

Hearing Date: December 2, 2014 at 10:00 a.m.
Response Deadline: November 24, 2014 at 4:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GETTY PETROLEUM MARKETING INC., et al.,

Reorganized Debtors.**

**Chapter 11
Case No. 11-15606 (SCC)

Jointly Administered**

**NOTICE OF LIQUIDATING TRUSTEE’S MOTION, PURSUANT TO RULE 9019(A)
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND SECTION 105(A)
OF THE UNITED STATES BANKRUPTCY CODE, FOR APPROVAL OF
SETTLEMENT OF REJECTION CLAIMS OF GIOVANNI CUTILLO AND NINO
AUTO REPAIR, INC., INDIVIDUALLY AND ON BEHALF OF SIMILARLY
SITUATED GASOLINE STATION DEALERS**

PLEASE TAKE NOTICE that on November 13, 2014, Alfred T. Giuliano, the trustee of the Getty Petroleum Marketing Inc. Liquidating Trust (the “Trustee” of the “Liquidating Trust”), as successor in interest to the above-captioned (and now reorganized) debtors and debtors in possession, filed the *Liquidating Trustee’s Motion, Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, and Section 105(a) of the United States Bankruptcy Code, for Approval of Settlement of Rejection Claims of Giovanni Cutillo and Nino Auto Repair, Inc., Individually and on Behalf of Similarly Situated Gasoline Station Dealers* (the “Motion”), and that a hearing to consider the Motion will be held before the Honorable Shelly C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court, Southern District of New



York, in Courtroom 623 at the Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 (the "Bankruptcy Court"), on **December 2, 2014 at 10:00 a.m.**

(prevailing Eastern Time), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must (i) comply with the Federal Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court, and all applicable rules and orders, (ii) set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, and (iii) be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (a copy of which can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a disc, preferably in Portable Document Format (PDF), or any other Windows-based word processing format, with a hard copy delivered directly to Chambers, and must be served upon (a) the undersigned attorneys for the Trustee; (b) counsel to Mr. Giovanni Cutillo and Nino's Auto Repair, Inc., Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016, Attn: Joshua J. Angel, Esq. and Frederick E. Schmidt, Jr.; and (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York, 10014, Attn: Nazar Khodorovsky, Esq., so that such response/objection is actually received by the foregoing no later than **November 24, 2014 at 4:00 p.m.** (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that only those responses or objections that are timely filed and served in accordance with the procedures set forth herein will be considered at the hearing.

Dated: November 13, 2014
New York, New York

/s/ Andrew N. Goldman
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Attorneys for the Liquidating Trustee

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GETTY PETROLEUM MARKETING INC., et al.,

Reorganized Debtors.**

**Chapter 11
Case No. 11-15606 (SCC)
Jointly Administered**

**LIQUIDATING TRUSTEE'S MOTION, PURSUANT TO RULE 9019(A) OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND SECTION 105(A)
OF THE UNITED STATES BANKRUPTCY CODE, FOR APPROVAL OF
SETTLEMENT OF REJECTION CLAIMS OF GIOVANNI CUTILLO AND NINO
AUTO REPAIR, INC., INDIVIDUALLY AND ON BEHALF OF SIMILARLY
SITUATED GASOLINE STATION DEALERS**

Alfred T. Giuliano, the trustee of The Getty Petroleum Liquidating Trust (the "Trustee") of the "Liquidating Trust"), as successor in interest to the above-captioned (and now reorganized) debtors and debtors in possession (the "Debtors" or "GPMI"), files this motion (the "Motion"), and seeks, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), entry of an order, in the form of the proposed order attached hereto as Exhibit A, approving the global settlement (the "Settlement") of claims asserted (and assertible) by Mr. Giovanni Cutillo and Nino Auto Repair, Inc., individually and on behalf of approximately 344 similarly situated former GPMI gasoline station dealers (the

“Dealers,”¹ and together with the Trustee, the “Parties”). In support of this Motion, the Trustee respectfully states as follows:

INTRODUCTION

1. One of the major remaining disputed groups of claims against the Debtors are the claims of the Dealers (the “Dealer Claims”). There are two components to the Dealer Claims: undisputed “net” security deposit claims due to each Dealer and allowed-but-disputed rejection damages claims of the 55 remaining Dealers. While the Parties are in agreement that the Trustee will allow and pay “net” security deposit claims (the “Allowed Dealer Security Deposit Claim”),² the Parties have always disagreed over the proper amount of the rejection damages component of the Dealer Claims. However, following the disallowance and expungement of the claims of the 287 Dealers who failed to provide evidentiary support for their rejection damages claims, *see* ECF Nos. 1274, 1275, the scope of this disagreement has significantly narrowed, with only the 55 Dealers who provided evidentiary support still pressing their rejection claims.³ These Dealers assert that the proper amount of rejection damages component of their claims is approximately \$7 million, but have provided scant support for that proposition.

2. Although the Trustee believes that—if pressed—the Dealers would ultimately fail in sustaining their burden of demonstrating support for a significant rejection damages claim, the Trustee also recognizes that such dispute would raise substantial and complex legal and factual

¹ The Dealers are represented by Herrick Feinstein LLP (“Herrick”), the law firm that filed the “master” Dealer Claims (as defined below). Herrick (through partner Frederick Schmidt), also sits on the Liquidating Trust Oversight Committee as the Dealers’ representative.

² As set forth below, the Trustee was able to determine (from the Debtors’ books and records) the amount of deposit monies owing to each of the 344 Dealers after setting off for unpaid commissions and other payments due from such Dealer (if any). The Trustee will grant each Dealer an allowed general unsecured claim for such “netted” Allowed Dealer Security Deposit Claim as a component of the Allowed Dealer Claim, in the face amount set forth in Exhibit B.

³ As set forth below, the rejection claims of two dealers were not expunged following a request for more time to quantify their rejection damages. While the Trustee believes that these Dealers have failed to provide such information, as discussed herein, the Trustee will leave final determination of such claims to the Dealer group itself.

issues and questions, and render the outcome of any final litigated resolution of the Dealer Claims unpredictable and costly. Given the uncertainty and expense of such litigation—as well as the threat of judgment in favor of the Dealers—it is the Trustee’s considered business judgment that entering into the Settlement is in the best interests of all of the Debtors’ creditors.

3. Pursuant to the Settlement (and as set forth below), the Dealers will be granted an aggregate \$6.5 million rejection damages claim (the “Allowed Dealer Rejection Claim,” and together with the Allowed Dealer Security Deposit Claim, the “Allowed Dealer Claim”). The Allowed Dealer Claim will be treated as a general unsecured claim in accordance with the Plan (as defined below). The Liquidating Trust will pay all distributions on account of this single Allowed Dealer Claim to the trust account of Herrick, or such other account as the Parties may agree (at the same time as any distributions are made to other allowed claimholders), and the allocation of the Allowed Dealer Rejection Claim among the 55 Dealers entitled to a share of the Allowed Dealer Rejection Claim (and the distributions therefrom) shall be left to the sole and absolute discretion of the Dealer group itself. Thereafter, no party in interest shall have any right to assert any claim or cause of action whatsoever against the Liquidating Trust on account of (i) the Dealer Claims, or (ii) the resulting division and distribution of the Allowed Dealer Claim, with such claims (if any) channeled to the Allowed Dealer Claim. The Parties shall further grant each other mutual and global releases, thereby resolving all outstanding issues between them.

4. The Settlement will thus resolve one of the most significant outstanding groups of claims against the Debtors, thereby allowing the Trustee to focus on the resolution of the remaining outstanding claims in the Debtors’ chapter 11 cases. Accordingly, the Trustee requests that the Court grant the Motion and approve the Settlement in all respects.

JURISDICTION AND STATUTORY PREDICATES FOR RELIEF

5. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are Bankruptcy Rule 9019(a) and section 105(a) of the Bankruptcy Code.

BACKGROUND

The Debtors' Bankruptcy Cases

6. On December 5, 2011 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. Also on the Petition Date, the Court issued an order authorizing the joint administration of the Debtors' estates. On August 24, 2012, the Court entered, pursuant to section 1129 of the Bankruptcy Code, the *Findings of Fact, Conclusions of Law and Order Confirming the Plan of Liquidation for Getty Petroleum Marketing Inc. and Its Subsidiary Debtors* (the "Confirmation Order") [Docket No. 714], confirming the *First Amended Plan of Liquidation for Getty Petroleum Marketing Inc. and its Subsidiary Debtors Proposed by Official Committee of Unsecured Creditors* (as amended or modified, the "Plan").

7. On September 24, 2012, the Plan became effective (the "Effective Date"), and pursuant to the Plan and the Confirmation Order, the Liquidating Trust was established, the appointment and designation of the Trustee was approved, and the Liquidating Trust Assets (as defined in the Plan) were conveyed and transferred to the Liquidating Trust. *See* Plan, §§ 1.2, 8.1, 8.8(b), and Schedule 1.2 thereto.

8. Pursuant to the terms of the Liquidating Trust Agreement, dated September 24, 2012, the Trustee is authorized to seek Court approval of a settlement such as this with—or without—the approval of the Trust Oversight Committee (the "Oversight Committee"). The

Oversight Committee is comprised of the Trustee (as representative of the claim held by Bionol Clearfield LLC, the Debtors' largest unsecured creditor), Fredrick Schmidt of Herrick (as representative of the Dealers), and a designee of Getty Realty Corp. The Oversight Committee is firmly supportive of this Settlement.

The Dealer Claims

9. In April 2012, Mr. Cutillo and Nino Auto Repair, Inc., acting through Herrick, timely filed the two "master" Dealer Claims (proof of claims numbers 388 and 390), individually and on behalf of approximately 350 similarly situated Dealers, to cover, *inter alia*, the Dealers' rejection damages claims. As filed, the Dealer Claims were unliquidated and unquantified. Accordingly, on December 5, 2013, the Trustee objected to the allowance of the Dealer Claims in the Ninth Omnibus Claims Objection [ECF No. 1024].

10. When the Trustee filed the Ninth Omnibus Claims Objection, the Trustee did not seek—at that time—to disallow and expunge the Dealer Claims. Rather, as the Trustee explained in the Ninth Omnibus Claims Objection, "[i]n an effort to try to resolve [the] Ninth Omnibus Claims consensually and efficiently, the Trustee has agreed to defer filing any detailed/substantive objection" to the Dealer Claims "for such period of time as he deems appropriate to allow the Trustee and [the Dealers] to continue working towards consensual resolutions of their respective Claims," and "to preserve his rights in light of the looming Claims Objection Deadline." The Trustee expressly indicated that further objections (and requests for expungement) would follow if those Dealers failed to provide sufficient documentation to enable the Trustee to evaluate and analyze the same, as is the burden in any claims allowance/resolution process.

11. Despite these warnings and repeated efforts by the Trustee, coordinated through numerous discussions with Herrick, the overwhelming majority of the Dealers failed to provide

any documentation supporting the core of their claims (i.e., lease documentation, sales commission documentation, lost revenue information, etc.) to the Trustee and Herrick so that the two parties could review, analyze and discuss the same.

