

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 97-10709
Chapter 11

NOXSO CORPORATION

Debtor

MEMORANDUM OPINION

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for Debtor

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HONORABLE R. THOMAS STINNETT,
UNITED STATES BANKRUPTCY JUDGE

The debtor, Noxso, has money on hand that must be distributed, but a dispute exists as to who should receive the money. The owners of reorganized Noxso – an entity separate from the debtor – assert that it should receive the money. The creditors' committee disagrees. The debtor has filed a motion for instructions asking the court to interpret the plan so that the debtor will know how to distribute the money.

THE PLAN

On December 9, 1999, the court confirmed the Second Plan of Reorganization with Modifications Through December 2, 1999. Docket Nos. 480 & 482. For convenience the court will refer to it simply as the plan. The details are explained below.

The debtor continues to exist but only as the entity responsible for carrying out the plan. It will not continue in business. Plan Art. I. § B. ¶¶ 1.24, 1.47; Art. II. § B. ¶¶ 6.; Art. IV.

The debtor will sell the technology known as the Noxso process to FLS/Miljo or the highest bidder. The plan identifies this sale as the asset sale. Plan Art. I. § B. ¶¶ 1.04, 1.39, 1.49; Art. III. § B. ¶ 1. B. 2.; Art. V.

The net proceeds of the asset sale will go into the plan fund. The plan fund is the property the debtor will have for distribution on claims as provided in the plan. Plan Art. I. § B. ¶¶ 1.53; Art. II. § B. ¶ 5.; Art. III. §§ A. & B.

Reorganized Noxso will acquire Noxso's business and its assets other than the Noxso process and the plan fund. The Long Group will pay the debtor \$50,000 for 90% of the stock in reorganized Noxso. The \$50,000 will go into the plan fund. The remaining 10% of the stock in reorganized Noxso will also go into the plan fund to be distributed on allowed general unsecured

claims. Plan Art. I. § B. ¶ 1.32, 1.45, 1.46, 1.57; Art. II. § B. ¶ 5. & 6.; Art. III. §§ A. & B.; Art. IV. §§ A., B., E.

The debtor will pursue avoidance actions under the bankruptcy code, specifically preferential transfer actions against creditors. The net proceeds will go into the plan fund. Plan Art, I. § B. ¶ 1.05, 1.24, 1.47; Art, II. § B. ¶ 5; Art. III. § A; Art. IV. § D. ¶ (f), (h); Art. VI. § A.; Art. IX. § D.

In summary, the plan fund will include: (1) cash on hand at the time of confirmation, (2) the net proceeds of the asset sale, (3) the net proceeds of the entity sale, (4) the net proceeds of the avoidance actions, and (5) 10% of the stock of reorganized Noxso.

Claims will receive distributions from the plan fund in the following order: (1) administrative claims, (2) involuntary gap claims, (3) secured claims, (4) priority tax claims, (5) general unsecured claims. The 10% of the stock in reorganized Noxso will be distributed to the general unsecured creditors. Plan Art. II. §§ A & B; Art I. § B. ¶ 1.01, 1.33, 1.34, 1.36, 1.40, 1.41, 1.42, 1.47, 1.48, 1.54, 1.55, 1.56, 1.61, 1.62.

Class 6 includes Noxso's stockholders. The plan provides that they will receive no distributions on account of their interests in Noxso. Plan Art. II. § B ¶ 6.

Only "Available Cash" and the stock in reorganized Noxso can be distributed. Cash means legal tender or its equivalent. Plan Art. I. § B. ¶ 1.11 & 1.30.

The consummation date occurs when the three conditions for consummation have been met or waived. The three conditions are: (1) the entity sale to the Long Group has been

closed; (2) the court has approved the asset sale, and it has been closed; and (3) the confirmation order has become a final order. Plan Art. I. § B. ¶¶ 1.20 & 1.37; Art. VII.

The distribution date will occur shortly after the consummation date:

“Distribution Date” means the date, occurring as soon as practicable after the Consummation Date, upon which counsel to the Debtor shall make Distributions to holders of Allowed Claims; provided, however, that in no event shall the Distribution Date occur sooner than five (5) business days or later than fifteen (15) business days after the Consummation Date.
Plan Art. I. § B. ¶ 1.29.

