

obtained the turnover of a 2006 Mercedes Benz CLS500 (the "Vehicle"). Also prior to the filing of the bankruptcy petitions, Reinhart Consulting and Reinhart (the "Reinhart Parties") sued the Debtors and Spalding in certain state court litigation styled *Reinhart Consulting, LP and Michael Reinhart v. Wind Plus, Inc., David Spalding, and Wind Plus Holdings, Inc.* in the 298th Judicial District in Dallas County, Texas for claims including but not limited to breach of contract, fraud, breach of duty of good faith and fair dealing, breach of fiduciary duty, theft of services, unjust enrichment and attorney's fees and costs (the "Reinhart Litigation") (the Debtors and Spalding are sometimes referred to collectively as the "Defendants"). The trial court in the Reinhart Litigation entered summary judgment for the Reinhart Parties (the "Reinhart Judgment"). The Defendants appealed to the Court of Appeals for the Fifth Judicial District of Texas at Dallas, Texas under Case No. 05-08-01667-CVS and styled *Wind Plus, Inc., David Spalding and Wind Plus Holdings, Inc., v. Reinhart Consulting, LP and Michael Reinhart* (the "Reinhart Appeal"). As security for the Reinhart Appeal, a supersedeas bond sufficient to institute and pursue the appeal was posted by the Debtors. (the "Bond"). There is a dispute between the Reinhart Parties and the Trustee whether the Bond is property of the estate if the Defendants prevail in the Reinhart Appeal.

4. **The Adversary Proceeding.** Prior to the Conversion Date, the Debtors filed their "Original Verified Complaint and Application for Temporary Restraining Order and Preliminary and Permanent Injunction" (the "Complaint") thereby initiating the Adversary Proceeding (the "Adversary Proceeding") of *Wind Plus Holdings, Inc. and Wind Plus, Inc., Debtors, Plaintiffs v. Trianon Partners, Defendant*, Adversary No. 09-04385-RFN, wherein the Debtors sought the turnover of the Vehicle pursuant to Sections 547 and 542 of the Bankruptcy Code.

5. **The Settlement.** The Trustee has entered into a formal, written compromise and settlement agreement with Trianon and the Reinhart Parties (the "Agreement"). The Agreement resolves all claims between the Trustee, the Estate, Trianon and the Reinhart Parties that are related to the Adversary Proceeding or the State Court Litigation with the exception of any pre-petition general unsecured claim, or claims arising under Trianon's Judgment and/or Turnover Orders in the State Court Litigation or any claim under 11 502(h). A true and correct copy of the Agreement is attached hereto as Exhibit "A."

6. The Agreement is dependent upon Court approval.

7. Generally, under the proposed Agreement, Trianon and the Reinhart Parties agree to: (i) pay the Trustee \$40,000.00; (ii) release the Trustee, the Estate, and all related individuals from claims except for any pre-petition general unsecured claim, any claim under Trianon's Judgment or Turnover Orders (as those terms are defined in the Agreement) and any 11 U.S.C. § 502(h) claims; and (iii) the Trustee releases Trianon and the Reinhart Parties from any claims by Trustee or the estates.

II.

ARGUMENT AND AUTHORITY

8. The Trustee believes the proposed settlement to be in the best interests of the bankruptcy estate. Accordingly, the Trustee respectfully requests that the Court exercise its discretion pursuant to Bankruptcy Rule 9019(a) and approve the settlement on behalf of the bankruptcy estate.

A. Relevant Legal Standards

9. The law, and particularly bankruptcy law, favors compromise. The United States Supreme Court has explained that "[c]ompromises are a normal part of the process of [bankruptcy]. In administering [bankruptcy] proceedings in an economical and practical manner

it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts." *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc.-v. Anderson*, 390 U.S. 414, 424 (1968).

