

ORIGINAL

ORIGINAL

RECEIVED-TPSC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

05 JAN 19 AM 10:47

In re

BROADBAND OFFICE, INC.,

Debtor.

Chapter 11

COMMISSION
CLERK

Case No. 01-1720 (GMS)

Objection Deadline: February 2, 2005, 4:00 p.m.

Hearing Date: To be scheduled by the Court if
objections are timely filed and served

NOTICE OF MOTION

TO: All parties listed on the Certificate of Service.

BroadBand Office, Inc. (the "Debtor"), the debtor in possession in the above-captioned case, has filed the attached Motion for an Order Approving Compromise of Priority Wage Claims (the "Motion").

You are required to file a response to the Motion on or before **February 2, 2005 at 4:00 p.m. Prevailing Eastern Time**. At the same time, you must also serve a copy of the response upon the attorneys for the Debtor as follows:

David M. Fournier, Esquire
Adam Hiller, Esquire
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
Telephone (302) 777-6500

A hearing on the Motion will be held before the Honorable Gregory M. Sleet, United States District Judge, United States Courthouse, 844 King Street, Wilmington, DE 19801 only if timely objections to the Motion are filed and served in accordance with this notice.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Grant

WE: #162379 v1 (3H@J011.DOC)

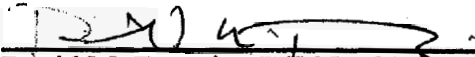
05 JAN 19 AM 9:02
DISTRIBUTION CENTER

DOCKET NO. 974
DATE 1/14/05

DOCUMENT NUMBER-DATE
00523 JAN 19 05

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING. If a party does not wish to contest the relief requested in the Motion, it is not required to file a response or appear at the hearing.

Dated: January 14, 2005
Wilmington, Delaware



David M. Fournier (DE No. 2812)
Adam Hiller (DE No. 4105)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
(302) 777-6500

Attorneys for the Debtor

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re

BROADBAND OFFICE, INC.,

Debtor.

Chapter 11

Case No. 01-1720 (GMS)

Objections due by: February 2, 2005 @ 4:00 p.m.
Hearing Date: To be scheduled by the Court
if objections are timely filed and served

**DEBTOR'S MOTION FOR
AN ORDER APPROVING COMPROMISE OF PRIORITY WAGE CLAIMS**

The debtor BroadBand Office, Inc. (the "Debtor"), by its undersigned attorneys, hereby files this motion pursuant to 11 U.S.C. §§ 363(b) and 507(a)(3) and Fed. R. Bankr. P. 9019 for authority to compromise and pay certain priority wage claims, and in support hereof states as follows:

1. On May 9, 2001 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is managing its properties as a Debtor in Possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. Approximately 450 former employees of the Debtor have either filed claims in this case asserting priority pursuant to 11 U.S.C. 507(a)(3) (each, to the extent that priority is asserted under section 507(a)(3), a "Priority Wage Claim"), or were listed in the Debtor's Schedules as having such a claim.

3. With the support of the Official Committee of Unsecured Creditors (the "Creditors' Committee") appointed in this case, the Debtor requests that it be authorized to

extend an offer to holders of Priority Wage Claims¹ offering an immediate payment, in complete settlement and satisfaction of all claims of the claimant in this case, in an amount equal to 50% of the lesser of (i) the priority amount scheduled or claimed, as the case may be, with respect to the claimant's Priority Wage Claim, or (b) the statutory priority cap of \$4,650 in effect under 11 U.S.C. § 507(a)(3) (the "Priority Wage Claim Compromise"). Any requisite withholding taxes will be deducted from such 50% dividend and paid to the appropriate taxing authorities in connection with such payment. Holders of Priority Wage Claims will have no obligation to accept the offer, and will retain all of the rights if they choose not to accept the offer.

4. The Debtor believes that the Priority Wage Claim Compromise would effect an earlier distribution to former employees that would otherwise be the case, and would relieve the estate of the administrative cost of administering the compromised claims. The Creditors' Committee has advised the Debtor that although it believes that viable defenses may exist with respect to certain of the scheduled and filed Priority Wage Claims or portions thereof, it supports the proposed Priority Wage Claim Compromise.

