

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

In re:)	Chapter 11
)	
NEXPAK CORPORATION, <i>et al.</i> , ¹)	Case No. 09-11244 (PJW)
)	
Debtors.)	(Jointly Administered)
)	
)	Objection Date: November 24, 2010 at 4:00 p.m.
)	Hearing Date: December 1, 2010 at 11:30 a.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 8, 2010, the Debtors filed the attached *Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code Section 105 and Bankruptcy Rule 9019 for Approval of a Settlement Between NexPak Corporation and Next Generation Media, Inc.* (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, must be filed on or before **November 24, 2010 at 4:00 p.m. prevailing Eastern Time**. At the same time, you must serve a copy of the objection or response on the Debtors' undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **December 1, 2010 at 11:30 a.m. prevailing Eastern Time** before the Honorable Peter J. Walsh, United States Bankruptcy Court, 824 Market Street, Sixth Floor, Courtroom No. 2, Wilmington, Delaware 19801.

¹ The Debtors (along with the last four digits of their respective federal tax ID numbers) are the following entities: NexPak Corporation (2207); Atlanta Precision Molding Co., LLC (4923); EPM Holdings, Inc. (4658); NexPak Holdings LLC (8844); JMC Acquisition LLC (1660); and AEI Acquisition LLC (1655).

Docket No. 774
Date 11-8-10

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 8, 2010
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC

/s/ William A. Hazeltine

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Attorneys for Debtor and Debtor-in-Possession

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

In re:)	Chapter 11
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NEXPAK CORPORATION, <i>et al.</i> , ¹)	Case No. 09-11244 (PJW)
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Debtors.)	(Jointly Administered)
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)	Objection Date: November 24, 2010 at 4:00 p.m.
)	Hearing Date: December 1, 2010 at 11:30 a.m.

**DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO
BANKRUPTCY CODE SECTION 105 AND BANKRUPTCY RULE 9019
FOR APPROVAL OF A SETTLEMENT BETWEEN
NEXPAK CORPORATION AND NEXT GENERATION MEDIA, INC.**

NexPak Corporation and its affiliated debtors, the reorganized debtors (the "Reorganized Debtors") in the above-captioned chapter 11 cases, hereby move this Honorable Court (the "Motion") for entry of an order, pursuant to section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 9019 (the "Bankruptcy Rules") approving a settlement as memorialized in the Settlement Agreement (the "Settlement Agreement") between NexPak and Next Generation Media, Inc. ("Next Generation"). In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are section 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

¹ The Reorganized Debtors (along with the last four digits of their respective federal tax ID numbers) are the following entities: NexPak Corporation (2207); Atlanta Precision Molding Co., LLC (4923); EPM Holdings, Inc. (4658); NexPak Holdings LLC (8844); JMC Acquisition LLC (1660); and AEI Acquisition LLC (1655).

BACKGROUND

2. On April 10, 2009 (the "Petition Date"), the Reorganized Debtors filed their voluntary petitions pursuant to chapter 11 of the Bankruptcy Code commencing the above-captioned cases. These cases are being jointly administered for procedural purposes only. On May 18, 2010, the Bankruptcy Court entered an order confirming the Second Amended Joint Plan of Liquidation for NexPak Corporation and its Affiliated Debtors (the "Plan"). The Plan became effective on June 2, 2010.

3. The Reorganized Debtors were leading manufacturers, marketers and distributors of packaging solutions for the digital video disc, VHS video cassette, video game and compact disc markets in the United States, Canada, Mexico, Argentina, Europe, Japan, China, Australia and New Zealand. The Reorganized Debtors' products were comprised primarily of injection molded plastic packaging. The Reorganized Debtors primarily sold their products to retailers, movie studios, media replicators and duplicators, record labels and video game manufacturers.

4. On May 6, 2009, Debtor Nexpak Corporation commenced a lawsuit against Next Generation Media, Inc. in the State Court of Gwinnett County, Georgia, Case No. 09GC-11456-1 (the "State Court Action"), in which a default judgment was entered against Next Generation Media, Inc.

