NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-09-1183-DHPa
SANITEC INDUSTRIES, INC.,	Bk. No. SV 07-12307-MT
Debtor.	
MICRO-WASTE CORPORATION,	
Appellant,	
v.	**M E M O R A N D U M**[1]
SANITEC INDUSTRIES, INC.; UNITED STATES TRUSTEE, WOODLAND HILLS; OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	
Appellees.	

Argued and Submitted on November 19, 2009
at Pasadena, California

Filed - December 21, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorble Maureen A. Tighe, Bankruptcy Judge, Presiding

Before: DUNN, HOLLOWELL and PAPPAS, Bankruptcy Judges.

Micro-Waste Corporation ("MWC") appeals the bankruptcy court's order confirming the chapter 11 plan of the debtor,

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Sanitec Industries, Inc.[2] MWC appeals on the grounds that: (1) the plan does not provide the appropriate rate of interest on unsecured claims for purposes of the "best interest of creditors" test under § 1129(a)(7); (2) the plan contains an overly broad exculpation provision that shields the debtor against liability for its negligence postpetition; and (3) the debtor solicited acceptances of the chapter 11 plan using a disclosure statement that included a liquidation analysis that was false and misleading. For the reasons set forth below, we AFFIRM.

I. FACTS

A. The early stages of the debtor's bankruptcy

The debtor operated a business manufacturing and selling medical waste disinfection units ("manufacturing business"). The debtor owned a patent, trademarks and other intellectual property relating to the medical waste disinfection units. The debtor also operated, through subsidiaries,[3] a medical waste processing business ("waste processing business").

On July 30, 2004, the debtor commenced an action against MWC in the United States District Court for the Southern District of Texas alleging that MWC infringed the debtor's patent and trademarks by fraudulently obtaining a license for them. MWC initiated a counterclaim alleging, among other things, that the

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[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[3] The debtor owns the following subsidiaries: Sanitec USA, Inc., North State Specialty Waste, Inc., Sanitec Safewaste, LLC, and Sanitec Indiana, Inc.

patent was not valid. After trial, the district court found that both the patent and license were valid and awarded MWC $665,050 in damages,[4] plus interest at a rate of 5.05% per annum ("district court judgment"). The federal circuit court later affirmed the district court on appeal.[5]

MWC attempted to execute on the district court judgment. The debtor consequently filed for chapter 11 relief on July 5, 2007.

On August 28, 2008, the debtor and its subsidiaries sold the waste processing business, along with substantially all of the subsidiaries' assets ("sale"),[6] to Stericycle, Inc. ("Stericycle"), for $18,050,000 ("purchase price"). Stericycle agreed to pay $5,294,818 in cash at closing and the balance of the purchase price pursuant to two promissory notes ("Notes") in the amounts of $6,175,000 ("Note A") and $6,625,000 ("Note B") respectively. The Notes were payable in ten annual installments ("annual note payments") with interest at 3% per annum. The Notes were fully secured by two letters of credit.

In connection with the sale, the debtor entered into a transition services agreement ("TSA") with Stericycle. Under the TSA, the debtor agreed to continue operating the waste processing business during the transfer of the waste processing business to

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[4] The damages award consisted of $584,550 in fees and $80,500 in costs, plus interest thereon.

[5] The debtor did not appeal the federal circuit court's decision.

[6] The sale only involved the assets of Sanitec USA, Inc., Sanitec Safewaste, LLC and North State Specialty Waste, Inc.

Stericycle. The TSA was to terminate on the earlier of September 30, 2008 or five business days after Stericycle obtained the necessary permits and informed the debtor it was prepared to assume operations of the waste processing business ("transition period").

Concurrently with the sale, the debtor and the official committee of unsecured creditors ("committee") entered into a stipulation ("stipulation") which allowed the debtor to use some of the sale proceeds to fund the operation of its manufacturing business and to fund its chapter 11 reorganization plan, among other things. In exchange, the debtor granted the committee a first-priority security interest in its remaining assets, including the Notes, for the benefit of unsecured creditors.[7]

On October 1, 2007, MWC filed a general unsecured claim in the amount of $1,705,882.90, based on the amount of the district court judgment and additional fees and costs. MWC later amended its proof of claim to reduce its general unsecured claim to $1,427,262.46. The bankruptcy court temporarily allowed MWC's claim in the amount of $676,643.73 for purposes of voting on the debtor's plan.

[7] Under the stipulation, the debtor agreed to assign Note B and its accompanying letter of credit to Broadway Advisors, LLC ("Broadway"), the disbursing agent on behalf of the committee. The debtor also agreed to deliver Note A and its accompanying letter of credit, along with an assignment of Note A and the letter of credit ("assignment"), to the committee; under the assignment, in the event of a default by the debtor, the committee could foreclose upon and exercise its rights to transfer Note A and the letter of credit to Broadway.

B. The debtor's multiple proposed plans and disclosure statements

The debtor filed a total of five chapter 11 plans and disclosure statements.[8] The provisions of the chapter 11 plans and disclosure statements have not varied much. In nearly all of the chapter 11 plans and disclosure statements, the debtor proposed payment of general unsecured creditors' claims in full over time.

The debtor proposed to use the annual note payments to fund the operations of its manufacturing business and to make payments

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[8] On October 31, 2007, the debtor filed its first chapter 11 plan ("October 2007 plan") and disclosure statement ("October 2007 disclosure statement") (collectively, "October 2007 plan and disclosure statement")(main case docket nos. 62 and 63). On September 26, 2008, the debtor filed its first amended chapter 11 plan, dated September 26, 2008 ("September 2008 plan") and disclosure statement ("September 2008 disclosure statement")(collectively, "September 2008 plan and disclosure statement")(main case docket nos. 207 and 209). On November 24, 2008, the debtor filed its revised first amended chapter 11 plan, dated November 24, 2008 ("November 2008 plan") and disclosure statement ("November 2008 disclosure statement")(collectively, "November 2008 plan and disclosure statement")(main case docket nos. 267 and 265). On January 7, 2009, the debtor filed its further revised first amended chapter 11 plan, dated November 24, 2008 ("Initial January 2009 plan") and disclosure statement ("Initial January 2009 disclosure statement")(collectively, "Initial January 2009 plan and disclosure statement")(main case docket nos. 295 and 296). On January 20, 2009, the debtor filed its ultimate revised first amended chapter 11 plan, dated November 24, 2008 ("Final January 2009 plan") and disclosure statement ("Final January 2009 disclosure statement")(collectively, "Final January 2009 plan and disclosure statement")(main case docket nos. 302 and 303).

