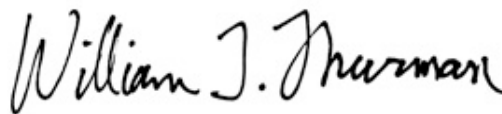


This order is SIGNED.

Dated: October 28, 2016



**WILLIAM T. THURMAN
U.S. Bankruptcy Judge**



mpw

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
IN THE CENTRAL DIVISION

In re:

EUROGAS, INC.,

Debtor.

Case No. 04-28075

Chapter 7

Judge William T. Thurman

MEMORANDUM DECISION

The Former Trustee distributed over \$600,000 before the case was closed in 2007. Because Claim 1-1 for more than \$113 million was still outstanding at that time, the distribution to creditors was approximately 0.56 percent of allowed unsecured claims, and most of that went to TEG. Under the terms of the Agreement, Eurogas II will pay a maximum amount of \$175,000 for distribution to creditors. With the waiver of Claim 1-1 provided for in the Agreement, the money distributed to the remaining creditors could be approximately 15% to 20% of those remaining claims.

The terms of the Agreement do not require any further litigation or adversary proceedings, which were part of the initial offer from the Slovak Republic. And while the Slovak Republic removed the requirements for litigation in its Quitclaim Offer, the distribution to creditors would not be nearly as advantageous because Claim 1-1 would not be withdrawn but would need to be challenged in further litigation.

The Court finds that this factor weighs in favor of approving the Agreement.

Accordingly, the Court finds and concludes (1) that the Trustee has adequately explained the business reasons for entering into this Agreement; (2) that the business reason is business judgment discretion allocated to a trustee and not an abuse of that discretion; and (3) that the Agreement is acceptable under the *Kopexa* factors. The Court will approve the Agreement.

C. Abandonment of the Talc Claims

As required by the terms of the Agreement, the Trustee has filed notice of her intent to abandon the Talc Claims under § 554(a), which states, “After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” When evaluating a motion for abandonment, the

focus of the Court's inquiry "is whether the property is burdensome or of inconsequential value to the estate."¹⁵ In reaching her conclusion, the Trustee reviewed expert reports prepared by two different lawyers in Salt Lake City who were identified. Although the parties elected not to seek to introduce those reports into evidence in this matter, the Court determines that such review and evaluation of reports greatly assisted the Trustee in making her determination to abandon.

The Trustee has concluded that the Talc Claims are burdensome to the estate. There is uncertainty about whether the Talc Claims are property of the estate, or if they were abandoned when this case was closed in 2007, and it would require litigation to settle that question. If the Trustee does not abandon the Talc Claims, she will need to either initiate or defend litigation about the ownership of the Talc Claims with the well-funded and highly motivated parties in this case. Time-consuming and costly litigation burdens a bankruptcy estate with administrative costs and delay. Part of a trustee's responsibility in administering an estate is to determine what assets should be abandoned. Another responsibility is to act "as expeditiously as is compatible with the best interests of the parties in interest."¹⁶

The Talc Claims are very valuable to the parties in the Arbitration Proceeding, but because they are not liquid claims, or easily administered, the Talc Claims are of inconsequential value to the bankruptcy estate outside of an arrangement with one of those two parties. The Trustee is trying to maximize the value to the estate with the Agreement with Eurogas II.

The Slovak Republic has objected to abandonment, but has not shown how denying the motion to abandon will benefit the bankruptcy estate. "The court need not consider speculative

¹⁵*In re Rich*, 510 B.R. 366, 369 (Bankr. D. Utah 2014).

¹⁶11 U.S.C. § 704(a)(1).

factors when determining whether abandonment is appropriate under Section 554(b) of the Bankruptcy Code.”¹⁷ The speculative benefit described by the Slovak Republic is contained within its Quitclaim Offer, an offer which the Trustee rejected for business reasons that she explained in her testimony. The Court will not second-guess the Trustee’s business judgment when she has so credibly explained her grounds for decision.¹⁸

Accordingly, the Trustee should be authorized to abandon the Talc Claims under § 554(a) as being burdensome or of inconsequential value to the estate. The Trustee has requested a determination that the abandonment is effective *nunc pro tunc* to the petition date. Making a judicial finding and conclusion that an action should be effective *nunc pro tunc* is a remedy that is available only in “extraordinary circumstances.”¹⁹ The legal effect of abandonment is determined as a matter of law.²⁰ When property is abandoned, it “reverts to the debtor and

¹⁷*Kaler v. Nelson (In re Nelson)*, 251 B.R. 857, 860 (B.A.P. 8th Cir. 2000).

