



**IT IS ORDERED as set forth below:**

**Date: August 28, 2014**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re	)	Case No. 10-96519-MGD
	)	
CHARLES TERRANCE MATTHEWS	)	
and ROBERTA LYNN MATTHEWS.	)	Chapter 7
	)	
Debtors.	)	Judge Diehl
	)	

**FINAL ORDER GRANTING CHAPTER 7 TRUSTEE AUTHORITY TO EMPLOY  
IP INVESTMENTS GROUP, LLC AS TRUSTEE'S PATENT BROKER UNDER  
SECTION 372(a) AND LIMITED APPROVAL UNDER SECTION 328(a)**

On July 23, 2014, an Order authorizing the retention and employment of IP Investments Group, LLC ("IPI"), as the Chapter 7 Trustee's Patent Broker, was entered under Sections 327(a) and 328(a), subject to a 21-day objection period. John Domjancic, *pro se*,<sup>1</sup> filed a timely objection to the Order (Docket No. 192). Mr. Domjancic is a co-owner of

<sup>1</sup> Mr. Domjancic states in his objection that he has terminated his attorney-client engagement with Mr. Broadfoot and Mr. Davis. The case docket reflects that neither Mr. Broadfoot nor Mr. Davis have filed a consensual withdrawal pursuant to Bankruptcy Local Rule 9010-5(c) or otherwise sought withdrawal as counsel, yet the Court uses its discretion to give full consideration to Mr. Domjancic's *pro se* objection.

the Patent at issue. Pursuant to the Approved Settlement Agreement, Mr. Domjancic is a 20% owner of the Patent and the estate owns the remaining 80%. (Docket Nos. 131, Exh. A (“Approved Settlement Agreement”) & 168).

Mr. Domjancic does not appear to object to the engagement of IPI and the proposed services for effectuating a sale of the Patent or an enforcement licensing financing transaction with the Patent. Instead, Mr. Domjancic objects to the terms of IPI’s employment, specifically the commission structure outlined in the engagement letter attached to Trustee’s Application for Employment of IPI (Docket No 185; Exh. A “IPI Engagement Letter”). Mr. Domjancic argues that IPI’s compensation structure contravenes the terms of the Approved Settlement Agreement.

The Trustee seeks approval of IPI’s retention and approval of the terms of IPI’s employment, including the compensation agreement set forth in the IPI Engagement Letter. The commission structure provides that IPI is entitled to 15% of all gross compensation actually received, which will be paid from both the estate’s and Mr. Domjancic’s respective interests. (IPI Engagement Letter, p.3). The commission fee is reduced to 7.5% in certain auction circumstances when IPI produces a stalking horse bidder but there are no subsequent bids or in the event that IPI fails to produce a stalking horse bid. (IPI Engagement Letter, p. 4).

The Approved Settlement Agreement contemplates and provides for a distribution scheme of any sales proceeds or patent litigation recovery, which provides that “any and all

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actual out of pocket expenses incurred by the Trustee” are paid first.<sup>2</sup> (“Approved Settlement Agreement,” Sections VII.i. and VIII.i.). In the event of a sale, then, “20% of the Purchase Price<sup>3</sup> shall be paid to Mr. Domjanic.” (Approved Settlement Agreement, p.7). The Approved Settlement Agreement provides a slightly different scheme in the event of a recovery resulting from Trustee Patent Litigation, which is not relevant to IPI’s employment for sale or licensing. IPI’s Engagement Letter states that “the Success Fee Commission shall be paid out of both the Estate’s and Mr. Domjancic’s interests in any compensation actually received from the sale or licensing of the Patent (80% by the Estate and 20% by Mr. Domjancic).” (IPI Engagement Letter, p. 3).

To the extent the Order conditionally approving IPI’s employment (Docket No. 188) is inconsistent with the Approved Settlement Agreement’s distribution terms, this Final Order approving the employment of IPI is now limited to approval under Section 327(a) and to approval under Section 328(a) as to the respective commission percentages only. Specifically excluded from approval is the commission agreement’s terms that relate to Mr. Domjancic’s apportioned commission responsibility. The parties may make arguments regarding the distribution of sale proceeds at a later date.

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<sup>2</sup> The Approved Settlement Agreement includes further Trustee counsel fee provision in Section VIII.i not relevant here.

<sup>3</sup> “Purchase Price: is defined in the Approved Settlement Agreement as “any and all monies received by the Trustee or the Estate in regard to the monetization of the Patent, including but not limited to, the granting of licenses, covenants not to sue and releases.” (Approved Settlement Agreement, p.5, Section I.P.)

Since final approval of a fee agreement under Section 328(a) may limit the Court's ability to later independently assess the application of such commission fees, *e.g.*, *In re Smart World Technologies, LLC*, 552 F.3d 228, 235 (2d Cir. 2009), it is not proper to limit Mr. Domjancic's ability to enforce the terms of the Approved Settlement Agreement distribution scheme by approving the terms of IPI's commission structure when such commission may conflict with the Approved Settlement Agreement. This Order makes no ruling as to the distribution terms of the Approved Settlement Agreement it merely limits the terms regarding IPI's employment.

The remaining objections asserted by Mr. Domjancic are premature. Any objection to any sale or proposed sale procedures may be raised when Trustee's files such motion. Any objection to the allowance of fees or compensation for IPI may be raised at such time. Accordingly, it is

**ORDERED** that the Chapter 7 Trustee's Application for Employment of IPI is **APPROVED** under Section 327(a).

It is **FURTHER ORDERED** that the commission percentages included in the IPI Engagement Letter are **APPROVED** under Section 328(a), yet the application of such commission fees to Mr. Domjancic's percentage of Purchase Price, as provided by the Approved Settlement Agreement, is **NOT APPROVED** at this time.

The Clerk is directed to mail a copy of this Order to the parties listed below.

**END OF DOCUMENT**

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