

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X
In re

BAUMANN & SONS BUSES, INC., et al.,

Debtors.¹
-----X

ACME BUS CORP.,

Plaintiff,

-against-

MALVERNE UNION FREE SCHOOL DISTRICT,

Defendant.
-----X

BAUMANN BUS COMPANY, INC.,

Plaintiff,

-against-

MALVERNE UNION FREE SCHOOL DISTRICT,

Defendant.
-----X

Chapter 11

Case No. 20-72121 (REG)

(Substantively Consolidated)

Adv. Pro. No. 20-08242

Adv. Pro. No. 20-08247

SETTLEMENT AND GENERAL RELEASE AGREEMENT

¹ The "Debtors" in these cases, along with the last four digits of each of the Debtor's federal tax identification number are: Baumann & Sons Buses, Inc. (2109), ACME Bus Corp. (8937), ABA Transportation Holding Co., Inc. (4676), Brookset Bus Corp. (7908), and Baumann Bus Company, Inc. (9631).

This SETTLEMENT AGREEMENT (the “Agreement”) by and between Neil Bivona, as the plan administrator (the “Plan Administrator”) on behalf of the Post-Confirmation Debtors under the *Third Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 495] and Malverne Union Free School District (the “District”), is entered into as of March 15, 2022. The Plan Administrator, on behalf of the Post-Confirmation Debtors, and the District may be referred to herein as a “Party” or collectively as the “Parties.”

WITNESSETH

WHEREAS, on May 27, 2020, Nesco Bus Maintenance, Bangs Towing, Acme Radiator & Glass Works, Inc., and Jenthy Enterprises, Inc., filed an involuntary petition under Chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) against ACME Bus Corp. (“ACME”) in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court” or the “Court”); and

WHEREAS, on June 18, 2020, the Court entered an order for relief under chapter 7 of the Bankruptcy Code; and

WHEREAS, on June 25, 2020, ACME filed a motion pursuant to Section 706(a) of the Bankruptcy Code and Rules 1017(f)(2) and 9013 of the Federal Rules of Bankruptcy Procedure seeking an order converting ACME’s chapter 7 case to a case under chapter 11 of the Bankruptcy Code, and on July 1, 2020, that motion was granted by order of the Court; and

WHEREAS, on August 3, 2020, Baumann Bus Company, Inc. (“Baumann”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court; and

WHEREAS, on June 30, 2021, the Court entered an order (the “Confirmation Order”) [Docket No. 538] confirming the Debtors’ Third Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”) [Docket No. 495]; and

WHEREAS, the effective date (the “Effective Date”) of the Plan occurred on July 15, 2021. *See* Docket No. 543; and

WHEREAS, on the Effective Date, Neil Bivona was appointed Plan Administrator on behalf of the Post-Confirmation Debtors; and

WHEREAS, the District and ACME were parties to a written student transportation contract (the “ACME Contract”) awarded to ACME for the 2019-2020 school year (September 1, 2019 through June 30, 2020); and

WHEREAS, the District and Baumann were parties to a written student transportation contract (the “Baumann Contract” and together with the ACME Contract, the “Contracts”) awarded to Baumann for the 2019-2020 school year (September 1, 2019 through June 30, 2020); and

WHEREAS, on or about March 16, 2020, in response to the COVID-19 pandemic, the Governor of the State of New York (the “Governor”) issued Executive Order 202.4 which, *inter alia*, directed every school in the State of New York to close for a period of two weeks; and

WHEREAS, subsequent emergency orders issued by the Governor extended the period of school closure through the end of the 2019-2020 school year (the “COVID Closure Period”); and

WHEREAS, ACME filed a notice of claim against the District, dated August 28, 2020, and then on December 9, 2020, ACME filed a complaint (the “ACME Complaint”) with the Bankruptcy Court commencing an adversary proceeding against the District (collectively, the

“ACME Adversary Proceeding”) seeking damages against the District in the amount of (i) \$66,634.29 for contracted transportation services for the COVID Closure Period (the “ACME COVID Closure Period Claim”), and (ii) \$7,570.04 for contracted transportation services prior to the COVID Closure Period (the “ACME Pre-COVID Closure Period Claim”); and

WHEREAS, Baumann filed a notice of claim against the District, dated August 28, 2020, and then on December 9, 2020, Baumann filed a complaint (the “Baumann Complaint” and together with the ACME Complaint, the “Complaints”) with the Bankruptcy Court commencing an adversary proceeding against the District (collectively, the “Baumann Adversary Proceeding” and together with the ACME Adversary Proceeding, the “Adversary Proceedings”) seeking damages against the District in the amount of \$33,734.73 for contracted transportation services for the COVID Closure Period (the “Baumann COVID Closure Period Claim” and together with the ACME COVID Closure Period Claim, the “COVID Closure Period Claims”); and

WHEREAS, on October 23, 2020, the District filed a claim against ACME in the general unsecured amount of \$12,115.33 on account of unperformed services (the “ACME Proof of Claim”); and

WHEREAS, on October 23, 2020, the District filed a claim against Baumann in the general unsecured amount of \$6,133.59 on account of unperformed services (the “Baumann Proof of Claim” and together with the ACME Proof of Claim, the “Proofs of Claim”); and

WHEREAS, on September 27, 2021, the Plan Administrator filed an objection to the Proofs of Claim, seeking entry of an order disallowing and expunging the Proofs of Claim (the “Claim Objection”) [Docket No. 589]; and

WHEREAS, the District and the Plan Administrator have agreed upon the terms of a negotiated settlement in order to avoid the additional costs, burdens and risks of litigation.

NOW, THEREFORE, the Parties hereby incorporate by reference the previous paragraphs and, in consideration of the compromise and settlement of the claims as alleged in the Adversary Proceedings, and in exchange for the consideration set forth below, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. The District will pay the Plan Administrator, on behalf of the Post-Confirmation Debtors, (i) \$19,990.29 on account of the ACME COVID Closure Period Claim and \$10,120.42 on account of the Baumann COVID Closure Period Claim for a total amount of \$30,110.71 on account of the COVID Closure Period Claims, and (ii) \$6,813.04 on account of the ACME Pre-COVID Closure Period Claim, for an aggregate settlement amount of \$36,923.75 and agree to withdraw and otherwise waive any right to payment on the Proofs of Claim in full settlement of the Adversary Proceedings (the “Settlement Payment”), and the Plan Administrator, on behalf of the Post-Confirmation Debtors, will accept the Settlement Payment in full satisfaction of the Post-Confirmation Debtors’ claims against the District.

2. This Agreement between the Parties is subject in all respects to the approval of the Bankruptcy Court as evidenced by the entry of a written order (an “Approval Order”). The Plan Administrator shall file a motion seeking an Approval Order by no later than five (5) weeks following the signing of this Agreement by all Parties. None of the Parties shall be bound by the provisions of this Agreement unless and until the Bankruptcy Court enters the Approval Order, and the Approval Order becomes final and non-appealable (a “Final Order”).

3. The Settlement Payment will be paid within twenty (20) business days of the Approval Order. The Settlement Payment amount shall be made payable to “ABA Transportation Holding Co., Inc., Post-Confirmation Debtor” and mailed to ABA Transportation Holding Co., Inc., Post-Confirmation Debtor, 80 Killians Road, #448, Massapequa, New York 11758.

4. Within five (5) business days of its receipt and clearance of the Settlement Payment, the Plan Administrator will execute and file (i) a Notice of Dismissal of the Adversary Proceedings, with prejudice, and (ii) a Notice of Withdrawal of the Claim Objection.

5. Subject to its receipt and clearance of the Settlement Payment, the Plan Administrator, on behalf of the Post-Confirmation Debtors, hereby releases the District, the members of the Board of Education, the Superintendent of Schools, the District’s officers, agents, employees, attorneys and representatives, their predecessors and successors, heirs and assigns, and all persons acting by, through, under, or in concert with any of the above from and against any and all debts, obligations, losses, costs, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, rights, obligations, liabilities, judgments, damages, expenses, claims, counterclaims, cross-claims, or demands, in law or equity, asserted or unasserted, express or implied, foreseen or unforeseen, suspected or unsuspected, known or unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever, arising on or before the date of this Agreement, which are related in any way to this Agreement or the facts and circumstances underlying this Agreement including, but not limited to, any and all claims for breach of contract or non-payment of ACME and Baumann invoices for services rendered through June 30, 2020.

