

This document was signed electronically on May 26, 2020, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: May 26, 2020



**ALAN M. KOSCHIK**  
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:

PLEASANTS CORP *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 18-50757

Cases Jointly Administered under

Case No. 18-50757

Judge Alan M. Koschik

**FINAL ORDER APPROVING CLASS ACTION SETTLEMENT UNDER  
BANKRUPTCY RULE 7023 AND FEDERAL RULE OF CIVIL PROCEDURE 23**

WHEREAS, by Order dated December 24, 2019 [Dkt. No. 3546 (the “Preliminary 7023 Approval Order”), the Court, pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 7023 and Federal Rule of Civil Procedure Rule 23, granted the *Motion of Schwebel Baking Company Pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 7023, and Federal*

<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; Energy Harbor Generation, LLC (0561), case no. 18-50762; Pleasants Corp. (5914), case no. 18-50763; Energy Harbor Nuclear Corp. (1493), case no. 18-50761; Energy Harbor LLC (0186), case no. 18-50757; and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors’ address is: 341 Pond Dr., Akron, OH 44320.

*Rule of Civil Procedure 23 for the Entry of an Order (I) Applying Bankruptcy Rule 7023 to these Proceedings (II) Certifying the Settlement Class for Settlement Purposes, (III) Appointing Class Counsel and Class Representative, (IV) Approving the Form and Manner of Notice to Settlement Class Members of the Settlement, and (V) Providing a Schedule for Fairness Hearing* [Dkt. No. 3401] (the “Preliminary 7023 Approval Motion”);<sup>2</sup>

WHEREAS, by Order dated December 17 2019 [Dkt. No.3516] (the “9019 Order”), the Court, pursuant to Bankruptcy Rule 9019, granted the *Motion of Debtors for Entry of Order Approving Settlement Between Debtors and Schwebel Baking Company Pursuant To Bankruptcy Rule 9019* [Dkt. No. 3404] (the “9019 Motion”); and

WHEREAS, the Court having considered the Preliminary 7023 Approval Motion, the 9019 Motion, the Settlement Agreement, the Plan of Allocation, and Class Claimant’s Motion in Support of Entry of a Final Approval Order (the “Final Approval Motion”), and any objections or oppositions thereto; and the Court having held a final Fairness Hearing in connection with its consideration of the Settlement in accordance with Bankruptcy Rule 7023(e) and following the issuance of Notice to Settlement Class Members as directed by the Preliminary 7023 Approval Order; and the Court, after due deliberation, having determined that the legal and factual bases set forth in the Final Approval Motion establish just and sufficient cause for the relief requested therein,

**IT IS HEREBY ORDERED, ADJUDGED, FOUND AND DECREED THAT:**

1. This Court has jurisdiction over this matter pursuant to 28 USC §1334.
2. This is a core proceeding pursuant to 28 USC §157(b)(2).

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement (the “Settlement Agreement” or “Settlement”) previously submitted at Dkt. No. 3401 as an exhibit to the Preliminary 7023 Approval Motion.

3. The Final Approval Motion is GRANTED in its entirety.

4. All objections (if any) to the Final Approval Motion, the Settlement Agreement, the Plan of Allocation, the allowance of the Class Proof of Claim as provided in the Settlement Agreement, or the other relief requested in Final Approval Motion, that have not been withdrawn, waived, compromised, settled or released, and all reservations of rights in such objections (if any), are hereby OVERRULED in all respects on the merits and denied.

5. Appropriate and adequate notice of the proposed Settlement, the Plan of Allocation and the Fairness Hearing, in accordance with the Court's Preliminary 7023 Approval Order, due process, the Bankruptcy Rules, and Federal Rule of Civil Procedure 23, was duly provided to the Settlement Class.

6. The Settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, is in the public interest, and merits approval under Bankruptcy Rule 7023 and Federal Rule of Civil Procedure 23, for the following reasons, *inter alia*:

- a. If the Settlement is not approved, the continued litigation of the relevant claims will likely be complicated, protracted and expensive, thereby depleting the Debtors' estate and delaying and diminishing distributions to creditors, including Settlement Class Members, with uncertain results;
- b. The Settlement Agreement was reached only after Class Counsel conducted significant formal and informal discovery, analyzed the applicable law, and weighed the likelihood of success against the risks of further litigation (including the risk that, even if the Settlement Class Representative were to prevail on behalf of the Settlement Class on all Settlement Class claims and were to obtain a greater recovery after trial, any such recovery would still face the risk of being overturned or reduced on appeal);
- c. The Settlement, which grants the Settlement Class an allowed unsecured claim equal to roughly 50% of the amount of the Settlement Class's estimated total alleged damages, is well within the range of reasonableness given (1) the risk that the Settlement Class Representative (and other Class Members) would be unable to establish that Debtor FES's imposition of the disputed Polar Vortex Surcharges breached FES's contracts with any Settlement Class Members, and (2) the risk that, even if the Settlement Class Representative (and other Settlement Class Members) established breaches of

the relevant contracts, the Debtors could still defeat the claims because of the voluntary payment doctrine, laches, waiver, or one or more of the Debtors' other affirmative defenses; and

- d. The Settlement Agreement was negotiated in good faith and at arm's length by experienced counsel on both sides, who had acquired a thorough understanding of the strengths and weaknesses of the Parties' respective claims and defenses in the course of approximately two years' of vigorously contested litigation (including in the District Court as well as subsequently in this Court), and who were therefore well-positioned to evaluate the benefits of the Settlement, taking into account the expense, risk and uncertainty of further litigation.