12. Accordingly, on September 23, 2014, the Trustee filed the First and Second Supplements to the Ninth Omnibus Claims Objection [ECF Nos. 1252, 1253], seeking to disallow and expunge the rejection damages claims of Dealers who failed to provide evidentiary support for their claims. Mr. Cutillo filed a declaration in support of the Supplements to the Ninth Omnibus Claims Objection. *See*, ECF No. 1270.

13. On November 5, 2014, the Court entered orders [ECF Nos. 1274, 1275] disallowing and expunging the rejection damages claims of the 287 Dealers who failed to support their claims. After entry of those orders, 55 Dealers still held claims as a component of the Dealer Claims.⁴ The Parties thereafter commenced discussions concerning the proper resolution of these remaining claims, and have reached the Settlement.

The Settlement

14. The terms of the Settlement are as follows:

- a. The Allowed Dealer Claim will be allowed as one general unsecured claim, comprised of two components.
 - i. The Allowed Dealer Rejection Claim will be allowed as a general unsecured claim in an aggregate amount of \$6.5 million; PLUS
 - ii. The Allowed Dealer Security Deposit Claim will be allowed as a general unsecured claim in the aggregate amount of

⁴ After the Trustee filed the First and Second Supplements to the Ninth Omnibus Claims Objection, two Dealers (27 Raceway LLC and Wantagh Avenue Automotive Inc.) contacted the Trustee and/or Herrick, and said they would provide evidentiary support for their rejection claims, and so did not have their rejection claims expunged and disallowed. However, the Trustee believes that they have only provided support for their security deposits (which, as set forth herein, the Trustee will allow and pay on a “net” basis) and failed to support an entitlement to rejection damages. Pursuant to the terms of the Settlement, the Trustee will leave final determination of such entitlement to the Dealer group itself, with any resulting claims (if any) channeled to the Allowed Dealer Claim.

\$9,572,697.01, which is derived from the total amount of “net” security deposit monies due to each Dealer, as determined by the Trustee in a good faith and, reasonable under the circumstances, review of the Debtors’ books and records. The face amount of each Dealer’s share of the Allowed Dealer Security Deposit Claim is set forth on Exhibit B hereto. For the avoidance of doubt, each Dealer shall only be entitled to one satisfaction on account of his or her security deposit monies, and to the extent that any Dealer also individually filed a claim for security deposits monies due to him or her (which has not been disallowed and expunged), the Allowed Dealer Security Deposit Claim shall satisfy such separately-filed claim.

- b. The Liquidating Trust shall pay distributions on account of this single Allowed Dealer Claim in the ordinary course, and in the same manner as the disbursements on account of other, similarly situated, general unsecured claims, to the trust account of Herrick (or such other account as the Parties may agree).
- c. The allocation of the Allowed Dealer Rejection Claim (and distributions on account thereof) among the Dealers entitled to a share of the Allowed Dealer Rejection Claim shall be left to the sole and absolute discretion of the Dealer group itself.
- d. The pro rata distributions on account of the Allowed Dealer Security Deposit Claim shall be likewise be made by Herrick to each Dealer in accordance with the face amount due to each Dealer, as set forth on Exhibit B hereto.
- e. After the Liquidating Trust makes distributions under the plan on account of the Allowed Dealer Claim to Herrick’s trust account, no party in interest shall have any right to assert any claim whatsoever against the Liquidating Trust on account of (i) the Dealer Claims, or (ii) the resulting allocation or distribution of the Allowed Dealer Claim.
- f. Upon the entry of an order granting the relief sought in this Motion, the Parties shall fully and mutually release and forever discharge each other, the intent being to resolve forever all outstanding issues between them and all successors and assigns.

The Trustee’s Authority to Enter into the Settlement

15. Pursuant to the Plan, the Debtors entered into the Liquidating Trust Agreement.

The Liquidating Trust Agreement provides that the Trustee may manage the Liquidating Trust

Assets subject to specific limitations set forth in the Liquidating Trust Agreement or the Plan. The Liquidating Trust Agreement requires that before taking certain actions, including actions with respect to any Liquidating Trust Asset that involves paying or incurring any obligation or expense in excess of \$50,000, either that (i) the Trustee obtain the consent of the majority of the Oversight Committee, Liquidating Trust Agreement ¶¶ 2.10, 3.2(a), or (ii) if the Trustee receives Bankruptcy Court approval to take such action, a majority vote of the Oversight Committee is not required, *id.* ¶ 3.2(c).

BASIS FOR RELIEF REQUESTED

Standards for Approving the Settlement

16. Bankruptcy Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). In ruling on a motion pursuant to Bankruptcy Rule 9019(a), the court must find that the proposed settlement is fair and equitable and in the best interests of the estate. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Drexel Burnham Lambert Group.*, 960 F.2d 285, 292-93 (2d Cir. 1992). A finding under Rule 9019(a) is committed to the sound discretion of the Court, which should exercise that discretion in light of the public policy that favors settlement of disputed claims. *See In re Hibbard Brown & Co.*, 217 B.R. 41, 45 (Bankr. S.D.N.Y. 1998); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y. 1993).

17. While the bankruptcy court should apprise itself of “all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated,” in determining whether a settlement is fair and equitable, *see TMT Trailer Ferry*, 390 U.S. at 424, the court need not determine and rule upon disputed facts and questions of law.

