

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:	:	Case No. 07-12963-BKC-LMI
	:	Case Nos. 07-12965-BKC-LMI through 07-12967-
All American Semiconductor, Inc., <i>et al.</i> ,	:	BKC-LMI; Case Nos. 07-12969-BKC-LMI
	:	through 07-12974-BKC-LMI; Case Nos.
	:	07-12976-BKC-LMI through 07-12979-BKC-
	:	LMI; Case Nos. 07-12981-BKC-LMI through 07-
	:	12991-BKC-LMI; Case No. 07-12993-BKC-LMI;
	:	Case Nos. 07-12995-BKC-LMI through 07-13002-
Debtors.	:	BKC-LMI
	:	
	:	Chapter 11
	:	(Jointly Administered)
	:	
	:	

MOTION TO APPROVE
STIPULATION AND ORDER RESOLVING
CLAIMS OF OHIO DEPARTMENT OF TAXATION

NOTICE

Any interested party who fails to file and serve a written response to this motion within 7 days after the date of service stated in this motion shall, pursuant to this Court's *Order Granting Motion of the Liquidating Trustee of the AASI Creditor Liquidating Trust for Approval of Procedures With Respect to the Settlement and Compromise of Certain Claims on an Expedited Basis* [E.C.F. # 2477], dated May 3, 2011, be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be canceled.

This motion to approve a settlement agreement seeks to fix a claim at or below its respective scheduled or filed amount, as applicable, and/or set such claim at a priority level at or below the scheduled or filed priority, as applicable.

Kenneth A. Welt, Liquidating Trustee ("Liquidating Trustee") for the AASI Creditor Liquidating Trust (the "Liquidating Trust"), by and through undersigned counsel, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure and this Court's *Order Granting*

Motion of the Liquidating Trustee of the AASI Creditor Liquidating Trust for Approval of Procedures With Respect to the Settlement and Compromise of Certain Claims on an Expedited Basis [E.C.F. # 2477], files this *Motion to Approve Stipulation and Order Resolving Claims of Ohio Department of Taxation* (the “Agreement”), by and between the Liquidating Trustee and the Ohio Department of Taxation (the “Claim Holder”, and together with the Liquidating Trustee, the “Parties”), and in support hereof respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and Article XIII of the Official Committee of Unsecured Creditors’ Third Amended Plan of Liquidation dated April 9, 2009 [E.C.F. # 1173] (“Plan”), as confirmed in these cases. This matter is a core proceeding.

2. Venue is proper pursuant to 28 U.S.C. § 1409, and pursuant to the Plan.

3. The predicate for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 9019-1.

RELEVANT BACKGROUND

4. On April 25, 2007, the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Florida, Miami Division (the “Bankruptcy Court”).

5. On May 14, 2007, the Claim Holder filed a proof of claim on account of certain tax liabilities in the amount of \$1,933.41, such claim being designated as claim numbered 18 (“Claim No. 18”).

6. On August 14, 2007, the Claim Holder filed an additional proof of claim on account of certain tax liabilities in the amount of \$87,720.24, such claim being designated as claim number 393 (“Claim No. 393”, and together with Claim No. 18, the “Claim”).

7. On April 10, 2009, the Bankruptcy Court confirmed the Plan [E.C.F. # 1175].

8. On April 22, 2009, the Effective Date¹ of the Plan occurred and, pursuant to the terms of the Plan, all assets of the Debtors’ estates were transferred and vested in the Liquidating Trust.

9. On February 07, 2011, the Liquidating Trustee filed the *Tenth Omnibus Objection to Claims Inconsistent with the Debtor’s Books and Records* [E.C.F. # 2277] (the “Objection”) which interposed an objection to the Claim.

10. On February 28, 2011, the Claim Holder filed that certain *Ohio Department of Taxation’s Response to AASI Liquidating Trustee’s Tenth Omnibus Objection to Claims – Objection to Claims Inconsistent with the Debtor’s Books and Records* [E.C.F. # No. 2341 (the “Response”).