The definition of distribution date applies only to allowed claims, not disallowed claims or disputed claims. Plan Art. I. § B. ¶¶ 1.02, 1.26, 1.28. Another provision expressly prohibits distributions on disputed claims:

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

Plan Art. VI. § B.

The plan defines disputed claim as follows:

“Disputed Claim” means a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, including, but not limited to, Claims (a)(i) that have not been Scheduled by the Debtor or (ii) have been Scheduled at zero or as contingent, unliquidated or disputed, (b) that are the subject of a proof of claim that differs in nature, amount or priority from the Debtor’s Schedules, and (c) the allowance or disallowance of which is not yet the subject of a Final Order.

Plan Art. I. § B. ¶ 1.28.

Under this definition, a claim can be disputed even if no one has filed an objection to the claim. Disputed claims include those that are not automatically allowed under the bankruptcy code. 11 U.S.C. §§ 1111(a). A claim is also disputed if the claimant files a proof of claim that is not consistent with the debtor's schedules. This provision allows the debtor the opportunity to object to the claim after the distribution date. Otherwise, the claim could be automatically allowed and a distribution required. 11 U.S.C. § 502(a).

The plan provides that if a claim is disputed on the distribution date, the debtor will make a distribution on the claim as soon as practical after the claim becomes an allowed claim. This provision appears in the plan for classes 1 through 5, all the classes for which the plan provides a distribution. Plan Art. II. § A. ¶¶ 1–5.

Note that the definition of consummation requires a distribution date early in the administration of the plan, long before Noxso could conclude the avoidance actions and all the disputes over claims.

The Long Group's arguments have raised more than one problem with the interpretation of the plan, but the problems all seem to arise from the three provisions quoted below:

“Secondary Distribution Date” means the date, occurring as soon as practical after all Disputed Claims in a specific class become Allowed Claims or Disallowed Claims, when funds remaining in the disputed Claims reserve, if any, are distributed to members of the specific class.

Plan Art. I. § B. ¶ 1.60.

On the Secondary Distribution Date, the amount, if any, remaining in the Plan Fund on account of the General Unsecured Claims which have all become Allowed General Unsecured Claims or Disallowed

General Unsecured Claims, shall be distributed on a pro-rata basis to holders of the Allowed General Unsecured Claims.

Plan Art. II. § B. ¶ 5.

Funds attributable to Disputed Claims on the Distribution Date will be held in the Plan Fund and any funds remaining in the Plan Fund on the Secondary Distribution Date will be paid on a pro-rata basis to members of the specific Class.

Plan Art. VI. § C.

Noxso had another plan confirmed before this one but was unable to carry it out. The earlier plan defined “disputed claims reserve” as funds attributable to disputed claims on the consummation date and held in reserve. The earlier plan also contained provisions with almost the same wording as the final two quoted above; the quoted provisions say “Plan Fund” where the provisions of the earlier plan said “Disputed Claims Reserve”. Docket No. 420, Order Confirming Debtor’s First Amended Plan of Reorganization, Art. I. § B. ¶ 1.30; Art. II. § B. s¶ 5; Art. V. § C.

DISCUSSION

The Long Group asserts that the plan does not provide for distribution of the money remaining in the plan fund. One of the arguments goes as follows:

The disputed claims reserve means cash that was available *on the distribution date* but was reserved on account of disputed claims. Therefore, the money collected in the avoidance actions after the distribution date cannot be part of the disputed claims reserve. The secondary distribution date is only for the disputed claims reserve. It does not apply to the money collected in the avoidance actions after the distribution date because it is not part of the a disputed claims reserve. Thus, the plan does not provide for distribution of the money collected in the avoidance actions after the distribution date.

This conclusion does not contradict the second provision quoted above. It requires distribution to general unsecured claims on the secondary distribution date. Plan Art. II. § B. ¶ 5. The second provision refers to money remaining in the plan fund on account of general unsecured claims that have become allowed or disallowed. This means money held in the plan fund on account of *disputed* general unsecured claims that have subsequently been allowed or disallowed. In other words, it means the disputed claims reserve for general unsecured claims. In summary, the second quoted provision merely repeats for general unsecured claims the general provision for distribution on the secondary distribution date of the disputed claims reserve. It does not provide for distribution of the money collected in the avoidance actions after the distribution date.