6. Subject to the filing of the Notice of Dismissal of the Adversary Proceedings and Notice of Withdrawal of the Claim Objection, the District hereby releases the Plan Administrator, the Post-Confirmation Debtors, the Debtors and all of their parent, subsidiary and affiliated entities and all of their respective present or former agents, insurers, representatives, employees, directors, officers, and attorneys in their capacities as such from and against any and all debts, obligations, losses, costs, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, rights, obligations, liabilities, judgments, damages, expenses, claims, counterclaims, cross-claims, or demands, in law or equity, asserted or unasserted, express or implied, foreseen or unforeseen, suspected or unsuspected, known or unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever, arising on or before the date of this Agreement, which are related in any way to this Agreement or the facts and circumstances underlying this Agreement including, but not limited to, (i) any and all claims for breach of contract or non-payment of ACME and Baumann invoices for services rendered through June 30, 2020 and (ii) the Proofs of Claim, which claim shall be deemed expunged without the need for any further order of the Bankruptcy Court. The District agrees that it will not file any further proof of claim or amended claim in the bankruptcy case.

7. The Parties understand and acknowledge that this Agreement is a settlement and compromise of disputed claims, and is not an admission by any Party or their representatives of any liability or wrongdoing, or an admission as to the merit or lack of merit of any claims or defenses that the Parties have asserted or could have asserted against one another in the Adversary Proceedings.

8. This Agreement will not serve as evidence in any pending or future actions, claims, or controversies of any nature whatsoever, in law or equity, except as a complete bar to

any claim, action or proceeding extinguished by this Agreement or for the purpose of enforcing this Agreement's terms.

9. This Agreement constitutes the full, complete and entire understanding, agreement, and arrangement by and among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior oral and written understandings, agreements and arrangements between or among them. There are no other agreements, covenants, promises or arrangements between or among the Parties hereto concerning the subject matter of this Agreement other than those set forth herein. There is no other consideration for this Agreement other than the consideration set forth in this Agreement.

10. This Agreement may be amended, altered, modified or waived, in whole or in part, only in a writing executed by all the Parties to this Agreement. This Agreement may not be orally amended, altered, modified or waived, in whole or in part.

11. The Parties hereto agree that this Agreement shall be governed by and construed in accordance with the laws of New York without regard to its conflict of laws provisions, and agree that the United States Bankruptcy Court for the Eastern District of New York shall have exclusive jurisdiction over any disputes or issues relating to this Agreement.

12. The language of all parts of this Agreement will be in all cases construed as a whole, according to its fair meaning and not strictly for or against any of the Parties, even though one of the Parties may have drafted it.

13. The Parties and their counsel agree to execute all further and additional documents and to take such other acts necessary under the circumstances to accomplish the purposes set forth in this Agreement.

14. This Agreement may be executed in multiple counterparts, each of which shall be considered to be an original and all of which together shall constitute one and the same agreement. A Party's signature transmitted by electronic means, including via facsimile, email, PDF or similar means shall be deemed an original signature for all purposes. A true and correct photocopy or electronic copy of this Agreement shall be effective and enforceable as if it were an original.

15. The persons signing below each represent and warrant that he or she has the authority to enter into this Agreement on behalf of the Party on whose behalf he or she so signs. The undersigned counsel, each represent that they have the full power and authority necessary to bind their respective clients to the terms of this Agreement, in the same manner as if the clients have duly executed the same.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Dated: Garden City, New York
March __, 2022

FRAZER & FELDMAN, LLP

Dated: Malverne, New York
March __, 2022

**MALVERNE UNION FREE
SCHOOL DISTRICT**

By: _____
Dennis O'Brien
1415 Kellum Place, Suite 201
Garden City, New York 11530
Tel: (516) 742-7777
Fax: (516) 742-7868
Email: dobrien@ffedlaw.com

*Counsel to Malverne Union Free
School District*

By: _____
Josephine Bottitta
President, Board of Education of the
Malverne Union Free School District

Defendant

Dated: Garden City, New York
March __, 2022

**KLESTADT WINTERS
JURELLER SOUTHARD &
STEVENS, LLP**

Dated: Melville, New York
March __, 2022

**HAMBURGER, MAXSON, YAFFE
& MARTINGALE, LLP**

By: _____
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*Counsel to the Plan Administrator,
on behalf of the Post-Confirmation
Debtors*

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*Counsel to the Plan Administrator, on
behalf of the Post-Confirmation Debtors*