The two chapter 11 plans and disclosure statements at issue before us in this appeal are the Initial January 2009 plan and disclosure statement and the Final January 2009 plan and disclosure statement.

to creditors.[9] Specifically, the debtor proposed to pay the first $1,000,000 of the annual note payments to creditors, the next $130,000 to the debtor, the next $130,000 to creditors, and the balance of the annual note payments to the debtor.[10] The debtor also proposed to fund the plan with excess cash[11] from the operations of its manufacturing business and waste processing business through its remaining subsidiary, Sanitec Indiana, Inc. (collectively, "manufacturing and processing businesses").[12] The debtor proposed to use revenue from its manufacturing and processing businesses to fund any deficiency resulting from Stericycle's failure to make any annual note payment or if the annual note payments, plus the debtor's excess cash, totaled less than $800,000.

Nearly all of the chapter 11 plans and disclosure statements shared three aspects to which MWC objected repeatedly: the rate of interest to be paid to general unsecured creditors on their

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[9] However, the October 2007 plan and disclosure statement proposed to fund the plan through future sales of the debtor's products, licenses of its intellectual property, repayments of various loans made to the debtor's subsidiaries, loans to the debtor and equity investments in the debtor.

[10] The September 2008 plan and disclosure statement did not disclose the amounts to be paid by Stericycle under the sale or the amounts of the annual note payments to be allotted to the creditors and to the debtor, respectively.

[11] The debtor defined "excess cash" as 20% of the cash in excess of $1,000,000 held by the debtor thirty days prior to a given annual distribution date.

[12] The debtor first proposed to use proceeds from the operations of its manufacturing and processing businesses in its November 2008 plan and disclosure statement.

claims,[13] the liquidation analysis,[14] and the scope of the exculpation clause.[15]

The rate of interest to be paid to general unsecured creditors on their claims varied from plan to plan. In the November 2008 plan and disclosure statement, the debtor proposed interest at 3% per annum, starting on the effective date. In the Initial January 2009 plan and disclosure statement and Final January 2009 plan and disclosure statement, the debtor reduced the interest rate to 1.5% per annum.

The debtor included a liquidation analysis in its October 2008 disclosure statement, but did not include a liquidation analysis in the next three disclosure statements. The debtor finally included a liquidation analysis as an exhibit (Exhibit 6) in its Final January 2009 disclosure statement.

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[13] Only the September 2008 plan did not provide for payment of interest on general unsecured claims.

[14] MWC initially objected to the September 2008 disclosure statement, the November 2008 disclosure statement and the Initial January 2009 disclosure statement on the ground that they did not include a liquidation analysis. As we explain more fully later, when the debtor finally included a liquidation analysis in the Final January 2009 disclosure statement, MWC objected to the Final January 2009 disclosure statement on the ground that the liquidation analysis was inaccurate and misleading.

[15] Unlike the plans and disclosure statements following it, the October 2007 plan and disclosure statement simply stated that, "upon substantial consummation of the Plan, Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the extent specified in 11 U.S.C. § 1141. However, any liability imposed by the Plan will not be discharged."

The exculpation clause remained the same in nearly all of the debtor's plans and the disclosure statements.[16] The exculpation clause provided:

> As of the Effective Date, the Debtor shall neither have nor incur any liability for, and is expressly exculpated and released from, any claims (including, without limitation, any claims whether known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise) for any actions taken or omitted to be taken under or in connection with, related to, effecting, or arising out of the following: (1) the negotiation, documentation, preparation, dissemination, implementation, administration, confirmation, or consummation of the Plan and the Disclosure Statement; (2) the negotiation, documentation, preparation and consummation of the Stipulation and the transactions giving rise to the Security Interest; or (4) the liquidation of any Litigation[17] or the distribution of property to be distributed under the Plan; except only for actions or omissions to act to the extent determined by a court of competent jurisdiction (in a Final Order) to be by reason of such party's gross negligence, willful misconduct, or fraud. It being expressly understood

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[16] The September 2008 plan and disclosure statement included an exculpation clause that released the debtor, its officers, directors, employees, agents, representatives, shareholders and professionals from liability for any claims for actions taken or not taken in connection with the plan and disclosure statement, the sale and the stipulation, the liquidation of any litigation claims or the distribution of any property under the plan, except for actions or omissions resulting from gross negligence, willful misconduct or fraud. The debtor later removed all references to the release or discharge of any non-debtor person or entity from the exculpation clause.

[17] The Final January 2009 plan defines "Litigation" as:

> [T]he interest of the Debtor and/or the Estate in any and all claims, rights and causes of action that may exist under bankruptcy or non-bankruptcy law, whether arising prior to or after the Petition Date, for which a court or administrative action has been or may be commenced by the Debtor or other authorized Estate representative, whether asserted or unasserted, and the proceeds thereof, including, but not limited to, all Avoidance Actions and Claim Objections.

> that any act or omission with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation.

C. Approval of the debtor's disclosure statement

Shortly before the January 12, 2009 hearing on the November 2008 disclosure statement, the debtor filed the Initial January 2009 plan and disclosure statement. At the hearing, the bankruptcy court approved the Initial January 2009 disclosure statement, subject to the debtor amending it. Among the amendments, the debtor was required to include a liquidation analysis setting forth the estimated values of its assets, explanations as to those values and the estimated distribution to creditors. The bankruptcy court further required the debtor to serve the plan, the disclosure statement and a ballot on all creditors entitled to vote on the plan by January 20, 2009.

A week later, the debtor filed the Final January 2009 plan and disclosure statement. On the same day, the debtor served on creditors the Final January 2009 plan and disclosure statement, along with a ballot and a notice of the plan confirmation hearing.

