

**IT IS SO ORDERED.**

**Dated: 02:51 PM December 18 2007**



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	<b>CASE NO. 05-81397</b>
	)	
NORTH COAST OIL, INC., <i>et al.</i>	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM
	)	
* * * * *	)	* * * * *
	)	
IN RE:	)	<b>CASE NO. 05-81475</b>
	)	
THOMAS AND YASMEN ABDALLAH	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM

**ORDER GRANTING AMENDED JOINT MOTION TO COMPROMISE**

This matter came on for hearing on November 5, 2007 on the following pleadings: (1) the “Joint Motion of Chapter 7 Trustee and Broadway Bank for Order Approving Settlement Agreement, Authorizing Compromise [of] Certain Controversies with Broadway Bank, Among Other Parties, and for Related Relief” (the “Joint Motion to Compromise”);<sup>1</sup> (2) an amendment to the Joint Motion to

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*In re* North Coast Oil, Inc. - docket #230 and *In re* Abdallah - docket #245.

Compromise (together with the Joint Motion to Compromise, the “Amended Joint Motion to Compromise”);<sup>2</sup> (3) an objection to the Amended Joint Motion to Compromise filed by Thomas and Yasmen Abdallah;<sup>3</sup> (4) an objection to the Amended Joint Motion to Compromise filed by Rocco Inc.;<sup>4</sup> and (5) an objection to the Amended Joint Motion to Compromise filed by Enzo Sberna.<sup>5</sup> Appearing at the hearing were Michael Moran, counsel for the chapter 7 trustee; Dan DeMarco, counsel for Broadway Bank; Michael Cheselka, Jr., counsel for Thomas and Yasmen Abdallah; and Enzo Sberna, *pro se*. Dana Ciarlillo, Vice President of the corporate entity, Rocco, Inc., was also present. Ms. Ciarlillo is not an attorney. During the hearing, the Court received evidence in the form of exhibits and in the form of testimony from Richard Wilson, the chapter 7 trustee.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (J) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). Based upon testimony and evidence presented at the hearing, the arguments of counsel and *pro se* creditor and the pleadings in the Cases (as defined below) and the Trustee Litigation (as defined below), the Court makes the following findings of fact and conclusions of law.

## **I. THE STIPULATED FACTS**

Prior to the hearing, the chapter 7 trustee and Broadway Bank jointly filed an extensive list

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<sup>2</sup> *In re* North Coast Oil, Inc. - docket #243 and *In re* Abdallah - docket #262.

<sup>3</sup> *In re* North Coast Oil, Inc. - docket #247 and *In re* Abdallah - docket #263.

<sup>4</sup> *In re* North Coast Oil, Inc. - docket #258 and *In re* Abdallah - docket #279.

<sup>5</sup> *In re* North Coast Oil, Inc. - docket #259 and *In re* Abdallah - docket # 281.

of proposed stipulations.<sup>6</sup> The Abdallahs also filed a list of proposed stipulations.<sup>7</sup> At the outset of the hearing, counsel for the chapter 7 trustee, Broadway Bank and the Abdallahs represented to the Court that they had conferred and agreed to all of the proposed stipulations except for the Abdallahs' proposed stipulation number 7. Those agreed upon stipulations, a copy of which are attached hereto as Exhibits A and B, were treated as established facts for the hearing and are hereby incorporated herein by this reference as if fully rewritten. [Capitalized terms not defined otherwise in this Order have the meaning ascribed to them in the joint stipulations filed by the chapter 7 trustee and Broadway Bank - *see* Exhibit A].

## **II. BACKGROUND**

### **A. *In General***

Broadway Bank is the payee of a promissory note dated September 5, 2003 and executed by the Abdallahs, North Coast Oil, Inc., AP Investment Properties, LLC, Ray's Discount Drug, Inc., A&H Marathon, Inc., Fairview Marathon and North Olmsted Oil Company (collectively, the "Borrowers"). On May 13, 2005 a \$11,917,239.37 judgment was entered by the Common Pleas Court for Summit County in favor of Broadway Bank and against the Borrowers and in July 2005 Broadway Bank recorded judgment liens against the Borrowers in each county in Ohio in which property (the "Property") that secured the promissory note was located.

On August 17, 2005, Broadway Bank initiated a foreclosure action against the Borrowers in respect of the Property. On November 10, 2005, the Borrowers filed an answer and counterclaim (the "Counterclaim") in response to Broadway Bank's foreclosure complaint. Before the time for

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<sup>6</sup> *In re* North Coast Oil, Inc. - docket # 256 and *In re* Abdallah - docket #272.

<sup>7</sup> *In re* Abdallah - docket #273 (the Abdallahs did not also file their proposed stipulations in the North Coast Oil, Inc. case).

Broadway Bank's reply to the Counterclaim expired, the Borrowers, along with one other corporate entity, Sprague Marathon, Inc., (individually, a "Debtor" and collectively, the "Debtors") filed for bankruptcy. Richard Wilson was appointed as the chapter 7 panel trustee to administer each of the Debtors' bankruptcy cases (individually, a "Case" and collectively, the "Cases"). None of the Debtors filed any schedules with their bankruptcy petitions. Although eventually filed, the bankruptcy schedules for each Debtor remain, to date, incomplete and inaccurate.