5. The Priority Wage Claim Compromise will not adversely affect those priority claimants that elect not to accept the offered settlement. If every claimant asserting a Priority Wage Claim was to accept the Priority Wage Claim Compromise, the Debtor would distribute to such claimants approximately \$800,000, less withholding taxes. As a result of recoveries from the sale of assets and the settlement of certain causes of action, and based upon the claims filed and scheduled in this case, the Debtor presently holds sufficient funds to pay all of its administrative claims and at least 50%, and possibly up to 100%, of its allowable Priority Wage

¹ The Priority Wage Claim Compromise will not be offered to (i) any current officer, director or employee of the Debtor, (ii) any present or former insider of the Debtor, or (iii) any claimants whose Priority Wage Claim was paid post-petition pursuant to the "first day" motions approved in this case.

Claims, in each case up to the statutory cap of \$4,650. Nonetheless, any such distribution is not likely to occur for at least several months, while the Debtor pursues confirmation of a plan and awaits the outcome of the claims administration process.

6. The Debtor proposes to implement the Priority Wage Claim Compromise by sending to those holders of Priority Wage Claims whose claims were not satisfied post-petition a letter substantially in the form attached hereto as Exhibit A, offering the claimant the opportunity to accept the Priority Wage Claim Compromise. Claimants would be under no obligation to accept the compromise, and would retain all rights if the compromise is not accepted. If the Priority Wage Claim Compromise is accepted, payment (less any required withholding taxes) would be mailed to the accepting claimant within 10 business days following the Debtor's receipt of the executed settlement letter, and the Priority Wage Claim for each accepting claimant would be marked satisfied in full on the claims register at the time of such payment.

7. Fed. R. Bankr. P. 9019 provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Bankruptcy courts consider four factors when determining whether to approve settlement agreements pursuant to Fed. R. Bankr. P. 9019:

- (a) the probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved and the expense, inconvenience and delays necessarily attendant to it; and
- (d) the paramount interest of creditors.

Drexel v. Loomis, 35 F.2d 800 (8th Cir. 1929), as adopted in Protective Committee for Independent Stockholders of T.M.T. Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968); In re Grant Broadcasting of Philadelphia, Inc., 71 B.R. 390 (Bankr. E.D.Pa. 1987).

8. The decision to approve a compromise of a claim is within the sound discretion of this Court. In re Blue Coal Corp., 47 B. R. 758 (Bankr. M.D.Pa. 1985). It is not necessary for this Court to resolve substantive issues in the pending or potential proceeding. In re Hermitage Inn, Inc., 66 B.R. 71 (Bankr. D.Colo. 1986).

9. Approval of each of the Priority Wage Claim Compromise is consistent with the Drexel factors described above. With respect to the claims scheduled by the Debtor, although the Debtor believes that such claims are properly scheduled as priority claims in the amounts scheduled, the Committee has taken the position that some claims may not be properly characterized as priority claims and has reserved the right, in the absence of this compromise, to object to any and all priority claims. In the absence of this compromise, the Debtor or the Committee might challenge certain priority claims that were filed but not scheduled as priority claims by the Debtor. Moreover, the Debtor believes that this compromise is in the best interests of creditors, as it permits creditors to elect for themselves whether to accept an earlier and certain recovery, or to wait for a larger recovery on priority claims that would come later than would be the case under the compromise scenario. Moreover, no creditor will be prejudiced by the proposed compromise, as the Debtor holds sufficient funds to pay all administrative claims in full and to pay at least a 50% dividend, and potentially a 100% dividend, on account of all priority claims.

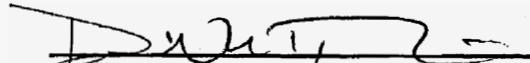
10. Notice of this Motion has been given to counsel for the Creditors' Committee, counsel for the United States Trustee, all parties that have requested notices pursuant to Fed. R. Bankr. P. 2002, all claimants asserting administrative claims, and all claimants asserting priority claims that are not Priority Wage Claims. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice need be given.