5. On November 6, 2009, pursuant to a summons of garnishment issued in the State Court Action, funds owned by Next Generation Media, Inc. in the amount of \$38,581.25 on deposit with Wells Fargo Bank were garnished and turned over to Debtor Nexpak Corporation (the "Garnishment").

6. On January 7, 2010, Next Generation Media, Inc. filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the

District of Minnesota (the “Minnesota Bankruptcy Court”). The Minnesota Bankruptcy Case was converted to one under Chapter 7 of the Bankruptcy Code on March 9, 2010 and Dwight Lindquist (the “Trustee”) was appointed as Chapter 7 trustee for Next Generation on March 10, 2010.

7. The Trustee asserts that the Garnishment is avoidable under, *inter alia*, 11 U.S.C. § 547, pursuant to the Trustee’s avoidance powers in connection with the Minnesota Bankruptcy Case (the “Trustee’s Avoidance Rights”).

8. On July 1, 2010, the Trustee filed his Motion of the Estate of Debtor Next Generation Media, Inc., by Dwight Lindquist, Chapter 7 Trustee, for Allowance and Payment of Administrative Expense Claim (the “Administrative Claim Motion”), asserting an administrative claim against the Debtors in the amount of \$38,581.25 based on the Trustee’s Avoidance Rights in connection with the Garnishment.

9. On or about November 4, 2010, NexPak and Next Generation entered into a Settlement Agreement resolving the issues raised in the Administrative Claim Motion. A copy of the Settlement Agreement is attached hereto as Exhibit A.

RELIEF REQUESTED

10. Pursuant to this Motion, the Debtors seek approval of the Settlement Agreement pursuant to Bankruptcy Code Section 105 and Bankruptcy Rule 9019. The salient terms of the Settlement are as follows:² The Trustee shall have an Allowed Administrative Claim in the amount of \$37,549.00. The Reorganized Debtors shall pay \$37,549.00 (the “Allowed Administrative Claim Amount”) to the Trustee within ten (10) days after the later of (i) entry of

² This Motion contains a summary of the provisions of the Settlement Agreement. Please refer to the Settlement Agreement for all of the terms and provisions. In the event that there is an inconsistency between this summary and the Settlement Agreement, the terms of the Settlement Agreement shall control.

an order in the Minnesota Bankruptcy Case approving the Settlement Agreement and (ii) entry of an order by this Court approving the Settlement Agreement.

BASIS FOR RELIEF REQUESTED

11. A bankruptcy court has the authority to approve a settlement or compromise between the debtor and another party under Bankruptcy Rule 9019 if it concludes that the settlement or compromise falls above “the lowest point in the range of reasonableness.” In re Pennsylvania Truck Lines, Inc., 150 B.R. 595, 598 (Bankr. E.D. Pa. 1992), aff’d, 8 F.3d 812 (3d Cir. 1993). In ascertaining the scope of this range of reasonableness, courts have considered, among other factors:

- (a) the probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation, and the expense, inconvenience and delay necessarily attending it; [and]
- (d) the paramount interests of the creditors and a proper deference to their reasonable views[.]

Id.

12. In considering proposed settlements, courts have found that “the law favors compromise.” In re Lakeland Development Corp., 48 B.R. 85, 90 (Bankr. D. Minn. 1985) (citations omitted), aff’d without opinion, 782 F.2d 1048 (8th Cir. 1985), cert. denied, 476 U.S. 1130 (1986). Indeed, settlements and compromises are “a normal part of the process of reorganization” and are strongly favored over litigation. Protective Comm. For Indep. Stockholders TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citation omitted). While a court must make its own considered judgment, it should not substitute its judgment for that of the debtor. In re Carla Leather, Inc., 44 B.R. 457, 465 (S.D.N.Y. 1984).