The argument can be varied slightly to reach the same result. The argument is: none of the money in the plan fund can be distributed unless there is a secondary distribution date, and there can be a secondary distribution date only if some of the money in the plan fund is a disputed claims reserve as defined in the argument. This variation addresses the possibility that the second and third quoted provisions allow distribution on the secondary distribution date of any money in the plan fund, not just the disputed claims reserve as defined by the argument.

The argument has two steps that are clearly stated. First, the disputed claims reserve means money that was available for distribution on the distribution date but was reserved on account of disputed claims. The purpose of this definition is to exclude from the disputed claims reserve the money collected in the avoidance actions after the distribution date. Second, the secondary distribution date applies only to the disputed claims reserve, and therefore, it does not apply to the money collected in the avoidance actions after the distribution date.

The third step is not clearly stated. It is the assumption that the plan allows only two distributions – one on the distribution date and another on the secondary distribution date. If this third step is incorrect, and the plan allows other distributions, that causes two problems with the argument. First, the money collected in the avoidance actions after the distribution date can be part

of the disputed claims reserve; the debtor had the authority to distribute it anytime after it was received and may have reserved it because the existence of disputed claims made distribution impractical. Second, the existence of a disputed claims reserve and the occurrence of a secondary distribution date may not be necessary for the debtor to distribute all the money in the plan fund in accordance with the plan.

The court disagrees with both the main argument and the variation. The first step in the argument is not required by the plan. The first step asserts that the disputed claims reserve means money that was available on the distribution date but was not distributed then. The point is to exclude the money collected in the avoidance actions after the distribution date. The plan does not necessarily exclude it from the disputed claims reserve.

The disputed claims reserve must be part of the plan fund since the plan fund is the source for all distributions under the plan. Plan Art. III. § A. The future proceeds of the avoidance actions could not be distributed on the distribution date because they were not cash. Nevertheless, the avoidance actions were part of the plan fund. Plan Art. I. § B. ¶¶ 1.11, 1.30; Art. III. § A. The situation is similar to the inclusion of accounts receivable in a plan fund. They cannot be distributed immediately, but they are part of the plan fund. Thus, the value of the avoidance actions – the potential proceeds – could have been reserved on the distribution date.

The Long Group might argue that since only cash could be distributed, the value of the avoidance actions (their potential proceeds) could not have been reserved on the distribution date. The plan does not define disputed claims reserve to mean only available cash that was not distributed; a reserve can include any property that was not distributed because disputed claims existed.

The court can also say that the value of the avoidance actions was reserved – not distributed – on account of disputed claims. The avoidance actions were brought to recover preferential transfers from creditors; every creditor-defendant was the holder of a disputed claim. 11 U.S.C. § 502(d). The value of the avoidance actions could not be realized and distributed until resolution of the claim disputes with the defendants.

The third step of the argument is also incorrect and that prevents the first step from being correct. The third step assumes only two distributions – one on the distribution date and one on the secondary distribution date. This leads to the theory that no money received after the distribution date can be in the disputed claims reserve because it could not have been reserved from the first distribution. It also means that if a claim is disputed on the distribution date and subsequently allowed, the only distribution on the claim will occur on the secondary distribution date.

That is not what the plan says. If a claim is disputed on the distribution date but subsequently allowed, the plan requires distribution on the claim as soon as reasonably practical after it becomes an allowed claim. Plan Art. II. § A. ¶¶ 1–5. In other words, the plan allows the debtor to make distributions on disputed claims that have become allowed claims whenever distribution is reasonably practical; the debtor is not required to wait until a secondary distribution date.

Furthermore, the debtor can make the distribution from money collected in the avoidance actions after the distribution date. That money is part of the plan fund. The plan does not require the debtor to hold it until a secondary distribution date.

Likewise, the debtor can decide not to distribute money collected in the avoidance actions after the distribution date. The debtor can reserve the money from distribution because the

existence of disputed claims makes distribution impractical. In that case, the money has been reserved on account of disputed claims and can be viewed as part of the disputed claims reserve.