Rather, the court need only “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991) (internal quotations omitted) (*quoting Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983)). In evaluating the reasonableness of a settlement, the court should give considerable weight to a trustee’s informed judgment that a compromise is fair and equitable. *TMT Trailer*, 390 U.S. at 444; *In re Carla Leather, Inc.*, 44 B.R. 457, 471 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985); *In re Drexel Burnham Lambert*, 134 B.R. at 496. The role of the Court is not to substitute its judgment for the trustee’s, but to check instead the reasonableness of the trustee’s decision. *In re Ashford Hotels Ltd.*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998), *aff’d*, 235 B.R. 734 (S.D.N.Y. 1999).

18. In determining whether a settlement falls within the broad range of reasonableness, courts consider several interrelated factors. As laid out by the Second Circuit, these factors include: (1) the probability of success in the litigation and the benefit of the settlement; (2) the likelihood of complex and protracted litigation, and its related expense, inconvenience, and delay; (3) the interests of the creditors and the extent to which creditors support or do not object to the settlement; (4) whether other parties support the settlement; (5) the “competency and experience of counsel” supporting the settlement and the experience and knowledge of the bankruptcy judge reviewing it; (6) the releases to be issued as a result of the settlement; and (7) the extent to which the settlement is the product of arm’s length bargaining. *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 461-62 (2d Cir. 2007) (citing *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006)). *See also In re Ashford Hotels*, 226 B.R. at 802; *In re Best Prods. Co.*, 168 B.R.

35, 50 (Bankr. S.D.N.Y. 1994); *see also TMT Trailer Ferry*, 390 U.S. at 424; *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990); *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986). These factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement.

The Settlement Is Fair and Equitable and in the Best Interests of Creditors

19. An evaluation of the factors outlined by the Second Circuit in *Iridium* supports approval of the Settlement. While the possibility exists that if litigation ensued, a determination that the rejection portion of the Allowed Dealer Claims were less than \$6.5 million could result, the reality is that given the many unresolved legal issues and factual disputes that have been identified so far and those that are sure to arise with litigation, the probability of such an outcome is very difficult to quantify. Moreover, a ruling in favor of the Liquidating Trust is likely to be offset by the additional cost of litigation and resulting delay in payment. Additionally, The Trustee cannot rule out the possibility that a ruling could be issued in favor of the Dealers. The benefit of the Settlement to creditors is proportionally significant in light of the expense of litigation and the amount in dispute. Accordingly, it is the judgment of the Trustee, based on all the facts and arguments that have been developed so far, and with the advice of experienced and knowledgeable trial and bankruptcy counsel, that the Settlement is in the best interests of the creditors.

i. Without the Settlement, Protracted and Complex Litigation Will be Required, and any Outcome is Uncertain

20. The issues concerning the rejection portion of the Allowed Dealer Claim present complex factual disputes, and litigating those issues to final resolution is fraught with uncertainty and likely would require protracted and expensive litigation. Further, such dispute would likely

require expert testimony concerning future projections, including, without limitation, complicated analysis of scores of individual businesses and, possibly, expert reports. It might also further require discovery related to events and circumstances giving rise to the Dealer Claims, some stretching back years. Because of the factual and legal disputes involved, the possibility of appeal is considerable. While the Trustee believes that his assessment of the Dealer Claims will be well supported, the Trustee must take into account the fact that discovery has not yet commenced, and the Trustee cannot be assured of what will be produced or what the ultimate assessment of remaining claims will be.

21. There is no doubt that litigating all of these issues to resolution would be expensive and time consuming. Formal discovery has not yet begun, no depositions have been taken, and an adjudication on these issues likely would be long and protracted due to the number and complexity of the issues involved. If there were an appeal—and given the number and complexity of issues and amount of money at issue, the probability of an appeal seems considerable—those costs would be substantially higher and the length of time before any payments could be made to creditors and the Liquidating Trust could be wound up would be substantially longer (perhaps elongated by years).

ii. The Settlement is in the Best Interests of Creditors

22. The Settlement provides significant benefit to the Debtors' creditors. It provides for the Trustee to allow and pay distributions on account of the Allowed Dealer Rejection Claim in the amount of \$6.5 million in exchange for mutual releases. This immediate resolution will undoubtedly be beneficial to the Debtors' estates and creditors, because resolution of the Dealer Claims now—rather than after litigation and perhaps years of appeal—means more cash available for distribution to creditors. It also minimizes the Liquidating Trust's expenses, especially since the Trustee will have no further involvement in the allocation or distribution of

any portion of the Allowed Dealer Claim among the individual dealers. Thus, the Trustee believes—in the prudent exercise of his business judgment—that the uncertainty surrounding any final litigated resolution does not warrant the risk or the additional expense that continuing to contest the Dealer Claims would entail, and the Oversight Committee supports such determination. To the Trustee’s knowledge, no other creditor or party in interest intends to object to the Settlement.

iii. Counsel and the Court are Experienced and Knowledgeable about the Issues Relating to the Claims

23. In making the judgment that entering into the Settlement rather than litigating the rejection portion of the Dealer Claims is in the best interests of the creditors, the Trustee has the benefit of experienced bankruptcy and trial counsel who have had ample opportunity to understand the issues and develop the facts through several months of negotiations. In addition, the Court, having presided over prior proceedings relating to similar issues and various claims raised by the Dealers, is well situated to “test [the Trustee’s] choice for reasonableness.” *In re Ashford Hotels*, 226 B.R. at 802.

iv. The Releases are Necessary and Reasonable

24. Pursuant to the terms of the Settlement, the Parties have agreed to mutual releases of claims between the Liquidating Trust and the Dealers. While the releases are broad, as part of the overall resolution of claims they are reasonable because they are a part of mutual releases on behalf of the Parties.