***B. The Trustee Litigation:***

Pursuant to agreement, the trustee was subject to a July 14, 2006 filing deadline to assert the issues raised in the Counterclaim. On that date, the chapter 7 trustee filed two identical adversary complaints (collectively, the "Trustee Litigation") styled as *Richard A. Wilson, Trustee v. Broadway Bank* thus initiating adversary case numbers 06-5148 and 06-5149. Those two adversary proceedings were later consolidated into adversary case number 06-5148. Through the Trustee Litigation, the chapter 7 trustee asserted four causes of action based on the Counterclaim.

The first two counts of the Trustee Litigation allege that, prior to the pre-petition execution of Loan Agreements between Broadway Bank and the Borrowers, Broadway Bank represented that the loan proceeds would be sufficient to meet certain of the Borrower's operating expenses (the "Operating Expenses Representation") and that Broadway Bank would further supply a "release schedule" that would allow the Borrowers to sell certain collateral and pay down certain cross-collateralized loans (the "Mortgage Release Representation"). Count I of the Trustee Litigation alleges that Broadway Bank's failures to fulfill the Operating Expenses Representation and the Mortgage Release Representation constitute breaches of contract. Count II alleges that Broadway Bank fraudulently induced Borrowers to enter into the Loan Agreements inasmuch as Broadway

Bank never intended to fulfill either the Operating Expenses Representation or the Mortgage Release Representation and that the Borrowers relied upon those representations in executing the Loan Agreements.

Count III of the Trustee Litigation alleges that the Borrowers had a written contract with a third party for the sale of certain assets at a price of \$22,800,000.00, but that Broadway Bank intentionally interfered with that sale by contacting the purchaser's lender and making statements that caused the purchaser's lender to deny financing. Count IV asks for equitable subordination of any claim that Broadway Bank may have in the Cases pursuant to § 510(c) of the Bankruptcy Code based upon the alleged interference with the sale.

During the pendency of the Trustee Litigation, the parties engaged in extensive discovery, this Court conducted multiple pre-trial conferences and the legal issues raised were extensively briefed by counsel for the the chapter 7 trustee and Broadway Bank. In March of 2007, the chapter 7 trustee moved to dismiss Counts I and II and that motion was granted by an Order entered on March 30, 2007. Prior to a May 2, 2007 pre-trial conference the chapter 7 trustee and Broadway Bank engaged in settlement negotiations and during the May 2<sup>nd</sup> pre-trial conference counsel reported that their clients had reached an agreement in principle to settle the two remaining counts in the Trustee Litigation.

***C. The Proposed Settlement***

On May 30, 2007 the chapter 7 trustee and Broadway Bank filed the Joint Motion to Compromise. That motion sought approval of a settlement with Broadway Bank under which Debtors' estates would receive cash consideration of \$9,900.00 and the chapter 7 trustee would dismiss, with prejudice, all claims that had been or could have been brought (including the Trustee Litigation) against Broadway Bank. [See Exhibit A (Settlement Agreement) to Joint Motion to

Compromise]. Debtors and other parties in interest had until July 5, 2007 to file objections to that motion.

On July 5, 2007 the Abdallahs, through newly retained counsel, filed an objection the Joint Motion to Compromise and the Court held a hearing on the matter on July 18, 2007. During that hearing the chapter 7 trustee indicated that he would be withdrawing the Joint Motion to Compromise. Notwithstanding that representation, the motion was never withdrawn.

On August 2, 2007, the chapter 7 trustee filed a notice of his intent to sell “all of the trustee’s right, title, and interest in and/or to any and all claims which the trustee has or may claim to have against Broadway Bank and arising by virtue of his status as trustee for the [D]ebtors . . .” (the “Estates’ Actions Against Broadway Bank”) for \$25,000.00 in cash to NFN Development, Inc.<sup>8</sup> On August 23, 2007 Broadway Bank filed an objection to the trustee’s proposed sale and a hearing on that matter was set for September 12, 2007.

Prior to the September 12<sup>th</sup> hearing, counsel for the trustee and Broadway Bank resumed settlement negotiations. In the course of those negotiations the trustee attempted to sell the Estates’ Actions Against Broadway Bank for more than the proposed \$25,000.00 sale price and shortly before the September 12<sup>th</sup> hearing a settlement was reached whereby Broadway Bank would pay the estate \$30,000.000 in cash. The September 12, 2007 hearing was held as scheduled and appearing at that hearing were Michael Moran, counsel for the chapter 7 trustee, and Dan DeMarco, counsel for Broadway Bank. During the hearing Mr. Moran indicated that the trustee would withdraw his notice of intent to sell the Estates’ Actions Against Broadway Bank and amend the Joint Motion to Compromise to reflect the agreed upon \$30,000.00 cash payment. The Amended Joint Motion to Compromise was filed on September 12, 2007 and the notice of intent to sell the Estates’ Actions

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<sup>8</sup>

*In re North Coast Oil, Inc.* - docket #234 and *In re Abdallah* - docket #250.

Against Broadway Bank was withdrawn on September 21, 2007.