As a practical matter, Noxso apparently could not make a distribution on allowed general unsecured claims until all the general unsecured claims were allowed or disallowed, all the money was collected, and all the expenses of administering the plan were paid. Without meeting these requirements, Noxso could not accurately determine how much to pay on each allowed general unsecured claim. These requirements are tied together because the avoidance actions were suits against creditors to recover preferential transfers. They would result in the recovery of money, the allowance or disallowance of claims, and the incurring of expenses for administering the plan. These facts justify the conclusion that the money collected in the avoidance actions after the distribution date has been reserved by Noxso on account of disputed claims; it can be viewed as part of the disputed claims reserve.

The plan appears to give a practical meaning to disputed claims reserve, a meaning that disagrees with the argument. The court is concerned with the second and third of the three quoted provisions that are the source of the argument. The third quoted provision (Art. VI. § C.) requires distribution of “funds attributable to disputed claims”. This could mean a “disputed claims reserve” as defined in the argument. The third provision, however, also provides for distribution of “any funds” in the plan fund on the secondary distribution date. The plan fund includes the money collected in the avoidance actions after the distribution date. As a result, the third provision apparently allows distribution on the secondary distribution date of any money in the plan fund, including money collected in the avoidance actions after the distribution date.

The second quoted provision (Art II. § B. ¶ 5.) refers to funds in the plan fund on account of general unsecured claims that have all become allowed or disallowed claims. This could

be interpreted to mean the disputed claims reserve, as defined in the argument, but it can also be interpreted more broadly. The words “on account of” do not necessarily mean money that was reserved from a prior distribution to cover disputed claims that might be allowed later. The words “on account of” can refer to all the money in the plan fund that is available to pay allowed general unsecured claims because it is not needed to pay claims in higher priority classes.

These interpretations mean that when the secondary distribution date arrives for a particular class, the debtor can distribute not only money reserved from the original distribution – a disputed claims reserve as defined in the argument – but also any other money in the plan fund, including money collected in the avoidance actions after the original distribution date. Of course, this conclusion still leaves the argument that a secondary distribution date will not occur unless there is a disputed claims reserve as defined in the argument. On this point, the court’s interpretation of the second and third quoted provisions suggests a fundamental flaw in the argument’s definition of disputed claims reserve.

The second and third quoted provisions can be interpreted to provide for distribution on the secondary distribution date of any money in the plan fund that is available for payment of claims in that particular class. This suggests even more. It suggests that the disputed claims reserve is any money in the plan fund (1) that has not been distributed because the existence of disputed claims has made it impractical and (2) that is available to pay on claims of a particular class when all the claims in the particular class have been allowed or disallowed.

Furthermore, if the disputed claims reserve is simply money that has not been distributed because disputed claims have made a complete distribution to the class impractical, then the reserve should be available for all claims in the class, not just disputed claims that have become allowed claims. This is important to assure that the distribution on each claim in the class complies

with the plan. To make a correct distribution on claims in a particular class, the debtor may be required to refrain from making any distribution, even on allowed claims, until all the claims in the class are allowed or disallowed. If the debtor does not wait until then, it may be required to make a second distribution on claims that were allowed and received an earlier distribution.

This interpretation of disputed claims reserve easily applies to money that is still in the plan fund and available for distribution on claims in a particular class when all the claims in the class have become allowed or disallowed. Moreover, this interpretation of disputed claims reserve makes sense of the provisions dealing with a secondary distribution date and explains the absence of a definition for disputed claims reserve. It allows the debtor to make a secondary distribution from the plan fund and to make it so that the overall distribution on claims of the particular class meets the plan's requirements.

The definition of secondary distribution date creates a minor problem with this reasoning. The definition provides for distribution of the disputed claims reserve *if any*. This suggests that the disputed claims reserve cannot be all the money kept in the plan fund while the claim disputes are being dealt with. This infers too much from the "if any" condition. It just recognizes the obvious. If the plan fund is empty, then there is no disputed claims reserve to distribute even though all the claims in the class have become allowed or disallowed.

In summary, the court concludes that some or all of the money now in the plan fund is the disputed claims reserve. A secondary distribution date will occur and when it does, all the money in the plan fund is to available for distribution in accordance with the plan. The court's conclusion is supported to some extent by differences in wording between this plan and the debtor's earlier confirmed plan, but the earlier plan was not entirely free of the same ambiguities

The “if any” condition also suggests an alternative interpretation of the plan; in this alternative interpretation, all the money in the plan must be distributed as provided in the plan even if there is no disputed claims reserve and no secondary distribution date.

