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William Dunnegan

From: Christ Gaetanos [cgaetanos@att.net]

Sent: Tuesday, May 06, 2008 1:48 PM

To: William Dunnegan

Subject: Stirling

Bill:

As a follow-up to our conversations, we propose the following: payment to Pearson, et al. of $33,000, in full satisfaction of all remaining monetary obligations under the PI/FJ.

This is the amt. that the insurer has agreed to pay for damages arising from this suit, less the cost of obtaining it. Coverage counsel has informed me several times that he feels that this is the best he can do under the circumstances (some of which you and I have discussed over time).

For all intents and purposes, this is payment of the entire amt. that Pearson bargained for. The PI/FJ provides for three sets of payments. The present and future values of the first lump sum payment are essentially identical to one another. Same for the second lump sum payment. These two payments total $40K. The FV of the third set is $36K, but the PV of that amt. – using a 6% rate of return, computed annually – is $20,102.21. I picked 6% somewhat arbitrarily, but it is the approximate rate that mortgage lenders have been charging this year for fixed rate loans to borrowers w/good or better credit who borrow less than 75% loan-to-value and who offer their homes as security. In other words, it is a market rate for decent quality loans of this nature.

Obviously, Matt does not have good or better credit (Pearson knew this, from voluntary doc disclosures last year), he cannot offer security and he does not have either much current excess cash flow or any prospects of material change in this respect, so the rate should have been higher (reflecting the increased risk of lending to someone w/Matt's financial difficulties), which in turn would make the PV lower. Anyway, the PV of the entire settlement amt. under these assumptions is $60,102.21, and this offer is for $58,000 in total ($33,000 from the insurer, plus the $25,000 already paid), or 96.5% of the amt. stated in the PI/FJ. By way of comparison, at 7%, the PV of all payments is $58,300.57, and 7% is not a wild number; my office is now closing home mtg. deals for clients of mine with comparable financial troubles as Matt has at 8.5%, w/points.

As you know, Matt has filed personal bankruptcy. As I understand it, he would prefer not to put his company into bankruptcy, for obvious reasons (the expense involved; no point, since it appears that the company has no assets other than the insurance settlement proceeds, etc.). But if Pearson does not accept this offer, he would not have any alternative. In bankruptcy, Pearson would share the $33K w/all other creditors, which means that it would get considerably less than that amt. Plus, the trustee most likely would seek to recover the $25 as a preference. Frankly, the cost to Pearson in efforts to resist a preference claim and to assert a claim to the $33K, etc. – all of which seem pretty unlikely to succeed – are likely to be far in excess of the differential between $60,102.21 and $58,000. Given the circumstan~~ces, this offer is a gift horse.~~

Payment would be made soon, as soon as the insurer pays. At the moment, I can only guess, but I would be surprised if it took longer than the end of next week. I will know more about this in a couple of days. Pearson would be paid by bank official check.

Let me know, soon.

C.

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