

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**DECLARATION OF STEPHEN B. DARR IN SUPPORT OF CONFIRMATION OF THE  
SECOND AMENDED JOINT CHAPTER 11 PLAN  
OF NEW ENGLAND COMPOUNDING PHARMACY, INC.**

**INTRODUCTION**

1. My name is Stephen B. Darr. As of April 13, 2015, I am a managing director of Huron Consulting Services LLC. Prior to that date, I was a Senior Managing Director of Mesirow Financial Consulting, LLC (“MFC”), which has been employed as financial advisor to Paul D. Moore, the duly appointed trustee (“Trustee”) of the chapter 11 estate of New England Compounding Pharmacy, Inc. (“NECC”) or the “Debtor”) in the above-captioned bankruptcy case. I had overall responsibilities for all services provided by MFC in connection with these proceedings, and I have personal knowledge of all matters averred in this Declaration, except for those matters stated to be upon information and belief, which I believe to be true and correct. I am competent to testify under oath to the matters set forth in this Declaration if called to do so. I submit this Declaration in support of confirmation of the *Second Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. 1308] (the “Plan”) in the above-referenced chapter 11 proceeding.

2. A copy of my resume is attached. In summary, I have over 35 years of extensive experience in providing financial advisory services related to complex restructuring matters. I have served, and continue to serve, as a bankruptcy trustee in numerous cases, and I have served

as a financial advisor to numerous chapter 11 creditors' committees and chapter 11 debtors in possession. Accordingly, I have specialized experience in fiduciary roles, such as trustee, examiner, assignee for benefit of creditors and liquidating agent. I also have significant experience providing litigation support and expert testimony in matters involving, *inter alia*, professional liability claims and business tort claims. I have provided valuation services in a number of roles for a variety of industries. I am a Certified Insolvency and Restructuring Advisor (CIRA), and I hold a Certification in Distressed Business Valuation (CDBV). I am a Certified Public Accountant (CPA) in the Commonwealth of Massachusetts and the State of New Hampshire. I hold a Certification in Financial Forensics (CFF), and I hold FINRA Series 7, 24 and 79 licenses. I am a Fellow of the American College of Bankruptcy.

## **LIQUIDATION ANALYSIS**

### **The "Best Interests" of the Creditors Test**

3. As a condition to confirmation, Section 1129(a)(7) of the Bankruptcy Code requires that the Bankruptcy Court find that each Holder of a Claim or Interest in each Impaired Class: (i) has accepted the Plan or (ii) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Satisfaction of these criteria is often referred to as the "best interests" test.

4. Attached hereto as Exhibit "A" is an analysis (the "Liquidation Analysis") which I prepared and which demonstrates that the Plan satisfies the "best interests" test. This analysis demonstrates the Plan's satisfaction of the "best interests" test through the following hypothetical three-part process: (1) estimating the amounts that would be recovered by a chapter 7 trustee if this case were converted to a case under chapter 7 of the Bankruptcy Code (the "Liquidation Proceeds"); (2) determining the amounts that would be available for distributions to creditors in a

chapter 7 case; and (3) comparing the amounts available for distribution under a hypothetical chapter 7 case as opposed to the amount available for distribution under the Plan. The Liquidation Analysis is based upon certain assumptions discussed herein and in the Disclosure Statement.

### **General Liquidation Analysis Assumptions**

5. The Liquidation Analysis begins with the Debtor's projected cash balance and assets as of May 19, 2015 (the hypothetical "Conversion Date") and estimates the amount of potential litigation recoveries in a chapter 7 case and the net costs to execute the administration of the wind-down of the estate. The Liquidation Analysis assumes that the Debtor would commence a chapter 7 liquidation on or about the Conversion Date under the supervision of a chapter 7 trustee. The Liquidation Analysis reflects the wind-down and liquidation of substantially all of the Debtor's remaining assets and the settlement or prosecution of remaining litigation.

