, we overrule the objections of the Smartalk Action Group and confirm the Plan.

An appropriate Order is attached.

BY THE COURT:

Dated: June 7, 2001

Mary F. Walrath
United States Bankruptcy Judge

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