WHEREFORE, for the foregoing reasons, the Debtor respectfully requests that this Honorable Court enter an order authorizing, but not requiring, the Debtor to offer the Priority Wage Claim Compromise as described herein to holders of Priority Wage Claims and, to the extent such offers are accepted, to make distributions on account of the same (subject to requisite tax withholdings), and granting such other and further relief as is just and equitable.

Dated: January 14, 2005
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP



David M. Fournier (DE No. 2812)

Adam Hiller (DE No. 4105)

Hercules Plaza, Suite 5100

1313 North Market Street

Wilmington, Delaware 19801

(302) 777-6500 telephone

(302) 421-8390 facsimile

Attorneys for the Debtor, BroadBand Office, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Chapter 11

BROADBAND OFFICE, INC.,

Case No. 01-1720 (GMS)

Debtor.

ORDER APPROVING COMPROMISE OF PRIORITY WAGE CLAIMS
(relates to Pleading No. __)

UPON CONSIDERATION OF the Motion For An Order Approving Compromise Of Priority Wage Claims (the "Motion") filed by the debtor, BroadBand Office, Inc. (the "Debtor"), in the above-captioned case; the Court having reviewed the Motion and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; and (d) no responses to the Motion have been filed; and the Court having determined that just cause exists for the relief granted herein, IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Motion.

2. The Debtor is authorized but not directed to extend an Employee Wage Claim Compromise offer, in the form and on the terms attached as Exhibit A to the Motion, to any claimant who (i) was either an employee of the Debtor within the 90 day period preceding the commencement of Debtor's bankruptcy case, or an independent contractor of the kind described in 11 U.S.C. § 507(a)(3)(B), and (ii) has asserted, or been scheduled by the Debtor as holding, a claim having priority pursuant to 11 U.S.C. § 507(a)(3). The Debtor is further authorized to effectuate by payment any Employee Wage Claim Compromise to the extent that an Employee Wage Claim Compromise offer is accepted by the claimant to whom it is extended.

3. Upon Debtor's payment of the Settlement Amount (as defined in Exhibit A to the Motion), less any applicable withholding taxes, to a claimant, all claims scheduled by the Debtor in favor of, or filed by, such claimant in this case shall be expunged from the claims register without need for further order of the Court, and such claimant shall be entitled to no other or further allowed claim or distribution in this case.

Dated: _____
Wilmington, Delaware

HONORABLE GREGORY M. SLEET
UNITED STATES DISTRICT JUDGE

EXHIBIT A

BROADBAND OFFICE, INC.

[Claimant Name]	Claim No.:
[Address]	Priority Amount Claimed/Scheduled:

Re: In re: BroadBand Office, Inc.
Bankr. D. Del. Case No. 01-1720-GMS

Dear Sir/Madam:

As you may be aware, the assets and liabilities of Broadband Office, Inc., debtor-in-possession ("BBO"), are currently being administered in a bankruptcy proceeding pending under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 01-1720-GMS.

As a result of the liquidation of assets and the settlement of certain claims and causes of action, funds now exist from which a partial distribution may be made to certain of BBO's creditors. Under the Bankruptcy Code, if funds remain after paying holders of allowed secured claims (i.e., claims that are secured by some collateral) and administrative claims (i.e., claims arising from goods or services provided after the bankruptcy was filed), then under certain circumstances up to \$4,650 of each former employee's claim may be entitled to "priority" treatment. If a former employee has a claim in an amount greater than \$4,650, then the first \$4,650 of the claim may be entitled to "priority" treatment, and the remaining claim, if allowed, gets paid when and if all other "non-priority" unsecured claims get paid. BBO believes that it currently has enough funds to pay at least 50 cents on the dollar on all valid "priority" claims. BBO ultimately may have enough funds to pay 100 cents on the dollar on all valid "priority" claims, but any such payment would not likely be made for at least several more months and, at this point in the case, is not guaranteed. If BBO ultimately is successful in paying valid "priority" claims in full, it anticipates that holders of "non-priority" unsecured claims will receive, if anything, a few cents or less on the dollar.