6. If this Court confirms the Plan, in addition to existing cash and estimated proceeds from the realization of accounts receivable and furniture and equipment, the proceeds from the following settlements will be available for payment of administrative priority claims and distribution to creditors:

<b><u>Contributing Party</u></b>		<b><u>Amount</u></b>
Shareholders	Cash payment	<b>\$47,500,000</b>
	Potential anticipated tax refunds	<b>\$21,800,000</b>
Insight Settling Parties and Insurers		<b>\$40,000,000</b>
UniFirst and Insurers		<b>\$30,500,000</b>
NECC Insurers		<b>\$25,200,000</b>

<u>Contributing Party</u>	<u>Amount</u>
Inspira and Insurers	<b>\$16,000,000</b>
Ameridose Insurer	<b>\$10,000,000</b>
ARL and Insurer	<b>\$6,400,000</b>
Victory and Insurers	<b>\$5,500,000</b>
GDC and Insurer	<b>\$3,750,000</b>
High Point and Insurer	<b>\$3,500,000</b>
Liberty and Insurer	<b>\$1,000,000</b>
<b>Total</b>	<b><u>\$211,150,000</u></b>

7. In my opinion, a chapter 7 trustee would not be able to realize *any* amounts from the Contributing Parties in settlements due to the fact that a condition to any settlement with these parties is the third-party releases of these parties provided in the Plan. Such releases are not available in a chapter 7 case. Further, the Contributing Parties (with the exception of the Shareholders) paid these settlement amounts principally, if not exclusively, to satisfy claims of tort claimants. A chapter 7 trustee would not have standing to pursue such claims. In sum, with the exception of the pursuit of avoidance actions against the Shareholder discussed in Paragraph 10 below, a chapter 7 trustee would not recover any amounts from the Contributing Parties through settlement or litigation.

8. The settlements with the Shareholders provide the Debtor's estate with certain tax-related payments that would not otherwise be available to the estate through traditional litigation. *See Declaration of Stephen B. Darr in Support of Pending Settlement Motions* [Dkt. 906] at ¶¶ 25-28.

9. Additionally, the settlements provide for payments to the estate from NECC's insurers, which, outside of the Plan, would likely contest or deny coverage under the applicable

Policies, as a result of which the Debtor's estate would like realize no recovery from these insurers. Moreover, they would not be willing to settle without policy releases for the various NECC insured parties, who would be unwilling to provide them without third party releases and assurances that they would no longer require coverage for related defense costs.

10. I have assumed that a chapter 7 Trustee would pursue successfully an action to avoid and recover certain transfers from the Shareholders and their affiliates (the "Insiders") under 11 U.S.C. § § 544, 548 & 550. I have assumed that the recovery in this action (the "Fraudulent Conveyance Action") would be limited to a maximum amount of \$10,927,801, which is the total amount of transfers to the Insiders on or after May 21, 2012 (the "Earliest Compounding Date"), the date on which a contaminated lot appears to have been compounded. See Declaration of Chapter 11 Trustee in Support of Pending Settlement Motions [Dkt. 905] at ¶ 18. Prior to the Earliest Compounding Date, NECC was highly profitable. It is reasonable to assume that a chapter 7 trustee would not be able to prove that NECC was insolvent prior to that date.

11. The costs of liquidation under Chapter 7 of the Bankruptcy Code would include the fees payable to a Chapter 7 trustee, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. The foregoing types of claims and other claims that might arise in a Chapter 7 liquidation case or result from the pending Chapter 11 Case, including any unpaid expenses incurred by the Chapter 11 Trustee and the Official Committee during this case, such as compensation for attorneys, financial advisors and accountants, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available for distribution to holders of allowed general unsecured claims.

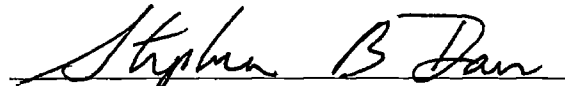
12. After considering the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to the holders of Claims and interests in this Chapter 11 Case, including the increases in Claims which could be satisfied on a priority basis or on parity with creditors in this Chapter 11 Case, I believe that confirmation of the Plan will provide each holder of an allowed Claim or Equity Interest with a recovery that is not less than such holder would receive pursuant to a liquidation under Chapter 7 of the Bankruptcy Code.

13. The statements in the Liquidation Analysis, including estimates of Allowed Claims, were prepared solely to assist the Bankruptcy Court in making the findings required under section 1129(a)(7) for the Plan, and they should not be used or relied upon for any other purpose.

*[Signature Page Follows]*

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 12, 2015

A handwritten signature in cursive script, reading "Stephen B Darr", written over a horizontal line.

Stephen B. Darr, C.P.A.  
Huron Consulting Services LLC.  
125 Summer Street  
18<sup>th</sup> Floor  
Boston, MA 02110

**EXHIBIT A**

**LIQUIDATION ANALYSIS<sup>1</sup>**

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<sup>1</sup> THE CHAPTER 11 TRUSTEE BELIEVES THAT ANY ANALYSIS OF A HYPOTHETICAL LIQUIDATION IS NECESSARILY SPECULATIVE. THERE ARE A NUMBER OF ESTIMATES AND ASSUMPTIONS UNDERLYING THE LIQUIDATION ANALYSIS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE CHAPTER 11 TRUSTEE OR A CHAPTER 7 TRUSTEE. NEITHER THE ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THERE CAN BE NO ASSURANCE THAT ACTUAL RESULTS WOULD NOT VARY MATERIALLY FROM THE HYPOTHETICAL RESULTS PRESENTED IN THE LIQUIDATION ANALYSIS.



New England Compounding Pharmacy, Inc.  
Liquidation Analysis  
United States Bankruptcy Court for the District of Massachusetts  
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			Projected Proceeds Available Under Chapter 11 Plan	Projected Proceeds Under Hypothetical Chapter 7
<b>Estimated Cash on Hand as of May 19, 2015</b>			\$ 800,000	\$ 800,000
<b>Settlements with National Defendants:</b>				
Ameridose Settlement	Note 2		10,000,000	-
GDC Settlement	Note 1		3,750,000	-
PMIC/Maxum Settlement	Note 1		25,200,000	-
NECC Owners/Shareholder Settlement	Note 1		47,500,000	10,927,801
Victory Settlement	Note 2		5,500,000	-
ARL Settlement	Note 2		6,400,000	-
Liberty Settlement	Note 2		1,000,000	-
UniFirst Settlement	Note 2		30,500,000	-
Total Estimated Amount			129,850,000	10,927,801
<b>Settlements with Clinic-Related Defendants:</b>				
High Point Settlement	Note 2		3,500,000	-
Inspira Settlement	Note 2		16,000,000	-
Insight Settlement	Note 2		40,000,000	-
Total Estimated Amount			59,500,000	-
<b>Shareholder Settlement</b>				
75% of the net funds realized from the sale or other disposition of the equity interests in or assets of the Pharmaceutical Entities	Note 1		-	-
Interests in Insurance Policies	Note 1		-	-
90 % of Estimated Federal, State and Local Tax Refunds	Notes 1 & 3		21,800,000	-
100% of Non-Disclosed Assets	Note 1		-	-
			21,800,000	-
<b>Other Assets</b>	<b>Book Value</b>			
Accounts Receivable	1,070,342	Note 4	107,034	107,034
Furniture and Equipment	3,168,037	Note 4	316,804	316,804
<b>Total recoveries</b>			212,373,838	12,151,639
<b>Administrative expenses</b>				
Chapter 11/7 Trustee fees		Note 5	(6,434,643)	(387,799)
Chapter 7 professional Fees	40%	Note 6	-	(4,371,120)
Estimated Chapter 11 Administrative Expenses (Professional Fees)			(11,020,000)	(11,020,000)
<b>Estimated amount available to pay claims after administrative claims/ (deficiency)</b>			194,919,195	(3,627,280)
<b>Estimated Priority Tax Claims</b>			-	-
Class A - Estimated Priority Non-Tax Claims			-	-
<b>Available for Class C - General Unsecured Claims and Class D - Tort Claims (deficiency)</b>			\$ 194,919,195	(3,627,280)