The only objection to the Amended Joint Motion to Compromise was filed by the Abdallahs and the matter came on for hearing on October 3, 2007. Appearing at that hearing were Michael Moran, Dan DeMarco and Michael Cheselka. Richard Wilson, the chapter 7 trustee and *pro se* creditor, Enzo Sberna<sup>9</sup> were also present. During the hearing Mr. Cheselka represented that his clients' objection was based on the fact that they had recently uncovered some additional information that was purportedly relevant to the Trustee Litigation. Mr. Sberna testified that he was in possession of computer hard drives related to his employment with North Coast Oil, Inc. from the years 2000 to 2005 (the "New Records"). Mr. Sberna also testified that he had never attempted to contact the chapter 7 trustee regarding this information.

Upon questioning by the Court, Mr. Wilson indicated that nothing in the Abdallahs' objection or his conversations with Mr. Cheselka about the recently uncovered information changed his business judgment that approval of the Amended Joint Motion to Compromise was in the best interest of Debtors' estates. However, given Mr. Sberna's testimony about potentially relevant new information, the trustee consented to an adjournment of the hearing so that he could review the New Records.

Mr. Sberna tendered the New Records to the trustee on October 13, 2007 and on October 17, 2007 the trustee completed a review of the information. Following the trustee's review, counsel for the trustee discussed the content of the New Records with counsel for Broadway Bank and counsel for the Abdallahs. Counsel for the trustee also discussed the content of the New Records with Mark George, pre-petition counsel to the Debtors. After their review of the New Records the trustee and

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<sup>9</sup> Mr. Sberna did not come to Court to participate in the North Coast Oil, Inc. and Abdallah matters but happened to be in the courtroom for a different case and decided to stay for the hearing on the Amended Joint Motion to Compromise when he saw it listed on the Court's docket.

his counsel concluded that the New Records did not provide any new or additional information to support the trustee's remaining claims in the Trustee Litigation. Accordingly, the trustee continued in his request that the proposed compromise set forth in the Amended Joint Motion to Compromise be approved as in the best interest of the creditors of Debtors' estates.

### **III. DISCUSSION**

Federal Rule of Bankruptcy Procedure 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). The decision to approve a compromise or settlement lies within the discretion of the bankruptcy court and is warranted when found to be reasonable and fair in light of the particular circumstances of the case and in the best interest of the bankruptcy estate. *See Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). In evaluating a proposed settlement or compromise the court must weigh all conflicting interests by considering such factors as (1) the probability of success on the merits, (2) the complexity and expense of litigation and (3) the paramount interest of creditors. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). *See also Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6<sup>th</sup> Cir. 1988). The bankruptcy court will, generally, give deference to the trustee's business judgment when evaluating a motion to approve a proposed compromise or settlement. *See, e.g., In re Lake City R.V., Inc.*, 226 B.R. 241, 243 (Bankr. D. Idaho 1998).

#### **A. *The Probability of Success on the Merits of the Trustee Litigation:***

During the November 5<sup>th</sup> hearing, Mr. Wilson described the Trustee Litigation as, in general, a “messy case” that was complicated by problems in the underlying Cases including competing land contract claims and possible flaws in title. Specific challenges to the trustee's success in the Trustee Litigation were presented by Broadway Bank's multiple legal defenses such as the parole evidence



rule, res judicata and the statute of frauds as well as by the fact that *any* legally permitted action by Broadway Bank in contacting the proposed purchaser's lender would constitute a *complete* defense to the claim of tortious interference.<sup>10</sup> Mr. Wilson also noted that, at trial, the success of his case would depend, in part, upon the testimony of Thomas Abdallah and that Mr. Abdallah's recent federal court felony conviction for money laundering would call into question his credibility and subject him to impeachment on cross-examination.

When filed, none of the petitions included any schedules and the trustee has faced an almost two year, uphill battle with Debtors and Debtors' original counsel to obtain relevant information necessary to administer the Cases. Additionally, the trustee has investigated and researched the legal and factual merits of the Trustee Litigation for more than one year. Whenever a potential party in interest came forward and claimed to possess information relative to the Cases or the Trustee Litigation, the trustee and his counsel followed the lead.

Given his experience as a chapter 7 panel trustee, in general, and his personal involvement with the Trustee Litigation and the underlying Cases, in particular, the Court deems Mr. Wilson's testimony to be highly credible and his business judgment to be sound. Accordingly, the Court finds the trustee's potential for success in the Trustee Litigation to be speculative, at best.

***B. Complexity and Expense of the Trustee Litigation:***

The legal theories behind the only two remaining counts in the Trustee Litigation are not complex. However, as discussed above, the trustee's ability to succeed on those counts is complicated by several potentially meritorious defenses. Moreover, the trustee has already expended

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<sup>10</sup> On October 23, 2007 the Court entered summary judgment in favor of Broadway Bank and against Thomas Abdallah as to the nondischargeability of \$5,109,332.99 pursuant to 11 U.S.C. § 523(a)(2)(A). Broadway Bank and the trustee contend that the entry of such judgment could give rise to additional defenses in the Trustee Litigation based upon the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, law of the case, setoff and recoupment. See Proposed Findings of Fact and Conclusions of Law at ¶87 - *In re* North Coast Oil, Inc. - docket # 257 and *In re* Abdallah - docket #276.

significant resources in pursuing the Trustee Litigation.