The alternative interpretation brings the court back to the third step in the argument. It assumed only two distributions – one on the distribution date and one on the secondary distribution date. The court has already rejected this assumption, but the court’s reasoning can go further than it did before.

The plan provides for distribution on the secondary distribution date of the disputed claims reserve *if any*. The plan does not define disputed claims reserve. The plan does not require the debtor to set up a disputed claims reserve. If the absence of a disputed claims reserve prevents the occurrence of a secondary distribution date, does the plan nevertheless allow the debtor to finish distributing the plan fund in accordance with the plan? The court concludes that it does.

The plan requires distribution on previously disputed claims as soon as reasonably practical after they are allowed. Plan Art. II. § A. ¶ 1–5.

As to claims that have never been disputed, the debtor is required to distribute the money in the plan fund in accordance with the plan. This may require more than one distribution on a claim. The plan does not expressly prohibit multiple distributions on a particular claim. Does the plan imply such a prohibition? The plan requires distribution on the distribution date. It requires distribution on a previously disputed claim as soon as reasonably practical after it is allowed. It requires a secondary distribution of a disputed claims reserve, if any, when all the claims in a class have become allowed or disallowed. A broad negative inference from these provisions could lead to the conclusion that the plan allows distribution on claims that have never been disputed only on

the distribution date and the secondary distribution date. The court will not adopt such a broad negative inference because it could prevent the debtor from complying with the basic provisions of the plan. Those basic provisions create the plan fund for the purpose of being distributed on allowed claims and set out how much should be paid on each allowed claim in a particular class. The plan should allow the debtor to make whatever distributions on a claim are required to make the total comply with the plan for claims in that class.

The Long Group argues for a different result. It contends that any money on hand is for the payment of disputed claims that have become allowed claims since the distribution date and that there are no such claims. The argument can be explained by considering the effect of a plan such as Noxso's plan.

Suppose that on the original distribution date there are disputed claims in all the classes. The plan provides for full payment of claims in classes 1 through 4. The debtor is able to pay the allowed claims in those classes in full because that will leave it with more than enough money for full payment of the disputed claims in those classes. The debtor cannot use the money reserved to pay the disputed claims in classes 1 through 4 to make payments on the allowed general unsecured claims in class 5. The debtor, however, has more money than it needs to reserve for disputed claims in classes 1 through 4. The debtor uses the excess to pay a cash dividend on the allowed general unsecured claims even though there are numerous disputed claims in the class and more money to be collected in the avoidance actions. Eventually all the disputes regarding claims in classes 1 through 4 are resolved. The debtor uses the plan fund to pay in full the disputed claims in classes 1 through 4 that have been allowed. The reserve is more than enough. What happens to the excess? The excess is still part of the plan fund that is available for distribution on all claims, including the general unsecured claims in class 5. In other words, the excess becomes

available for distribution on claims in lower priority classes. The debtor finally concludes all the avoidance actions, and all the general unsecured claims are allowed or disallowed. As it turns out, none of the general unsecured claims that were disputed on the original distribution date have been allowed. The only allowed general unsecured claims are the ones that were allowed on the original distribution date. They have already received one cash dividend. The debtor pays its operating expenses for the time after the initial distribution and has money left over. What happens to this money?

The Long Group argues that the money should not be distributed to class 5. According to the Long Group, the allowed claims in class 5 received whatever they were supposed to receive on the distribution date; the money remaining in the plan fund is there for payment on claims that were disputed on the distribution date and have subsequently been allowed, not for claims that were allowed on the distribution date.

Noxso's plan provides for a pro rata distribution on the allowed general unsecured claims in class 5. Plan Art. II. § B. ¶ 5; Art. I. § B. ¶ 1.14. A creditor's pro rata share is determined by the ratio of its allowed claim to the total of the allowed claims. Suppose the creditor's allowed claim is 5% of the total of the allowed claims. It will receive 5% of the money available for payment on allowed general unsecured claims.

