

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
CRUCIBLE MATERIALS CORPORATION, <i>et al.</i> , ¹)	Case No. 09-11582 (MFW)
Debtors.)	Jointly Administered
)	Hearing Date: Nov. 30, 2009 at 2:00 p.m. (EST)
)	Obj. Deadline: Nov. 23, 2009 at 4:00 p.m. (EST)

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING AND APPROVING
MEMORANDUM OF AGREEMENT BETWEEN CRUCIBLE MATERIALS
CORPORATION AND UNITED STEELWORKERS**

Crucible Materials Corporation ("Crucible") and Crucible Development Corporation ("CDC"), debtors and debtors in possession (collectively, the "Debtors"), hereby move (the "Motion") for entry of an order, pursuant to sections 105(a), 363(b), 503(b), 507(a)(4), 1113 and 1114 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing and approving the entry by Crucible into and the carrying out of a certain Memorandum of Agreement between Crucible and the United Steelworkers ("USW"), a copy of which is annexed hereto as Exhibit A (the "Settlement Agreement"). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Crucible Materials Corporation (9229); Crucible Development Corporation (3475). The Debtors' headquarters is located at 575 State Fair Boulevard, Syracuse, NY 13209.

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b), 507(a)(4), 1113 and 1114 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9019 and Local Rule 2002-1(b).

BACKGROUND

4. On May 6, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code thereby commencing these chapter 11 cases. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. Prior to the sales of a substantial portion of Crucible's assets on September 25, 2009, Crucible had been a leader and innovator in the specialty metals industry for more than one hundred years, manufacturing stainless steel, alloy steel, tool steel, and valve steel for use in the automotive, aerospace, petrochemical, and other industries. Crucible also had maintained a significant research division, which was devoted to advanced metallurgical research and the development of new products and processes and the continuous improvement of current ones.

6. CDC is a wholly-owned subsidiary of Crucible, which owns certain real property formerly used in the operations of Crucible's business.

7. No trustee or examiner has been appointed in these chapter 11 cases.

8. On May 20, 2009, the Office of the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee").

9. On September 25, 2009, the Court entered Orders authorizing and approving the sale and transfer, free and clear of all liens, claims, interests and encumbrances, of a substantial portion of Crucible's operating assets and the assets of CDC (the "Asset Sales") including:

(a) Crucible's Romeoville, Illinois service center; (b) Crucible's Compaction Metals and Research Divisions; and (c) Crucible Specialty Metals Division in Syracuse, New York. The Asset Sales have closed and Crucible is in the process of selling and disposing of its remaining assets.

10. Prior to the closing of the Asset Sales, and as relevant to this matter, Crucible was a party to the following collective bargaining agreements (collectively the "CBAs") with the USW:

- Agreement between Crucible Specialty Metals, a Division of Crucible Materials Corporation, and the United Steelworkers of America Office & Technical (Amalgamated Local Union 14532-18) and Plant Protection Employees (Local Union 924), dated August 1, 2005 and extended August 1, 2009, through July 31, 2010;
- Agreement between Crucible Materials Corporation, Specialty Metals Division, and the United Steelworkers of America Local Union 1277 Production & Maintenance Employees, dated August 1, 2005, and extended August 1, 2009, through July 31, 2010; and,
- Agreement between Crucible Compaction Metals and United Steel Workers of America Local No.14043 dated January 14, 2008.

11. On or about September 11, 2009, Crucible filed a motion (the "Rejection Motion") for an order pursuant to section 1113(c) of the Bankruptcy Code, authorizing rejection of the CBAs and authorizing termination of certain medical benefits provided to USW retirees (the "Retiree Benefits") pursuant to section 1114(g) of the Bankruptcy Code.

12. On or about September 29, 2009, the USW filed an objection to the Rejection Motion (the "USW Objection") alleging that Crucible had not satisfied the requirements imposed by sections 1113 and 1114 of the Bankruptcy Code to be entitled to the relief requested in the Rejection Motion, that Crucible had not negotiated with the USW in good faith, that the USW had good cause to reject the initial proposal made by Crucible and the USW did not have an

adequate opportunity to negotiate over the then pending proposals and that the balance of equities did not warrant rejection of the CBAs.

13. The Rejection Motion was thereafter adjourned a number of times and the evidentiary hearing that had been scheduled for November 2, 2009 was cancelled in order to afford Crucible and the USW further opportunity to negotiate a mutually acceptable settlement of the issues raised by Crucible in the Rejection Motion and the USW Objection.

14. Crucible and the USW have now reached a mutually satisfactory settlement which is embodied in Settlement Agreement.

RELIEF REQUESTED

15. By this Motion, the Debtors seek authority and approval pursuant to sections 105(a), 363(b), 503(b), 507(a)(4), 1113 and 1114 of the Bankruptcy Code, Bankruptcy Rule 2002, 6004 and 9019 and Local Rule 2002-1(b) authorizing and approving the entry by Crucible into and the carrying out of the Settlement Agreement.