v. The Channeling Injunction is Necessary and Reasonable

25. Pursuant to the terms of the Settlement, the Liquidating Trust shall make distributions made on account of the Allowed Dealer Claim to the trust account of Herrick and have no involvement in the allocation or distribution of the Allowed Dealer Claim. Thereafter,

no party in interest shall have any right to assert any claim whatsoever against the Liquidating Trust on account of (i) the Dealer Claims, or (ii) the resulting allocation or distribution monies received by the trust on account of the Allowed Dealer Claim. This “channeling” of any future potential claims to the Allowed Dealer Claim is absolutely critical to the Settlement, because without being able to remove itself from any dispute over allocation or distribution of the Allowed Dealer Claim, the Liquidating Trust would not enter into the Settlement.

vi. The Settlement is the Product of Arm’s Length Bargaining

26. Finally, there is no question that the Settlement is the product of arm’s length bargaining. The Settlement comes after months of discussions and exchange of numerous proposals and counterproposals, with both Parties fully engaged in the issues and aware of their import. All Parties were represented by sophisticated counsel and there is—and can be—no suggestion that any Party had an unfair advantage or had reason to not vigorously negotiate the best deal it could obtain.

NO PRIOR RELIEF

27. No prior request for the relief requested herein has been made to this or any other court.

NOTICE

28. Notice of this Motion has been served on (a) counsel of record for the Dealers, (b) all creditors with an interest in the Litigation Trust; (c) the United States Trustee for the Southern District of New York; and (d) all parties who filed a notice of appearance and request for documents in these cases.

WHEREFORE, for the reasons set forth above, the Trustee respectfully requests that the Court enter an order approving the Settlement in the form attached hereto as Exhibit A, and grant such other and further relief as is just.

Dated: November 13, 2014
New York, New York

/s/ Andrew N. Goldman
Andrew N. Goldman
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Attorneys for the Liquidating Trustee

Exhibit A – Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GETTY PETROLEUM MARKETING INC., et al.,

Reorganized Debtors.**

Chapter 11

Case No. 11-15606 (SCC)

Jointly Administered

**[PROPOSED] ORDER APPROVING SETTLEMENT OF
REJECTION CLAIMS OF GIOVANNI CUTILLO AND NINO
AUTO REPAIR, INC., INDIVIDUALLY AND ON BEHALF OF
SIMILARLY SITUATED GASOLINE STATION DEALERS**

Upon consideration of the *Liquidating Trustee's Motion, Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, and Section 105(a) of the United States Bankruptcy Code, for Approval of Settlement of Rejection Claims of Giovanni Cutillo and Nino Auto Repair, Inc., Individually and on Behalf Of Similarly Situated Gasoline Station Dealers* (the "Motion"),¹ and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and it appearing that the notice of the Motion is sufficient, adequate, and timely under the circumstances of this case and that no other or further notice need be provided; and a reasonable opportunity to object or be heard regarding the Motion having been given to all parties; and a full and fair opportunity having been afforded to litigate all issues raised in all objections, or which might have been raised; and upon all of the proceedings before the Court; and after due deliberation and sufficient cause appearing therefor;

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

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Settlement is the product of arm's length negotiations among the Parties and was negotiated, proposed and entered into by the Parties without collusion and in good faith;

B. The Settlement and the relief requested in the Motion and granted herein are fair and equitable and in the best interests of the Debtors, their estates, their creditors and all other parties in interest;

C. The Settlement falls within the range of reasonableness, is in the best interests of creditors, is supported by the Trustee, the Oversight Committee, and experienced and knowledgeable counsel after lengthy negotiations;

D. Without the Settlement, continued complex and protracted litigation is likely and the probability of a more favorable result for the Liquidating Trust and its creditors is uncertain;

E. The releases granted in the Settlement are reasonable;

F. Each Party has the capacity to enter into the Settlement; and

G. The legal and factual bases set forth in the Motion establish just cause for the relief requested in the Motion.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The notice of the Motion was adequate, sufficient and in satisfaction of applicable law.

2. The Motion is granted in all respects.

3. The Settlement, including all terms and conditions thereof, is approved in all respects, and its terms incorporated by reference into this Order, and the Parties are authorized

and directed to perform all of the obligations thereunder, and to take all other actions reasonably necessary or appropriate to perform their obligations under the Settlement.

4. All releases provided for in the Settlement are hereby found to be reasonable, are approved, and shall be binding upon each Party and each of such Party's respective successors and assigns.

5. No party in interest served with the Motion shall hereafter have any right to assert any claim against the Liquidating Trust on account of the Dealer Claims or the allocation or distribution of the Allowed Dealer Claim among the individual Dealers, and all such claims, if any, are hereby channeled to the Allowed Dealer Claim to be paid by the Liquidating Trust.

6. This Order, and the terms and conditions of the Settlement, shall be immediately effective. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the Parties are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, unless otherwise provided herein or in the Settlement and (ii) the Parties may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

7. The lack of any specific description or inclusion of any particular provision of the Settlement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Settlement be approved in its entirety.

8. In the event the Settlement terminates, the Parties are ordered to promptly notify this Court of such termination at which time this Order shall be vacated and have no further force and effect, with the Parties returned to the position the Parties were in as if the Settlement had not been entered into and this Order had not been entered.

9. This Court shall retain exclusive jurisdiction and authority to hear and determine any and all matters arising from, or relating to, the interpretation or implementation of the Settlement and this Order, including, without limitation, any disputes among the Dealers concerning distribution or allocation of the Allowed Dealer Claim.

Dated: _____, 2014
New York, New York

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B – Net Security Deposit Amounts

NAME	Net Deposit \$ Due
100-17 Beach Channel Dr. Corp.	26,679.04
1133 Jerome Avenue Corp.	17,051.37
1160 Straight Path Trading Corp	53,150.66
1164 Gas Inc.	24,593.73
1714 New York Ave., LLC	739.96
18th Avenue Auto Center, Inc.	39,464.82
195 Leasing Corp.	51,034.92
266 Ashburton Ave., LLC	3,962.00
27 Raceway LLC	43,000.00
292 Railroad Ave., LLC	3,711.94
40 N.M. Corp.	-
440 Express Stop, LLC	-
6126 Amboy RD, LLC DBA MM&B Gar	33,402.43
9 W Auto Center Inc.	15,052.19
A&H Investments USA Inc.	23,697.01
A&L Auto Repair, Inc.	56,373.81
A&R Petroleum Inc.	66,818.59
A&S Car Clean LLC	58,095.54
A. Chaudry & S. Begum	50,000.00
AA MM Auto Inc.	29,055.10
Aalcare Service LLC	80,000.00
Abdelkarim A Assaf D/B/A Good	4,300.00
ABK Petroleum Corp.	43,060.29
Ace Auto Clinic, Inc.	28,239.75
Adams S/S at 11 E Post Rd. Inc.	12,270.17
Adelphi Auto Repair, Inc.	54,076.66
Agate Auto Service Center, Inc.	8,062.80
Aggarwal Brothers, Inc.	46,478.80
Aggregate Resources, Inc.	-
Ahmad Ali D/B/A AGA & Son	20,536.35
Ali Khanian D/B/A One Stop Auto	3,400.00
All-Fleet Service, Inc.	23,957.14
Aman Enterprises Inc.	33,434.06
Aman Group, Inc.	30,786.99
Amar Energy Corp.	44,674.44
Amitkumar Pael	5,000.00
Andover Quick Mart, LLC	30,000.00
A-Plus Auto Service Corp.	38,110.31
Ardley Gas Station, Inc.	38,800.01
Arlington Gas Mart Inc.	57,862.68
ASAD Petroleum Inc	16,363.25
ASAD Petroleum Inc	25,448.48
Ashok K. Chauhan	40,000.00
Atacan Demirbulaki	25,000.00
Atacan Demirbulakli	25,000.00
Ates, Hasim N.	1,667.01
Auto Wiz Repair Shop, Inc.	51,664.80

Autochopshop, Inc.	47,379.97
Avani Trading Corporation	54,292.63
B&P Auto Repairs LLC	36,000.00
B2B Auto Care, Inc.	36,325.74
B2B Automotive Services, Inc	18,243.34
Babita Petroleum Corp.	-
Bailey Service Station Inc.	30,811.28
Bajaj Gas and Convenience Inc.	27,085.61
Bayshore Convenience Inc.	42,800.92
Belleville Getty	1,200.00
Beltway Energy, Inc.	86,254.65
Betso Inc.	44,811.55
Betz, Carl	41,054.08
Bobby Petroleum Corp.	45,966.25
Bobby Petroleum Corp.	14,745.20
Bobby Petroleum Corp.	14,571.23
Bronx River Gas & Auto Care Inc.	30,469.17
Bruckner/Virginia Svs Stn, Inc.	-
Burke Ave Automotive Inc.	17,709.98
Campana Brothers Inc.	29,743.12
Car Life Auto Care, Inc.	57,488.28
Carlisle Pike Pre-Owned, Inc.	6,400.00
Carmel USA Corp.	12,739.71
Casablanca Auto Sales.	3,200.00
Castro's Enterprises, Inc.	33,400.86
Causeway Food Zone Inc.	59,745.00
Cedar Point Service, Inc.	-
Central Getty Inc.	18,572.22
CIPS Service Center	7,799.40
Clove-Victory LLC	43,984.90
CML Foods Inc.	2,500.00
Colonial Auto Repair, LLC	3,600.00
Complete Automotive	5,000.00
Corner Service Station, Inc.	32,900.53
Cox Autos, Inc.	23,109.66
Crown Petroleum, Inc.	17,026.34
D& Lika Station Corp.	6,911.11
D.P. Oil, Inc.	32,039.54
Dajon Ventures Inc.	-
Daniel J. Lynch	23,526.00
Dantoni's Serv Ctr DBA M&B Gar	37,329.53
Davis Service, Inc.	21,792.97
Del & Del Enterprises, Inc.	69,025.49
Denver Auto Repair, Inc.	58,201.40
DHC Enterprises Inc.	-
Dinunzio Corp.	-
Dobbs Ferry Food & Gas, Inc.	-
East Hills Auto Care, Inc.	39,765.73
East Meadow Service Center, Inc.	44,439.34
East Side Auto Services Inc.	79,865.48

Eden Dan 2 Inc.	40,341.39
Edward L. Grant Corp.	19,943.83
EESA Ahmer, Inc.	46,409.81
Eliot Auto Service Inc.	69,302.35
Elizabeth Getty	2,500.00
Englewood Gas, LLC	-
Enterprise Rent-A-Car	2,500.00
Ersa-1 Corp.	29,585.86
Escarpment Business Co II, LLC	16,751.09
Esha Corp.	-
Evergreen Energy Enterprises LLC	30,977.20
F&A Petroleum, Inc.	37,230.34
F&B Service Station, Inc.	68,013.28
F&D Mart, Inc.	66,803.12
F&E Auto Service Inc.	-
F&K Brothers, Inc.	42,503.24
Fanwood Getty Inc.	20,767.95
Felbo Service Corp.	42,131.48
Fioretti, Henry & Roberta	31,995.91
First Star Auto Repair Inc.	-
Five Star Auto Company	2,000.00
Five Star Automotive Serv Inc.	50,409.55
Flips LLC	4,000.00
Fordham Road Auto Care Inc.	21,783.56
Fort Lee Mart, Inc.	2,772.80
Fouad M. Elmaria	5,369.66
Four West Gas LLC	37,160.30
Frank & David Fresco	17,776.27
Fresh Store, Inc	64,843.11
Gabby Roustic	3,000.00
Gas Me & Auto Repair Inc.	36,750.00
Gas on the Hill Ltd.	10,079.52
Gas Up America, Inc.	71,889.72
Gas We Serve, Inc.	66,064.00
Gentile Automotive LLC	4,000.00
Geo Auto Repairs Inc.	14,468.78
George & Joann Holtzer	32,540.69
George Bouchamoun	67,524.28
George P. Auto Repairs, Inc.	47,101.83
Georgica Services Ltd.	33,212.31
German F. Concepcion	12,250.68
Glendale Service Station Inc.	54,526.01
Global Fuel Inc.	25,358.20
Good Luck Service Station Inc.	35,030.72
Grand KH Lee, Inc.	30,000.00
Great Neck Triumph, Inc.	63,265.80
Grigoriy Mikhelson	1,469.42
GRM Automotive Service	35,020.00
Gujar Enterprise LLC	5,000.00
Gurlen Group Inc.	7.27
Guru Mehar LLC	23,000.00

Guru Star, Inc.	42,000.00
H&H Food & Grocery Corp.	41,770.79
H.T. Elmont Inc.	5,463.70
Hafiz Eraslan	-
Haluk Hannavi	3,000.00
Hasbrouck Heights Gas, Inc.	3,588.36
Herbert Bustamante	1,500.00
High Tech Automotive, LLC	6,000.00
Hudson Gas & Auto	12,000.00
I and U Petroleum Inc.	19,399.17
Inwood Auto Service Corp.	43,753.95
J&C Gas & Auto Repair, Inc.	33,295.05
J&R Towne Auto LLC	5,000.00
J&Z International Inc.	35,486.97
Jai Mata Inc.	24,599.89
Jay Auto Service, Inc.	35,135.11
Jay Management, Inc.	30,689.32
Jimzo Minimart Corp.	40,619.65
JM Mart #2	1,000.00
JMD Auto Care Ltd.	84,825.10
JMJ Gas Corp.	3,382.97
John's South Bay Service Inc.	47,786.29
Joo Han Kim	14,038.07
JTE Service Station, Inc.	87,518.71
Junction Station Incorporated	24,121.99
Kanchan Auto Service, Inc.	42,969.33
Kartech NY, Inc.	18,577.39
Kerrymen's Property, Inc.	2,833.97
Khan Auto Repairs, Inc.	56,490.16
Khan Auto Service, Inc.	11,136.72
Kiska Construction Corp. -USA	26,570.52
Kumar, Jatinder	47,551.92
KYU Ung Lee & Sons Ser Stat, Inc.	50,757.25
L & I Quality Service Inc.	10,000.00
L C Slater DBA Millerton Auto	-
Lake Street Fuel corp.	35,046.18
Lal, Hussan	51,154.45
Latham petroleum, Inc.	32,205.80
Lensky & Son Enterprises, Inc	4,793.42
LG Gas Station Corp.	33,204.92
LN Utility Corp.	31,000.00
Long's Automotive	6,000.00
Loops Farmer Inc.	40,000.00
Los Amigos of NY Corp.	47,025.71
Lui & Son Corp.	58,155.08
M&R Mart, Inc.	24,459.92
M&S Gasmart, Inc.	35,724.64
Maitri Corporation	3,000.00
Malik Enterprises, Inc.	62,993.12
Manhasset Auto Diagnostic Inc.	45,258.25

Mani Petro Line Inc.	51,414.91
Manor Gas Mart Inc.	15,226.02
Marine Park Svc. Station, Inc.	50,052.99
Mario Vasquez Tremillo	2,000.00
Mastory Automotive Serv. Inc.	29,711.76
Matt's Truck & Auto Repair Inc.	30,000.00
MD Wahid Corporation	3,175.00
Metro, Inc.	36,209.48
Mian Petroleum Inc.	18,534.11
Michael Soufan	5,301.00
Michele's Bway Stylists Inc.	2,579.30
Midland park Getty	1,500.00
MNZ Mart, Inc.	10,023.89
Montvale Auto Spa, LLC	-
Motta's Country Gardens, Inc.	4,000.00
MTAM Station, Inc	-
N & N Mobil Mart, Inc.	38,427.07
N&J Auto Repairs, Inc.	57,437.70
Nabil & Niamul Management Inc.	13,712.87
Nasren Sons Inc.	30,612.26
Nate Quto Care, Inc.	45,330.36
Neet Enterprises Ltd.	1,064.16
Neffsville Bagels Inc.	2,500.00
Neil's Automotive, Inc.	3,000.00
New Bronx River parking Inc.	15,000.00
New Way Gas Inc.	25,490.39
Niagara Petroleum Mart, Inc.	31,481.80
Nick Davvetas D/B/A Columbia D	3,500.00
Nino Auto Repair, Inc.	63,014.19
Northfield Auto Service Inc.	22,991.20
Ocean Ave Auto Center Inc.	41,040.75
Ocean City Getty	1,000.00
O'Keefe, Robert	-
OM-Namay Shway LLC	36,179.16
One Shot Wireless	4,000.00
One Stop 86 St. Inc.	28,719.78
Ossining Snack Shop Inc.	-
Ozone Management Inc.	54,730.27
P&R Petroleum, Inc.	58,291.59
P.E.H. auto Center. Corp.	50,732.31
Pamar Petroleum LLC	18,000.00
Paramjit Singh Suri	34,000.00
Pat's Garage, Inc.	37,130.00
Peke Petroleum, Inc.	30,369.85
Pelham Parkway Services Inc.	31,456.48
Pequa Automotive, Inc.	53,034.36
Performance Trans, Inc.	1,170.49
Petromarsh, Inc.	39,850.40
Philips Mart, Inc.	16,676.76

