

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Case No. 03-12272(PJW )
	:	Chapter 11
	:	Jointly Administered
LTWC CORPORATION, <u>et al.</u> ,	:	<b>Ref. Dkt. No. 184</b>
	:	<b>Effective Date: 4/12/04</b>
Debtors-in-Possession.	:	


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**NOTICE OF PLAN CONFIRMATION ITS EFFECTIVE DATE**

PLEASE TAKE NOTICE that the *Liquidating Plan of LTWC Corporation and its Subsidiary Debtors*, dated November 21, 2003 [Docket No. 115] was confirmed on March 3, 2004 by the U.S. Bankruptcy Court for the District of Delaware. A copy of the *Findings of Fact, Conclusions of Law and Order Confirming Plan of Liquidation of LTWC Corporation and its Subsidiary Debtors* [Docket No. 184] (the Confirmation Order”) is attached hereto.

PLEASE TAKE FURTHER NOTICE that the **Effective Date of the Plan** was **April 12, 2004**.

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Date: April 27, 2004

Co-counsel for the Debtors

Dkt. No. 214

Date Filed: 4/27/04

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11 – Jointly Administered
LTWC CORPORATION, <i>et al.</i>	)	Case No. 03-12272-PJW
Debtors.	)	Reference Docket No. 116
	)	Objection Deadline: February 9, 2004 at 4:00 p.m.
	)	Hearing: March 10, 2004 at 9:30 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CONFIRMING PLAN OF LIQUIDATION  
OF LTWC CORPORATION AND ITS SUBSIDIARY DEBTORS**

On March 10, 2004, the Court held a hearing on adequate notice to all creditors of LTWC Corporation, et al., the Debtors and Debtors-in-Possession (collectively, the "Debtors"), on Debtors' request for confirmation of its Plan of Liquidation dated November 21, 2003 (the "Plan").<sup>1</sup>

NOW, THEREFORE, based upon (i) all of the evidence proffered or adduced at, memoranda and objections filed in connection with, and arguments of counsel made at, the confirmation hearing, and (ii) the entire record herein; and after due deliberation thereon; and good cause appearing therefor;

**The Court Finds and Concludes as Follows:<sup>2</sup>**

1. **Jurisdiction and Venue (28 U.S.C. §§ 157, 1334 and 1408).** This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1408. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2),

<sup>1</sup> Capitalized terms not defined in this Order shall have the meanings given to them in the Plan.

<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

Dkt. No. 184

Date Filed: 3/10/04

and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. **Judicial Notice.** This Court takes judicial notice of the docket of this case maintained by the Clerk of the Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at, the hearings held before the Court during the pendency of this case

3. **Transmittal and Mailing of Materials; Notice.** The Amended Disclosure Statement, Plan, Ballot and Confirmation Hearing Notice were transmitted and served in compliance with Bankruptcy Rules and such transmittal and service were adequate and sufficient.

4. **Substantive Consolidation.** Substantive consolidation of the Estates of each of the Debtors, as provided for in Section 2.1 of the Plan, is appropriate under the circumstances and is hereby approved.

5. **Plan Compliance with 11 U.S.C. § 1123(a).** As specifically set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(1) of the Bankruptcy Code.

a. **Proper Classification (11 U.S.C. §§ 1122 and 1123 (a)(1)).** The Plan designates classes of Claims and Equity Interests for the Debtor. The Claims and Equity Interests placed in each class are substantially similar to other Claims or Equity Interests, as the case may be, in each such class. Valid business, factual and legal reasons exist for separately classifying the various classes of Claims and Equity Interests created under the Plan. The Plan therefore satisfies Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

b. Specify Unimpaired and Impaired Classes (11 U.S.C. § 1123(a)(2) and (3)). The Plan specifies that Class 1 Priority Claims are not impaired under the Plan, thereby satisfying Section 1123(a)(2) of the Bankruptcy Code. The Plan designates Classes 2, 3, 4 and 5 as impaired and specifies the treatment of Claims and Equity Interests in those classes, thereby satisfying Section 1123(a)(3) of the Bankruptcy Code.

c. No Discrimination (11 U.S.C. § 1123 (a)(4)). The Plan provides for the same treatment by the Debtor for each Claim or Equity Interest in each respective class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying Section 1123(a)(4) of the Bankruptcy Code.

d. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for its implementation and therefore satisfies Section 1123 (a)(5) of the Bankruptcy Code.

e. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan provides for the dissolution of the Debtor, therefore Section 1123(a)(6) of the Bankruptcy Code is inapplicable.

f. Selection of Officers, Directors and Other Persons (11 U.S.C. § 1123(a)(7)). Pursuant to the Plan, the Official Committee of Unsecured Creditors and the Debtors have designated Michael M. Arons to serve as the Plan Administrator of the Debtors. In addition, the Plan provides for the dissolution of the Debtors. Therefore, the Plan is consistent with the interests of creditors and with public policy, and satisfies, to the extent applicable, Section 1123(a)(7) of the Bankruptcy Code.

