

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

-----	:	Chapter 7
	:	
TSG GROUP, INC., et al.,	:	Case No. 07-11337 (KG)
	:	
	:	(Jointly Administered)
Debtors.	:	

		Hearing Date: 2/22/2013 at 10:00 a.m. (ET)
		Objection Deadline: 2/15/2013 at 4:00 p.m. (ET)

**MOTION OF THE CHAPTER 7 TRUSTEE FOR ENTRY OF AN ORDER
AUTHORIZING ABANDONMENT, DISPOSAL, AND/OR
DESTRUCTION OF PROPERTY AND PAYMENT OF RELATED
EXPENSES *NUNC PRO TUNC* TO JANUARY 31, 2013**

Edward N. Cahn, Esq., in his capacity as a chapter 7 trustee (the “Chapter 7 Trustee” or “Trustee”) for the above-captioned debtors’ (collectively, the “Debtors”) estates, hereby moves this Court (the “Motion”) for entry of an order, pursuant to sections 105, 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rule 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the abandonment, disposal, and/or destruction of certain surplus, obsolete, non-core or burdensome, property, including, without limitation, shelving, convention materials, telecommunications and computer equipment, accounting and sales documents, and business records (collectively, the “Obsolete Property”) and pay related expenses in connection therewith *nunc pro tunc* to January 31, 2013. In support of this Motion, the Trustee respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363 and 554 and Bankruptcy Rule 6007.

BACKGROUND

3. On September 14, 2007 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases were jointly administered.

4. On August 25, 2009, this Court approved the appointment of Edward N. Cahn, Esq. as a chapter 11 trustee (the “Chapter 11 Trustee”) for the Debtors’ estates [D.I. 900].

5. On August 24, 2012, this Court entered the *Order Converting Cases from Chapter 11 to Chapter 7 of the Bankruptcy Code* [D.I. 1439] (the “Conversion Order”) whereby the jointly administered chapter 11 cases for the Debtors’ estates were converted to cases administered pursuant to chapter 7 of the Bankruptcy Code, effective as of August 24, 2012.

6. On August 28, 2012, the Office of the United States Trustee appointed the Chapter 11 Trustee as a chapter 7 trustee in these cases [D.I. 1443].

RELIEF REQUESTED

7. By this Motion, the Trustee seeks an order of this Court (i) authorizing the Trustee to (a) abandon and, as appropriate, discard or destroy certain obsolete marketing and sales materials, telecommunications and computer equipment, and records (collectively, the “Obsolete Property”) which are burdensome, of inconsequential value to the Debtors’ estates, and not relevant to the further administration of these chapter 7 estates and (b) pay related expenses; and (ii) modifying the service requirements related to this Motion.

BASIS FOR RELIEF REQUESTED

8. Bankruptcy Code section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Additionally, Bankruptcy Code section 105 provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105 also provides the basis for the *nunc pro tunc* relief requested herein. See COLLIER ON BANKRUPTCY, ¶105.02[6][a] (“*nunc pro tunc* orders are permissible so long as they are necessary or appropriate to carry out the provisions of . . . title [11].”). Courts have granted *nunc pro tunc* relief “when the benefit is great and the prejudice is small.” Id. (listing cases with retroactive authorizations).

9. The Court should apply the business judgment standard in reviewing a trustee’s decision to abandon property that is either of inconsequential value or burdensome to the Debtors’ estates. See In re Slack, 290 B.R. 282, 284 (Bankr. D. N.J. 2003) (“The trustee’s power to abandon property is discretionary... The court only needs to find the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee’s scope of authority.”)

10. Section 363(b)(1) of the Bankruptcy Code further provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under Bankruptcy Code section 363(b)(1), courts should generally approve a non-ordinary course transaction if the proposed use of the estate assets is within a trustee’s reasonable business judgment. See e.g., In re Martin, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that the court generally defers to a trustee’s judgment so long as there is a

legitimate business justification); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (noting that courts have applied the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)); In re Delaware & Hudson R.R. Co., 124 B.R. 169,175-76 (D. Del. 1991) (same).

11. Bankruptcy Rule 6007 provides, in pertinent part, that “[u]nless otherwise directed by the court, the trustee ... shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to §705 or appointed pursuant to §1102 of the Code.” Fed. R. Bankr. P. 6007(a) (emphasis added).

12. As a result of the sale of substantially all of the Debtors’ assets during the administration of the Debtors’ chapter 11 cases, these chapter 7 estates no longer need to retain the Obsolete Property in their possession, custody or control. Accordingly, abandonment, disposal and/or destruction of the Obsolete Property are warranted under Bankruptcy Code sections 363 and 554(a).

13. The Chapter 7 Trustee currently pays monthly fees to maintain three (3) rental storage units in Utah (the “Storage Units”) in which the Obsolete Property is stored. Because the Debtors’ estates have no proposed future operations and the Obsolete Property has no independent value to these estates, there is no need to keep the Obsolete Property. The continuing cost to store the Obsolete Property far exceeds any benefit of maintaining the Obsolete Property. The Trustee has determined that disposing of the Obsolete Property will further efforts to eliminate unnecessary costs. The Trustee is exploring various means of disposing of the Obsolete Property, including, without limitation, hiring a former employee of the Debtors on an hourly basis to determine whether certain of the Obsolete Property contains

confidential information that may require special disposal. Accordingly, the Trustee respectfully requests authority to dispose of any Obsolete Property as the Trustee deems reasonable and appropriate.

14. Finally, due to the nature of the Obsolete Property sought to be discarded, i.e. obsolete equipment and old business records, the Trustee requests that this Court modify the service requirement of Bankruptcy Rule 6007 to eliminate service on all of the Debtors' creditors. Rather, the Trustee proposes that service of this Motion on the Office of the United States Trustee, any party filing a request for notice pursuant to Bankruptcy Rule 2002 and any parties known by the Trustee who may have an interest in any of the Obsolete Property that is the subject of this Motion is sufficient notice.

NOTICE

15. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) any party filing a request for notice pursuant to Bankruptcy Rule 2002; and (c) any parties known by the Trustee who may have an interest in any of the Obsolete Property that is the subject of this Motion. In light of the nature of the relief requested herein, the Trustee submits that no other or further notice is necessary or required.

NO PRIOR REQUEST

16. No previous motion for the relief sought herein, other than a *de minimis* asset procedure motion filed in the Debtors' chapter 11 cases, has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests entry of an order substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

Dated: January 31, 2013

BLANK ROME LLP

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