¹⁸*See, e.g., Allen v. Absher (In re Allen)*, 607 F. App’x 840, 844 (10th Cir. 2015) (unpublished opinion) (affirming the bankruptcy court’s finding that the sale transaction was within the trustee’s sound business judgment because the record included evidentiary support for the trustee’s actions and no evidence of bad faith); *In re JL Bldg., LLC*, 452 B.R. 854, 859 (Bankr. D. Utah 2011) (stating that courts should show deference to a trustee’s business judgment when there is no showing of an abuse of discretion); *In re Curlew Valley Associates*, 14 B.R. 506, 513 (Bankr. D. Utah 1981) (declining to interfere with a trustee’s business judgment when a decision was made in good faith, upon a reasonable basis, and was within the scope of the trustee’s authority).

¹⁹*Land v. First Nat’l Bank of Alamosa (In re Land)*, 943 F.2d 1265, 1268 (10th Cir. 1991).

²⁰*See, e.g., Rajala v. Buerge (In re Buerge)*, 2013 WL 4409698, at *3 (Bankr. D. Kan. Aug. 13, 2013) (“Abandonment is effective retroactively to the petition date as if the debtor were its owner during the pendency of this bankruptcy.”)

stands as if no bankruptcy petition was filed.”²¹

Abandoning the Talc Claims removes the Trustee and the bankruptcy estate from the dispute in the Arbitration Proceeding about the ownership of the Talc Claims. “Following abandonment, ‘whoever had the possessory right to the property at the filing of bankruptcy again reacquires that right.’”²² Eurogas I was administratively dissolved in 2001 for failure to file an annual report and pay a nominal fee. Eurogas II was incorporated after the bankruptcy petition was filed, and signed the Merger documents in which it sought to inherit all Eurogas I’s assets and liabilities.²³ Whether the Talc Claims passed to Eurogas II in the Merger or remained with Eurogas I will be a matter for the Arbitration Tribunal to decide. This Court takes no position on that question other than to note that whatever interest the bankruptcy estate had or has in the Talc Claims is authorized to be abandoned by the Trustee.

V. CONCLUSIONS OF LAW

The Court has authority pursuant to Bankruptcy Rule 9019 to consider and authorize the Agreement submitted by the Trustee. The Court concludes that the Trustee has properly exercised her business judgment in entering into this Agreement and has not abused her

²¹*In re Dewsnup*, 908 F.2d 588, 590 (10th Cir. 1990), *aff’d sub nom. Dewsnup v. Timm* 502 U.S. 410 (1992) (“Property abandoned under this section ceases to be part of the estate. . . . It reverts to the debtor and stands as if no bankruptcy petition was filed.”); *see also In re Cruseturner*, 8 B.R. 581, 591 (Bankr. D. Utah 1981) (“Thus, when the trustee abandons property, the property stands as if no bankruptcy had been filed and the debtor enjoys the same claim to it and interest in it as he held previous to the filing of bankruptcy.”).

²²*In re Dewsnup*, 908 F.2d 588, 590 (10th Cir. 1990), *aff’d sub nom. Dewsnup v. Timm*, 502 U.S. 410 (1992) (quoting *Dewsnup v. Timm (In re Dewsnup)*, 87 B.R. 676, 681 (Bankr. D. Utah 1988)).

²³A copy of the document effecting the Merger is attached as Exhibit C to the Slovak Republic’s objection to the Motion, filed at Dkt. No. 235.

discretion. The Court further concludes that the Trustee has complied with the standards outlined by *Kopexa* and has considered the best interest of creditors. The Court has considered the Slovak Republic's objection, and overrules it.

The Court approves the Trustee's Notice of Intent to Abandon, concluding that the Talc Claims are burdensome to the estate due to the litigation that would be necessary in order to sell the Talc Claims, and are of inconsequential value to the estate because the Talc Claims cannot be freely liquidated by the Trustee but are only valuable to the Slovak Republic and Eurogas II. The Court further concludes that the Trustee reasonably pursued negotiations with both parties before she exercised her business judgment to prefer one offer above the other.

The Trustee's Motion to Approve Agreement shall be GRANTED.

The Trustee's Notice of Proposed Abandonment shall be APPROVED.

A separate order accompanying this decision will be entered.

End of Document

SERVICE LIST

Service of the foregoing MEMORANDUM DECISION will be effected through the Bankruptcy Noticing Center to each party listed below in the manner designated and to each party listed on the MATRIX.

By electronic service: I certify that the parties of record in this case as identified below are registered CM/ECF users:

- David W. Alexander david.alexander@squirepb.com
- Matthew L. Anderson manderson@fabianvancott.com, mbeck@fabianvancott.com
- Stephen P. Anway stephen.anway@squirepb.com
- Matthew M. Boley mboley@cohnekinghorn.com, jhasty@cohnekinghorn.com
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- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

By U.S. Mail – In addition to the parties of record receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed. R. Civ. P. 5(b).

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