13. In applying this standard test, the reasonableness of a proposed compromise and settlement does not depend on a determination that the settlement reached is the best that could possibly be obtained, but rather, whether the settlement “fall[s] below the lowest point in the range of reasonableness.” In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983); see also Penn Central, 596 F.2d at 1114 (test is whether terms of proposed compromise fall “within the reasonable range of litigation possibilities”) (citations omitted); In re Pennsylvania Truck Lines, Inc., 150 B.R. 595, 598 (E.D. Pa. 1992) (citing W.T. Grant, 699 F.2d at 608) (same); In Genesis Health Ventures, Inc., 266 B.R. 591, 620 (D. Del. 2001) (“if the settlement falls below the lowest point in the range of reasonableness, it should be rejected”) (internal quotations omitted).

14. Additionally, Section 105(a) of the Bankruptcy Code grants broad authority to a Court to enforce the provisions of the Bankruptcy Code under equitable common law doctrines.

15. The use of the Court’s authority under Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 is appropriate here. As noted above, the Trustee asserts that the estate of Next Generation is entitled to an administrative expense claim in the amount of at least \$38,581.25. Without admitting liability, the Debtors believe that, under applicable law, the Trustee may be able to avoid the Garnishment and recover the amount avoided as an administrative expense claim. Given the expense that would be involved in litigating this matter and the uncertainty as to the outcome, the Allowed Administrative Claim Amount is reasonable.³

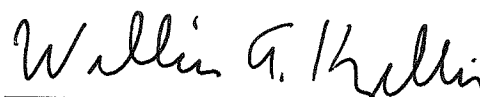
³ Resolution of the Trustee’s administrative claim will complete the claims reconciliation process with respect to the Debtors’ administrative and priority claims. Payment of the Allowed Administrative Claim Amount will completely exhaust the amounts available for payment of administrative, priority and general unsecured claims as set forth in the Second Amended Joint Plan of Liquidation of NexPak Corporation and its Affiliated Debtors, which became effective on June 2, 2010. Accordingly, after payment of the Allowed Administrative Claim Amount, there will be no funds available for distribution to general unsecured creditors.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as Exhibit B, approving the Motion and the Settlement Agreement and granting to the Debtors such other and further relief as the Court deems just and proper.

Dated: November 8, 2010
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



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Attorneys for the Reorganized Debtors

Exhibit A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Settlement Agreement**”) by and between Nexpak Corporation, *et al.*, reorganized debtors (“**Reorganized Debtors**”) in Case No. 09-11244 (PJW) (Jointly Administered) (the “**Delaware Bankruptcy Case**”), and Dwight Lindquist, the duly appointed and authorized Chapter 7 Trustee (the “**Trustee**” and together with the Reorganized Debtors, the “**Parties**”), of the bankruptcy estate (the “**Estate**”) of Next Generation Media, Inc., debtor in Case No. 110-40097 (RJK) in the United States Bankruptcy Court, District of Minnesota (the “**Minnesota Bankruptcy Case**”), is made and entered into as of this day of October 27, 2010.

WHEREAS, on April 10, 2009, Reorganized Debtors commenced the Delaware Bankruptcy Case under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Bankruptcy Court**”);

WHEREAS, on or about May 6, 2009, Debtor Nexpak Corporation commenced a lawsuit against Next Generation Media, Inc. in the State Court of Gwinnett County, Georgia, Case No. 09GC-11456-1 (the “**State Court Action**”), in which a default judgment was entered against Next Generation Media, Inc.;

WHEREAS, on or about November 6, 2009, pursuant to a summons of garnishment issued in the State Court Action, funds owned by Next Generation Media, Inc. in the amount of \$38,581.25 on deposit with Wells Fargo Bank were garnished and turned over to Debtor Nexpak Corporation (the “**Garnishment**”);

WHEREAS, on January 7, 2010, Next Generation Media, Inc. commenced the Minnesota Bankruptcy Case by filing its voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Minnesota (the “**Minnesota Bankruptcy Court**”). The Minnesota Bankruptcy Case was converted to one under Chapter 7 of the Bankruptcy Code on March 9, 2010; and the Trustee was appointed on March 10, 2010;

WHEREAS, the Trustee asserts the Garnishment is avoidable under, *inter alia*, 11 U.S.C. § 547, pursuant to the Trustee’s avoidance powers in connection with the Minnesota Bankruptcy Case (the “**Trustee’s Avoidance Rights**”);

WHEREAS, on May 18, 2010, the Delaware Bankruptcy Court confirmed the *Second Amended Joint Plan of Liquidation for Nexpak Corporation and Its Affiliated Debtors* (the “**Plan**”);

WHEREAS, on July 1, 2010, the Trustee filed his *Motion of the Estate of Debtor Next Generation Media, Inc., by Dwight Lindquist, Chapter 7 Trustee, for Allowance and Payment of Administrative Expense Claim* (the “**Admin Claim Motion**”), asserting an administrative claim against Debtors in the Delaware Bankruptcy Case in the amount of \$38,581.25 based on the Trustee’s Avoidance Rights in connection with the Garnishment;

WHEREAS, following good faith, arms-length negotiations, the Debtors and the Trustee have agreed to settle and compromise (the "**Settlement**") the issues relating to the Garnishment, including the Admin Claim Motion and the Trustee's Avoidance Rights, on the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby stipulate and agree, in full and final settlement of all claims, defenses and causes of action available to them in connection with the Plan, the Admin Claim Motion and the Trustee's Avoidance Rights, as follows:

1. The Trustee shall have an Allowed Administrative Claim (as defined in the Plan) in the Delaware Bankruptcy Case in the amount of \$37,549.00.

2. The Reorganized Debtors shall pay \$37,549.00 (the "**Admin Claim/Settlement Payment**") to the Trustee within ten (10) days after the later of (i) entry of an order by the Minnesota Bankruptcy Court approving this Settlement and (ii) entry of an order by the Delaware Bankruptcy Court approving this Settlement.

3. Within three (3) days of execution of this Settlement Agreement, the Reorganized Debtors shall file a motion under Bankruptcy Rule 9019(b) seeking approval of the Settlement by the Delaware Bankruptcy Court.

4. Within three (3) days of execution of this Settlement Agreement, the Trustee shall file a motion under Bankruptcy Rule 9019(b) seeking approval of the Settlement by the Minnesota Bankruptcy Court.

5. Payment of the Admin Claim/Settlement Amount shall be full and final satisfaction of any claims that the Trustee may have with respect to Garnishment and the Trustee covenants that he shall not sue or otherwise assert any claims against the Reorganized Debtors related in any way to the Garnishment whether through the Trustee's Avoidance Rights or otherwise.

6. The Parties hereby declare that the terms of this Settlement Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, settlement and release of any and all claims disputed or otherwise, relating to the Garnishment, the Admin Claim Motion and the Trustee's Avoidance Rights.

7. The Parties each warrant that they have made no assignment, and hereafter will make no assignment of any claim, chose in action, right of action, or any other right released pursuant to this Settlement Agreement.

8. The Parties each shall bear their respective attorneys' fees and costs, including without limitation, settlement negotiations and implementation of this Settlement Agreement. However, if any action is commenced by any party hereto to enforce the provisions of this Settlement Agreement, the prevailing party shall be entitled to an award, in addition to any other claims or damages, of its costs and expenses, including attorneys' fees, in connection with said action.

9. The Parties hereto have read all of the foregoing and represent that this Settlement Agreement has been explained to them by their respective legal counsel, and that each understands all of the provisions hereto.

10. This Settlement Agreement is binding on and for the benefit of the Parties, as well as their respective parents, subsidiaries, representatives, successors and assigns.

11. The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures. This Settlement Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement which shall be binding on the Parties hereto.

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed by themselves or on their behalf by their respective attorneys as of the date first above mentioned.

Date: November ____, 2010

STEVENS & LEE, P.C.

John D. Demmy (DE Bar No. 2802)
1105 North Market Street, 7th Floor
Wilmington, Delaware 19801
Phone: (302) 425-3308
Fax: (610) 371-8515
Email: jdd@stevenslee.com

*Counsel for Dwight Lindquist, Chapter 7 Trustee
for the Estate of Next Generation Media, Inc.*

Date: November 3, 2010

NEXPAK CORPORATION, *et al.*

By: _____

Name: _____

Its: _____

9. The Parties hereto have read all of the foregoing and represent that this Settlement Agreement has been explained to them by their respective legal counsel, and that each understands all of the provisions hereto.

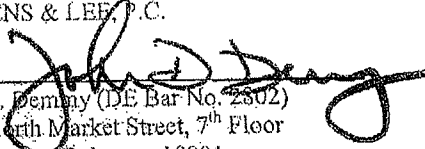
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11. The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures. This Settlement Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement which shall be binding on the Parties hereto.

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed by themselves or on their behalf by their respective attorneys as of the date first above mentioned.

Date: November 4, 2010

STEVENS & LEE, P.C.


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*Counsel for Dwight Lindquist, Chapter 7 Trustee
for the Estate of Next Generation Media, Inc.*

Date: November 3, 2010

NEXPAK CORPORATION, et al.

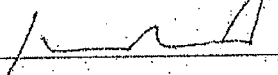
By: 
Name: Kevin Dowd
Its: Dir. of Operations

Exhibit B

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

In re:) Chapter 11
NEXPAK CORPORATION, *et al.*,¹)
Debtors.) Case No. 09-11244 (PJW)
) (Jointly Administered)
)
) **Related Docket No.** _____
)

**ORDER PURSUANT TO BANKRUPTCY CODE SECTION 105 AND BANKRUPTCY
RULE 9019 FOR APPROVAL OF A SETTLEMENT BETWEEN NEXPAK
CORPORATION AND NEXT GENERATION MEDIA, INC.**

Upon consideration of the *Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code Section 105 and Bankruptcy Rule 9019 for Approval of a Settlement Between NexPak Corporation and Next Generation Media, Inc.* (the "Motion"); and it appearing that the relief requested therein is in the best interest of the Debtors, their estates and creditors; and it appearing that the Court has jurisdiction over this matter; and it appearing that notice of the Motion as set forth therein is sufficient, and that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Settlement Agreement between NexPak and Next Generation attached to the Motion is approved in its entirety; and it is further

¹ The Debtors (along with the last four digits of their respective federal tax ID numbers) are the following entities: NexPak Corporation (2207); Atlanta Precision Molding Co., LLC (4923); EPM Holdings, Inc. (4658); NexPak Holdings LLC (8844); JMC Acquisition LLC (1660); and AEI Acquisition LLC (1655).

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or in relation to the implementation of this Order.

Dated: December ___, 2010

The Honorable Peter J. Walsh
United States Bankruptcy Judge

File a Motion:09-11244-PJW Nexpak Corporation, et al.,

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Judge: PJW

Case Flag: MEGA, LEAD,
CLMSAGNT, CONFIRMED**U.S. Bankruptcy Court****District of Delaware**

Notice of Electronic Filing

The following transaction was received from William A. Hazeltine entered on 11/8/2010 at 4:48 PM EST and filed on 11/8/2010

Case Name: Nexpak Corporation, et al.,**Case Number:** 09-11244-PJW**Document Number:** 774**Docket Text:**

Motion to Approve *Settlement Between Nexpak Corporation and Next Generation Media, Inc.* Filed by Nexpak Corporation, et al., Hearing scheduled for 12/1/2010 at 11:30 AM at US Bankruptcy Court, 824 Market St., 6th Fl., Courtroom #2, Wilmington, Delaware. Objections due by 11/24/2010. (Attachments: # (1) Notice # (2) Exhibit A# (3) Exhibit B) (Hazeltine, William)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**C:\fakepath\Motion to Approve Settlement.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=11/8/2010] [FileNumber=9031532-0]
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Document description:Notice**Original filename:**C:\fakepath\Motion to Approve Settlement - Notice.pdf**Electronic document Stamp:**

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Document description:Exhibit A**Original filename:**C:\fakepath\Motion to Approve Settlement - Ex A.pdf**Electronic document Stamp:**

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Document description:Exhibit B**Original filename:**C:\fakepath\Motion to Approve Settlement - Ex B.pdf**Electronic document Stamp:**