

LIMITED RESPONSE

1. The GUC Trustee takes no position on the substantive merits of the three pending Administrative Expense Requests or whether they should be granted. The GUC Trustee files this Response to the Administrative Expense Requests solely to preserve the GUC Trustee's rights and ensure that the GUC Trustee does not become responsible for addressing or satisfying the Administrative Expense Requests through the GUC Trust.

2. As evident in the *Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [D.I. 730] (the "Plan"), the Plan embodies a settlement that was heavily negotiated (and requiring several days of mediation) among the Debtors, the Committee, and Plan Sponsor over the course of several months. That settlement culminated in the Debtors' and Plan Sponsor's agreement to contribute \$12.75 million dollars, as well as certain other assets, to the GUC Trust, to be used solely for the benefit of unsecured creditors. Other provisions in the Plan were also negotiated to protect General Unsecured Claims and preclude the GUC Trust from being used to satisfy anything other than General Unsecured Claims. For example, the Plan expressly provides that "Allowed Administrative Expense Claims shall not be paid by the GUC Trust or funded by the GUC Contribution." *See* Plan, Art. IV § A. This sentiment was a direct result of the settlement reached at mediation. *See Id.*, Art. III.C.5 (noting that one of the terms reached during mediation was that "[t]he GUC Trust / GUC Contribution will not fund/pay Administrative Expense Claims (including 503(b)(9) and Priority Claims)").

3. Here, the only relief sought through the Administrative Expense Requests is allowance and payment of Administrative Expense Claims. The only issue to be determined by these Administrative Expense Requests, then, is whether certain creditors are entitled to an

Allowed Administrative Expense Claim under the Plan and not whether such creditors are entitled to an Allowed General Unsecured Claim. The resolution of the Administrative Expense Requests should not include, under any circumstances, the recharacterization, treatment and/or allowance of an asserted Administrative Expense Claim as a General Unsecured Claim. To permit this recharacterization would not only violate the plain terms of the Plan, but also abrogate the rights and expectations of general unsecured creditors all the while diminishing their distributions they are entitled to under the GUC Trust. In short, the Administrative Expense Requests cannot be transformed into General Unsecured Claims subject to payment by the GUC Trust.

4. For the foregoing reasons, the GUC Trustee files this Response. The GUC Trustee reserves all rights to supplement this Response and appear before the Court and address the Administrative Expense Requests.

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