As noted earlier, the debtor included a liquidation analysis in the Final January 2009 disclosure statement. In the liquidation analysis, the debtor listed assets with an estimated total liquidation value of $6,923,696.09. The debtor estimated the liquidation value of Note A at $3,087,500 and Note B at $3,312,500. The debtor explained that it reduced the principal balance of the Notes by 50% to account for claims by Stericycle

against the debtor for the breach of the TSA that would occur if the debtor were to liquidate. The debtor also explained that the estimated liquidation values of the notes were subject to further reduction based on the risk associated with Stericycle's ability to make the annual note payments and other claims Stericycle may assert against the debtor in connection with the sale. The debtor noted that it also based the liquidation value of the Notes on the assumption that there would be a willing buyer of the Notes, that Broadway, as the secured party, would consent to the sale, and that the buyer would demand a "steep discount" because of the 10-year repayment period and the 3% interest.

The debtor estimated a total of $1,585,600 in administrative expenses, priority tax and secured claims and a total of $8,600,000 in unsecured claims. After paying the administrative expenses, priority tax and secured claims, the debtor estimated it would have $5,338,096.09 remaining in liquidation to pay unsecured claims, which would result in a 62.07% payout on unsecured claims.

Three days after filing the Final January 2009 plan and disclosure statement, the debtor filed a proposed order ("proposed order") approving the Final January 2009 disclosure statement. MWC did not object to the proposed order.

On February 3, 2009, the bankruptcy court entered the order approving the Final January 2009 disclosure statement ("approval order"). Under the approval order, the bankruptcy court determined that the Final January 2009 disclosure statement contained adequate information under § 1125(b). The bankruptcy court scheduled the plan confirmation hearing and set various

deadlines, including a deadline of February 20, 2009 for the debtor to file its brief in support of plan confirmation.

D. Confirmation of the debtor's plan

On February 9, 2009, before the debtor filed its motion for confirmation ("confirmation motion") of the Final January 2009 plan, MWC filed its opposition to confirmation of the Final January 2009 plan ("opposition").[18] MWC served the opposition on all creditors.[19]

In the opposition, MWC called upon creditors to reject the Final January 2009 plan. MWC contended that the debtor's liquidation analysis was "grossly inaccurate and misleading." MWC accused the debtor of intentionally depressing the value of its assets "to create the appearance" that creditors would be better off voting in favor of the Final January 2009 plan in order to continue operating its manufacturing and processing businesses.

Specifically, MWC claimed that the debtor exaggerated the amount of chapter 7 administrative expenses and the amounts of unsecured claims. MWC further claimed that the debtor unduly deflated the value of the Notes, while its justifications for its valuations were "nonsensical." MWC asserted that the debtor misrepresented the effect of a chapter 7 liquidation on the TSA. First, MWC noted, the TSA was not a long-term arrangement as it

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[18] MWC repeated the arguments it made in the opposition in its briefs before us.

[19] At oral argument, counsel for MWC confirmed that MWC served its opposition on all creditors.

was set to terminate on the earlier of September 30, 2008 or five business days after Stericycle obtained the necessary permits to operate the waste processing business. In fact, MWC claimed, the TSA already had terminated as the September 30, 2008 deadline had passed by the time that the Final January 2009 disclosure statement was approved. Additionally, it would not take long for Stericycle, as one of the world's largest medical waste processing companies, to obtain the required permits and prepare to assume operations of the waste processing business.

Second, MWC asserted that there was little or no risk that the immediate liquidation of the debtor would cause a breach of the TSA in a way that would create a substantial setoff claim against the annual note payments. Stericycle already had been operating two of the debtor's waste processing facilities and had shut down other waste processing facilities. Accordingly, MWC claimed, there was little risk of the debtor breaching the TSA for failing to continue operating the waste processing business.

Finally with respect to the TSA, MWC claimed, given that the debtor, as debtor-in-possession (or trustee), had fiduciary duties to the estate and its creditors, it would not breach the TSA; the debtor or the trustee simply would wait for Stericycle to obtain the permits.

MWC also contended that the debtor exaggerated the risk associated with Stericycle's potential failure to make the annual note payments. Two letters of credit backed the Notes. Even if a risk of non-payment existed, MWC continued, it would exist under the Final January 2009 plan as much as it would in a chapter 7 liquidation.

MWC contested the debtor's assertion that certain risks necessitated reducing the Notes' value in its liquidation analysis. Aside from the TSA, the debtor had no known ongoing obligations to Stericycle under the sale that, if breached, would lead to additional claims.

MWC further argued that a chapter 7 liquidation of the debtor did not mean that the Notes would have to be sold. A trustee or other liquidating agent simply could wait for the annual note payments to be made and then use the entire amount of the annual note payments to pay creditors.

MWC contended that the Final January 2009 plan proposed to allow the debtor to use a substantial portion of the annual note payments that otherwise could be used to pay unsecured creditors more quickly. In the first four years of the Final January 2009 plan, MWC claimed, the debtor stood to receive $2,077,500 that creditors could otherwise receive in a chapter 7 liquidation. Even though the debtor proposed to supplement the annual note payments by providing its excess cash, MWC complained that it was unlikely the debtor would provide any excess cash, as the debtor's manufacturing and processing businesses were speculative and the debtor proposed to retain 80% of all cash over $1,000,000.

Moreover, MWC argued, the Final January 2009 plan could not be confirmed because it did not satisfy the "best interest of creditors" test. In a chapter 7 liquidation, creditors would be entitled to receive interest on their claims from the petition date under § 726(a)(5), not from the effective date as the debtor proposed in the Final January 2009 plan.

Also, MWC pointed out, the debtor proposed to pay only 1.5% interest per annum on creditors' claims, even though the applicable interest rate was the federal judgment interest rate of 5.02% in effect as of the petition date. Citing In re Cardelucci, 285 F.3d 1231, 1234 (9th Cir. 2002), MWC asserted that interest at the legal rate under § 726(a)(5) meant the federal judgment interest rate under 29 U.S.C. § 1961. Because interest must be paid from the petition date, the federal judgment interest rate in effect as of the petition date would be the appropriate rate.

MWC additionally contended that the exculpation clause in the Final January 2009 plan improperly sought to insulate the debtor from liability for postpetition conduct. Although the Final January 2009 plan allowed creditors to seek revocation of the confirmation order if it had been procured by fraud, the exculpation clause could be read as precluding claims for the debtor's postpetition negligence.

On February 20, 2009, the debtor filed its confirmation motion. In its confirmation motion, the debtor proposed modifying the Final January 2009 plan to provide for an interest rate of 2.42% per annum from the petition date to the effective date,[20] and an interest rate of 2% from the effective date onward (collectively, "compromise interest rate"). The debtor explained that it reached the compromise interest rate after negotiating

[20] The debtor noted that the 2.42% interest rate constituted the mean week-ending federal post-judgment interest rate since the petition date under 28 U.S.C. § 1961.

with the committee in order to avoid further litigation regarding plan confirmation.

The debtor reported that all impaired classes voted to accept the Final January 2009 plan. Class 4, which consisted of general unsecured claims not otherwise classified, was the only impaired class that did not vote unanimously to accept the Final January 2009 plan. Within class 4, only two creditors voted to reject the Final January 2009 plan, one of which was MWC.

On March 16, 2009, the debtor filed a motion to approve non-material modifications to the Final January 2009 plan ("motion to modify") seeking, among other things, to incorporate the compromise interest rate.

The bankruptcy court granted the debtor's motion to modify at a hearing on April 7, 2009, deciding that the debtor's proposal to modify the interest rate payment on general unsecured claims in the Final January 2009 plan was permissible and non-material. The bankruptcy court determined that the compromise interest rate did not adversely affect creditors; rather, the compromise interest rate benefitted them. The bankruptcy court found that the compromise interest rate was "more than the creditors would get otherwise under the liquidation analysis. And [it was] certainly an improvement over what the creditors thought they were responding to in the [Final January 2009] disclosure statement." Tr. of April 7, 2009 Hr'g, 21:5-9.

At the confirmation hearing on April 13, 2009, counsel for the debtor informed the bankruptcy court that, for reasons unknown, Stericycle had not determined that the transition period had ended. Stericycle had discretion, however, in determining

when the TSA was completed. Counsel for the debtor believed, however, that, even if the debtor defaulted under the TSA, Stericycle would not have a sizeable setoff claim against it, given that several months had passed; what might have been a serious concern at the time of the filing of the disclosure statement was no longer as serious a concern as "a lot less work, a lot less of the [Stericycle transfer], had occurred at that point in time." Tr. of April 13, 2009 Hr'g, 20:23-24.

Counsel for the debtor also stated that "probably liquidation at this time would still result in payment to creditors, [though it would] not be any quicker, because payments [would] still have to occur . . . ." Tr. of April 13, 2009 Hr'g, 21:2-5.

The bankruptcy court questioned whether it needed to evaluate the liquidation values set forth in the liquidation analysis in order to determine the appropriate interest rate for purposes of the "best interest of creditors" test.

Counsel for the debtor answered that the finding that the bankruptcy court had to make regarding the appropriate interest rate "[didn't] have anything to do with the liquidation value of the assets." Tr. of April 13, 2009 Hr'g, 24:5-6.

Instead, counsel for the debtor continued,

> I think it has to do with an appropriate and fair interest rate, because the issue is only whether the Debtor's plan proposes to pay creditors at least as much as they would receive in liquidation.
>
> So, if we just take and, you know, put aside any analysis, if we just look at – if the Debtor says, you know, for purposes of this argument, our creditors are going to receive 100-percent payment in liquidation, what the Debtor's plan has to do is provide for 100-percent payment plus a fair and appropriate interest rate, and that's the argument, your Honor, is that we don't need to look at the underlying numbers, because

> the underlying numbers are only important if the liquidation value is under 100 percent.
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> Once the liquidation value is 100 percent, then the Debtor has no choice but to pay a fair amount of interest . . . .

Tr. of April 13, 2009 Hr'g, 24:6-21.

The bankruptcy court ultimately determined that the compromise interest rate was appropriate. In coming to its determination, the bankruptcy court explained:

> The test is whether or not the creditors are receiving as much as they would receive in a liquidation, and here there's a real doubt whether, if there were a liquidation, it would come out the same, even though it's close, and at this point, the liquidation should give as much.
>
> It is not clear that there wouldn't be a discount, and the litigation costs have to be taken into consideration, and, given that the payment over time is with interest, I think the compromise struck by the committee is appropriate . . . and gives the creditors as much as they otherwise would receive. So I'm going to go with that.

Tr. of April 13, 2009 Hr'g, 41:4-19.

Counsel for MWC claimed that counsel for the debtor had "acknowledged [at the hearing] that creditors would be paid in full in a liquidation." Tr. of April 13, 2009 Hr'g, 45:18-19. Counsel for MWC further contended that, if creditors "knew there [sic] were going to get paid in a liquidation in full, and that the liquidation analysis has changed materially, they might [have] cast their ballot[s] differently on the plan." Tr. of April 13, 2009 Hr'g, 45:21-24. Counsel for MWC therefore requested that the bankruptcy court decline to confirm the Final January 2009 plan and "require a re-solicitation of creditors['] [votes] based upon very significant material information which is now different." Tr. of April 13, 2009 Hr'g, 46:1-3.

Counsel for MWC further contended that the "best interest of creditors" test was not satisfied because, even though it provided for payment of claims in full, the Final January 2009 plan did not pay creditors quickly. Counsel for MWC argued that, in order for the "best interest of creditors" test to be met, creditors must not only be paid a sufficient amount, but they also must be paid within a reasonable time. If creditors could be paid more quickly in a chapter 7 liquidation than in a chapter 11 reorganization, counsel for MWC claimed, then the chapter 11 plan should not be confirmed.

Counsel for MWC also argued that the exculpation clause should not extend to any claims MWC may have arising out of a pending adversary proceeding. Counsel for MWC acknowledged that, although the debtor was entitled to a discharge for postpetition conduct under § 1141(d), that discharge should not apply to claims arising out of the pending adversary proceeding, given that the adversary proceeding was ongoing, and no determination had been made as to the amounts of claims stated therein. Counsel for MWC asked that the bankruptcy court limit the exculpation clause to provide that the discharge did not extend to issues that MWC had pending against the debtor in the adversary proceeding.

After hearing the arguments advanced by the parties, the bankruptcy court made findings on the record. It ultimately determined that all the requirements for plan confirmation had been met and granted the debtor's confirmation motion.