Pine Bush Petrol, Inc.	30,657.52
Pleasant Briar Svs Stn., Inc.	-
Popoli Service Station, Inc.	50,075.35
Quality Auto Repair, Inc.	44,513.34
Quick Petroleum Inc.	54,676.12
Quick Stop Mart, Inc.	35,791.09
R&D Petroleum, Inc.	30,972.34
Rail Auto Service Inc.	46,621.81
Rajpet, Inc.	35,987.66
Ram Sunrise Inc.	23,894.90
Ramay Enterprises LLC	31,094.52
Rasila Mart Inc.	21,509.86
Rawal Petroleum Inc.	4,000.00
RDS Service Center LLC	5,000.00
Right Service Station, Inc.	27,630.45
Robustelli, Robert	10,207.68
Roosevelt, Inc.	-
Ropri Enterprises	36,513.42
RS Oil & Gas LCL	-
S Great Auto Inc.	35,457.52
S&D Motor Aid Inc.	20,235.61
S&J&I Corporation	61,804.45
S&R Inc.	-
Sadhia Abbasi	6,211.64
Saeed, jam shed	39,620.26
SAI Grup Enterprises, Inc.	5,000.00
Sanaa Petroleum, Inc.	-
Sandy's Service, Inc.	21,343.76
Santa Fuel, Inc.	2,400.09
Sark Corp.	40,000.00
Sedkam, Inc.	36,365.03
Seema Kumar LLC	10,870.89
Shah Petroleum, Inc.	27,566.82
Shahid Shamraz	27,633.56
Shakti and Laxmi Corp.	38,778.88
Shan & Co. Inc.	38,613.70
Shivam Corp	7,700.00
Showtime Express Lube Inc.	46,001.23
Shree Hari Auto Inc.	30,000.00
Shrub Oak Auto, Inc.	23,991.02
Shvm Petroleum Inc	13,297.26
SK Auto Repair LLC	37,775.00
SKAK Mini Mart, Inc.	33,590.12
South Hylan LLC	43,712.43
South Side Sandwich Shop, LLC	3,952.00
Southview, Inc.	17,122.31
Sparti Station Inc	22,500.00
Splended Star Corp.	75,000.00
SSJ Friends, LLC	46,420.24
Stan's Service Center Inc.	94,171.19

Star Central Auto, LLC	56,477.68
Star Central Motors, LLC	44,911.46
Stephen M. Froelich	3,000.00
Sunny Triangle, Inc.	44,238.27
Sunset Service Station, Inc.	25,469.31
Swami Auto Repair Inc.	35,512.46
Swami Auto Repairs 2, Inc.	18,031.52
T.E.K. Corporation	5,667.39
Tejinder Singh	41,242.90
Than N Nyugen	48,876.70
Thomas Carlson	-
Tip Top Mart Plus, Inc.	67,513.99
Tony & Prem Service Sta. Inc.	38,626.81
Tony Atlas, Inc.	61,999.87
Top Cat Management Corporation	25,906.84
Toto Auto Service Center, LLC	32,000.00
Tresh Enterprises, Inc.	40,054.00
Tuckahoe Gas & Mart Inc.	32,243.84
TwinCounty Collision	9,184.93
U.S. Petroleum, Inc.	28,165.47
UF Ruihong Inc.	8,115.30
V.F. Franklin Ave., Inc.	9,360.00
Van Vraken Enterprises, Inc.	13,292.06
Vedat Service Corp.	8,687.12
VIB Enterprises Inc.	25,928.76
VSB Enterprises, Inc.	6,000.00
Wantagh & Hempstead Gas, Inc.	50,118.26
Wantagh Ave. Automotive Inc.	49,406.95
Waterfront Gas & Convenience LLC	39,472.25
Wave Gree, Inc.	22,282.19
Webster Gas Copr.	26,397.10
West Islip Convenince, Inc.	96,390.48
Wild Ridge Service Center	43,869.94
Wizard Cars II, Inc.	15,021.42
Woodbridge Transmission Specia	3,000.00
Wyandanch Getty	3,340.75
Yaphank Gas corp.	4,370.96
Yasasny Inc.	12,515.61
Yim Seongmin & Kim, Richard K.	33,100.00
YMCS Repair & Gas Svs Str, LLC	15,359.62
YMCS Repair & Gasoline SS LLC	15,000.00
Yonkers Central Energy Servs Inc.	33,170.20
Young Lee Corp.	68,579.88
Zamzam Service Station, Inc.	30,846.57
Zman Brothers Inc.	43,131.45
Zoom Car Spa, LLC	36,747.94
ZZ Petroleum	41,894.55
	\$ 9,546,017.97