During the November 5<sup>th</sup> hearing, Mr. Wilson testified that he had recently received an offer whereby Mr. Cheselka would represent him in the Trustee Litigation on a contingency fee basis and a third party would pay up to a total of \$5,000.00 of expenses incurred by the bankruptcy estates. Mr. Wilson further testified that, in his opinion, the expense of further litigating the Trustee Litigation would likely total between \$15,000.00 and 20,000.00. Given the disparity between the amount of expenses the third party has offered to be responsible for and the amount of expenses the bankruptcy estates are likely to occur, Mr. Wilson opined that it was not in the bankruptcy estates' best interest to accept such offer.

Again, based upon Mr. Wilson's experience as a chapter 7 panel trustee, in general, coupled with his experience with the Trustee Litigation, in particular, the Court finds that continued prosecution of the Trustee Litigation will deplete the already limited assets available for distribution in each of the Cases.

***C. The Paramount Interest of Creditors:***

Aside from an objection by the Abdallahs, no objections to the the Amended Joint Motion to Compromise were filed prior to the initial hearing on the matter. Mr. and Mrs. Abdallah are not listed as creditors of any of the Debtors so, unless all creditors in each Case are paid in full with interest, the Abdallahs would not receive *any* distributions in any Case.

After the adjournment of the initial hearing on the Amended Joint Motion to Compromise and only three days before the adjourned hearing, objections were filed by Enzo Sberna and Rocco Inc., purported holders of unsecured claims.<sup>11</sup> Each objection is based upon the fact that the proceeds of the proposed compromise will be insufficient to pay any dividend to holders of allowed unsecured

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<sup>11</sup> Neither Enzo Sberna nor Rocco, Inc. have ever been listed as creditors in Debtors' schedules.

claims. Neither in their pleadings nor during the November 5<sup>th</sup> hearing did either purported creditor make any argument or present any evidence to challenge the fairness or reasonableness of the proposed compromise. Nor did they claim that, based upon the particular circumstances of the Cases, the proposed compromise would not be in the best interests of all the creditors of the bankruptcy estates.

Given the financial posture of Debtors when their bankruptcy cases were filed, it was highly unlikely that creditors holding allowed unsecured claims would ever receive a distribution in any Case. Based upon that unlikelihood, coupled with the fact that no creditor ever objected to the fairness or reasonableness of the proposed compromise, the Court finds that the finality offered by approval of the proposed compromise would serve the best interests of all creditors.

#### **IV. CONCLUSION**

Based upon the foregoing, the objections to the Amended Joint Motion to Compromise are overruled and the Amended Joint Motion to Compromise is hereby granted.

# # #

cc (*via* electronic mail):

MICHAEL MORAN, Counsel for Chapter 7 Trustee

DAN DEMARCO, Counsel for Broadway Bank

MICHAEL CHESELKA JR., Counsel for Thomas and Yasmen Abdallah

cc (*via* regular US mail):

ENZO SBERNA

5003 Bringham Drive

Brunswick OH 44212

ROCCO, INC.

198 Marks Road

Brunswick OH 44212

**EXHIBIT A to  
ORDER GRANTING AMENDED JOINT MOTION TO COMPROMISE**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO (AT AKRON)

In re:	)	Case No. 05-81397
	)	(Jointly Administered)
NORTH COAST OIL, INC., <i>et al.</i> ,	)	
	)	Judge Marilyn Shea-Stonum
Debtors.	)	
	)	Chapter 7
-----	)	
	)	
In re:	)	Case No. 05-81475
	)	
THOMAS AND YASMEN ABDALLAH,	)	Chapter 7
	)	
Debtors.	)	
-----	)	
	)	

**STIPULATIONS OF FACT AMONG DEBTORS, THOMAS AND YASMEN  
ABDALLAH, RICHARD A. WILSON, CHAPTER 7 TRUSTEE, AND BROADWAY  
BANK FOR PURPOSES OF HEARING SCHEDULED FOR NOVEMBER 5, 2007 ON  
JOINT MOTION OF CHAPTER 7 TRUSTEE AND BROADWAY BANK FOR ORDER  
APPROVING SETTLEMENT AGREEMENT, AUTHORIZING COMPROMISE OF  
CERTAIN CONTROVERSIES WITH BROADWAY BANK, AMONG OTHER  
PARTIES, AND FOR RELATED RELIEF**

Debtors, Thomas Abdallah ("T. Abdallah") and Yasmen Abdallah (collectively, the "Abdallahs") Richard A. Wilson, Chapter 7 Trustee ("Trustee"), and Broadway Bank ("Broadway") hereby stipulate, for the purposes of the hearing scheduled for November 5, 2007 on the *Joint Motion Of Chapter 7 Trustee And Broadway Bank For Order Approving Settlement Agreement, Authorizing Compromise Of Certain Controversies With Broadway Bank, Among Other Parties, And For Related Relief* (as amended) (the "9019 Motion"), as follows:

1. Broadway is the payee of that certain promissory note dated September 5, 2003 executed by the Abdallahs, North Coast Oil, Inc. ("NCO"), AP Investment Properties, LLC ("AP"), Ray's Discount Drug, Inc. ("Ray's"), A&H Marathon, Inc. ("A&H"), Fairview Marathon ("Fairview"), and North Olmsted Oil Company ("NOO"). (collectively, the

"Borrowers"). jointly and severally, in favor of Broadway (the "Note") which is the subject of certain agreements, instruments and documents (collectively, the "Loan Agreements") and the holder of a Judgment in the amount of \$11,917,239.37 (the "Judgment") against the Borrowers, jointly and severally, entered May 13, 2005 in the Common Pleas Court for Summit County, Ohio, Case No. CV-2005-05-2833, in respect of which, on or before July 31, 2005, Broadway recorded Judgment liens against the Borrowers in each county in Ohio in which the property (the "Property") that secured the Note is located.

2. On August 17, 2005, subsequent to the entry of the Judgment, Broadway filed a Complaint (the "Foreclosure Complaint") and accompanying appendix commencing a foreclosure action in the Common Pleas Court for Cuyahoga County, Ohio, styled as *Broadway Bank v. Tom Abdallah, et al.*, Case No. 05-570120 (the "State Court Foreclosure Action") against Debtors in respect of the Property.

3. On November 10, 2005, Debtors filed an Answer to Complaint and Counterclaim (the "Counterclaim") in response to the Foreclosure Complaint.

4. Before the time for Broadway's Reply to Debtors' Counterclaim expired, as described below, Debtors filed for bankruptcy.

5. Richard A. Wilson is the Bankruptcy Trustee for each of NCO's, Ray's, AP's, NOO's, A&H's, Sprague Marathon, Inc. ("Sprague") and Fairview's (collectively, the "Corporate Debtors") and together with the Abdallahs, the "Debtors") chapter 7 bankruptcy cases, Case Nos. 05-81397 through 05-81403 (collectively, the "Corporate Cases"), and the Abdallahs chapter 7 bankruptcy, Case No. 05-81475 (the "Principals Case" and together with the Corporate Cases, the "Cases"), all pending in the U.S. Bankruptcy Court for the Northern District of Ohio (the "Court").

6. On December 2, 2005 (the “Corporate Petition Date”), the Corporate Debtors filed the Corporate Cases under chapter 7 of the Bankruptcy Code<sup>1</sup>. The Corporate Debtors did not file any schedules with their bankruptcy petitions. On December 13, 2005 (the “Principal Petition Date”), the Abdallahs filed the Principals Case under chapter 7 of the Bankruptcy Code. The Abdallahs did not file any schedules with their petition and failed to file other required documents.

7. On December 13, 2005, NCO, Ray’s, Sprague, A&H, NOO and Fairview filed Amended Voluntary Petitions. (See NCO Docket No. 15.) On December 12 and 13, 2005, AP filed an Amended Voluntary Petition. (AP Docket Nos. 8 and 14.)

8. On each of December 19, 2005, December 30, 2005, January 3, 2006 and January 16, 2006, the Corporate Debtors filed motions to extend the deadlines to file the required bankruptcy schedules. (See NCO Docket Nos. 23, 28 and 35.)

9. On each of January 8, 2006, January 10, 2006 and January 16, 2006, the Abdallahs filed motions to extend the deadlines to file the required bankruptcy schedules. (Abdallahs Docket Nos. 28, 33 and 35.)

10. The Trustee scheduled the 341 Meetings of certain of the Corporate Debtors for January 10, 2006. (See NCO Docket No. 37.) Such 341 Meetings were continued to January 24, 2006. (See NCO Docket No. 42.)

11. On January 20, 2006, the Corporate Debtors filed Second Amended Voluntary Petitions. (See NCO Docket No. 40.)

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<sup>1</sup>Unless otherwise indicated, all section references are to the current version of the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), all rule references are to the current Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was enacted prior to the filing of these cases and applies to these cases.

12. On January 20, 2006, the Corporate Debtors filed incomplete bankruptcy schedules. (*See* NCO Docket No. 39.)

13. On January 27, 2006, the Abdallahs filed incomplete bankruptcy schedules. (Abdallahs Docket No. 44.)

14. The Trustee held the 341 Meetings of certain of the Corporate Debtors on January 24, 2006. (*See* NCO Docket No. 42.) On February 7, 2006, the Trustee continued and reconvened the 341 meetings of such Corporate Debtors. (*See* NCO Docket No. 45.) At such 341 meeting, the Trustee requested such Corporate Debtors amend and/or supplement their bankruptcy schedules and produce certain financial records.

15. On March 6, 2006, each of the Corporate Debtors amended and/or supplemented their bankruptcy schedules. (*See* NCO Docket No. 55.)

16. On March 7, 2006, the Trustee continued and reconvened the 341 meetings of certain of the Corporate Debtors. To date, the Trustee has not concluded the 341 meetings of the Corporate Debtors. (*See* NCO Docket No. 57.)

17. On February 7, 2006, the Trustee held the 341 meeting of the Abdallahs. At such 341 meeting, the Trustee requested the Abdallahs amend and/or supplement their bankruptcy schedules and produce certain financial records. (Abdallahs Docket Nos. 48, 56, 57 and 59.)

18. On February 17, 2006, the Abdallahs supplemented and amended their bankruptcy schedules. (Abdallahs Docket No. 57.)

19. On March 7, 2006, the Trustee continued and reconvened the 341 meeting of the Abdallahs on March 7, 2006. To date, the Trustee has not concluded the 341 meeting of the Abdallahs. (Abdallahs Docket No. 69.)

20. To date, the bankruptcy schedules of Debtors remain incomplete and inaccurate.

21. On April 13, 2006, the Chapter 7 Trustee for Debtors filed in the Bankruptcy Cases *Trustee's Motion for Order (A) Granting Authority for the Sale of Assets Pursuant to § 363(b); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases Pursuant to § 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; (E) Approving For of Notice; and (F) Waiving the Ten-Day Period Provided by Bankruptcy Rules 6004(h) and 6006(d)* (the "Sale Motion") seeking to sell, among other things, all the real and personal property, including the Property, of Debtors. (Abdallahs Docket Nos. 91 and 92; *see also* NCO Docket Nos. 71 through 74.)

22. On April 13, 2006, the Parties also filed the *Joint Motion Of Chapter 7 Trustee And Broadway Bank For Order Approving Settlement Agreement, Authorizing Compromise Certain Controversies With Broadway Bank, Among Other Parties, And For Related Relief* [Docket No. 75] (the "Initial 9019 Motion") seeking approval of a certain compromise entered into between the Parties that, among other things, permitted the Trustee to investigate (the "Investigation") the Counterclaim by the Borrowers against Broadway. (Abdallahs Docket No. 95; *see also* NCO Docket No. 75.) On May 10, 2006, the Court entered an order approving the Initial 9019 Motion and related Settlement Agreement and Release. (Abdallahs Docket Nos. 131 and 132; *see also* NCO Docket No. 116.)

23. In connection with the Initial 9019 Motion, Trustee agreed to review the Loan Documents and assert any challenge to the Loan Documents on or before April 28, 2006 and to assert the issues raised in the Counterclaim on or before July 14, 2006.



24. On April 28, 2006 Trustee filed a Notice that he did not intend to file a challenge as to the nature, amount, validity, priority or perfection of any of the mortgage liens and security interests of or claimed by Broadway. (Abdallahs Docket No. 107; *see also* NCO Docket No. 84.)

25. On May 24, 2006, the Bankruptcy Court entered an order (the “Sale Order”) approving the sale, among other things, of the Property owned by Debtors and the other real and personal property of Debtors to Broadway or its assignee(s) by virtue of Broadway’s credit bid. (Abdallahs Docket No. 159; *see also* NCO Docket No. 149.)

26. On or about May 31, 2006, in accordance with the Sale Order, the Trustee closed the sale approved in the Sale Order and transferred, among other things, the Property owned by Debtors and other real and personal property of Debtors to GG Real Estate, LLC, Broadway’s assignee.

27. On June 12, 2006, and as part of the Trustee’s Investigation, counsel for the Trustee, pursuant to Federal Rule of Bankruptcy Procedure 2004 (“Rule 2004”), took the oral deposition of Alexis Giannoulis, Sr., the former President of Broadway.

28. On July 6, 2006, and as part of the Trustee’s Investigation, counsel for the Trustee, pursuant to Rule 2004, took the oral deposition of T. Abdallah.

29. On July 12, 2006, and as part of the Trustee’s Investigation, counsel for the Trustee, pursuant to Rule 2004, took the oral deposition of Mr. Mark J. Nasca, a principal of JDI Realty, LLC and a Senior Vice President of JDI Loans, LLC, a subsidiary of JDI Realty, LLC.

30. On July 14, 2006, and as part of the Trustee’s Investigation, counsel for the Trustee, pursuant to Rule 2004, took the oral deposition of Mr. Nicola Palmieri, a principal of

Star Petroleum Management Services, LLC that managed certain of the Property upon which gas stations were operated and is a former consultant to Debtors.

31. On July 14, 2006, Trustee filed two identical adversary complaints (collectively, the “Trustee Litigation”) in the Cases, styled as *Richard A. Wilson, Trustee v. Broadway Bank*, Adv. Case Nos. 06-5148 and 06-5149, commencing a lawsuit against Broadway asserting three causes of action based on essentially the same allegations as in the Counterclaim and, by later amendment (on September 14, 2006), asserting a fourth cause of action, for equitable subordination of Broadway’s claim arising from the Judgment and Note.

32. On August 30, 2006, the Court entered an order consolidating Adv. Case Nos. 06-5148 and 06-5149 under Adv. Case No. 05-5148. (Adv. Case Docket No. 17.)

33. Subsequent to the filing of the Trustee Litigation, the Trustee had multiple communications with corporate counsel to the Corporate Debtors, Mark George, and other parties-in-interest or with knowledge of the allegations in the Trustee Litigation.

34. During the pendency of the trustee litigation, the trustee and Broadway extensively briefed the legal issues relating to the trustee’s claims.

35. During the pendency of the Trustee Litigation, the Trustee and his counsel have been provided with the pleadings in the State Court Foreclosure Action, have had access to some of the Debtors’ books and records, including those pertaining to the Trustee’s claims in the Trustee Litigation and Debtors’ identical claims in the Counterclaim, and have had access to persons with knowledge of such matters, including without limitation, the Debtors and their counsel, including corporate counsel to the Corporate Debtors, Mark George, as well as other parties-in-interest or with knowledge of the allegations in the Trustee Litigation.

36. On February 23, 2007, in the Trustee Litigation, the Trustee and Broadway filed *Stipulations of Fact* providing, among other things, a factual timeline of events related to the allegations in the Counterclaim. (Adv. Case Docket Nos. 42 and 43.)

37. On February 27, 2007, Trustee and Broadway each filed its statement of legal issues in dispute in the Trustee Litigation. (Adv. Case Docket Nos. 44 and 45.)