The Bankruptcy Court has authorized BBO to make a cash offer to settle the claims of former employees holding alleged "priority" claims. Specifically, BBO is authorized to offer an amount equal to 50% of the lesser of (i) the "priority" portion of the claim, or (ii) \$4,650.

Using that formula, BBO offers to pay you the sum of \$[SETTLEMENT AMOUNT] (the "Settlement Amount") less applicable withholding taxes, in full and complete settlement of all claims of whatever nature or priority that you hold or may hold against BBO, including all claims filed by you in BBO's bankruptcy case. If you wish to accept this offer, you must complete and sign the enclosed form and mail it back to BBO at the address indicated by not later than **February 28, 2005**. Upon BBO's receipt of your properly completed and signed form, a check for the Settlement Amount, less withholding taxes, will be mailed to you within approximately 10 business days. Please note that this offer is valid and can be accepted **ONLY IF** you still own your claim against BBO. If you previously have assigned your claims against BBO to someone else, this offer is void. If this offer is not accepted, then BBO reserves all rights and defenses with respect to your claims.

By accepting this offer, you will be waiving any right to a further distribution in BBO's bankruptcy case, and you will be agreeing that all claims filed by you or scheduled in your favor in the BBO bankruptcy

case will be marked satisfied and that you will not assert any further claims of any kind against BBO or its bankruptcy estate. For this reason, you are encouraged to consult your own attorney regarding this offer. Questions regarding this offer may be directed to counsel for BBO, Evelyn Meltzer, at 302-777-6532, but you should be aware that Ms. Meltzer does not represent you and cannot provide you with legal advice.

Very truly yours

Rachelle B. Chong
Executive Vice President and General Counsel

MEMORANDUM OF ACCEPTANCE OF CLAIM SETTLEMENT

BANKRUPTCY CASE: In re Broadband Office, Inc., Case No. 01-1720-GMS (the "Bankruptcy Case")

CLAIM NO.: [CLAIM NO] (the "Claim")

CURRENT OWNER OF CLAIM: [NAME] ("Claimant")

LESSER OF PRIORITY AMOUNT CLAIMED/SCHEDULED OR \$4,650: [PRIORITY AMOUNT]

This will confirm that Claimant agrees as follows:

1. Claimant is presently the record owner of all right, title, and interest in the Claim identified above and all other claims filed by or scheduled in favor of Claimant in the Bankruptcy Case (collectively, the "Claims"), is entitled to exclusive enforcement of the Claims, and has not transferred or attempted to transfer the Claims or any portion thereof to any other party.

2. Claimant **ACCEPTS** the offer of Broadband Office, Inc. to settle the Claims for a single payment by Broadband Office, Inc. to Claimant in the amount of \$[SETTLEMENT AMOUNT], less applicable withholding taxes (the "Settlement Amount"). The Settlement Amount (net of withholding taxes) will be mailed to Claimant approximately ten business days after the receipt by Broadband Office, Inc. of this form completed and signed by Claimant.

3. Upon payment of the Settlement Amount, the Claims Agent appointed by the Bankruptcy Court may mark the Claims satisfied in full without further notice, and Claimant shall be entitled to no further distributions or other treatment from Broadband Office, Inc. or its bankruptcy estate. Other than payment of the Settlement Amount, Claimant irrevocably waives any and all claims or whatever nature or priority it has or may have against Broadband Office, Inc. or its bankruptcy estate, and agrees not to assert any further claims against Broadband Office, Inc. or its bankruptcy estate.

4. Claimant has been advised to consult its own attorney before signing this memorandum. Claimant has either consulted with its own attorney or has voluntarily elected to waive the right to consult with an attorney even though Claimant may be waiving unknown rights.

I agree to the terms set forth above.

Dated: _____, 2004

[CLAIMANT]

Address: _____

Phone Number: _____

Social Security Number: _____