10. Under Bankruptcy Rule 9019, the decision whether to approve a compromise of controversies lies within the sound discretion of the bankruptcy court. *In re AWECO, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984), *cert. denied*, 469 U.S. 880 (1984). However, the approval must receive the "informed, independent judgment of the bankruptcy court." *Anderson*, 390 U.S. 414. Thus, a sufficient factual background must be provided in order to permit the court to reach an "intelligent, objective and educated evaluation" of the settlement. *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). Specifically, the test to apply is:

whether or not the terms of the proposed compromise fall within the reasonable range of litigation possibilities. The reviewing court must determine that the value of the proposed compromise distribution is reasonably equivalent to the value of the potential claim which has been surrendered or modified by the settlement which has been achieved.

Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.), 632 F.2d 955, 960 (2d Cir. 1980), *cert. denied sub nom., Barry v. American Fin. Enters., Inc.*, 449 U.S. 1062 (1980).

11. Although the court should not act as a mere rubber stamp, it also should not conduct a mini-trial on the merits of the settlement. *Official Committee of Unsecured Creditors v. Cajun Electric Power Coop., Inc. (In re Cajun Electric Power Coop., Inc.)*, 119 F.3d 349, 355 (5th Cir. 1997). Rather, the court's obligation is to "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *In re Dow Corning Corp.*, 192 B.R. 415, 421 (Bankr. E.D. Mich. 1996).

12. Any factor "relevant to a full and fair assessment of the wisdom of [a] proposed compromise" should be considered by the court. *Anderson*, 390 U.S. at 424. The Fifth Circuit Court of Appeals identified four primary factors to be considered in ruling on a proposed

(a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law;

(b) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay;

(c) all other factors bearing on the wisdom of the compromise, including the paramount interest of creditors; and

(d) the extent to which the settlement is truly the product of arms-length bargaining, and not fraud or collusion.

Connecticut Gen. Life Ins. Co. v United Cos. Fin. Corp. (In re Foster Mortgage Corp.), 68 F.3d 914, 917-18 (5th Cir. 1995); *see also Cajun*, 119 F.3d at 356.

B. Application to the Instant Matter

13. The Trustee believes that her overall probability of success against Trianon as relates to the Adversary Proceeding is reasonably high. However, the amount of recovery that might be awarded as weighed against the expense favors compromise. In regards to the State Court Litigation and the Bond, the matter has been litigated for a lengthy period and the risk of additionally protracted proceedings through various appeals is such that compromise is warranted.

14. The economic impact of the proposed settlement is in the best interest of the bankruptcy estate. The bankruptcy estate will receive \$40,000.00 under the proposed settlement. Although extensive time and effort have been expended to negotiate and complete the settlement, the conclusion of these matters, both of which were initiated prior to the Trustee's appointment, is in the best interest of the bankruptcy estate.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED Trustee requests that the Court enter an order (a) approving the settlement described above, (b) authorizing the Trustee to enter into the Settlement Agreement and execute any and all documents as needed to further effectuate the terms of the Agreement, and (c) granting the Trustee such other and further relief, at law or in equity, to which she may be justly entitled.

DATED: July 27, 2010.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Fax)

By: /s/ Linda S. LaRue
Linda S. LaRue
State Bar No. 24046269
Kenneth A. Hill
State Bar No. 09646950

ATTORNEYS FOR AREYA HOLDER,
CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served by electronic transmission via the CM/ECF system upon all parties registered to receive electronic notice in this bankruptcy case, and on those parties set forth on the attached service list, by regular U.S. mail, postage prepaid, on this 27th day of July, 2010.

/s/ Linda S. LaRue
Linda S. LaRue

SETTLEMENT, COMPROMISE AND MUTUAL RELEASE AGREEMENT

This Settlement, Compromise and Mutual Release Agreement (the "Agreement") is made and entered on this ___ day of _____, 2010, by and among Areya Holder (the "Trustee"), in her capacity as the Trustee under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101-1352 as amended (the "Bankruptcy Code")¹ for the bankruptcy estates of Wind Plus Holdings, Inc. and Wind Plus, Inc. (the "Debtors"), on the one hand, and Trianon Partners ("Trianon"), Reinhart Consulting, L.P. ("Reinhart Consulting"), and Michael Reinhart ("Reinhart") (collectively, the "State Court Plaintiffs") (the Trustee and the State Court Plaintiffs, each, a "Party" and, collectively, the "Parties"), on the other hand.