38. On March 26, 2007, Trustee moved to dismiss Counts One and Two of his amended complaints in the Trustee Litigation. (Adv. Case Docket No. 48.) The Court granted such motion on March 30, 2007. (Adv. Case Docket No. 49.)

39. On April 4, 2007, Trustee and Broadway filed their joint statement of legal issues in dispute. (Adv. Case Docket No. 50.) On April 4, 2007, the Court also conducted a pretrial conference in the Trustee Litigation, and set a further pretrial conference for May 2, 2007. (*See* Adv. Case Docket Entry.)

40. Prior to the May 2, 2007 pretrial conference, the Trustee and Broadway engaged in settlement negotiations. In this process, the Trustee had further communications with corporate counsel to the Corporate Debtors, Mark George, and other parties-in-interest or with knowledge of the allegations in the Trustee Litigation.

41. Shortly before the May 2, 2007 pretrial conference, the Trustee and Broadway reached a settlement in principle of the Trustee Litigation. At the May 2, 2007 pretrial conference, the Trustee and Broadway announced to the Court that they had reached an agreement in principle to settle the Trustee Litigation. (*See* Adv. Case Docket Entry.)

42. Following the May 2, 2007, the Trustee and Broadway began the preparation of definitive settlement documents to resolve the Trustee Litigation, and related matters.

43. On May 30, 2007, Trustee and Broadway filed the 9019 Motion. (Abdallahs Docket No. 245; *see also* NCO Docket No. 230.) Among other things, the 9019 Motion sought approval for a settlement with Broadway under which the Debtors' estate would receive cash consideration of \$9,900. Debtors and other parties-in-interest had until July 5, 2007 to file objections to the 9019 Motion.

44. On July 5, 2007, Debtors (Abdallahs Docket No. 249; *see also* NCO Docket No. 232) filed an objection to the 9019 Motion and Plymouth Park Tax Services, LLC, (*see* NCO Docket No. 233) a creditor of certain of the Debtors filed a limited objection to the 9019 Motion.

45. On July 18, 2007, the Court held a hearing on the 9019 Motion. (*See* Abdallahs Docket Entry and NCO Docket Entry.) At such hearing, Trustee indicated his intention to withdraw the 9019 Motion. (*See* Abdallahs Docket Entry and NCO Docket Entry.) Trustee never withdrew the 9019 Motion.

46. On August 2, 2007, Trustee filed a Notice of Intent to Sell the Counterclaim for \$25,000 in cash ("Sale Notice"). (Abdallahs Docket No. 250; *see also* NCO Docket No. 234.) On August 23, 2007, Broadway objected to the Sale Notice on various grounds. (Abdallahs Docket No. 256; *see also* NCO Docket No. 240.) A September 12, 2007 hearing was set on the Sale Notice and the Broadway objection. (*See* NCO Docket No. 241.)

47. Prior to the September 12, 2007 hearing, counsel for the Trustee and Broadway resumed settlement negotiations. In the course of these discussions, the Trustee attempted to sell the Counterclaim for more than the sum set forth in the Sale Notice (\$25,000), or to attain greater cash consideration from Broadway as part of a settlement. Shortly before the September 12, 2007 hearing, counsel for the Trustee and Broadway reached a settlement that would increase the cash consideration to \$30,000.

48. At the September 12, 2007 hearing, counsel for the Trustee announced the Trustee would amend the 9019 Motion, increasing the cash consideration to \$30,000, and would withdraw the Sale Motion.

49. On September 12, 2007, Trustee amended the 9019 Motion, noticing all parties in interest in both of the Cases, of the increase to \$30,000 in the cash payment by Broadway to Trustee under the Settlement Agreement and Release between Trustee and Broadway. (*See* NCO Docket No. 243.)

50. On September 21, 2007, Trustee withdrew the Sale Notice. (Abdallahs Docket No. 266; *see also* NCO Docket No. 245.)

51. On September 28, 2007, the Trustee filed a Notice of Service of Amendment to the 9019 Motion in the Principals case. (Abdallahs Docket No. 262.)

52. On October 1, 2007, Debtors objected to the 9019 Motion (as amended). (Abdallahs Docket No. 263; *see also* NCO Docket No. 247.)

53. There were no other objections to the 9019 Motion, as amended on September 12, 2007. (*See* Abdallahs Docket Entry and NCO Docket Entry.)

54. On October 3, 2007, the Court held a further hearing on the 9019 Motion. (*See* Abdallahs Docket Entry and NCO Docket Entry.)

55. At the October 3, 2007 hearing on the 9019 Motion, counsel for Debtors stated that Debtors had further information relevant to the Trustee Litigation and Counterclaim in the form of computer records (the “New Records”) of NCO in the possession of Enzo Sberna, a former employee of NCO. The Court directed the undersigned counsel for the Debtors, and Mr. Sberna, to tender the New Records to the Trustee no later than October 5, 2007.

56. On October 13, 2007, Mr. Sberna tendered the New Records to the Trustee.

57. On October 17, 2007 counsel for Trustee completed the review of the New Records, and provided them to counsel for Broadway Bank. Following this review of the New Records, counsel for Trustee has discussed the content of the New Records with Trustee, and with the undersigned counsel for Broadway Bank and for the Abdallahs.

58. Following this review of the New Records, counsel for Trustee also has discussed the content of the New Records with corporate counsel to the Corporate Debtors, Mark George, and other parties-in-interest or with knowledge of the allegations in the Trustee Litigation.

59. The conclusion reached by the Trustee and the Counsel for Trustee, after their exhaustive review of the New Records, and consultation with all parties in interest, is that the New Records do not provide any new or additional information supportive of Trustee's claims in the Trustee Litigation or Debtors' identical claims in the Counterclaim.

60. Although the Trustee has made repeated requests for information from all parties in interest, including the Abdallahs and their counsel, since at least sometime prior to March 2007 the Trustee has been in possession of all material information concerning the Trustee's claims in the Trustee Litigation and Debtors' identical claims in the Counterclaim.

SO STIPULATED:

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/s/ **NO SIGNATURE - SEE NOTICE**

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**EXHIBIT B to**  
**ORDER GRANTING AMENDED JOINT MOTION TO COMPROMISE**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In Re:	)	CASE NO. 05-81397
	)	(Jointly Administered)
NORTH COAST OIL, INC., et al	)	
	)	JUDGE MARILYN SHEA-STONUM
Debtors	)	
-----	)	Chapter 7
	)	
In Re:	)	CASE NO. 05-81475
	)	
TOM ABDALLAH and YASMEN	)	JUDGE MARILYN SHEA-STONUM
ABDALLAH	)	
	)	
Debtors	)	Chapter 7
-----	)	

PROPOSED STIPULATIONS OF FACT OF DEBTORS TOM ABDALLAH AND  
YASMEN ABDALLAH

1. Broadway Bank filed a foreclosure action in the Cuyahoga County Common Pleas Court (Case No. CV 05 570120) on August 17, 2005.



2. Debtors Tom Abdallah and Yasmen Abdallah filed a Counterclaim against Broadway Bank in Cuyahoga County Common Pleas Court Case No. CV 05 570120 on November 10, 2005.
3. Debtors Tom Abdallah and Yasmen Abdallah filed their Chapter 7 Bankruptcy Case on December 13, 2005.
4. Common Pleas Court Case No. CV 05 570120 was stayed as to Debtors Tom Abdallah and Yasmen Abdallah on December 19, 2005.
5. The Trustee filed Adversary Proceeding No. 06-05149 against Broadway Bank on July 14, 2006.
6. Proposed Stipulations of Fact were filed in Adversary Proceeding No. 06-05149 on February 23, 2007.
7. The Proposed Stipulations of Fact filed in Adversary Proceeding No. 06-05149 on February 23, 2007 contained the following statements:

“3. Before entering into the Loan with Debtors, Broadway’s Then-Chief Executive Officer, Mr. Alexis Giannoulis, spoke with T. Abdallah, and told T. Abdallah that he could sell individual properties, including the Gas Stations, for an amount no less than the value of each property as set forth in the appraisals obtained by Broadway prior to closing the Loan and pay such proceeds to Broadway.”

“46. Subsequently, without prior notice to Debtors, Mr. Nasca (official of JDI) agreed to meet on June 10, 2005 with Mr. Alexis Giannoulis.”

“53. During the June 13, 2005 conference call, Mr. Nasca expressed concern about the lender for the seller contacting the lender for the buyer. Mr. Nasca asked Mr. Haffey (a Certified Public Account) whether he thought it was unusual that the lender for the seller would contact the lender for the buyer, because in Mr. Nasca’s

fifteen years as a lender he had not seen that occur.”

8. The Trustee and Broadway Bank filed a Joint Motion seeking authority to settle Adversary Proceeding No. 06-05148 on May 30, 2007. Broadway Bank offered to pay the sum of Nine Thousand Nine Hundred Dollars (\$9900.00) to settle Adversary Claim No. 06-05148.
9. Debtors Tom Abdallah and Yasmen Abdallah filed objections to the Joint Motion for authority to settle Adversary Proceeding N. 06-05148 on July 5 2007.
10. The Trustee, on July 18, 2007, withdrew the Joint Motion for authority to settle Adversary Proceeding No. 06-05148 that had been filed on May 30, 2007.
11. On August 2, 2007 the Trustee filed a Notice of Intent to sell an asset (the State Court Counterclaim) of the estate to NFN Developments for the sum of Twenty Five Thousand Dollars (\$25,000.00).
12. Broadway Bank filed objections to the Notice of Intent to sell on August 23, 2007.
13. The Trustee withdrew the Notice of Intent to sell on October 3, 2007
14. The Trustee and Broadway Bank filed a renewed Joint Motion for authority to settle Adversary Proceeding No. 06-05148 on September 28, 2007. The renewed Joint Motion was the same as the previous Joint Motion except that Broadway Bank increased its payment offer to Thirty Thousand Dollars (\$30,000.00).

15. Debtors Tom Abdallah and Yasmen Abdallah filed objections to the renewed Joint Motion for authority to settle Adversary Proceeding No. 06-05148 on October 1, 2007.

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#### CERTIFICATE OF SERVICE

The foregoing Proposed Stipulations of Fact of Debtors Tom Abdallah and Yasmen Abdallah was filed electronically through the ECF system on the 31st day of October 2007. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

S/Michael J. Cheselka, Jr.  
Michael J. Cheselka, Jr.  
Attorney For Debtors Tom Abdallah  
and Yasmen Abdallah