

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: §
§
WAVE SYSTEMS CORP., § Case No. 16-10284 (KJC)
§
Debtor. § Chapter 11

NOTICE OF (I) ENTRY OF ORDER CONFIRMING, AND OCCURRENCE OF
EFFECTIVE DATE OF, AMENDED CHAPTER 11 PLAN OF DEBTOR; AND
(II) CERTAIN RELEASES AND INJUNCTION THEREUNDER

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Confirmation of the Plan.

On August 25, 2016, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order [Docket No. 303] (the “Confirmation Order”) confirming the *Amended Plan of Reorganization of the Debtor Dated August 23, 2016* [Docket No. 285] (collectively with all exhibits and supplements and any modifications or other amendments thereto, the “Plan”) in the chapter 11 case of the above-captioned debtor (the “Debtor”). Capitalized terms used but not defined in this Notice have the meanings given to them in the Plan and the Confirmation Order.

2. Occurrence of the Effective Date; Distribution Trustee; Vesting of Assets.

Pursuant to section 13.2 of the Plan, the Plan became effective on August 29, 2016 (the “Effective Date”). As of the Effective Date, among other things, (a) the Debtor continues in existence as the Reorganized Debtor; (b) the Distribution Trustee was appointed with the power to exercise the rights, power, and authority of the Distribution Trust under applicable provisions of the Plan, Distribution Trust Agreement, and bankruptcy and non-bankruptcy law; and (c) except as otherwise provided in the Plan, all property of the Estate and the Debtor (other than the Distribution Trust Assets) became the property of, and vested in, the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. Except as otherwise provided in the Plan and Distribution Trust Agreement, all distributions to be made to creditors under the Plan shall be made by the Distribution Trustee (or his or her designated agent).

3. Resolution of Disputed Claims.

Except as otherwise provided in Article VII of the Plan, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and subject to section 502(a) of the Bankruptcy Code, the Distribution Trustee on behalf of the Distribution Trust has the right to make, file, prosecute, settle, compromise, withdraw, or resolve objections to Claims. Further, the Distribution Trustee may settle, resolve, release, or compromise any Claims and objections to Claims on behalf of the Distribution Trust without need for notice or order of the Bankruptcy Court.

4. Releases; Exculpation; Injunction.

Discharge. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims, causes of action and Equity Interests of any kind or nature whatsoever, whether known or unknown, including any interest accrued on such Claims from and after the Petition Date, liabilities of, Liens on, obligations of, rights against, and Equity Interests in the Debtor or any of its assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims and causes of action against and Equity Interests in the Debtor, subject to the occurrence of the Effective Date.

Injunction. Except as otherwise expressly provided in the Plan, the discharge and releases set forth in Section 11.1 shall also operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (except for offsets exercised prior to the Petition Date) any Claim or Interest or cause of action, whether known or unknown that is discharged and released in Section 11.1 . Except as otherwise expressly provided in the Plan, all Persons shall be precluded and forever barred from asserting against the Debtor, its estate or the Reorganized Debtor, their successors or assigns, or their assets, properties, or interests in property any other or further Claims or Interests, or causes of action, or any other right to legal or equitable relief regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date.

Except as otherwise expressly provided in the Plan, as of the Effective Date there shall be an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (except for offsets exercised prior to the Petition Date) any Claim or Interest or cause of action, whether known or unknown against the Protected Parties that are released under section 11.5 of the Plan. Except as otherwise expressly provided in the Plan, all Persons shall be precluded and forever barred from asserting against the Protected Parties, their successors or assigns, or their assets, properties, or interests in property any Claims or Interests, or causes of action, or right to legal or equitable relief released under section 11.5 of the Plan, regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date.

Terms of Existing Injunctions or Stays. All injunctions or stays arising under or entered during the Bankruptcy Case under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date shall remain in full force and effect until the Effective

Date, *provided, however*, that no such injunction or stay shall preclude enforcement of parties' rights under the Plan and the related documents.

Exculpation. The Chapter 7 Trustee, the Chapter 11 Trustee and their respective professionals will neither have nor incur any liability to any entity for any claims or causes of action arising before, on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or Confirmation or consummation of the Plan; provided, however, that the foregoing provisions will have no effect on the liability of any entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or willful misconduct; provided, further, that the Chapter 7 Trustee and the Chapter 11 Trustee will be entitled to rely upon the advice of counsel concerning their duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

Releases by the Debtor. Notwithstanding anything to the contrary in the Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby acknowledged and confirmed, the Debtor will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full waiver and release to the Released Parties and their respective related parties (and each such Released Party and their respective related parties so released shall be deemed forever released, and waived by the Debtor Releasing Parties) and their respective properties from any and all claims that the Debtor and their respective related parties would have been legally entitled to assert in their own right, on behalf of one another, or on behalf of another party against the Released Parties or their respective related parties; provided, however, that the foregoing provisions of this release shall not operate to waive or release (i) any Distribution Trust Action expressly set forth in and preserved by the Plan or the Plan Supplement; (ii) the rights of the Debtor to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to final order of the Bankruptcy Court; and/or (iii) any claims or defenses against third party.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities released pursuant to this release. For purposes of this release, and without limiting the scope of the foregoing, the Debtor is specifically not releasing the Distribution Trust Actions.