PROPOSED STIPULATION

11. The Parties have reached a settlement (the “Settlement”), as embodied in the Agreement, with respect to the Claim in order to avoid the costs and uncertainties of litigation. Subject to the approval of the Bankruptcy Court, the material terms of the Settlement, as set forth in the Agreement, are as follows:

- (i) The Liquidating Trustee, acting on behalf of the Liquidating Trust, agrees to pay the Claim Holder the amount of \$14,912.54 as a priority unsecured

¹ Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

claim (the “Stipulated Amount”) within five (10) business days after the Stipulation Effective Date, in full and final settlement of the Claim.

- (ii) The Claim Holder agrees to accept, on account of and in full and final satisfaction of such Allowed Claim, the payment of the Stipulated Amount as described above.

12. The Parties recommend approval of the Agreement because it is fair and reasonable and in the best interests of the Liquidating Trust, and the beneficiaries thereof.

13. A copy of the Agreement is attached hereto as Exhibit “A”.

14. A proposed order, approving the Settlement and the Agreement, is attached hereto as Exhibit B.

15. The Bankruptcy Court shall retain jurisdiction to enforce the terms of the Agreement.

BASIS FOR RELIEF

16. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that, after notice and a hearing, a court may approve a compromise or settlement. Fed. R. Bankr. P. 9019(a). In deciding whether to approve a proposed settlement, the Bankruptcy Court is required to exercise its sound discretion in assessing the reasonableness of a proposed settlement. *See In re Honeywell*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988); *In re Teltronics Services, Inc.*, 762 F.2d 185 (2d Cir.1985).

17. The standards for approval of settlements under Bankruptcy Rule 9019 are well settled. In *In re Justice Oaks II, Ltd.*, the United States Court of Appeals for the Eleventh Circuit established a four part test for the approval of settlements, which test is as follows:

- (i) the probability of success in the litigation;
- (ii) the difficulties, if any, to be encountered in the matter of collection;
- (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (iv) the paramount interest of the creditors and a proper deference to their reasonable views.

898 F.2d 1544, 1549 (11th Cir. 1990).

18. In addition, a court considering the approval of a settlement need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988); *In re Martin*, 91 F.3d 389 (3d Cir. 1996). If it does not fall below this standard, the settlement should be approved. *Id.*

19. The Liquidating Trustee submits that the Settlement and Agreement are fair and equitable, and are in the best interests of the Liquidating Trust, the beneficiaries thereof and the other interested parties. The Liquidating Trustee further submits that the Settlement, as embodied in the Agreement, avoids the cost, expense, and uncertainty that accompanies litigation. *See Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986) (the law favors compromise to avoid the expense and burden of litigating claims, where the compromise is fair and equitable, and where the compromise is necessary or appropriate to an efficient administration of a bankruptcy estate).

20. Indeed, compromises are generally favored in bankruptcy cases. *See John S. Marandas, P.C. v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Ore. 1993).

21. For these reasons, the Liquidating Trustee respectfully requests that the Agreement be approved.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that this Bankruptcy Court: (i) approve the terms and conditions of the Agreement attached hereto as Exhibit "A"; (ii) approve this motion by entering an order in the form proposed herewith; and (iii) grant such other and further relief as the Bankruptcy Court deems just and proper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE OF ADMISSION

I HEREBY CERTIFY that I am a member of the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualification to practice in this court as set forth in Local Rule 2090-1(A).

I FURTHER CERTIFY that in accordance with Local Rule 2090-1(B)(2), the undersigned attorney from Loeb & Loeb LLP is appearing pro hac vice in this matter pursuant to the *Order Granting Motion to Appear Pro Hac Vice* dated May 14, 2007 (DE# 170).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Regular Mail (and e-mail through the Court's BNC) on or before the ^{21st}8th day of February, 2012 to **all parties on the attached service list.**

Dated: Miami, Florida
February 8, 2012

21st

MARKOWITZ, RINGEL TRUSTY + HARTOG
9130 South Dadeland Boulevard, Suite 1800
Miami, Florida 33156-7849
Tel: 305-670-5000
Fax: 305-670-5011
E-mail: jmarkowitz@mrthtlaw.com

By: /s/ Ido Alexander
IDO ALEXANDER
Florida Bar No.: 51892

Local Counsel to the AASI Creditor Liquidating Trust, By and Through Kenneth A. Welt, Liquidating Trustee

-and-

LOEB & LOEB LLP
William M. Hawkins
345 Park Avenue
New York, New York 10154
Tel: (212) 407-4000
Fax: (212) 407-4900

Counsel to the AASI Creditor Liquidating Trust, By and Through Kenneth A. Welt, Liquidating Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

ALL AMERICAN SEMICONDUCTOR,
INC., ET AL.,

Chapter 11
(Jointly Administered)

Case No. 07-12963-BKC-LMI
Case Nos. 07-12965 through 07-12967-BKC-
LMI; Case Nos. 07-12969 through 07-12974-
BKC-LMI; Case Nos. 07-12976 through 07-
12979-BKC-LMI; Case Nos. 07-12981
through 07-12991-BKC-LMI; Case No. 07-
12993-BKC-LMI; Case Nos. 07-12995
through 07-13002-BKC-LMI

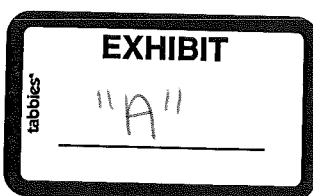
Debtors.

**STIPULATION AND ORDER RESOLVING
CLAIMS OF THE OHIO DEPARTMENT OF TAXATION**

This Stipulation and Order (“Stipulation” or “Agreement”) is entered as of the date indicated below herein, by and between the Ohio Department of Taxation (the “Claim Holder”), and Kenneth A. Welt, Liquidating Trustee (“Liquidating Trustee”) for the AASI Creditor Liquidating Trust (“Liquidating Trust”) (collectively, the “Parties”), in the above-styled cases. The Parties recite as follows:

Whereas, on April 25, 2007, All American Semiconductor, Inc. and certain of its affiliates and subsidiaries including All American Semiconductor of Ohio, Inc. (collectively, the “Debtors”) filed voluntary petitions for relief in the above-styled cases under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”);

Whereas, on May 14, 2007 the Claim Holder filed a proof of claim on account of certain tax liabilities in the amount of \$1,933.41, such claim being designated as claim number 18 (“Claim No. 18”);



Whereas, on August 14, 2007, the Claim Holder filed an additional proof of claim on account of certain tax liabilities in the amount of \$87,720.24, such claim being designated as claim number 393 (“Claim No. 393”, and together with Claim No. 18, the “Claim”);

Whereas, the Claim Holder asserts that the Claim enjoys priority status;

Whereas, pursuant to the *Official Committee of Unsecured Creditors’ Third Amended Plan of Liquidation* (DE # 1173) (the “Plan”) and the *Order Confirming Official Committee of Unsecured Creditors’ Third Amended Plan of Liquidation* (DE # 1175), the Liquidating Trustee, acting on behalf of the Liquidating Trust, is authorized to settle claims and litigation, as provided in the Plan, upon and after the Effective Date of the Plan;*

Whereas, such Effective Date occurred on April 22, 2009;

Whereas, the Liquidating Trust interposed an objection to the Claim (DE # 2277) (the “Objection”), and the Claim Holder responded thereto (DE # 2341) (the “Response”);

Whereas, in order to avoid the costs and uncertainties of litigation, the Parties have reached a settlement, the terms of which are set forth in this Agreement;

Whereas, the Parties enter into this Agreement without admitting any liability whatsoever and by entering into this Agreement, neither Party admits any fault or liability whatsoever;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and relying on each and every one of the provisions hereof, the Parties hereby stipulate and agree as follows:

1. Recitals Incorporated. Recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Agreement.

2. Effective Date. This Stipulation shall be effective upon its being “so ordered” by the Bankruptcy Court and such order of the Bankruptcy Court having become final (the “Stipulation Effective Date”).

3. Payment. The Liquidating Trustee, acting on behalf of the Liquidating Trust, agrees to pay the Claim Holder the amount of \$14,912.54 as a priority unsecured claim (the “Stipulated Amount”) within ten (10) business days after the Stipulation Effective Date, in full and final settlement of the Claim.