**New England Compounding Pharmacy, Inc.  
Liquidation Analysis  
United States Bankruptcy Court for the District of Massachusetts  
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**Note 1-**Each of these settlements provides that the settling counterparty will receive a third-party release under the Plan. In a Chapter 7 case, none of the recoveries (other than the insider settlements) would be possible since (a) such a release would not be available; and (b) the settlement amounts could not be recovered by a Chapter 7 Trustee through litigation because the underlying claims are the claims of the tort claimants and not claims of the estate. It is projected that a maximum of \$10,927,802 would be recovered in Chapter 7 litigation against NECC's insiders pursuant to 11 U.S.C. Sections 544, 548 and 550.

**Note 2-**Each of these pending settlements is anticipated to provide that the settling counterparty receive a third-party release under the Plan. In a Chapter 7 case, none of the recoveries (other than the insider settlements) would be possible since (a) such a release would not be available; and (b) the settlement amounts could not be recovered by a Chapter 7 Trustee through litigation because the underlying claims are the claims of the tort claimants and not claims of the estate.

**Note 3-**Estimated amount of tax refunds arising from the carry-back of expenses incurred in connection with the administration of the estate and/or in the investigation and settlement of the liability claims which will be available under the terms of the Chapter 11 Plan. No such tax refunds would be available or recovered in a Chapter 7 liquidation.

**Note 4-**Calculated at

\*10% of remaining accounts receivable (a significant portion has been collected postpetition)

\*10% of original cost of furniture and equipment

**Note 5-**Calculated at the rates provided by Section 326 of the U.S. Bankruptcy Code.

**Note 6-**Assumed contingency fee required to pursue litigation seeking recoveries from the insiders; estate has insufficient funds to pursue these claims on a fee basis.



**STEPHEN B. DARR**  
**SENIOR MANAGING DIRECTOR**  
**MESIROW FINANCIAL CONSULTING, LLC**

Mr. Darr is a Managing Director in the Boston office of Huron Consulting Group, Inc. (“Huron”) Huron provides financial advisory services, interim management and fiduciary services to financially distressed business organizations, as well as litigation support and valuation services involving both distressed and non-distressed business organizations. Mr. Darr has led advisory engagements involving several significant reorganization cases, has provided interim management services in a variety of “C-level” positions, has served as Examiner, Chapter 7 and Chapter 11 trustee in Massachusetts, Rhode Island, Maine and New Hampshire. He has testified frequently in both bankruptcy and non-bankruptcy matters.

**Education and Qualifications:**

University of Chicago, Master of Business Administration (Accounting and Finance)

Boston College, Bachelor’s in Business Administration (Accounting)

Certified Public Accountant - Massachusetts and New Hampshire

Certified Insolvency and Reorganization Advisor

Certification in Distressed Business Valuation

Certification in Financial Forensics

Securities registrations

- Series 7–Registered Securities Representative
- Series 24-General Securities Principal
- Series 79-Investment Banking Representative

STEPHEN B. DARR  
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**Associations and Memberships:**

Member-American Institute of Certified Public Accountants

Member-Massachusetts Society of Certified Public Accountants

Member-American Bankruptcy Institute

Director, member and President (*emeritus*) of the Association of Insolvency and Restructuring Advisors

Fellow-American College of Bankruptcy

**Certificate of Service**

I, Michael R. Lastowski, hereby certify that on this day, May 12, 2015, I caused a copy of the *Declaration of Stephen B. Darr in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.*, which was filed using this Court's ECF system, to be served electronically upon those parties registered to receive ECF service.

/s/ Michael R. Lastowski  
Michael R. Lastowski