THE SETTLEMENT AGREEMENT

16. In summary, the Settlement Agreement provides as follows:
- (a) Crucible shall continue all health benefit programs for retiree and laid off employees through November 30, 2009 after which all health programs shall terminate;
 - (b) The USW consents to the distress termination of the Pension Plan covered by the Pension Agreement effective June 1, 1983 between Crucible Materials Corporation Specialty Metals Division a-Syracuse and United Steelworkers for Separate Plan, as amended and restated January 1, 2001;
 - (c) Crucible shall pay all accrued but unused vacation within five (5) business days of an order of this Court approving the Settlement Agreement;
 - (d) All CBAs between Crucible and the USW represented employees at the Debtors' former Syracuse facility shall be considered to have been terminated on the date that this Court enters an order approving the Settlement Agreement;

- (e) The USW and Crucible will seek to agree on the amount of the general unsecured claim of Crucible retirees (the “Retiree Claim”) relating to loss of retiree benefits for USW-represented retirees, which will be submitted to the Court for approval after notice and a hearing. If the parties are unable to agree on the appropriate amount of said claim, either party may petition the Court to determine the appropriate amount of the claim after notice and a hearing;
- (f) If requested by the USW, Crucible will make payments to the USW for the purpose of establishing a VEBA for the purpose of providing retiree medical and life insurance benefits on an interim basis following the termination of such benefits by the Debtors. Such payments shall not exceed the higher of (a) \$300,000, or (b) thirty (30%) percent of the estimated recoveries on the Retiree Claim as determine in good faith by Crucible in consultation with the USW. To the extent any such payments are made, the Debtors shall be entitled to credit such payments, on a dollar for dollar basis, against any amounts that may become payable with respect to the Retiree Claim under a confirmed chapter 11 plan in the Debtors’ cases.

BASIS FOR THE RELIEF REQUESTED

17. Section 1113 (c) of the Bankruptcy Code provides the exclusive means for a debtor-in-possession or a trustee to reject a collective bargaining agreement. Section 1113(c) specifically provides

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that – (1) a trustee has, prior to the hearing, made a proposal that fulfills the requirement of subsection (b)(1); (2) the authorized representative of the employees has refused to accept such proposal without good cause; and (3) the balance of the equities favors rejection of such agreement.

18. Section 1113(b)(1) of the Bankruptcy Code provides:

(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee shall:

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most

complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and (B) provide . . . the representative of the employees with such relevant information as is necessary to evaluate the proposal.

19. Section 1114(g) of the Bankruptcy Code provides the exclusive means for a debtor-in-possession or a trustee to terminate retiree benefits and states as follows:

(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that – (1) a trustee has, prior to the hearing, made a proposal that fulfills the requirement of subsection (f); (2) the authorized representative of the employees has refused to accept such proposal without good cause; and (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors are treated fairly and equitably, and is clearly favored by the balance of the equities[.]

20. Section 1114(f) of the Bankruptcy Code provides:

(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee shall:

(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably;

21. Pursuant to the Settlement Agreement, the USW has agreed that the CBAs will terminate on the date that this Court enters an Order approving the Settlement Agreement.

22. In light of the Settlement Agreement, Crucible believes that the requirements of sections 1113 and 1114 of the Bankruptcy Code have been met and Crucible submits that the

legal determination that must be made by the Court is whether the Settlement Agreement complies with the requirements of section 9019 of the Bankruptcy Code.

23. A bankruptcy court's authority to approve settlements and compromises derives from section 105 of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a); see Eddy v. Nat'l Fire Ins. Co. (In re Med. Asset Mgmt., Inc.), 249 B.R. 659, 666 (Bankr. W.D. Pa. 2000) (noting settlement authority under section 105).

24. Bankruptcy Rule 9019(a), in turn, provides the Court with procedural guidelines under which it may exercise this approval power. Northview Motors, Inc. v. Chrysler Motors Corp. (In re Northview Motors, Inc.), 186 F.3d 346, 351 n.4 (3d Cir. 1999); Myers v. Martin (In re Martin), 91 F.3d 389, 395 n.2 (3d Cir. 1996). In relevant part, Bankruptcy Rule 9019 provides as follows:

Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

25. While neither Bankruptcy Rule 9019 nor section 105 of the Bankruptcy Code explicitly establish standards for approval of a proposed settlement, courts have traditionally focused on whether the proposed settlement is "fair and equitable". Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 425 (1968). As the Supreme Court noted in Anderson, the approval of a compromise should arise from an informed, independent judgment of the risks and rewards of the litigation to be settled:

[T]he judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Anderson, 390 U.S. at 424-25 (citations omitted).