In addition to considering the complexity, expense, likely duration and risks of further litigation, the stage of the proceedings (including the amount of discovery completed) and the range of reasonableness of the Settlement in light of the best possible recovery, the Court has also considered the reaction of the Settlement Class in deciding to approve the Settlement, as well as the benefits to the Debtors' estate and Debtors' other creditors in efficiently and fairly resolving the claims that are being settled and resolved under the Stipulation.

7. In accordance with Federal Rule of Civil Procedure 23(e)(2)(A), the Settlement Class Claimant and Settlement Class Counsel have adequately represented the Settlement Class.

8. The Plan of Allocation is fair, reasonable and adequate, and (in conjunction with the Settlement Agreement) provides for an effective and cost-efficient method of distributing relief to the Settlement Class that treats Settlement Class Members equitably relative to each other, and that the Settlement and the Plan of Allocation merit approval under Federal Rule of Civil Procedure 23(e)(2).

9. On the Settlement Effective Date, the Settlement Agreement and the terms of this Order shall become final and binding upon the Parties and all members of the Settlement Class who did not timely and properly elect to exclude themselves in accordance with the Settlement Class Notice and Preliminary 7023 Approval Order.

10. The entry of this Order is without prejudice to the relief granted in the Preliminary 7023 Approval Order or the 9019 Order, and the Court's prior certification (for settlement purposes only) of the Settlement Class and appointment of Class Counsel and the Settlement Class Claimant on the grounds set forth in the Preliminary 7023 Approval Order are hereby reconfirmed.

11. The entry of this Order shall not serve to extend or stay the time of filing any appeal regarding any of the relief granted in the Preliminary 7023 Approval Order or the 9019 Order.

12. The Parties are hereby authorized, empowered and directed to take such steps and perform such acts as may be necessary and appropriate to carry out the terms of this Order and the Settlement Agreement.

13. Upon the occurrence of the Settlement Effective Date, all Released Claimants' Claims of each Released Claimant Party as against each Released Debtor Party, and all Released Debtors' Claims of each Released Debtor Party as against each Released Claimant Party, shall be fully, finally and forever compromised, settled, released, relinquished, discharged and dismissed with prejudice (and without costs except as provided herein or in the Settlement Agreement or documents incorporated therein).

14. Contingent on the occurrence of the Settlement Effective Date, (a) Claim No. 934 (the Class Proof of Claim) shall, without further order of the Court, be ALLOWED in so far as the Class shall be allowed a non-priority unsecured class claim in the amount of \$12,000,000.00; and and (b) Claim No. 935 shall, in accordance with the terms of the Settlement Agreement, be deemed WITHDRAWN.

15. Payment or transfer of the distributions on the Allowed Claim shall be made into the Escrow Account in accordance with the Debtor's Plan and subject to all of the terms and conditions set forth in the Settlement Agreement.

16. The Court finds that all Parties and their counsel have complied with each requirement of Federal Rule of Civil Procedure 11 as to all proceedings relating to the subject matter of the Class Proof of Claim.

17. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and/or implementation of this Order.

18. There is no just reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed.

19. This Order is effective immediately upon entry.

###

**Prepared by:**

/s/ William C. Fredericks

William C. Fredericks (admitted pro hac vice)

Scott Jacobsen (admitted pro hac vice)

**SCOTT+SCOTT, ATTORNEYS AT LAW, LLP**

The Helmsley Building

230 Park Ave., 17th Floor

New York, NY 10169

Tel: (212) 223-6444

Fax: (212) 223-6334

/s/ David Neumann

Peter Turner (0028444)

Richard Bain (0016525)

David Neumann (0068747)

**MEYERS, ROMAN, FRIEDBERG & LEWIS**

28601 Chagrin Blvd, Suite 500

Cleveland, OH 44122

Tel: (216) 831-0042

Fax: (216) 831-0542

[pturner@meyersroman.com](mailto:pturner@meyersroman.com)

[rbain@meyersroman.com](mailto:rbain@meyersroman.com)

[dneumann@meyersroman.com](mailto:dneumann@meyersroman.com)

*Counsel for Class Claimant Schwebel Baking Co.*