What happens when the debtor makes two distributions on allowed general unsecured claims? To determine a creditor's pro rata share, the debtor will include the money previously distributed on allowed general unsecured claims as part of the total available for payment to the class. Returning to the example, suppose the creditor's 5% of this total should be \$250, and it received \$100 in the earlier distribution. The debtor will pay the creditor an additional \$150 in the final distribution so it receives its total pro rata share.

The Long Group argues against the \$150 distribution because the claim is not one that was disputed on the distribution date and has since been allowed. The court rejects this interpretation of the plan because it would prevent payment of a creditor's correct pro rata share as required by the plan.

The same problem arises even if there are claims that were disputed on the distribution date but have since been allowed. Limiting the distribution to the previously disputed claims could prevent payment of the correct pro rata shares. A final distribution on allowed general unsecured claims should result, as nearly as possible, in payment of the correct pro rata share on each allowed general unsecured claim without regard to when it was allowed.

The court should also point out that the Long Group's argument is factually incorrect. The creditors who were defendants in the avoidance actions on the distribution date had disputed claims at that time. The resolution of the avoidance actions has resulted in allowance of some of their disputed claims. *E.g.*, Docket Nos. 493 & 523 (orders approving settlement of preference complaints filed in June 1999). There are general unsecured claims that were disputed on the distribution date and have become allowed claims.

Finally, all of these arguments suffer from an overriding defect that has already been pointed out. The arguments are contrary to the basic structure of the plan. The plan sets up the plan fund to be used for distributions in accordance with the plan. The plan fund includes all the proceeds of the avoidance actions, including proceeds received after the distribution date. It does not make sense for the plan to include money in the plan fund and then fail to provide for its distribution in accordance with the plan. That result is exactly what the Long Group wants.

The plan surely did not intend for any money in the plan fund to go to reorganized Noxso unless it has an allowed claim. The plan provides that the debtor's remaining property after the sale of the Noxso process goes to the reorganized Noxso *except the property in the plan fund*. Plan Art. IV. § E. In other words, the plan prohibits reorganized Noxso from receiving any of the plan fund based on its status as Noxso's successor. The plan also provides that the debtor's stockholders will not receive any distribution under the plan. Plan Art. II. § B. ¶ 6. These two provisions should leave no doubt that all the plan fund is to be distributed in accordance with the plan.

Of course, a plan may fail to provide for the distribution of an unexpected surplus. But the money in question is not an unexpected surplus because the debtor has not completed the distributions provided for in the plan. In particular, the plan provides for distribution on allowed general unsecured claims of the remainder in the plan fund after paying higher priority claims and post-confirmation expenses of administering the plan. The Long Group is attempting to insert reorganized Noxso into the plan's order of distribution ahead of claims actually provided for by the plan. That result would contradict the basic structure of the plan.

In summary, the court rejects all the arguments against distribution of the money now on hand in accordance with the plan. The money is part of the plan fund and must be distributed as provided by the plan.

The Long Group's arguments have also raised questions concerning the payment of Noxso's expenses for carrying out the plan, especially the fees and expenses of professionals hired for that purpose. The plan gives Noxso the authority to pursue the avoidance actions and the court the jurisdiction to deal with them. Plan Art. IV. § D. ¶ (f), (h); Art. VI. § A; Art. IX. §§ A, D.

The plan gives Noxso the authority to hire and pay professionals for the purpose of carrying out the plan. Plan Art. IV. § D. ¶ (c).

The plan apparently creates two categories for claims by professionals for fees and expenses. Time is the key factor in determining the correct category. The plan defines “professional fee claim” as a claim by a professional for fees or expenses incurred after the petition date (during the bankruptcy case) and before the consummation date. To receive payment of a professional fee claim, the claimant was required to file a request for payment before the deadline set by the plan and confirmation order. Plan Art. II. § B. ¶ 1.51, 1.55, 1.56; Art. I. § B. ¶ 1.01; Art. IX. § A. ¶ 2.

