

MAR 10 2011

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 11
)
MILES PROPERTIES, INC., *et al.*,) CASE NO. 10-60797 - MHM
)
Debtor.)

ORDER APPROVING INCENTIVE-BASED SEVERANCE AGREEMENT

On October 19, 2010, Debtor Miles Properties, Inc. ("MPI") filed *Miles Properties, Inc.'s Motion for Approval of Incentive-Based and Severance Agreement for Certain Employees* (the "Motion"), seeking approval of incentive-based compensation and severance for its remaining employees (Doc. No. 780). On November 12, 2010, the United States Trustee filed *United States Trustee's Objection to Debtor's Motion for Approval of Incentive-Based and Severance Agreement for Certain Employees* (the "Objection") (Doc. No. 829). Hearing on the Motion was held November 16, 2010, and the U.S. Trustee and MPI were allowed to file post-hearing briefs on that portion of the Motion seeking approval of the incentive-based severance payment to James L. Mauck ("Mauck").

The U.S. Trustee argues that the proposed payment to Mauck in the amount of \$52,814 exceeds the amount of severance pay allowed by §503(c)(2). Mauck is an insider of MPI, as that term is defined in §101(31). The U.S. Trustee asserts that the proposed payment to Mauck is slightly less than two times the amount to which he would be entitled under MPI's severance policy, and is not in line with a program that is generally applicable to all full-time employees.

MPI argues that Mauck's severance is not the type of payment that §503(c)(2)(A) was meant to prevent, i.e. the "golden parachutes" given to executives while non-insider employees received little or no severance pay. MPI asserts, however, that a severance policy can change over time. MPI asserts that, during this winding down phase of MPI's operations, it proposes to use the same measure to pay Mauck that has been approved regarding the three remaining non-insider employees, i.e. double the severance payment under the prepetition policy. MPI asserts that the proposed severance payment to Mauck has an incentive component, as it will be paid only upon *MPI's termination* of Mauck's employment. In support of its proposal, MPI asserts that Mauck has provided "incredible value" to Debtor's estate and does not enrich Mauck, an insider, to the detriment of non-insiders.

MPI's argument is persuasive. In this final phase of MPI's operations, a severance policy to provide an incentive to the critical remaining employees to remain at work until no longer needed is reasonable. Accordingly, it is hereby

ORDERED that the incentive-based severance payment to James L. Mauck is *approved.*

IT IS SO ORDERED this the 9th day of March, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE