

SO ORDERED.

SIGNED this 9th day of August, 2023.



Benjamin A. Kahn
BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	
Howard Frank Auman, Jr.,)	Case No. 13-10057
)	Chapter 11
<u>Debtor.</u>)	

AMENDED

ORDER GRANTING MOTION IN AID OF PLAN CONSUMMATION AND
SETTING NEW BAR DATE FOR NOTICE TO FILE CERTAIN CLAIMS

THIS MATTER having come on for hearing and being heard on June 27, 2023, upon the Plan Administrator’s Motion in Aid of Plan Consummation Requesting New Bar Date for Notice to File Certain Claims; Charles M. Ivey, III appeared as attorney for the Debtor and Plan Administrator and John Paul Cournoyer appearing as the Bankruptcy Administrator; based upon the evidence presented and the pleadings the Court makes the following findings of facts and conclusions of law:

1. Debtor filed a voluntary petition under chapter 11 of title 11 on January 16, 2013.
2. On December 30, 2014, the Court entered an Order Confirming the “Third Modified Plan of Reorganization” [DE 418]. In the order confirming the plan, the Court appointed Jeffrey Smith as the Plan Administrator.¹ The Plan Administrator was directed and authorized to administer certain named “Sale Assets” for the benefit of creditors and the Reorganized Debtor.

¹ Capitalized terms shall have the meaning assigned in the plan and the order confirming the plan, unless otherwise defined herein.

The grant of authority was broad and included the duty to sell, abandon, or otherwise administer the Sale Assets, file such tax returns as necessary, and to take such actions as he deemed necessary to properly administer the Sale Assets to maximize the return and minimize any tax exposure. (See Paragraph 3.02 of Confirmed Plan [DE 385] and Confirmation Order in Paragraph 5 of Ordered Section [DE 418])

3. The administration of the Sale Assets is now virtually complete with all material Sale Assets having been administered. To date it appears \$31,469,250.76 of gross revenue has been generated by the Plan Administrator of this case.

4. As a result of the administration of the Sale Assets, all creditor classes have been paid in full and the parties in interest who are now receiving distributions are the Reorganized Debtor and Self-Help Ventures Funds (“Self Help”). The distributions being made now and, to be made to the Reorganized Debtor and Self Help, are pursuant to a mediated settlement dispute formula. It is estimated, upon closing of this case, another distribution, after all cost of administration, will be made in the approximate amount of \$4,000,000.00.

5. Other than fees owed to the attorney for the Plan Administrator or the Plan Administrator, which have not been invoiced or approved, all known cost and expenses of administration have been paid in full. The Plan Administrator, at this time, has not received any demand for payment which he has not paid and/or is disputing.

6. There has been extensive administration activity involving the Sale Assets since the 2014 Plan Confirmation. These activities have involved the limited operations, fulltime operations, wind down of operations, closure and marketing of assets and active marketing and sale of operating Sale Assets. These activities have included the environmental remediation of the real estate owned by the Sale Asset Erwin Plant, LLC. The remediation was done with the involvement of the United State Environmental Protection Agency (“EPA”), and the North Carolina Department of Environmental Quality (“DEQ”). During the time frame of the administration of the Sale Assets, and not taking into account certain professional fees or Post-Confirmation income tax related expenses, over \$3,000,000.00 of administrative expenses have been paid. As indicated

above it is the position of the Plan Administrator that no administrative expense claims remain and all have been paid in full. (Claim as used herein is defined as that term is set out in 11 U.S.C. § 101(5)).

7. Given the number of years, number of creditors, and the millions of dollars which have been distributed, to date, and taking into consideration the substantial sum which will be distributed upon the closing of this case and given that upon closing no funds will remain, it is in the best interest of all parties for the Plan Administrator to be certain that all outstanding cost, expenses, and claims have been paid in full. Good cause therefore exists and under the authority set pursuant to the Confirmed Plan, the U.S. Bankruptcy Code, for this Court to set a new bar date to file claims and to set the appropriate noticing for such right to file a claim and a bar date for such filing.

8. The procedure to be followed by the Plan Administrator shall be as follows:

a. Attached hereto and incorporated herein and identified as Order Exhibit "A" is the "Notice to File Claim and Bar Date as set by Court Order" to be served/noticed by the Plan Administrator.

b. The Plan Administrator shall serve upon Exhibit "A" Notice on

- (i) All creditors on the official mailing matrix;
- (ii) All parties the Plan Administrator has dealt with for goods and services post-confirmation;
- (iii) All state and federal governmental units who received this Exhibit "A" notice shall be served in accordance with United States Rules of Bankruptcy Procedure 7004;
- (iv) Plan Administrator shall cause Exhibit "A" notice to be published for three (3) consecutive weeks in the Erwin Newspaper, The Daily Record, and the Raleigh News and Observer;

- (v) The Clerk of the United States Bankruptcy Court shall cause this Order and Exhibit “A” Notice to be available on the Courts website under the following link: www.ncmb.uscourts.gov;
- (vi) The bar date as stated in the Exhibit “A” notice is November 13, 2023, Unless a claim is filed as specifically directed herein then the unfiled claim as against the Howard Frank Auman, Jr. estate shall be forever barred;
- (vii) This procedure allowing for the filing of claims is not intended to extend an existing claim bar date, reopen any previous claim, determination, including but not limited to the liquidation of an amount, priority or allowability; and
- (viii) The purpose of this procedure is to allow any creditor with a claim, which has not to date been paid or otherwise determined or dealt with in this case, to be brought to the attention of the Plan Administrator or this Court.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The Procedures for filing claims and bar date, as set out herein are approved;
2. The Plan Administrator is directed to follow these Procedures and to provide Notice as set forth herein;
3. The holder of any claim against Debtor or the Creditor Escrow Account that arose after entry of the confirmation order and prior to entry of this order² must file a claim with the Court pursuant to Local Rule 3001-1 and the procedures for electronic claims filing that can be found at <https://www.ncmb.uscourts.gov/electronicproofclaimform> on or before the Bar Date;
4. Any claim that is not timely filed before the Bar Date shall be forever barred against the Creditor Escrow Account and Debtor; provided, however, that the Bar Date shall not apply to

² Nothing in this order modifies, limits, or effects the terms and provisions of the plan, the order confirming the plan, or the provisions of 11 U.S.C. § 1141, including without limitation, the binding nature of the terms of the confirmed plan under § 1141(a) and (c) or any discharge under § 1141(d).

a claim for fees and expenses owed to the attorney for the Plan Administrator or the Plan Administrator, which claims remain subject to allowance and approval by this Court.

5. If a claim is properly and timely filed then, unless this time limit is extended by this Court pursuant to a motion filed prior to the expiration of the Bar Date, the Plan Administrator is directed and authorized to either: (a) pay the claim under Article II, Section 2(b) of the Plan; or (b) to file an objection to the claim within sixty (60) days of the Bar Date.

[END OF DOCUMENT]

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	
Howard Frank Auman, Jr.,)	Case No. 13-10057
)	Chapter 11
_____ Debtor.)	

NOTICE TO FILE CLAIMS AND BAR DATE AS SET BY COURT

(1) Howard Frank Auman, Jr. (“Auman”), filed a petition under chapter 11 of title 11 on January 16, 2013. The Court confirmed a Plan of Reorganization on December 30, 2014. Under the terms of the confirmed plan, Jeffrey Smith was appointed and is acting as Plan Administrator.

(2) As a result of the Plan and resulting Administration all creditors with allowable claims have been paid in full.

(3) Given the time and extent of asset administration by the Plan Administrator, numerous creditors have dealt with the Plan Administrator in his capacity of administering the Creditor Escrow Account for creditors of Auman under the plan. To the knowledge of the Plan Administrator, all such claims have been paid full. This NOTICE and BAR DATE is being set to ensure any such claims have been dealt with in this case.

(4) On August 9, 2023, the Court entered its Oder Granting Motion in Aid of Plan Consummation and Setting New Bar Date for Notice to File Certain Claims (“Bar Date Order”). Copies of the Bar Date Order are available on the Court’s website at www.ncmb.uscourts.gov, and by written request to the Plan Administrator Jeff Smith at jeff@cira-solutions.com.

After payment of any timely filed claims under the Bar Date Order, all remaining funds, less administrative expense claims will be distributed under the terms of the plan and the order confirming the plan to the Reorganized Debtor, Howard Frank Auman, Jr., and Self-Help Ventures Fund, after which distribution and subject to a final report, the Plan Administrator will be discharged and the Creditor Escrow Account closed.

TERMS AND CONDITIONS OF BAR DATE ORDER:¹

(a) Any party asserting that it is owed money or otherwise holds a claim against the Plan Administrator in his capacity as Plan Administrator, the Creditor Escrow Fund, the bankruptcy estate, or Howard Frank Auman, Jr. must file a claim on or before the Bar Date with the Court pursuant to Local Rule 3001-1 and the procedures for electronic claims filing that can be found at <https://www.ncmb.uscourts.gov/electronicproofclaimform>.

(b) Any claim that is not timely filed before the Bar Date of November 13, 2023 shall be forever barred against the Creditor Escrow Account and Debtor.

[END OF DOCUMENT]

¹ Parties should refer to the requirements set forth in the Bar Date Order. Nothing herein shall be construed to modify the terms of that order.