Among its oral findings, the bankruptcy court found that service of the Final January 2009 plan was adequate. With

respect to the exculpation clause, the bankruptcy court determined that it was neither too broad nor overreaching. It found that the exculpation clause tracked the releases and exculpations provided for under the Bankruptcy Code. As to whether it extended to the issues MWC had pending against the debtor in the adversary proceeding, the bankruptcy court concluded that the exculpation clause did not "obviate[] them." Tr. of April 13, 2009 Hr'g, 94:8. The bankruptcy court decided that it would deal with such issues in the course of the adversary proceeding.

As to the liquidation analysis, the bankruptcy court noted that the assets already had been liquidated. The bankruptcy court explained that the completion of the Stericycle transfer required the debtor to continue operations for a period; without the TSA, there would be "no clear recovery at this time immediately for the estate, and there [was] a good recovery under the plan, and the Debtor [was] allowed to reorganize under Chapter 11." Tr. of April 13, 2009 Hr'g, 94:22-25.

The bankruptcy court further found that the interest rate proposed by the debtor was favorable. The bankruptcy court determined that the timing as to when creditors received payment did not preclude confirmation. The bankruptcy court concluded that the amounts and the interest paid were sufficient under the Code.

The bankruptcy court further determined that there were no changes in circumstances that required the re-solicitation of ballots. It noted that the chapter 11 case involved an operating debtor, and the market and business were subject to change. The

bankruptcy court pointed out that there were often business developments during the time between approval of the disclosure statement and voting on the plan. It concluded that "there [was] no reason to go back and [re-solicit] [votes]" because no creditor appeared asking to change its vote in light of these changed circumstances. Tr. of April 13, 2009 Hr'g, 96:16-18.

The bankruptcy court found that the "best interest of creditors" test under § 1129(a)(7) was satisfied as each member of the impaired classes accepted the plan or that each class member would receive at least as much through the chapter 11 plan as in a chapter 7 liquidation, taking into consideration the payments to creditors over time under the plan.

On May 12, 2009, the bankruptcy court entered its findings of fact, conclusions of law and order confirming the Final January 2009 plan ("confirmation order").

MWC appeals the confirmation order.

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(L). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUES

(1) Did the bankruptcy court err in determining that the compromise interest rate was appropriate for purposes of satisfying the "best interest of creditors" test under § 1129(a)(7)?

(2) Did the bankruptcy court err in determining that the exculpation provision was reasonable and in compliance with applicable provisions of the Bankruptcy Code for purposes of § 1129(a)(1)?

(3) Did the bankruptcy court err in determining that the debtor complied with § 1129(a)(2) when it solicited acceptances of the Final January 2009 plan using a disclosure statement earlier approved by the bankruptcy court as containing "adequate information" within the meaning of § 1125(b)?

VI. STANDARDS OF REVIEW

We review the bankruptcy court's decision to confirm a chapter 11 reorganization plan for an abuse of discretion. Computer Task Group, Inc. v. Brotby (In re Brotby), 303 B.R. 177, 184 (9th Cir. BAP 2003). We apply a two-part test to determine whether the bankruptcy court abused its discretion. United States v. Hinkson, 585 F.3d 1247 (9th Cir. 2009)(en banc). We first determine de novo whether the bankruptcy court "identified the correct legal rule to apply to the relief requested." Id. at 1251. If it did, we then determine "whether [the bankruptcy court's] application of the correct legal standard was (1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" Id. If any of these three determinations applies, we may be left with a definite and firm conviction that the bankruptcy court abused its discretion in making a clearly erroneous factual finding. Id.

"Of course, a determination that a plan meets the requisite confirmation standards necessarily requires a bankruptcy court to make certain factual findings and interpret the law." Brotby, 303 B.R. at 184. "[W]hile compliance with the disclosure requirements of § 1125 may be a mixed question of law and fact [which we review de novo], to the extent factual issues are appealed . . . the proper standard of review is clear error." Id.

The bankruptcy court's determination as to whether the chapter 11 reorganization plan satisfied the "best interest of creditors" test under § 1129(a)(7) is a factual determination that we review for clear error. United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 653 (9th Cir. BAP 1994). A factual finding is clearly erroneous if, after reviewing the record, we have a definite and firm conviction that a mistake has been committed. Id.

We may affirm on any basis supported by the record, even if the bankruptcy court did not rely on that basis. See United States v. Washington, 969 F.2d 752, 755 (9th Cir. 1992).

V. DISCUSSION

A. This appeal is not moot

For reasons unclear to this Panel, MWC argued the question of mootness in this appeal. At the outset, we note that the party arguing for dismissal based on mootness, "bears the heavy burden of establishing that we cannot provide any effective relief" to MWC. United States v. Gould (In re Gould), 401 B.R. 415, 421 (9th Cir. BAP 2009), citing Suter v. Goedert,

504 F.3d 982, 986 (9th Cir. 2007). The debtor has neither raised that argument nor met that burden.

An appeal may be vulnerable to dismissal as constitutionally or equitably moot. Gould, 401 B.R. at 421. A case is constitutionally moot "when events occur during the pendency of the appeal that make it impossible for the appellate court to grant effective relief." Id. A case is equitably moot when the appellant fails diligently to pursue his or her available remedies to obtain a stay of the bankruptcy court's objectionable order, which allows for such a change of circumstances as to render it inequitable to consider the merits of the appeal. Id.

There is nothing in the record before us indicating that a distribution has been made to creditors under the Final January 2009 plan or that any comprehensive change in circumstances has occurred since the bankruptcy court issued the confirmation order. Constitutional mootness clearly does not apply here, and we question whether equitable mootness would have any application either. See Focus Media, Inc. v. NBC (In re Focus Media, Inc.), 378 F.3d 916, 923 (9th Cir. 2004) (determining that equitable mootness applies when case involves transactions that have occurred and that are too complex or difficult to unwind). See also Ederel Sport, Inc. v. Gotcha Int'l LP (In re Gotcha Int'l LP), 311 B.R. 250, 254 (9th Cir. BAP 2004)(determining appeal is moot if no stay of plan confirmation order is obtained and plan is substantially consummated so that effective relief is no longer available).

B. Compromise interest rate satisfies "best interest of creditors" test under § 1129(a)(7)

MWC argues that the bankruptcy court erred in concluding that the Final January 2009 plan satisfied the "best interest of creditors" test under § 1129(a)(7) by determining that the compromise interest rate was an appropriate rate of interest. Citing Cardelucci, 285 F.3d at 1234, MWC asserts that interest at the "legal rate" under § 726(a)(5) means the federal judgment interest rate under 28 U.S.C. § 1961. Because § 726(a)(5) provides that interest must be paid from the petition date, MWC continues, the appropriate rate of interest is 5.02%, the federal judgment interest rate in effect as of the petition date in this case.

MWC notes that the debtor may have been able to justify the compromise interest rate had it not represented at the confirmation hearing that unsecured creditors would receive payment in full on their claims in a chapter 7 liquidation. The bankruptcy court disregarded the debtor's admission, however, in finding the compromise interest rate to be appropriate.

Contrary to MWC's assertion, counsel for the debtor did not acknowledge at the confirmation hearing that unsecured creditors would be paid in full in a chapter 7 liquidation. MWC misconstrues the statements counsel for the debtor made at the confirmation hearing. Counsel for the debtor merely stated that "probably liquidation at this time would still result in payment to creditors."

MWC quotes the following language as further evidence that the debtor acknowledged that unsecured creditors would receive payment in full on their claims in a chapter 7 liquidation:

> So, if we just [took] and, you know, put aside any analysis, if we just look[ed] at – if the Debtor [said], you know, for purposes of this argument, our creditors are going to receive 100-percent payment in liquidation, what the debtor's plan has to do is provide for 100-percent payment plus a fair and appropriate interest rate . . . . (Emphasis added.)

Tr. of April 13, 2009 Hr'g, 24:10-15.

MWC again misinterprets the comments made by counsel for the debtor at the confirmation hearing. Counsel for the debtor did not acknowledge that creditors would receive payment in full on their claims should the debtor proceed with a chapter 7 liquidation. Rather, he simply contended, for the sake of argument, that, if the debtor's plan acknowledged a 100% payment of unsecured creditors' claims in a liquidation, the plan also must provide an appropriate and fair interest rate. Based on our review of the statements of the debtor's counsel in the record before us, we do not accept MWC's interpretation.

More importantly, we conclude that the bankruptcy court did not err in approving the compromise interest rate for purposes of the "best interest of creditors" test under § 1129(a)(7). Under § 1129(a)(7),[21] a plan must satisfy the "best interest of

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[21] Section 1129(a)(7) provides, in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class –
> (i) has accepted the plan; or
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date . . . . (Emphasis added.)

creditors" test in order to be confirmed. See Mut. Life Ins. Co. of N.Y. v. Patrician St. Joseph Partners Ltd. P'ship (In re Patrician St. Joseph Partners Ltd. P'ship), 169 B.R. 669, 680 (D. Ariz. 1994). That is, the plan must "provide non-consenting impaired creditors with at least as much as they would receive if the debtor was liquidated in chapter 7." In re Coram Healthcare Corp., 315 B.R. 321, 346 (Bankr. D. Del. 2004). Under § 726(a)(5), which dictates the order for distribution of property liquidated in a chapter 7 case, "[w]here a debtor in bankruptcy is solvent, an unsecured creditor is entitled to 'payment of interest at the legal rate from the date of the filing of the petition'" before the debtor receives any distribution. Cardelucci, 285 F.3d at 1234 (emphasis added). See also Beguelin v. Volcano Vision, Inc. (In re Beguelin), 220 B.R. 94, 99 (9th Cir. BAP 1998).

MWC relies on Cardelucci in arguing that the federal judgment interest rate, not the compromise interest rate, is the appropriate legal rate of interest. But the crucial point in Cardelucci that MWC overlooks is that Cardelucci holds that unsecured creditors only are entitled to interest at the federal judgment interest rate when the debtor is solvent. Here, the bankruptcy court was not asked to make and never made a finding that the debtor was solvent as of the petition date. In fact, the bankruptcy court repeatedly expressed doubts as to whether unsecured creditors would receive as much in a chapter 7 liquidation as they would under the chapter 11 plan proposed by the debtor.

At the April 7, 2009 hearing, the bankruptcy court stated:

> [There was] a legitimate basis to believe that the Debtor's estimate that in a hypothetical liquidation, creditors would not be paid in full due to the assets being depressed because of liquidation, potential claims against the Debtor which could result from this termination, the nature of the current business climate . . . . So [it was] not clear in the best interest [of creditors] test whether creditors would be getting interest anyway if there had been a liquidation or any more than they would get [under] the plan.

Tr. of April 7, 2009 Hr'g, 20:14-23.

The bankruptcy court went on to note that the compromise interest rate was "more than the creditors would get otherwise under the liquidation analysis. And it [was] certainly an improvement over what the creditors thought they were responding to in the disclosure statement." Tr. of April 7, 2009 Hr'g, 21:5-7. The bankruptcy court concluded that the compromise interest rate "did not adversely affect the creditors [but] [i]n fact, it benefit[ted] them." Tr. of April 7, 2009 Hr'g, 21:10-11.

The bankruptcy court did not change its position at the confirmation hearing, even after the debtor informed it that Stericycle would not have a sizeable setoff claim against the debtor. The bankruptcy court stated:

> [There was] a real doubt whether, if there were a liquidation, it would come out the same, even though it's close, and at this point, the liquidation should give as much.
>
> It [was] not clear that there wouldn't be a discount, and the litigation costs have to be taken into consideration, and, given that the payment over time is with interest, . . . the compromise struck by the committee [was] appropriate, . . . and gives the creditors as much as they otherwise would receive.

Tr. of April 13, 2009 Hr'g, 41:6-14.

The bankruptcy court concluded that:

> As far as the liquidation analysis, the corporate assets really [were] already liquidated here. Whether or not at this point all the parties agree, the completion of the APA [Stericycle] require[d] the Debtor to continue operations for a period, and without this APA, there's no clear recovery at this time immediately for the estate, and there's a good recovery under the plan, and the Debtor is allowed to reorganize under Chapter 11. The interest rate proposed by the Debtor [was] favorable, and . . . the timing of when they're paid [did not] preclude[] confirmation. The amount paid and the interest rate paid [were] sufficient under the Code, and that's all that's needed under the liquidation analysis.

Tr. of April 13, 2009 Hr'g, 94:18-25, 95:1-5.

Because the bankruptcy court did not find that the debtor was solvent on the petition date, Cardelucci is not directly applicable to its determination as to whether the compromise interest rate was the appropriate rate of interest for purposes of the "best interest of creditors" test under § 1129(a)(7). The bankruptcy court applied the correct legal standard, and its determination was not without support based on the facts before it. It thus had discretion to approve the compromise interest rate and confirmed the Final January 2009 plan based on the consent of the creditors voting in favor of the Final January 2009 plan.[22] MWC has not shown that the bankruptcy court abused its discretion in doing so.

C. Exculpation clause was not overly broad

MWC argues that the bankruptcy court erred in confirming the Final January 2009 plan because it contained an overly broad

[22] We note that Class 4 creditors voted to accept the Final January 2009 plan when it initially provided for an interest rate lower than the compromise interest rate.

exculpation clause that shielded the debtor against liability for negligence in its postpetition conduct. Moreover, MWC contends, the exculpation clause did not restrict the debtor's liability as otherwise provided under applicable law.

An exculpation clause excusing a debtor and its officers, members, directors, and professionals from liability resulting from any act taken or not taken in connection with the chapter 11 process is not per se against public policy or unreasonable. See In re Friedman's, Inc., 356 B.R. 758, 762 (Bankr. S.D. Ga. 2005). However, there are a number of decisions in the Ninth Circuit that do not favor exculpation clauses that limit liability for negligence. See, e.g., In re WCI Cable, Inc., 282 B.R. 457, 479 (Bankr. D. Or. 2002), and decisions cited therein.

The bankruptcy court concluded that the exculpation clause was reasonable. It determined that the exculpation clause was neither overbroad nor overreaching; it did not exculpate any party other than the debtor and did not apply to gross negligence, willful misconduct or fraud. The bankruptcy court also found that it followed the releases and exculpations provided for in the Bankruptcy Code.

The bankruptcy court, in overruling MWC's objection to the exculpation clause, essentially deferred to a business judgment standard on the part of the debtor in its postpetition conduct. See Friedman's, Inc., 356 B.R. at 763-64 (adopting business judgment rule applied to directors that excuses them from negligence arising in corporate decision making in approving exculpation provision in chapter 11 plan that excuses debtor and its representatives from liability for negligence). Moreover,

excluding negligence from the debtor's potential liability for postpetition acts taken in connection with proposing a reorganization plan and getting the plan confirmed is not clearly inconsistent with the provisions of the Bankruptcy Code. The bankruptcy court did not err in applying the business judgment standard; its application of such a standard was neither illogical nor implausible, given the contentious nature of the proceedings before the bankruptcy court in this case. We thus conclude that the bankruptcy court did not abuse its discretion in overruling MWC's objections to the exculpation clause.[23]

D. MWC's standing to contest the adequacy of the disclosure statement is questionable

The debtor asserts that MWC lacks standing to contest the adequacy of the disclosure statement in this appeal because it cannot demonstrate that it is a party aggrieved.

Generally, an appellant must show that he or she is directly and adversely affected pecuniarily (i.e., the party aggrieved) by the bankruptcy court's order to have standing to appeal it. Within the context of an appeal involving the adequacy of a disclosure statement, the debtor continues, to qualify as a party

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[23] At the confirmation hearing, MWC argued that the exculpation clause should not extend to any claims MWC may have arising out of the adversary proceeding. We agree with the bankruptcy court that any claims arising out of the adversary proceeding should be addressed in the course of the adversary proceeding. The exculpation clause, in fact, provides that the debtor only is released from liability for claims in connection with its postpetition acts in liquidating claims asserted by the debtor. By its terms the exculpation clause does not appear to cover MWC's claims in the adversary proceeding.

aggrieved, the appellant must show that creditors would have voted differently on the plan if the disclosure statement had been "adequate." The appellant cannot claim creditors may have voted differently, however, if they actually were provided with the information the appellant claims was lacking in the disclosure statement.

Here, the debtor argues, MWC provided creditors with the information allegedly omitted from the disclosure statement in its opposition to the Final January 2009 plan. Moreover, even if debtor's counsel had stated at the confirmation hearing that circumstances had changed such that a chapter 7 liquidation would pay creditors' claims in full, the disclosure statement already disclosed that such a change could occur given the terms of the TSA. As such, the debtor concludes, MWC cannot show that creditors would have voted differently because they already had the information allegedly missing from the disclosure statement but still voted to accept the Final January 2009 plan.

The debtor relies on Everett v. Perez (In re Perez), 30 F.3d 1209 (9th Cir. 1994), and In re PWS Holding Corp., 228 F.3d 224 (3rd Cir. 2000), in making its argument. In Perez, the appellant, Frank Everett, appealed the bankruptcy court's order confirming the debtor's chapter 11 plan. Among his objections to the bankruptcy court's confirmation of the plan, Everett argued that the plan was defective because the debtor made inadequate disclosures, which "depriv[ed] creditors of information they needed to cast a meaningful vote." 30 F.3d at 1212.

Like MWC, Everett voted against the plan. Id. at 1217. The Ninth Circuit concluded, however, that, despite his vote

rejecting the plan, Everett had standing to contest the adequacy of the disclosure statement because he had been denied information he might have used to persuade other creditors to vote against the plan. Id. The Ninth Circuit stated that:

> If other creditors were tricked – and voted for the plan only because they didn't know the facts – then Everett too has been injured because he was denied the information he might have used in persuading other creditors to vote against the plan. Everett can claim, therefore, he would have had a better shot at defeating the plan if [the debtor] had made full disclosure.

Id.

In PWS Holding Corp., the appellant, W.R. Huff Asset Management Co., LLC ("Huff") claimed that the plan proponents did not comply with the disclosure requirements of § 1125 by failing to provide adequate information regarding the release of preference claims. 228 F.3d at 248. Huff contended that the debtor did not disclose that it had not performed a thorough analysis of these claims before deciding not to pursue them. Id. Huff was aware of the alleged failing at the time, however, and informed creditors of it when it opposed the plan. Id. The Third Circuit determined that Huff lacked standing to raise the issue because it could not demonstrate that it was a person aggrieved by the debtor's failure to disclose. Id. The Third Circuit pointed out that Huff would not have acted any differently if the subject disclosures had been made. Id. Moreover, because Huff pointed out the alleged failure to disclose in its objections to the plan, it could not show that it was personally aggrieved because other creditors might have voted differently if they had the alleged missing information. Id. Citing Perez, the Third Circuit noted that a creditor objecting

to a plan for lack of disclosure that actually had the information might have standing if it could demonstrate that other creditors would have acted differently if they had the same information. Id.

Under Perez and PWS Holding Corp., MWC's standing to contest the adequacy of the disclosure statement is questionable. MWC claims that counsel for the debtor "admitted" at the confirmation hearing that unsecured creditors would receive payment in full on their claims in a chapter 7 liquidation. Had creditors known this information, MWC maintains, they may have voted to reject the Final January 2009 plan. But as we explained above, counsel for the debtor did not represent at the confirmation hearing that unsecured creditors would receive payment in full on their claims in a chapter 7 liquidation.

E. The disclosure statement was adequate

However, even if MWC has standing to appeal the adequacy of the Final January 2009 disclosure statement, we conclude that the bankruptcy court did not err in confirming the Final January 2009 plan for the following reasons. According to MWC, the Final January 2009 disclosure statement contained a liquidation analysis that led creditors to believe they would receive less on their claims in a chapter 7 liquidation than in a chapter 11 reorganization, even though, as the debtor later allegedly admitted, a chapter 7 liquidation would have paid their claims in full. Had creditors earlier known this information, MWC contends, they would have voted to reject the Final January 2009 plan. Because the debtor solicited votes for the Final

January 2009 plan with a disclosure statement that did not meet the adequate information requirements of § 1125, the debtor did not comply with § 1129(a)(2), precluding confirmation.

Based on the record before us, MWC cannot demonstrate that creditors would have changed their minds and voted to reject the Final January 2009 plan if the alleged misinformation in the Final January 2009 disclosure statement had been corrected.

The bankruptcy court has discretion in determining what constitutes adequate information. Brotby, 303 B.R. at 193 (quoting In re Tex. Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)). Such a determination is subjective, to be made on a case-by-case basis. Brotby, 303 B.R. at 193 (quoting Tex. Extrusion Corp., 844 F.2d at 1157).

When determining the adequacy of information during the pre-solicitation phase, "the court is acting in a context in which information may be sketchy and preliminary." Brotby, 303 B.R. at 194 (quoting In re Michelson, 141 B.R. 715, 718 (Bankr. E.D. Cal. 1992)). The bankruptcy court does not conduct an independent investigation, but instead relies on its reading for "apparent completeness and intelligibility . . . ." Brotby, 303 B.R. at 194 (quoting Michelson, 141 B.R. at 719). At plan confirmation, however, "[w]hat once appeared to be adequate information may have become plainly so inadequate and misleading as to cast doubt on the viability of the acceptance of the plan and to necessitate starting over." Brotby, 303 B.R. at 194 (quoting Michelson, 141 B.R. at 719). "[T]he use of misleading or false information in a disclosure statement may be so serious as to invalidate the voting by creditors as to a plan, requiring a new round of voting

after necessary corrections to the disclosure statement are made." Brotby, 303 B.R. at 194.

Here, the bankruptcy court, in its discretion, determined that the liquidation analysis contained adequate information under the circumstances. The bankruptcy court was aware of MWC's objections to the liquidation analysis, but nonetheless concluded that the liquidation analysis contained adequate information in finding that the debtor satisfied the requirements under § 1129(a)(2). The bankruptcy court determined that "proper methods were made to convince creditors to vote for [the Final January 2009 plan]" and there was "adequate voting." Tr. of April 13, 2009 Hr'g, 94:13-14.

The bankruptcy court found that, though some of the assumptions underlying the liquidation analysis may have changed, such change was to be expected, given the dynamic nature of the market and business, and did not require re-solicitation of votes. The bankruptcy court stated:

> I don't think the changes require any re-solicitation. This is an operating Debtor. The market and business change[]. It's a dynamic process. There are often business developments between disclosure statement approval and the plan voting. They've been discussed. It's clear they were possible, and there's no reason to go back and resolicit because there's no one that's appeared and said with these changes I want to change my vote.

Tr. of April 13, 2009 Hr'g, 96:11-18.

More importantly, the bankruptcy court doubted that if a chapter 7 liquidation took place, unsecured creditors would receive more than in the chapter 11 plan that the debtor proposed. The bankruptcy court found that "there [was] a real doubt whether, if there were a liquidation, it would come out the

same, even though it's close, and at this point, the liquidation should give as much." Tr. of April 13, 2009 Hr'g, 41:6-9. It further determined that it was unclear that there would not be a discount as to the value of the Notes. The bankruptcy court determined that, under the TSA, the debtor was required to continue operations of the waste processing business. Without the Stericycle sale, it concluded, there was "no clear recovery at this time immediately for the estate, and there [was] a good recovery under the plan, and the Debtor [was] allowed to reorganize under Chapter 11." Tr. of April 13, 2009 Hr'g, 94:22-25.

Even after MWC questioned the accuracy of the liquidation analysis in the opposition, as the bankruptcy court noted, no creditor expressed a desire to change its vote. At oral argument, counsel for MWC stated that MWC had served the opposition on all creditors. Consequently, all of the creditors were given notice of the alleged inaccuracies in the disclosure statement and could factor in that information in determining how to vote. By refusing or declining to answer MWC's call to reject the Final January 2009 plan, creditors indicated that they found the information in the disclosure statement adequate to support a vote in favor of the Final January 2009 plan. MWC thus cannot demonstrate that a more "accurate" liquidation analysis would have caused creditors to change their votes. Based on the facts before it, the bankruptcy court did not abuse its discretion in approving the disclosure statement and in declining to require a re-solicitation of ballots.

VI. CONCLUSION

Based on the foregoing analysis, we conclude that the bankruptcy court did not abuse its discretion in determining that the compromise interest rate was appropriate for the purposes of the "best interest of creditors" test. Nor did the bankruptcy court abuse its discretion in determining that the exculpation provision was not overly broad in excusing the debtor from liability for postpetition acts in connection with the Final January 2009 plan, except for gross negligence, willful misconduct or fraud. Finally, the bankruptcy court did not abuse its discretion in finding that the debtor complied with § 1129(a)(2) in soliciting acceptances of the Final January 2009 plan. We therefore AFFIRM.