An administrative claim can arise only after the petition date, but the definition does not specifically include a later cutoff date; it does not exclude claims arising after confirmation or consummation of the plan. Plan Art. I. § B. ¶ 1.01. The definition of administrative claim specifically includes professional fees. The plan defines “professional fee claim” to include fees and expenses only for work up to the consummation date, but the plan does not include this limitation on professional fees. The definition of professional includes professionals hired under §§ 327 and 1103 of the bankruptcy code “or otherwise”. This removes any doubt that professionals working for the debtor after confirmation or consummation of the plan can have claims for professional fees. Plan Art. I. § B. ¶ 1.55. The bar date for administrative claims also does not apply to claims for professional fees except a “professional fee claim”, meaning a claim incurred before the consummation date. Plan Art. XII. § A.

These provisions were intended to give professionals employed after confirmation and consummation of the plan administrative expense claims for their fees and expenses. These provisions allow a question as to expenses because “fees” is not defined to include them. But the

court can refer to the definition of “professional fee claim” to discover the meaning of “fees”, and it includes expenses. *Ohio Medical Instrument Co. v. Eagle-Picher Industries, Inc. (In re Eagle-Picher Industries, Inc.)*, 270 B.R. 842 (Bankr. S. D. Ohio 2001).

If the plan does not treat post-consummation professional fees and expenses as administrative claims, then the plan can be interpreted to allow the debtor to pay them in the ordinary course. The debtor’s authority to hire and pay professionals for their assistance in carrying out the plan would *not* be limited by the provisions relating to payment of administrative claims.

The plan allows an argument against this conclusion: specifically, the post-consummation fees and expenses cannot be paid unless they are in one of the classes established by the plan. This argument does not make practical sense. A plan that allows the debtor to hire and pay professionals to help carry out the plan must allow the debtor to pay them from the only fund available, especially when their work has been required to collect or protect the fund.

The courts generally interpret a confirmed plan as a contract. *See, e.g., McFarland v. Leyh (In re Texas General Petroleum Corp.)*, 52 F.3d 1330 (5th Cir. 1995); *Hillis Motors, Inc. v. Hawaii Automobile Dealers’ Association*, 997 F.2d 581 (9th Cir. 1993); *Sergi v. Everett Savings Bank (In re Sergi)*, 233 B.R. 586 (1st Cir. B.A.P. 1999); *In re Beta International, Inc.*, 210 B.R. 279 (E. D. Mich. 1996). The court attempts to determine the intent of the parties from the words of the plan. The court must read each provision of the plan in light of the others. *D & E Construction Co. v. Robert J. Denley Co.*, 38 S.W.3d 2001 (Tenn. 2001). The court should strive for an interpretation of the plan that gives every clause effect and makes all the clauses work together in harmony. *Guilano v. Cleo, Inc.*, 995 S.W.2d 88 (Tenn. 1999). Furthermore, the court should interpret the plan in light of its main purpose. *Lippman v. Boals*, 79 Tenn. 489 (1883); *Stoops v. First American Fire Ins. Co.*, 160 Tenn. 239, 22 S.W.2d 1038 (1930).

The Long Group's interpretation of the plan does not satisfy these rules, but the court's interpretation does. The court holds that the Long Group has no right to any distribution under the plan other than the stock in reorganized Noxso and payment on any allowed claim it may have.

This brings up the Long Group's equitable argument for inserting reorganized Noxso into the plan's order of distribution ahead of creditors provided for in the plan. According to the Long Group, they have spent \$75,000 to straighten out reorganized Noxso's tax and accounting problems, and this benefitted the general unsecured creditors by increasing the likelihood that their 10% of the stock in reorganized Noxso will have some value.

The Long Group is essentially complaining that the stock in reorganized Noxso was not as good a deal as they expected, and they want back some of the \$50,000 purchase price they paid into the plan fund. If the Long Group miscalculated, through no fault of the debtor, then they have nothing to complain about in the bankruptcy case.

Furthermore, the Long Group's additional \$75,000 investment was primarily for their own benefit since they own 90% of the stock in reorganized Noxso. The Long Group could have a difficult job proving any benefit to the general unsecured creditors who hold only 10% of the stock. Indeed, the argument does not assert any measurable benefit.

In any event, the Long Group has not filed a claim or request for payment that has been allowed and might come within a class ahead of the claims and expenses remaining to be paid in accordance with the plan.

The court will enter an order in accordance with this memorandum. This memorandum constitutes the court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052; Fed. R. Civ. P. 52.

ENTER:

BY THE COURT

[entered 6/20/02]

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE