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UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

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IN RE:)
)
PATHNET OPERATING, INC.,)
)
Debtor.)
_____)

Case No. 01-12266-SSM

Chapter 7

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MOTION TO APPROVE SETTLEMENT WITH CONSOLIDATED LAND SURVEYING, INC. AND MEMORANDUM IN SUPPORT THEREOF

Gordon P. Peyton, Chapter 7 Trustee (the "Trustee") for Pathnet Operating, Inc. (the "Debtor"), by and through the undersigned counsel, pursuant to Rules 9019(a) and 2002(a)(3) of the Federal Rules of Bankruptcy Procedure, hereby moves for the approval of the settlement agreement to resolve claims asserted against Consolidated Land Surveying, Inc.

("Consolidated"). In support of this Motion, the Trustee states as follows:

Introduction

1. On April 2, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
2. The case was subsequently converted to Chapter 7 and the Trustee was appointed Chapter 7 Trustee.
3. In the 90 days prior to the Petition Date, the Debtor made transfers to Consolidated in the amount of \$4,000.00 (the "Alleged Preferential Transfers").
4. On March 4, 2003, the Trustee sent a letter to Consolidated demanding the return

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John G. McJunkin, VSB # 31011
J. David Folds, VSB # 44068
Piper Rudnick LLP
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
(703) 773-4155 - Telephone
(703) 773-5035 - Facsimile

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The Settlement Agreement

5. After engaging in settlement discussions, the Trustee and the Defendant entered into an agreement (the "Agreement") subject to this Court's approval, to resolve the amount owed to the Trustee by Consolidated as a result of the Alleged Preferential Transfers.

6. Under the terms of the Agreement, Consolidated and the Trustee agreed that Consolidated shall pay the Trustee the sum of Two Thousand Dollars and Zero Cents (\$2,000.00) (the "Settlement Amount") in full settlement of any and all claims that could have been asserted by the Trustee against the Defendant related to the Alleged Preferential Transfers.

Relief Requested

7. By this Motion, the Trustee requests that the Court approve the Agreement pursuant to Bankruptcy Rule 9019(a) and Section 105 of the Bankruptcy Code.

8. The standard for approving a settlement, whether it is in the best interest of the estate, entails an examination of the settlement's terms with the litigation's probable cost and benefits. In re Bond, 16 F.3d 408 (4th Cir. 1994).

9. The Agreement meets this test. Consolidated received payments in the 90 days before the Petition Date totaling \$4,000.00. After reviewing the facts and circumstances of the transaction, and evaluating the defenses raised by Consolidated, the Trustee has concluded that compromising the claim for a payment of \$2,000.00 is a fair compromise of the claim. The Trustee submits that the proposed settlement is in the best interests of the creditors in this case as it will result in an immediate payment of \$2,000.00 without incurring the expenses and inherent risk of litigation. The settlement will also eliminate any issue as to difficulty in collection following litigation, if successful.

Notice

10. Notice of this Motion has been provided to the United States Trustee, counsel for Consolidated, the creditors in this case and each of the parties requesting notice pursuant to Bankruptcy Rule 2002.

Conclusion

WHEREFORE, the Trustee respectfully requests the entry of an order (a) approving the Agreement by and between the Trustee and Consolidated Land Surveying, Inc. and (b) granting such other relief as the Court considers just and proper.

Respectfully submitted,

Reston, Virginia
June 11, 2003

**Gordon P. Peyton, Chapter 7
Trustee for Pathnet Operating, Inc.**

By: /s/ J. David Folds
J. David Folds

**Counsel to Gordon P. Peyton,
Chapter 7 Trustee for Pathnet Operating, Inc.**

John G. McJunkin, VSB # 31011
J. David Folds, VSB # 44068
Piper Rudnick LLP
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
(703) 773-4155 – Telephone
(703) 773-5035 – Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Approve Settlement and proposed Order were served electronically as available, and mailed, postage prepaid, on June 11, 2003 to the following:

David L. Wentworth II, Esquire
Hasselberg, Williams, Grebe & Snodgrass
Bank One Building
124 S.W. Adams Street, Suite 360
Peoria, IL 61602-1320

Office of the U.S. Trustee
115 S. Union Street
Alexandria, Virginia 22314

and via first class mail on June 11, 2003 to entities who have requested notice pursuant to Bankruptcy Rule 2002 as set forth on the attached service list.*

/s/ J. David Folds
J. David Folds

*Pursuant to Local Rule 5005-1(C) (8), the attached service lists are not being served on each of the parties, but are attached to the original Certificate of Service filed with the Court.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:

PATHNET OPERATING, INC.,

Debtor.

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Case No. 01-12266-SSM

Chapter 7

**ORDER APPROVING SETTLEMENT WITH
CONSOLIDATED LAND SURVEYING, INC.**

Having considered the Motion to Approve Settlement With Consolidated Land Surveying, Inc. (the "Motion") filed by Gordon P. Peyton, Chapter 7 Trustee (the "Trustee") for Pathnet Operating, Inc. (the "Debtor") and any opposition to the Motion, and finding that there is cause to grant the relief requested, it is hereby ORDERED, ADJUDGED AND DECREED that the Motion is granted.

It is so ORDERED this ____ day of _____, 2003.

Stephen S. Mitchell
United States Bankruptcy Judge