I. Statement of Facts

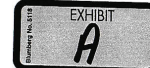
The Parties stipulate and agree to the facts set forth below:

1.1 **The Bankruptcy Case.** On November 2, 2009, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, originally assigned case numbers 09-37475-11 and 09-37478-11 in the Northern District of Texas, Dallas Division (collectively, the "Bankruptcy Cases"). The Bankruptcy Cases were transferred subsequently to the Fort Worth Division under case numbers 09-47227-rfn and 09-47228-rfn and are jointly administered under Case No. 09-47227-rfn. The Debtors were in the business of renewable energy development.

1.2 **Conversion.** On November 8, 2006 (the "Conversion Date"), the Bankruptcy Cases were converted from chapter 11 to chapter 7 of the Bankruptcy Code. The Trustee was appointed as the chapter 7 Trustee in the Bankruptcy Cases.

1.3 **Previous State Court Litigation.** Prior to the filing of the Bankruptcy Cases, Trianon obtained a Judgment against the Debtors and against the principal and sole shareholder of the Debtors, David Spalding ("Spalding"), jointly and severally, in certain state court litigation

¹ All of the statutory references in this Agreement, unless other indicated, are to the Bankruptcy Code.



III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED Trustee requests that the Court enter an order (a) approving the settlement described above, (b) authorizing the Trustee to enter into the Settlement Agreement and execute any and all documents as needed to further effectuate the terms of the Agreement, and (c) granting the Trustee such other and further relief, at law or in equity, to which she may be justly entitled.

DATED: July 27, 2010.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.
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/s/ Linda S. LaRue
Linda S. LaRue

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¹ All of the statutory references in this Agreement, unless other indicated, are to the Bankruptcy Code.



2.4 **Bankruptcy Rule 9019.** This Agreement must be the subject of a motion filed under Bankruptcy Rule 9019 (the "9019 Motion") and approved by an order of the Bankruptcy Court that is final and non-appealable (the "9019 Order") in the Bankruptcy Case and is expressly subject thereto. The 9019 Motion shall be drafted and filed by the Trustee with the Bankruptcy Court. The Trustee agrees to request a hearing on the 9019 Motion as promptly as possible. The 9019 Motion shall be supported by all of the Parties. The 9019 Order shall be binding not only upon the Parties, but also upon any subsequent Trustees appointed in the Bankruptcy Cases and any successors to the Parties.

2.5 **Dismissal of the Adversary Proceeding and the Reinhart Appeal.** Subject to the satisfaction of each of the conditions in the foregoing paragraphs and Article II of this Agreement, the Trustee shall file on behalf of the Parties a stipulation of dismissal signed by all of the Parties in the Adversary Proceeding and the Parties shall cooperate in filing motions necessary in the Reinhart Appeal to affect its dismissal (the "Dismissal Stipulations"). The Dismissal Stipulations shall dismiss the Adversary Proceeding and the Reinhart Appeal with prejudice to the re-filing of same. The Dismissal Stipulations shall be filed after the 9019 Order is final and non-appealable.

III. Defaults and Remedies

3.1 **Defaults.** This Agreement shall be in default if any of the Parties fails to comply with the provisions set forth herein in the time required thereof.

3.2 **Remedies.** In any future litigation instituted or defended by the Parties herein, concerning the enforcement, interpretation or effect of this Agreement, including tax litigation or any other proceeding relating thereto, the losing party shall be obligated to pay the prevailing party the prevailing party's reasonable attorneys fees and costs before, during and after the suit,

trial, proceedings and appeals brought regarding the enforcement, interpretation or effect of this Agreement.

IV. General Provisions

4.1 **Effective Date.** This Agreement shall take effect and become binding on each Party as of the date that the 9019 Order is final and non-appealable.

4.2 **Headings.** The various headings in this Agreement are inserted for convenience and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

4.3 **Gender.** All of the words and phrases shall be construed as masculine, feminine or neuter-gender according to the context and "and" and "or" shall be construed disjunctively or conjunctively as is necessary.

4.4 **Tense.** The past tense includes the present tense where the clear meaning is not distorted by change of tense, and *vice-versa*.

4.5 **Plural and Singular.** For the purposes of this Agreement, the singular shall include the plural and the plural shall include the singular.

4.6 **Counterparts.** This Agreement, and any amendments, waivers, consents or supplements may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same Agreement.

4.7 **Amendments.** This Agreement, or any provision hereof, may be changed, waived, or terminated only by a statement in writing, signed by the Party against which such change, waiver or termination is sought to be enforced, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

4.8 **Waiver.** No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all of the Parties to this Agreement. No waiver of default of any of the terms of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

4.9 **Governing Law.** This Agreement shall be governed by and interpreted under the internal laws under the State of Texas.

4.10 **Venue and Jurisdiction.** All of the acts contemplated by this Agreement shall be performed in Dallas County, Texas. The Bankruptcy Court for the Northern District of Texas shall retain sole and exclusive jurisdiction for any matter arising under or related to this Agreement.

4.11 **Binding Effect.** All of the rights of the Parties under this Agreement shall inure to the benefit of their successors and assigns.

4.12 **Entire Agreement.** This Agreement, together with any other agreement executed in connection herewith, is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in the course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the performance and an opportunity for objection.

4.13 **Severability.** If any provision or obligation of this Agreement shall be found to be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and unenforceability of the remaining provisions and obligations or any other agreement executed in connection herewith, or of such provision or obligation in any other jurisdiction shall not in any way be

affected or impaired thereby and shall nonetheless remain in full force and effect to the maximum extent permitted by law.

4.14 **Agreement Prepared Jointly by All of the Parties' Attorneys.** This Agreement has been prepared by the joint efforts by the respective attorneys for each of the Parties. Each Party acknowledges that it has been or has had the opportunity to be represented by counsel and has received or has had the opportunity to receive independent legal advice regarding the meaning and effect of the terms of this Agreement. Each Party agrees that any rule of interpretation or construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Agreement.

4.15 **Acknowledgment of the Entire Agreement.** Each Party acknowledges that it has carefully read this Agreement, including all documents or exhibits to which it refers; that this Agreement expresses the entire agreement among and between the Parties concerning the subjects it purports to cover; and that each Party has executed this Agreement freely and of its own free will and accord. The Parties each represent that no Party has made any representations, other than as expressly set forth herein, regarding this Agreement.

4.16 **Further Assurances.** Each Party to this Agreement shall execute and deliver such documents and file such additional pleadings and shall take such actions as may be reasonably necessary or desirable to effect the transactions described in this Agreement.

4.17 **Facsimile Signatures.** The manual signature of any Party to this Agreement that is transmitted to any other party or counsel to any other Party by facsimile shall be deemed for all purposes, to be an original signature.


4.18 **No Admission.** Nothing in this Agreement or any negotiations or proceedings in connection therewith shall constitute or be deemed or claimed to be evidence of an admission by

any Party of any liability, the violation of law, or wrongdoing whatsoever or the truths or untruths, or merit or lack of merit, of any claim or defense of any Party. Neither this Agreement nor any negotiations or proceedings in connection herewith may be used in any proceeding against any Party for any purpose whatsoever, except with respect to the effectuation and enforcement of this Agreement.

4.19 Third Party Beneficiary Status. The terms and conditions of this Agreement are intended solely for the benefit of the Parties and their respective successors and/or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other person.

Intending to be legally bound, the Parties have signed this Agreement as of the date first written above.

Areya Holder

By: 
Title: Chapter 7 Trustee
Date: 7/22, 2010

Trionon Partners, a Nevada Corporation

By: _____
Title: _____
Date: _____, 2010

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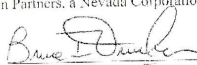
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Areya Holder

By: _____
Title: Chapter 7 Trustee
Date: _____, 2010

Trionon Partners, a Nevada Corporation

By: 
Title: Chief Executive Officer
Date: July 10, 2010

Reinhart Consulting, LP, a _____ limited partnership

By: Mike Reinhart
Title: CEO

Date: July 12, 2010

Michael Reinhart

By: Mike Reinhart

Date: July 12, 2010