4. Allowed Claim. The Stipulated Amount is hereby deemed an unsecured, priority Allowed Claim (as that term is defined in the Plan) classified as a Class 1 Allowed Priority Claim under the Plan. The Claim Holder agrees to accept, on account of and in full and final satisfaction of such Allowed Claim, the payment of the Stipulated Amount as described in paragraph 3 above.

5. Release of Claims. Effective upon the Stipulation Effective Date, and/or upon entry by the Bankruptcy Court of a final order approving this Stipulation, the Debtor and the Liquidating Trustee, on the one hand, and Claim Holder, on the other, hereby release and discharge each other from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, liabilities and expenses (including attorney’s fees and costs), whether known or unknown, relating to any amounts owed to Claim Holder for the tax, interest and penalties contained in the Claim, including but not limited to any right the Debtor and/or the Liquidating Trustee may have to request a refund for any overpayments made by the Debtor to the Claim Holder in connection with the taxes, interest, and penalties in the Claim.

* Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

6. No Transfer of Claims. The Claim Holder represents that it has not transferred or otherwise assigned any right in or to the Claim or any other claim or cause of action of any type against any of the Released Persons.

7. Fees and Costs. Each Party shall bear its own costs and attorney's fees in connection with this Agreement.

8. Entire Understanding. This Agreement contains the entire understanding and agreement of the Parties with respect to settlement of issues raised in connection with the Claim, and there are no prior or contemporaneous promises, representations, agreements, warranties, or undertakings with regard thereto by any Party to any other, either oral or written, of any character or nature, except as set forth in this Agreement. This Agreement may be altered, amended, or modified only by an instrument in writing, executed and acknowledged by the Parties, and by no other means. Each Party hereby waives any right to claim that this Agreement was modified, canceled, superseded, or changed by an oral agreement, course of conduct, or estoppel.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors, assigns, heirs and personal representatives.

10. Notices: All notices to be sent or information to be provided under this Agreement shall be sent to the following addresses:

- a. Liquidating Trustee/Liquidating Trust : William M. Hawkins
Loeb & Loeb LLP
Attorneys for Kenneth A. Welt,
Liquidating Trustee, and for the
AASI Creditor Liquidating Trust
345 Park Avenue
New York, New York 10154

b. Claim Holder: Ohio Department of Taxation
Bankruptcy Division
P.O. Box 530
Columbus, OH 43216-0530
Attn: Rebecca L. Daum

11. Cooperation of The Parties. The Parties hereto shall cooperate in the consummation of the Agreement and in the preparation and execution of any and all documents necessary to carry out the intent and purpose of this Stipulation and in the pursuit of approval of the terms and conditions of this Agreement by the Bankruptcy Court.

12. Retention of Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction to enforce, approve, ratify and construe the provisions of this Stipulation. The Parties consent to the exclusive jurisdiction of the Bankruptcy Court to adjudicate any disputes which may arise under this Stipulation.

13. Counter-Parts. The Stipulation may be executed in one or more counterparts, each counterpart to be considered an original portion of this Stipulation and all of which shall constitute a single instrument. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile or e-mail shall be effective as delivery of a manually executed counterpart of this Stipulation.

14. Authority. Each Party represents and warrants that it is duly authorized to execute this Stipulation, that upon its signature hereto and the occurrence of the Stipulation Effective Date, this Stipulation shall be enforceable against it (subject to the terms hereof), and that the person through whom each Party executes this Stipulation is fully and duly empowered and authorized to execute same on the respective Party's behalf, and to bind such Party.

15. Standing. Each of the Released Persons shall have the right and standing to enforce the terms of this Stipulation against the Claim Holder.

16. Refusal of Approval. Should the Bankruptcy Court refuse to "so order" this Stipulation, the Liquidating Trust shall have not less, nor more, than thirty (30) days after such

Bankruptcy Court refusal to impose other and further objections to the Claim, regardless of whether the Claim Objection Deadline may have already passed by the time of such Bankruptcy Court refusal.

17. Objection. Upon the Stipulation Effective Date, the objections and the Response shall be considered settled and disposed of, with prejudice.

18. Final Determination. The determination as to the amount and status at which the Claim shall be Allowed (subject to the other provisions of this Stipulation), and the disallowance of the Claim, except as set forth above, shall not be subject to any reconsideration at the Claim Holder's request, whether pursuant to 11 U.S.C. §502(j) or on any other basis.

19. Date of Stipulation. The date of this Stipulation is the date on which the last of the Parties executes a copy of the Stipulation.

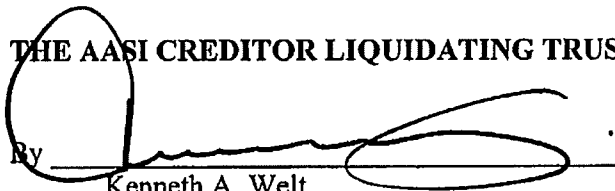
Executed this 7 day of FEB. 2012.

Executed this 1 day of February 2012.

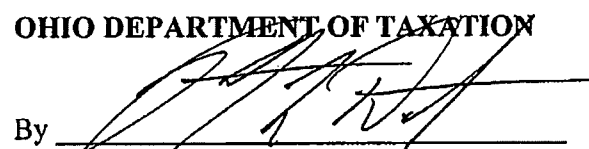
THE AASI CREDITOR LIQUIDATING TRUST

OHIO DEPARTMENT OF TAXATION

By


Kenneth A. Welt
Liquidating Trustee

By


Robert L. Doty, Assistant Attorney General
Counsel for the Ohio Department of Taxation

THIS CAUSE came before the Court upon the Liquidating Trustee's *Motion to Approve Stipulation and Order Resolving Claims of Ohio Department of Taxation* ("Motion") [D.E.# ____] by and between Kenneth A. Welt, Liquidating Trustee ("Liquidating Trustee") for the AASI Creditor Liquidating Trust ("Liquidating Trust"), and the Ohio Department of Taxation ("Claim Holder"). The Court finding that due and proper notice of the Motion has been given by the Liquidating Trustee in accordance with the applicable provisions of the Bankruptcy Code and the Federal and Local Rules of Bankruptcy Procedure; and that no further notice of the Motion is necessary; and it appearing that the Liquidating Trustee and the Claim Holder have conferred and reached an agreement regarding the resolution of the disputes between them as set forth in further detail in the Agreement¹ attached as Exhibit "A" to the Motion; and the Court having reviewed the Motion and the terms of the Agreement; and it appearing that no parties in interest have filed any objections to the Motion; and finding that the Agreement is in the best interests of the Liquidating Trust and its beneficiaries, it is hereby

ORDERED that:

1. The Motion is **GRANTED**.
2. The Settlement, as embodied in the Agreement by and between the Liquidating Trustee and the Claim Holder, is **APPROVED**. As set forth in the Agreement, the Claim of the Claim Holder shall be an Allowed Claim in the amount of \$14,912.54 as a priority unsecured claim.
3. The Agreement, as referenced in the Motion, is approved in all respects. The parties are authorized and instructed to comply with the terms thereof. Each and every term and condition of the Agreement attached to the Motion as Exhibit "A", is incorporated herein and made an order of this Court.

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

4. The Liquidating Trustee and the Claim Holder are expressly authorized and directed to execute, deliver, perform, and consummate all terms and conditions set forth in the Agreement.

5. The Liquidating Trustee and the Claim Holder shall bear their own respective attorney's fees and costs in connection with the Agreement and the Motion.

6. This Court hereby retains jurisdiction to enforce the terms of this Order.

###

Copies furnished to:

Ido Alexander, Esq.

*Local Counsel to the AASI Creditor Liquidating Trust
and AASI Creditor Liquidating Trust Committee*

Markowitz, Ringel, Trusty + Hartog, P.A.

9130 South Dadeland Boulevard, Suite 1800

Miami, Florida 33156

Tel: 305-670-5000

Fax: 305-670-5011

E-mail: ialexander@mrthtlaw.com

(Attorney **ALEXANDER** is directed to mail a conformed copy of this Order to all interested parties immediately upon receipt of this Order)