26. Following Anderson's admonition to approve only "fair and equitable" compromises, the Third Circuit has recognized four factors that should be considered by a bankruptcy court in evaluating a request for approval of a settlement: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the 'paramount interest of the creditors.'" In re Martin, 91 F.3d at 393 (citing In re Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986)). Other factors bearing on the propriety of the compromise include the extent to which the settlement is the result of arms' length negotiations, and proper deference to the creditors' own reasonable views. See Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.), 68 F.3d 914, 917, 918 (5th Cir. 1995).

REASONS TO APPROVE THE SETTLEMENT AGREEMENT

27. Crucible submits that the terms of the Settlement Agreement are fair and reasonable and that the Settlement Agreement is in the best interests of its estate and creditors for the following reasons among others.

28. First and foremost, the Settlement Agreement avoids the need for contested litigation between the parties, which would have required a substantial commitment of resources by the Debtors, and would not necessarily have yielded any earlier termination of employee and

retiree benefits than those to which the USW has voluntarily agreed in the context of a consensual resolution.

29. Second, the Settlement Agreement provides for a certain and orderly termination of the benefit plans presently covering USW employees and retirees, which will result in immediate and continuing savings of approximately \$800,000 per month that would otherwise be payable under Crucible's self-insured medical benefit plans.

30. Crucible has a self insured medical benefit plan (the "Plan") with Excellus Health Plan, Inc. ("Excellus") which covers both salaried and union employees. Under the Plan, Excellus has been providing health insurance coverage for Crucible salaried and union employees. Arguably, Crucible cannot terminate the Plan without an order of the Court as a unilateral termination of the Plan would be modification of the retiree benefits in violation of section 1114 of the Bankruptcy Code. The USW has opposed the termination of the Plan and sought to continue the benefits to the retirees and laid off employees beyond the date that Crucible had sought as the termination date. The Settlement Agreement fixes November 30, 2009 as the termination date of the Plan and thus Crucible will be in a position to limit future expenses.

31. While the Settlement Agreement also requires Crucible to make an immediate payment of accrued vacation benefits valued at approximately \$660,000 to USW-represented former employees, the USW contends that those benefits would have been entitled to priority treatment in any event under the rule established by In Re Northwest Engineering Company, 863 F.2d 1313 (7th Cir. 1988).

32. Under Crucible's vacation policies an employee is entitled to vacation days for 2009 based on his or her employment during 2008 as long as the employee was employed by

Crucible on January 1, 2009. The USW maintains that a substantial portion of such claims would be entitled to priority under section 507(a)(4) of the Bankruptcy Code. See In Re Northwest Engineering Company, 863 F.2d 1313 (7th Cir. 1988). Crucible ultimately determined that it would be in the best interests of the estate to agree to the immediate payment of those claims as part of an overall settlement of the Rejection Motion given the uncertainty concerning the legal status of the claims and the need to eliminate the certain cost of continuing to provide benefits to the retirees in the absence of prompt relief under section 1114.

33. Crucible clearly is not administratively insolvent and, therefore, does not believe that paying for vacation time within five (5) business days of an order of the Court approving the Settlement Agreement is prejudicial to any administration creditor and is permitted under section 503(a) of the Bankruptcy Code.

34. Third, the Settlement Agreement provides for the possibility of a limited continuation of medical and other benefits to USW-represented retirees through a to-be-established VEBA that will mitigate the impact of what would otherwise be an immediate cessation of benefits for the retirees.

35. Fourth, the Settlement Agreement provides a mechanism for Crucible to recoup the value of any contributions made towards the USW's establishment of a VEBA for the benefit of USW-represented retirees by crediting such contributions.

36. Considering the Settlement Agreement in light of the Anderson factors, Crucible respectfully submits that the Settlement Agreement should be approved, particularly in light of the express legislative directive to ensure that "all of the affected parties are treated fairly and equitably" in connection with a termination or modification of retiree benefits. 11 U.S.C. § 1114(g)(3).

37. Crucible has hundreds of retirees and laid off employees who will be materially and adversely impacted as a result of the liquidation of Crucible. The terms of the Settlement Agreement will not make those parties whole, but will provide a modest equitable cushion designed to ease the shock of losing the health and welfare benefits that Crucible has previously provided.

38. Additionally, while the Settlement Agreement imposes certain non-negligible costs on Crucible, the Debtors nevertheless believe that the Settlement Agreement is also fair to their other, non-union represented, creditors and parties in interest. The Debtors project that when the sale of all of their remaining assets has concluded, they will have adequate funds remaining to make a meaningful distribution to general unsecured creditors.

NOTICE

39. Notice of this Motion has been provided to: (a) the U.S. Trustee for the District of Delaware, (b) counsel to the Debtors' pre-petition lenders, (c) counsel to the Creditor's Committee, (d) counsel for the USW; (e) the retirees and (f) all parties that have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

NO PREVIOUS REQUEST

40. No previous request for the relief requested in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form submitted herewith, (a) authorizing and approving the Debtors to implement the Memorandum of Agreement, (b) and granting such other and further relief as this Court deems just and proper.


Dated: November 11, 2009

Respectfully submitted,

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