Notwithstanding the foregoing, the provisions of this section 11.4 will have no effect on the liability of the Chapter 7 Trustee, the Chapter 11 Trustee or their respective professionals that

results from any act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or willful misconduct.

Releases by the Holders of Claims. To the extent allowed by applicable law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Protected Parties (acting in any capacity whatsoever) shall be forever released from any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Plan in the Bankruptcy Case, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the (a) Creditors who are Unimpaired, (b) Creditors who voted to accept or reject the Plan and did not check the opt-out box on the ballot, and (c) creditors who were sent a solicitation package but did not vote and did not return a ballot with the opt-out box checked, have or may have against any of the Protected Parties in any way related to the Bankruptcy Case or the Debtor (or its predecessors); provided however that the release provided in this section shall not apply to any Creditor in category (c) above if the solicitation package was returned to the Chapter 11 Trustee as undelivered, and that such Creditor did not otherwise file a ballot;¹ provided further, however, the releases provided for in this paragraph shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or *ultra vires* acts under applicable law. No compliance with or reliance on the applicable law or the orders of the Bankruptcy Court shall be deemed or permitted to be judged, declared, or ruled to be in any way wrongful, in bad faith, *ultra vires*, inequitable or otherwise subject to any sanction or punishment, all of which are preempted, superseded and negated by the Plan to the maximum extent permitted by applicable law.

With respect to any Creditor who is unimpaired and therefore grants a release under this section, to the extent such Creditor has an impaired Claim in Class 3 or 4, and checks the box on the ballot to opt-out of the releases under this section, or holds an Equity Interest in Class 5, such a Creditor shall not provide the release in this section on account of its impaired Claim where such Creditor opted-out of such release. Nor shall such Creditor provide a release on account of its Equity Interest.

Notwithstanding the foregoing, the provisions of this section will have no effect on the liability of the Chapter 7 Trustee, the Chapter 11 Trustee or their respective professionals that results from any act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or willful misconduct.

¹ Within ten (10) days after the Effective Date, the Debtor or its claims agent shall file a declaration specifying the name of any claimholder whose solicitation package was returned undelivered, and as to which the Debtor did not receive a ballot

For the avoidance of doubt, nothing in Article XI of the Plan shall prevent the enforcement of the terms of the Plan. Further, no Interest Holder will be deemed to consent to provide any release set forth in this section.

Limitation of Liability. The Protected Parties shall have all of the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable law.

5. Rejection of Executory Contracts and Unexpired Leases Not Assumed.

Except as otherwise provided (i) in the Plan; (ii) in the Schedule of Assumed Contracts and Unexpired Leases [Docket No. 260]; (iii) in any contract, instrument, release, or other agreement or document entered into in connection with the Plan; or (iv) in a Final Order of the Bankruptcy Court, as of the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtor rejected each executory contract and unexpired lease not previously assumed, assumed and assigned, or rejected during the Bankruptcy Case. For the avoidance of doubt, executory contracts and unexpired leases listed on Exhibit B to the Plan were assumed as of the Effective Date, pursuant to section 365 of the Bankruptcy Code and the terms of the Confirmation Order. For the avoidance of doubt, the Chapter 11 Trustee, subject to the agreement of the Plan Sponsor, shall have the right to assume all executory contracts entered into by the Chapter 7 Trustee or the Chapter 11 Trustee postpetition prior to the Effective Date.

6. Bar Dates.

a. Administrative Bar Date. Unless previously filed or as otherwise governed by a bar date order or in another order of the Court, requests for payment of Administrative Claims must be filed with the Court and served on the parties identified in section 13.12 of the Plan by **September 28, 2016 at 4:00 p.m. (ET)** (the “**Administrative Claim Bar Date**”). Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the Administrative Claim Bar Date shall be forever barred from asserting such Administrative Claims against the Debtor, the Estate, or its property, absent order of the Court to the contrary. Objections to any requests for payment of Administrative Claims must be asserted by the Claim Objection Deadline. Notwithstanding the foregoing, a governmental unit shall not be required to file and serve a request for payment of an Administrative Claim with respect to any administrative expense of the type described in section 503(b)(1)(B) or section 503(b)(1)(C) of the Bankruptcy Code as a condition to such amounts being an allowed administrative expense. Notice of the Administrative Claim Bar Date was previously provided to parties in interest, and nothing in this Notice is intended to extend the Administrative Claim Bar Date or recommence the occurrence of the Administrative Claim Bar Date.

b. Professional Compensation. Each Professional shall file an application for allowance of final compensation and reimbursement of expenses in the Bankruptcy Case, for the period through the Effective Date, no later than **October 13, 2016**, which is forty-five (45) days after the Effective Date.² Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the U.S.