6. **Compliance with Applicable Provision of the Code (11 U.S.C. § 1129).**

a. The Plan complies with the applicable provisions of the Bankruptcy Code thereby satisfying Section 1129(a)(1) of the Bankruptcy Code.

b. **Proponents' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**  
The Proponents have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(2) of the Bankruptcy Code.

c. **Proponents' Good Faith (11 U.S.C. § 1129(a)(3)).** The Proponents have proposed the Plan in good faith and not by any means forbidden by law.

7. **Payments for Services or Expenses (11 U.S.C. § 1129(a)(4)).** Any payment made or to be made by the Proponents or the Debtors for services or for costs and expenses in or in connection with this case, or in connection with the Plan prior to the Effective Date and incident to this case, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying Section 1129(a)(4) of the Bankruptcy Code.

8. **Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)).** The Proponents have complied with any applicable provision of Section 1129(a)(5) of the Bankruptcy Code.

9. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Debtors will have no continuing business operations or activities after confirmation and consummation of the Plan, and therefore Section 1129 (a)(6) of the Bankruptcy Code is not applicable.

10. **Best Interest of Creditors Test (11 U.S.C. § 1129 (a)(7)).** The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code in that each holder of a Claim or Equity Interest in an impaired class either (i) has accepted the Plan, or (ii) will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the

Plan, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

11. **Acceptance By Certain Classes (11 U.S.C. §1129(a)(8)).** Class 1 is a class of unimpaired Claims that is conclusively presumed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code. [Classes 2 and 3 have voted to accept the Plan. Class 4 . . . . Class 5 is not entitled to receive or retain any property of value under the Plan and therefore is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Although Section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to Classes 2, 4 and 5, the Plan is confirmable because the Plan satisfies Section 1129(b) of the Bankruptcy Code with respect to those classes.

12. **Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims and Priority Claims under the Plan satisfies the requirements of Section 1129(a)(9) of the Bankruptcy Code.

13. **Acceptance by Impaired Class (11 U.S.C. § 1129 (a)(10)).** Class 3 is an impaired class of Claims that has voted to accept the Plan determined without including any acceptance by "insiders," thus satisfying Section 1129(a)(10) of the Bankruptcy Code.

14. **Feasibility (11 U.S.C. § 1129 (a)(11)).** The Plan is a plan of liquidation which provides for the winding-up of the Debtors, the transfer of assets to the Plan Administrator for the benefit of holders of Allowed Unsecured Claims and the distribution to creditors in accordance with the terms of the Plan. Therefore, to the extent applicable, the Plan satisfies Section 1129(a)(11) of the Bankruptcy Code.

15. **Payment of Fees (11 U.S.C. § 1129 (a)(12)).** All fees payable under 28 U.S.C. §1930 have been paid or will be paid on the Effective Date pursuant to the Plan, thereby

satisfying Section 1129(a)(12) of the Bankruptcy Code. In addition, all such fees shall be paid until the entry of a final decree and the Debtors shall file all required operating reports. The Plan provision regarding request for payment of an Administrative Claim does not include payment of the United States Trustee quarterly fees.

16. **Retiree Benefits (11 U.S.C. § 1129(a)(13))**. The Debtors had no pre-bankruptcy or post-bankruptcy program in place to pay "retiree benefits". Accordingly, the Debtors have no obligation to continue any such program under Section 1129(a)(13) of the Bankruptcy Code.

17. **Fair and Equitable (11 U.S.C. § 1129 (b))**. Class 4 (collectively the "Rejecting Class") is the impaired class that is deemed to have rejected the Plan. This is the only class that has not accepted, or been deemed to have accepted the Plan. The holders of Class 4 Claims will not receive or retain property any property under the Plan on account of such Equity Interests. Therefore, the Plan is fair and equitable with respect to the Rejecting Class within the meaning of Section 1129(b) of the Bankruptcy Code. The Plan therefore may be confirmed notwithstanding the failure to satisfy Section 1129(a)(8) of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. **Confirmation**. The Plan is approved and confirmed under Section 1129 of the Bankruptcy Code. The terms of the Plan are incorporated by reference into and are an integral part of this Order. To the extent the terms of the Plan and the terms of this Order are inconsistent, the terms of this Order prevail.

2. **Substantive Consolidation**. Substantive consolidation, as provided in Section 2.1 of the Plan, is appropriate under the circumstances herein and is hereby approved.

3. **Objections**. All Objections to confirmation of the Plan that have not been withdrawn, waived or settled are overruled.

4. **Plan Classification.** The Classification of Claims and Equity Interests under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by creditors in connection with voting on the Plan (i) were set forth on the Ballot solely for the purpose of voting to accept or reject the Plan, (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes and (iii) shall not be binding on the Debtors, their estates, the Plan Administrator, or any other person or party.

