UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	**CASE NO. 15-10553**
THINKSTREAM, INC.	**CHAPTER 11**
Debtor	**JUDGE DOUGLAS D. DODD**

MOTION FOR APPROVAL OF
COMPROMISE UNDER BANKRUPTCY RULE 9019

NOW INTO COURT, through undersigned counsel, comes David S. Rubin, Chapter 11 Trustee (the "Trustee") for the bankruptcy estate (the "Estate") of Thinkstream Incorporated of Delaware ("Thinkstream" or the "Debtor") who respectfully requests, pursuant to Bankruptcy Rule 9019, the Court's approval of a compromise between the Estate and **T**hinkstream Acquisition, LLC ("TAL") regarding the Trustee's motion to sell substantially all of the Estate assets.[1] The Trsutee makes the following representations in support of the proposed compromise:

BACKGROUND

1. On September 19, 2014 (the "Petition Date"), TSB Ventures, LLC ("TSB"), together with six other creditors, the Grossman Family Limited Partnership, Michael S. Chadwick, Rainbow Investments Company, Kevin C. Kling GST Trust, Tim O'Leary and John Zapalac, filed an involuntary chapter 11 petition[2] against Thinkstream Incorporated of

[1] *See*, P-339, defined infra as the Sale Motion.

[2] P- 1.

Delaware ("Thinkstream" or "Debtor") pursuant to 11 U.S.C. § 303 (the "Involuntary Proceeding").

2. On July 9, 2015, the Involuntary Proceeding was converted to a voluntary case under chapter 11 and the Court entered an Order for Relief.[3] David S. Rubin subsequently, on July 9, 2015, was appointed to act as Chapter 11 Trustee for the bankruptcy estate of Thinkstream Incorporated of Delaware (the "Estate").[4]

3. At the time of the entry of the order for relief, the Debtor had been resisting the involuntary petition for more than eight weeks. There was less than $5,000.00 cash in the Debtor's bank accounts. Employees had not been paid for several weeks. The Debtor had failed to transmit 401(k) contributions deducted from employee pay to its 401(k) administrator, which resulted in an order from and judgment in favor of the U.S. Department of Labor. Employee health insurance premiums were delinquent. The Debtor had failed to file tax returns for 2012, 2013, and 2014, had failed to transmit approximately $700,000 in unpaid employee withholding taxes to the IRS for prepetition wages, and had failed to file various informational returns with local tax authorities. The Debtor was delinquent in payment of taxes to various states as well. Critical vendors had sent notices of termination of services. Bills were unpaid for services rendered to the Debtor after the filing of the involuntary petition. Clients and contract parties were resisting payment for services previously rendered. Rent was delinquent to the Debtor's two landlords. There had been numerous negative stories in the press regarding the Debtor and its financial condition.

---

[3] P-105.

[4] P-108.

4. Under the management of the Trustee and with the cooperation of the Debtor's employees and management as well as some of the Debtor's customers, the Trustee collected adequate funds to allow operations to continue. Employee wages were brought current and their 401(k) contributions were repaid. Post-petition payroll taxes have been kept current. Employee health insurance premiums were brought current. Tax returns for missing years and periods were filed. Post-petition obligations, critical vendors and the landlords were brought current. The Trustee prepared and filed the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs. Clients and customers have been contacted and assured of current ongoing support and maintenance services. Following his appointment, financial operations came under the complete control of the Trustee and his accountants.

5. Nevertheless, the immediate crisis that existed as of the date of the Trustee's appointment was only temporarily resolved and it was apparent to the Trustee that cash from operations would be inadequate to finance operations for any reasonable period of time.

PRE-PETITION SECURED INDEBTEDNESS

6. On July 16, 2015, the Trustee filed his Emergency Motion for Interim and Final Orders Authorizing the Trustee to Use Cash Collateral and Provide Adequate Protection If Required (the "Cash Collateral Motion," Dkt. 132). As set forth in the Cash Collateral Motion, the Debtor is party to one or more loan and security agreements entered in 2012 and thereafter with First NBC Bank ("FNBC"), pursuant to which FNBC made loans to the Debtor (collectively the "FNBC Pre-Petition Loan").

7. In connection with the FNBC Pre-Petition Loan, the Debtor granted to FNBC a continuing security interest in and lien (the "FNBC Lien") on, among other assets, all or

substantially all of the Debtor's assets, including the following: All Accounts, Chattel Paper, Contracts and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, chattel paper and other accounts proceeds) and all related general intangibles (collectively, the "FNBC Thinkstream Collateral"), all as more fully described in financing statements filed by FNBC.

8. FNBC has other collateral securing its debts, including, upon information and belief, certificates of deposit and letters of credit issued on account of shareholders of the Debtor in favor of FNBC as beneficiary (the "Shareholder LOC's"), the personal guaranty of Mr. Barry Bellue (the Debtor's founder and principal), real estate owned by Mr. Bellue, and other collateral (the "FNBC Additional Collateral"). Upon information and belief, the FNBC Additional Collateral also secures the pre-petition indebtedness of Mr. Bellue to FNBC (the "Bellue Indebtedness") which exceeds $2 million.

9. The Debtor is also indebted to TSB, one of the petitioning creditors, under a Consent Judgment entered by the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana on November 18, 2014. TSB's Judgment arises out of a series of pre-petition loan transactions (debentures and notes) with the Debtor (the "TSB Loans"). In connection with the TSB Loans, the Debtor granted to TSB a continuing security interest (the "TSB Lien") in and upon, among other assets, any and all contracts, leases, licenses, purchase orders, sales order or other binding agreements or commitments of the Debtor related to the sale, maintenance and service of software and other services and produces sold or licensed by the Debtor and now existing as of or entered into, acquired or arising

after the date thereof; any and all equipment, furniture, and fixtures; and, together with all property added to or substituted for the any of the foregoing, and all accounts and other rights to payment arising therefrom, and all interest, dividends, income, returns, accessions, profits, and proceeds of or arising out of any of the foregoing (the "TSB Collateral"). TSB filed financing statements and its security interest was recognized in its judgment.

10. The Trustee conducted a lien search in Delaware and Louisiana to determine whether there are any entities other than FNBC or TSB which assert liens against the FNBC Collateral, the FNBC Additional Collateral, or the TSB Collateral. No other claimants to any of that collateral have been revealed by that search as of this date nor has the Debtor, FNBC, or TSB advised the Trustee that any other claimants assert any liens against any of the assets or property of the Debtor. Overlap exists between the FNBC collateral and the TSB Collateral.

11. The Debtor's assets which are secured by the liens of FNBC and TSB represent substantially all of the Debtor's assets of any significant value, other than value attributable to the Debtor's going concern or goodwill or claims that the Debtor may have against others.

12. On August 17, 2015, the Court entered, on motion of the Trustee, the Final Order Authorizing Trustee to Use Cash Collateral Pursuant to 11 U.S.C. §363 (the "Cash Collateral Order," Dkt. 227). The Cash Collateral Order reserved the rights of all parties in interest to contest the priority, validity, extent, enforceability, or rank of any other party's pre- or post-petition security interest (inclusive of the eligibility of any party to

adequate protection) or underlying debt obligation, and the order expressly did not determine the validity, priority, or extent of any lien or claim asserted by FNBC or TSB.

THE POST-PETITION LOAN

13. On August 26, 2015, the Trustee filed his Motion for Post-Petition Secured Financing (the "Motion for Financing," Dkt. 246), which motion was granted by the Bankruptcy Court (Dkt. 275).

14. Pursuant to the Motion for Financing, the Trustee executed loan documents with FNBC providing for a secured revolving loan facility of $750,000 for the Debtor's estate (the "Post-Petition Loan"). The Trustee has drawn the full availability on the Post-Petition Loan facility (the "Post-Petition Loan Balance").

15. As of October 31, 2015, the balance owed by the Debtor on the FNBC Pre-Petition Loan to the Debtor is approximately $4,122,836 (including accrued and unpaid interest, but excluding attorney fees and costs), plus interest continuing to accrue until paid (the "FNBC Pre-Petition Loan Balance").

16. The Post-Petition Loan has allowed the Trustee to continue the operations of the Debtor thus maintaining the value of the Debtor's assets and pay post-petition administrative expenses. Pursuant to the Order approving the Motion for Financing, the Post-Petition Loan is an administrative expense and is accorded priority under Section 364(c)(1) of the Bankruptcy Code.

THE TRUSTEE'S PROCESS TO SOLICIT OFFERS FOR THE PURCHASE OF THE DEBTOR'S ASSETS

17. While the initial crisis extant on the date of the petition was temporarily abated, it was clear to the Trustee that without a substantial infusion of capital, the Debtor would run

out of operating cash by year end. To maximize the value of the Estate and its assets, the Trustee embarked upon a marketing and sale process.

18. On September 9, 2015, the Trustee filed his Motion for Authority to Employ Investment Advisor (Dkt. 254), which motion was granted by the Bankruptcy Court (Dkt. 264).

19. Following the Trustee's employment of SSG Advisors, LLC ("SSG"), SSG conducted an expedited and diligent nationwide process (the "Marketing Process") to locate and contact (a) all known entities which had previously expressed interest in purchasing some or all of the Debtor's assets, and (b) other entities which because of their lines of business may have an interest in purchasing some or all of the Debtor's assets and being a "stalking horse bidder." SSG made initial contacts with about 136 entities, and more detailed contacts with 36 entities, in order to solicit their interest in the Debtor's assets.

20. The entities contacted during the Marketing Process were determined to be likely strategic or financial purchasers. Ten entities (the "NDA Parties") executed a Non-Disclosure, Confidentiality, and Non-Solicitation Agreement with the Trustee. The Trustee and SSG prepared a Confidential Information Memorandum providing information on the Debtor and its operations and condition and established an electronic due diligence "data room" so interested parties could conduct due diligence of the Debtor. The Trustee and SSG also responded to many inquiries from the NDA Parties for additional information.

21. At least four of the NDA Parties conducted more intensive due diligence of the Debtor and requested and were granted a demonstration of the Debtor's technology platform and/or access to the Debtor's technical staff and/or management and/or the Trustee.

22. The Trustee also contacted the Debtor's two major secured creditors, FNBC and TSB, and solicited their interest and participation in the Marketing Process. TSB is one of the NDA Parties.

23. A sale of all or substantially all of the Debtor's assets is the best way to preserve the value of the Debtor's assets, particularly the Debtor's valuable patents on its technology and the source code for the technology as well as the contracts between the Debtor and its customers.

24. Moreover, as the Bankruptcy Court is aware, many of the Debtor's customers rely on the Debtor's technology for mission-critical, life-saving applications, and there is a reasonable possibility that public health and safety could be impacted if the Debtor were to cease operations.

THE RESULT OF THE MARKETING PROCESS AND THE NEED FOR A SECTION 363 SALE

25. Although the Marketing Process generated significant interest in all or some of the Debtor's assets, the Trustee did not receive any written offers or expressions of further interest.

26. The Trustee believes that the estate only has adequate cash resources to last until, at best, early January, 2016.

27. Therefore, in the absence of any other offers for the Debtor's assets, the Trustee contacted FNBC to determine if FNBC would be willing to make an offer for the Debtor's assets. FNBC was deemed by the Trustee to be the most likely buyer due to its senior lien position on all of the Debtor's assets.

28. FNBC agreed to make an offer to fund, in cash, the expenses necessary for the Trustee to pay administrative expenses of the estate, and to credit bid the approximately $4.1

million in debt owed to it by Thinkstream and the approximately $750,000 Post-Petition Loan Balance.

THE SALE MOTION

29. On November 19, 2015, the Trustee filed a motion seeking to sell substantially all the assets of the Debtor at auction (the "Sale Motion"),[5] with FNBC acting as initial bidder with rights to credit bid its loan balance and by payment in cash of estate administrative expenses (save and except the Post-Petition Loan Balance as such amount is secured by the FNBC Liens).

30. The Sale Motion, as originally contemplated would not have resulted in cash recovery to the Estate (other than cash necessary to satisfy administrative expenses) unless a bid exceeded approximately $5.5 million. Moreover, in the event a bidder surfaced who was willing to bid over and above $5.5 million, much, if not all, of the remaining money paid would be covered by the TSB Liens.

31. On December 1, 2015, TSB filed an objection to the Sale Motion contesting the right of FNBC to credit bid any debt owed by the Debtor to it, and reserving rights to litigate other issues arising from the sale such as the extent of its lien rights, and whether 11 U.S.C. § 363(f) allowed for sale in the event it did not consent to the sale of the assets.[6]

32. Two other parties filed objections – the Louisiana State Police and Washington County, Oregon.[7]

33. In the meantime, TSB commenced an adversary proceeding against FNBC under Adversary Proceeding No. 15-1088, seeking to determine the extent, validity and priority

---

5 P-339.

6 P. 366, 368.

7 P. 370, P. 385.

of the FNBC Lien.[8] Specifically, the TSB complaint requests that, due to the multiple pots of collateral held by FNBC to secure performance of the Debtor's obligations, FNBC be required to marshal or to look for satisfaction first to collateral which does not overlap with TSB.

BID PROCEDURES ORDER

34. On December 4, 2015, this Court entered an Order approving bidding procedures for the sale of the assets (the "Bid Procedures Order").[9]

35. Under the Bid Procedures Order a creditor holding an Allowed Secured Claim may credit bid the Allowed Secured Claim. *See, id.*, p. 2, ¶ 3.

36. The auction of the assets is presently scheduled for December 17, 2015 with a hearing to determine whether to approve the sale of assets scheduled for December 22, 2015.

ISSUES WITH THE PRESENT STATUS OF THE PROPOSED SALE

37. As it presently stands, FNBC asserts a secured claim (between the Post-Petition Loan and the FNBC Pre-Petition Loan) with a balance of approximately $4.9 million. TSB asserts a secured claim as identified in its judgment, the total claim being approximately $9.1 million. Under the Bid Procedures Order, both creditors could credit bid under certain circumstances (i.e., if the FNBC claim were allowed). TSB has objected to the credit bid rights of FNBC and will not consent to a sale under § 363 if FNBC is allowed to credit bid. FNBC may not consent to a sale if it is not allowed to credit bid and/or TSB is allowed to credit bid. The Trustee is therefore concerned that while he may have received authority to conduct an auction, open questions remain as to whether the

[8] P. 354.

[9] P. 391.

winning bid would be opposed by either or both of FNBC or TSB with the risk that bid would not be approved by this Court. That would raise doubt whether a winning bidder would close a sale. The disputes over these issues will be costly for the Estate to resolve, and the Estate would likely be operationally insolvent soon thereafter.

38. For example, if the Trustee proceeds to auction and FNBC attempts to credit bid its debt, would the Court approve such bid over the objection of TSB in light of the fact that FNBC did not file a proof of claim? Would this Court approve the sale over the non-consent of TSB?[10] Correlatively, if the Trustee were to accept a bid other than a FNBC credit bid would this Court approve a sale to a party other than FNBC over the objection or non-consent of FNBC? If FNBC cannot credit bid, can TSB begin its credit bid after the Administrative Reserve (as defined with the Sale Motion)? If the sale resulted in cash proceeds, over and above the FNBC debt obligation, what portion of the proceeds would be attributable to those assets upon which TSB has a lien (and which TSB asserts is virtually all the value of the assets – the contracts)?

39. In sum, these questions create a cloud of uncertainty for the auction.

TAL AND THE PROPOSED COMPROMISE

40. The relevant parties entered into negotiations in an effort to resolve their differences while at the same time assuring that the value assets of the Estate can be market-tested at the auction and a sale concluded.

41. TAL has or will purchase the FNBC Pre-Petition Loan, including all FNBC Liens (the "FNBC Claim"). TSB has agreed that it will assign to TAL its judgment and all underlying note and security instruments in return for a minority equity interest in TAL

[10] *See, e.g., Clear Channel Outdoor, Inc. v. Knupfer*, 391 B.R. 25 (B.A.P. 9th Cir. 2008).

(the "TSB Claim"). After the consummation of these transactions, TAL will own both the FNBC and the TSB Claims.

42. In an effort to resolve many of the questions identified herein, TAL has approached the Trustee to discuss settlement of the issues referred to above. The Trustee has had settlement discussions regarding the proposed bid and sale process in light of the pending or to be consummated debt acquisitions by TAL. The Trustee and TAL believe that they have reached an agreement which is beneficial to the Estate and provides finality to the sale process, allowing the Trustee to move forward with comfort that the auction process with certainty that any sale will be approved by this Court and avoid the potentially burdensome, costly questions presently nagging the auction and sale process.

43. Upon consummation of the purchases and transfers of debt instruments by and into TAL, TAL will be the holder of both the FNBC Pre-Petition Loan balance, the Post-Petition Loan Balance and the TSB debt. It is anticipated that prior to or contemporaneous with the purchase by TAL of the FNBC Pre-Petition Loan, FNBC will enforce its security interests against non-Thinkstream collateral, specifically, the LOC's and CD's pledged to secure the FNBC Pre-Petition Loan. As noted earlier, the present balance of the FNBC Pre-Petition Loan is approximately $4.122 million. Inclusive of the Post-Petition Loan ($750,000 plus interest and costs), the total amount due FNBC under its documents is approximately $4.85-4.9 million. It is anticipated that the drawdown on the LOC's and CD's will result in the total amount due FNBC (Pre- and Post-Petition) to be approximately $2.0-2.1 million. Inclusive of the TSB indebtedness in the judgment amount of $9.1 million, the total claim held by TAL will approximate $11.1-11.2 million.

44. In an effort to avoid dispute over consent, credit-bid rights, collateral value and the like, TAL and the Trustee have reached an agreement as set forth in the Settlement Agreement, a draft of which is attached hereto as **Exhibit "A"** (the "Agreement"). The salient terms are as follows:

a. The Trustee will file an amended Schedule D removing the contingent, unliquidated, disputed characterizations of both the FNBC and the TSB debts and allowing both claims

b. TAL shall make an initial bid in the amount equal to the Administrative Reserve (currently $1,405,000).

c. TAL will agree to subordinate its lien on the sales proceeds for the first $625,000 and allow such funds to be retained by the Trustee for payment of Estate administrative expenses.

d. Due to the subordination expressed above, TAL will agree to pay the $625,000 portion of the initial bid in cash.

e. Thereafter, TAL shall be allowed to credit bid up to the sum of $11 million - $2 million on account of the FNBC Claim ($595,000 over its initial bid) and $9 million on account of the TSB Claim.

f. Should TAL be required to credit bid over and above an amount equal to the first $2.0 million bid, and should TAL be the winning bidder, then TAL will be responsible for payment, in cash, of an amount equal to fifteen percent of the bid in excess of $2.0 million (the "Carve-out").[11]

[11] If the Administrative Reserve is $1,405,000, then TAL will credit bid up to an additional $595,000 (thus, $2.0 million total bid) without payment of the fifteen percent. If bidding requires TAL to increase its credit bid above a bid level of $2.0 million, for example to $3.0 million, TAL will pay fifteen

g. Should TAL not be the winning bidder, then TAL shall be entitled to the first approximately $1.375 million in sales proceeds ($2.0 million in bid minus the portion of the Administrative Reserve in excess of the Post-Petition Loan Balance), and thereafter shall be entitled to eighty-five percent of any remaining proceeds (up to the amount of its combined claim). The Estate shall retain the first approximately $625,000 for payment of administrative claims and the fifteen percent Carve-out for the unsecured creditors or as otherwise directed by the Court.

h. If the sales proceeds are insufficient to satisfy the combined TAL claim, TAL shall be entitled to an unsecured deficiency claim for any remaining balance due. However, TAL shall agree to subordinate as to all timely filed and allowed unsecured claims its deficiency claim solely as to any proceeds derived as a result of this sale.

i. TAL shall also subordinate to the Trustee its security interest in, to and upon those Estate assets excluded from the sale, thereby allowing the proceeds of such assets to be distributed to unsecured creditors.

---

percent of the amount over and above $2.0 million. In the $3.0 million example, TAL would pay an additional $150,000 cash (fifteen percent of the $1 million in additional bid over and above the $2.0 million threshold).

LAW AND ARGUMENT

45. In order to approve a compromise, this Court must determine that the Agreement is both fair and equitable and in the best interest of the Estate.[12] The terms of the compromise must be compared with the likely rewards of litigation in order to determine whether the settlement of litigation is fair and equitable.[13] This Court must consider (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (3) all other factors bearing on the wisdom of the compromise.[14] With regard to part three of this analysis, the Fifth Circuit has specified two factors that bear upon the decision to approve a compromise and thus should be considered by this Court: (a) the best interest of the creditors, "with proper deference to their reasonable views" and (b) "the extent to which the settlement is truly the product of arms-length negotiations and not of fraud or collusion."[15] In other words, "[t]o assure a proper compromise, the bankruptcy judge must be apprised of all the necessary facts for an intelligent, objective and educated evaluation."[16]

---

[12] *In re Bodenheimer, Jones, Szwak & Winchell L.L.P.*, 592 F.3d 664, 675 (5th Cir. 2009) (citing *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980)).

[13] *In re Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980)); *See also, In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995).

[14] *Id*. at 355 (citing *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980)).

[15] *Id*. at 356 (citing *In re Foster Mortgage Corp.*, 68 F.3d 914, 917-18 (5th Cir. 1995)).

[16] *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

46. The Trustee represents that the Agreement is the result of arms-length negotiations between them and does not represent any fraud or collusion.

47. Considering the terms of the Agreement, and the costs and speculative nature associated with litigating the issues presented in the future, the Trustee believes that the Agreement is fair and equitable and in the best interest of the Estate and its creditors and should thus be granted.

48. As noted above, a variety of thorny issues plague the proposed sale of assets, including; whether FNBC has credit bid rights, the extent of the FNBC claim, and its attendant lien rights, whether TSB may credit bid its allowed secured claim, whether a cash sale for less than the sum of the FNBC and TSB liens may be accomplished over and above the non-consent of either party, valuation of collateral for disposition of proceeds, the need for the Estate to sell assets immediately due to immediately impending illiquidity, the cost of litigation on the estate that is facing administrative insolvency if it cannot consummate an asset sale transaction. All of these, to name but just a few are reasons the Trustee and TAL believe that the proposed settlement and compromise is a fair and just outcome for the sale process.

49. By agreeing to this compromise, the Estate now receives the benefit of having to deal with only one secured creditor who has expressed that it will consent to a sale if this compromise is approved. This compromise allows the secured creditor to protect its lien position, but at the same time provides an avenue for a return to the Estate over and above that contemplated in the Sale Motion as originally filed. The settlement also allows a true market-test of the value of the assets to be sold without the cloud that would otherwise exist for other bidders. Under the original Sale Motion, the Estate would

receive the Administrative Reserve (and immediately pay back to FNBC the Post-Petition Loan Balance, thus netting a sum needed to pay administrative creditors). Junior creditors would have had to make initial bids of over $5 million to possibly see a return to the Estate. But in such case, *i.e.*, a bid over the FNBC credit bid, then TSB's lien rights would require apportionment of the proceeds and further litigation over the issue, including difficult valuation proceedings of the collateral pots of FNBC and TSB (assuming that a sale could be approved over the non-consent of the junior secured creditor if proceeds were insufficient to pay the TSB claim). For creditors of the Estate junior to administrative expenses (such as the rather large and expansive pre-petition tax claimants, not to mention the general unsecured creditors), the possibility of seeing any return from a sale of the assets would be non-existent unless a bidder were willing to bid over approximately $5.5 million. And even then, were a bidder to bid cash over and above $5.5 million, the Estate would have to litigate what portion of the sales price is attributable to the sale of TSB collateral.

50. In contrast, under the proposed compromise, the floor for possible return to junior creditors is reduced by approximately $3.5 million. If a bid in excess of $2.0 million is received, then cash representing fifteen percent of the portion of such bid in excess of $2.0 million goes to the estate (whether it is paid by TAL or some other successful bidder). Moreover, the Estate eliminates the need to apportion the bid between collateral values, thus saving litigation costs (moneys the estate does not presently have, and would further reduce any potential recovery to junior unsecured creditors were the Trustee required to expend administrative expenses seeking to determine such issue).

51. An additional benefit to the Estate is that TAL is providing a $625,000 "floor" for the Trustee's proposed sale, thereby ensuring the Estate of being able to pay its administrative obligations and quickly divest the Thinkstream assets to a purchaser who is able to recapitalize them and carry on the vital work of the company.

52. Finally, in addition to the Carve-Out, TAL is also subordinating its security interest to the Trustee on those assets retained by the Trustee and excluded from the sale, namely the Estate's prepetition accounts receivable and general intangibles. The sum total of these carve-outs and subordinations maximizes the prospect of a dividend to the Estate where little existed before.

CONCLUSION

53. In summary, the proposed compromise between the Trustee and TAL provides resolution of several prickly issues surrounding the proposed sale of the Estate's assets, resolves the rights of the lienholders (now lienholder) to credit bid, lowers the threshold for the Estate and its unsecured creditors to see a possible recovery from the sale of the assets, and guarantees recovery for the unsecured creditors from the assets excluded from the sale. And further, the proposed compromise eliminates the possibility of costly and perhaps intensive litigation over the allocation of sales proceeds, credit bidding rights, consent to sale, collateral valuation, and other issues. The proposed compromise allows the Trustee to proceed with an auction necessary to stave off administrative insolvency and heightens the likelihood of sale approval without expensive litigation. The proposed compromise does not stifle any bidding from any party and should have no effect on the interest of other parties to bid at the auction.

54. In short, the Trustee believes that the resolution proposed herein will strengthen the Estate's ability to maximize recovery to the Estate's creditors and will provide certainty and finality in the most cost-efficient manner.

NOTICE

55. In accordance with applicable law, this matter will be noticed for hearing, allowing all creditors the opportunity to oppose the Agreement should any choose to do so.

WHEREFORE, David S. Ruin, Trustee, prays that this Court enter an order (i) approving the Settlement Agreement attached hereto as Exhibit "A"; (ii) authorizing the Trustee to effectuate the Settlement Agreement attached hereto as Exhibit A"; and (iii) for any such other relief deemed just.

By Attorneys:
KANTROW, SPAHT, WEAVER & BLITZER
(A PROFESSIONAL LAW CORPORATION)
P. O. Box 2997
Baton Rouge, Louisiana 70821-2997
Telephone: 225/383-4703
Facsimile: 225/343-0630

By: /s/David S. Rubin
David S. Rubin (La. 11525)
Julie M. McCall (La. 29992)
Attorneys for David S. Rubin, Chapter 11 Trustee

Exhibit:

Exhibit A – Proposed Settlement Agreement (draft)

332426.3