² The Chapter 7 Trustee and the Chapter 11 Trustee shall not be subject to such deadline.

Trustee, and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is served, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

c. Rejection Damages Bar Date. Claims arising out of the rejection of an executory contract or unexpired lease pursuant to section 8.2 of the Plan must be filed on or before **September 28, 2016**, which is thirty (30) days after the Effective Date. Any such Claims not timely filed shall be forever barred from asserting such Claims against the Debtor, the Reorganized Debtor, the Estate, the Distribution Trust, or their respective property, absent order of the Court to the contrary.

d. Filing Rejection Damage Claims with Claims Agent. Proofs of Claim arising from the rejection of executory contracts or unexpired leases should be filed with the Court approved claims and noticing agent UpShot Services LLC ("**UpShot**"). Proofs of Claim may be filed electronically via UpShot's website: <http://www.upshotservices.com/wavesystems>. Further instructions regarding electronic filing can be found on the Claims Agent's website.

If you wish to file a Proof of Claim via submission of a hard copy, the hard copy must be delivered so as to be received by UpShot on or before the applicable Bar Date at the following address:

**Wave Systems Claims Processing
c/o UpShot Services LLC
8269 E. 23rd Avenue, Suite 275
Denver, CO 80238**

Proof of Claim forms may be obtained from UpShot's website: <http://www.upshotservices.com/wavesystems> or by calling (855) 812-6112

All proofs of claim arising from the rejection of executory contracts or unexpired leases must be filed by September 28, 2016. Proofs of Claim submitted by facsimile or e-mail shall not be accepted.

7. Retention of Jurisdiction by Bankruptcy Court.

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retained jurisdiction over the Bankruptcy Case after the Effective Date to the fullest extent legally permissible, including, without limitation, with respect to all matters specified in Article XII of the Plan.

8. Post-Confirmation Service List.

If you wish to receive copies of court filings after the Effective Date, you must make such request in writing to counsel to the Distribution Trustee at the address listed in 9(a) below. You must make such request in writing to counsel to the Distribution Trustee even if you previously filed with the Court a request for service under Rule 2002 of the Bankruptcy Rules.

9. Notice Parties' Service Addresses.

For purposes of serving requests for payment of Administrative Claims, applications for allowance of Fee Claims, and any other papers required to be served on the notice parties set forth in the Plan, such service should be made, as applicable, on:

- a. counsel to the Distribution Trustee:

Archer & Greiner, P.C.
Attn: Alan M. Root
300 Delaware Avenue, Suite 1100
Wilmington, DE 19801
Email: aroot@archerlaw.com
Fax: 302-777-4352

- b. counsel to the Chapter 11 Trustee:

Archer & Greiner, P.C.
Attn: Alan M. Root
300 Delaware Avenue, Suite 1100
Wilmington, DE 19801
Email: aroot@archerlaw.com
Fax: 302-777-4352

- c. counsel to the Reorganized Debtor,

Haynes and Boone, LLP,
30 Rockefeller Plaza, 26th Floor,
New York, NY 10112,
Attention: Trevor R. Hoffmann, Esq.
Email: trevor.hoffmann@haynesboone.com;

and

Haynes and Boone, LLP
1221 McKinney Street, Suite 2100,
Houston, Texas 77010
Attention: Arsalan Muhammad, Esq.
Email: arsalan.muhammad@haynesboone.com

- d. U.S. Trustee (for service of Fee Claims only):

Juliet Sarkessian
Trial Attorney
United States Department of Justice

Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801
Tel: 302-573-6008
Fax: 302-573-6497
Juliet.M.Sarkessian@usdoj.gov

10. Copies of Confirmation Order.

Copies of the Plan and the Confirmation Order may be obtained for free at <http://www.upshotservices.com/wavesystems> or upon request from counsel to the Distribution Trustee, whose contact information is in 9(a) above.

Dated: August 29, 2016

By: /s/ Alan M. Root
Alan M. Root (# 5427)
ARCHER & GREINER
A Professional Corporation
300 Delaware Avenue, Suite 1100
Wilmington, DE 19801
Telephone: 302-777-4350
Facsimile: 302-777-4352
Email: aroot@archerlaw.com

Counsel to the Distribution Trustee

114784553v3