5. **Binding Effect.** Pursuant to Section 1141 of the Bankruptcy Code, the provisions of the Plan (including the exhibits to, and all documents and agreements executed pursuant to, the Plan) shall be binding on (i) the Debtors, (ii) the Plan Administrator, (iii) all holders of Claims against and Equity Interests in the Debtors and (iv) each of their respective heirs, successors, assigns, trustees, executors and administrators.

6. **Termination of Automatic Stay.** Except as otherwise provided in any other order of this Court, all injunctions or stays provided for under Sections 105 or 362 of the Bankruptcy Code or otherwise and extant on the Confirmation Date, shall remain in full force and effect until the Effective Date of the Plan.

7. **Rejected Contracts and Leases.** Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, all of the executory contracts and unexpired leases to which any of the Debtors is a party, to the extent such contracts or leases are executory as of the Confirmation Date, are rejected pursuant to Section 365 of the Bankruptcy Code and the Plan, except those contracts or leases (i) previously assumed or rejected by the Debtors, or (ii) which expired or terminated pursuant to their own terms during the pendency of these cases. If the rejection of an executory

contract or unexpired lease pursuant to the Plan gives rise to a Claim by the non-debtor party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, their estates, the Plan Administrator, or his respective successors, assigns or properties unless a proof of claim is filed and served in accordance with the Plan.

8. **Plan Administrator.** Except as expressly provided in the Plan, in accordance with Section 1123(b) of the Bankruptcy Code, the Plan Administrator or his successor or substitute (as provided in the Plan) may retain and enforce any claims, rights and causes of action, whether arising before or after the Petition Date, that the Debtors or their estates may hold against any entity or person. Pursuant to the terms of the Plan, the Plan Administrator or his successor or substitute may pursue such claims, rights or causes of action, as appropriate and may pursue, abandon, settle or release any or all such claims, rights and causes of action as the Plan Administrator may deem appropriate.

9. **Exculpation.** Neither the Debtors nor the Plan Administrator or any of the Debtors' or the Official Committee of Unsecured Creditors' current or former officers, directors, employees, agents, counsel, advisors or representatives shall have or incur any liability to any Entity for any act or omission in connection with or arising out of this case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct and in all respects the Debtors, any of their current or former officers, directors, employees, agents, advisors, representatives and the Plan Administrator shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

10. **Transfers to the Plan Administrator.** In accordance with Section 1123(b) of the Bankruptcy Code, the Plan Administrator is hereby designated as the successor to and the

representative of the Debtors' estates, and the Plan Administrator may retain and enforce any claims, rights and causes of action, whether arising before or after the Petition Date, that the Debtors or their estates may hold against any entity or person. Pursuant to the terms of the Plan, the Plan Administrator may pursue such claims, rights or causes of action, as appropriate in the Plan Administrator's judgment and may pursue, abandon, settle or release any or all such claims, rights and causes of action as he may deem appropriate.

11. **Plan Administrator's Authority to Sell Assets.** The Plan Administrator shall have authority to sell assets or property of the Estates to any purchaser on such terms and conditions as the Plan Administrator deems appropriate, and to execute all necessary instruments and documents in connection with any such sale, and such sales shall not require court approval. All transfers of property and Assets by the Debtors (A) to the Plan Administrator (1) are or shall be legal, valid, and effective transfers of property, (2) vest or shall vest the Plan Administrator with good title to such property and Assets free and clear of all liens, charges, claims, encumbrances or interests, except as expressly provided in the Plan or Confirmation Order, (3) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (4) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to transfers by the Plan Administrator), and (5) do not and shall not subject the Plan Administrator or holders of Claims, Interests or property to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor or transferee liability, and (B) to holders of Claims under the Plan are for good consideration and value.

12. **Objections to Claims.** The Plan Administrator may file objections to Claims no later than 180 days after entry of this Order, unless extended by this Court.

13. **Payment of Fees.** All fees payable by the Debtors under 28 U.S.C. § 1930 shall be paid on or before the Effective Date.

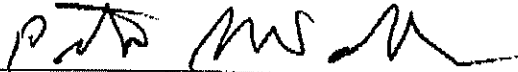
14. **Fee Applications.** All final fee applications must be filed with the Court no later than thirty days after entry of this Confirmation Order becomes final.

15. **Retention of Jurisdiction.** This Court shall retain jurisdiction over all matters arising out of and related to this case and the Plan in accordance with Sections 105(a) and 1142 of the Bankruptcy Code and Article 14 of the Plan.

16. **Confirmation Order Controlling.** In the event of any direct conflict between the Plan and this Order, the terms of this Order shall control.

17. The Debtors shall give notice of the entry of this Order and of the Effective Date of the Plan within ten (10) days after the Effective Date as defined in the Plan.

Dated: March 10, 2004

  
The Honorable Peter J. Walsh,  
United States Bankruptcy Judge

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