

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
)	Case No. 09-10545 (KJC)
Forward Foods LLC,)	
Debtor.)	Re: Docket No. 282
)	
)	

**ORDER GRANTING MOTION OF DEBTOR FOR ENTRY OF AN ORDER
(i) APPROVING THE DISCLOSURE STATEMENT FOR THE PLAN OF
REORGANIZATION DATED OCTOBER 30, 2009; (ii) APPROVING FORM OF
BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND
(iii) APPROVING FORM AND MANNER OF NOTICES**

This matter came on for hearing (the “Hearing”) on November 24, 2009, upon the *Motion of Debtor for Entry of an Order (i) Approving the Disclosure Statement for the Plan of Reorganization Dated October 30, 2009; (ii) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (iii) Approving Form and Manner of Notices* [Docket No. 282] (the “Motion”), filed by Forward Foods, LLC (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case.¹

¹ All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion, and if not defined therein, then in the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Debtor Dated October 30, 2009.

The Court, having considered the Motion, and the statements of counsel for the Debtor at the Hearing **FINDS AS FOLLOWS:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor's chapter 11 case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Debtor served the Motion, the Plan, the Disclosure Statement and notice of the hearing on the S.E.C., the United States Trustee and parties who have appeared and requested service of papers pursuant to Bankruptcy Rules 2002 and 3017.

C. Based on the representations set forth in the Motion, the Court finds and concludes that the Disclosure Statement contains "adequate information," within the meaning of Bankruptcy Code section 1125(a), and may and should be approved accordingly.

D. In the Motion, the Debtor requested authority to solicit acceptances or rejections of the Plan from holders of Allowed Claims in voting Class III and Class VI under the Plan by mailing a Solicitation Package that consists of the following: the Disclosure Statement (including exhibits), the Plan (including exhibits), the appropriate Ballot(s) (substantially in the form attached to the Motion as Exhibits A1 and A2), the Confirmation Hearing Notice (substantially in the form attached to the Motion as Exhibit B), any supplemental solicitation materials the Debtor may file with the Court; and a pre-addressed return envelope, if applicable, at the Debtor's sole discretion. Based on the representations in the Motion, the Court finds that the Solicitation Package, including the form of Ballots and Confirmation Hearing Notice contained therein, may and should be approved under Bankruptcy Code section 1126 and Bankruptcy Rule 3017(d) for distribution to the Debtor's known creditors and equity security holders for purposes of soliciting votes on the Plan from potential Class III and Class VI voting creditors.

E. The Debtor further proposed pursuant to Bankruptcy Rule 3017(d) that in the case of unimpaired creditors in Classes I, II, IV and V under the Plan, they would receive a Confirmation Hearing Notice and a notice that (i) such creditors are designated in the Plan as unimpaired, and (ii) they could obtain the Disclosure Statement and the Plan from William I. Kohn, Esq., counsel for the Debtor (“Unimpaired Notice”). Based on the Debtor’s representations in the Motion and at the Hearing, the Court may and should approve, consistent with Bankruptcy Rule 3017(d), the Debtor’s request to limit its postage costs by providing the unimpaired classes with a copy of the Confirmation Hearing Notice and Unimpaired Notice.

F. The Debtor further proposed that the impaired Interests holders in Class VII, who are not entitled to vote to accept or reject the Plan because such Class VII is deemed to reject the Plan pursuant to section 1126 of the Bankruptcy Code, should receive the Solicitation Package without a Ballot.

G. The Court further finds that the Solicitation Package provides adequate notice of the Confirmation Hearing, the deadline to object to confirmation of the Plan, the deadline and procedure to obtain temporary allowance of Class III and Class VI Claims for Plan voting purposes, and the Voting Deadline, and that such notices comply with the requirements of Bankruptcy Rules 2002(b), 2002(c)(3), 3017 and 3018.

H. The Court finds that the Debtor may and should be excused from being required to re-mail Solicitation Packages or notices, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtor’s Schedules as of the Voting Record Date, and that such limitation of notice is appropriate under the circumstances and is consistent with due process and the notice requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the District of Delaware and orders of the Court.

I. The Debtor may and should be authorized to appoint Garden City Group, Inc. (“Garden City”), as the Debtor’s Balloting Agent, with such rights and duties as are set forth in the Motion.

Accordingly, it is hereby ORDERED that

1. The Motion is hereby granted.
2. The Disclosure Statement is hereby approved as containing “adequate information” pursuant to section 1125(a) of the Bankruptcy Code.
3. All objections to the Disclosure Statement, to the extent not withdrawn on the record at the Hearing, are hereby overruled.
4. The Voting Record Date shall be **November 24, 2009**. The Voting Record Date established hereby shall apply to all creditors who have provided evidence of a Claim or who are listed on the Debtor’s consolidated schedules of assets and liabilities and statements of financial affairs.
5. Pursuant to Bankruptcy Rule 3018(a), creditors holding disputed Class VI Claims and who have filed timely proofs of claim will be permitted to vote consistent with such filed proofs of claim, however, such permission shall not act as recognition by Debtor for such Claim for distribution purposes.
6. The Voting Deadline shall be **5:00 p.m. Eastern Standard Time on December 18, 2009**. Ballots must be received by the Balloting Agent on or before the Voting Deadline at the address set forth on the Ballot. Ballots not received by the Balloting Agent on or before the Voting Deadline shall not be counted for purposes of voting on the Plan.
7. The deadline for filing objections to confirmation of the Plan shall be **5:00 p.m. Eastern Standard Time on December 18, 2009**.

8. The Confirmation Hearing shall be held at **11:00 a.m. Eastern Standard Time on December 23, 2009.**

9. Garden City is hereby appointed as the Balloting Agent and shall have all of the rights and duties as set forth in the Motion, including the right to reasonable compensation for services and fees associated with the services of the Balloting Agent, subject in all respects to the terms and limitations of the Debtor's debtor-in-possession financing budgets approved or as may be approved by the Court. The Balloting Agent is authorized and directed to maintain true, complete and accurate records of all Ballots and all responses relating to questions concerning Ballots or balloting, so as to ensure the ability of the Debtor to audit the actions of the Balloting Agent.

10. Garden City, as Balloting Agent, is required to submit a balloting report to the Court on **December 22, 2009.**

11. Any Ballot that is executed and returned, but that does not indicate thereon either an acceptance or rejection, shall not be deemed an acceptance or rejection of the Plan.

12. Any Ballot that is executed and returned and indicates thereon an acceptance and rejection may be deemed an acceptance of the Plan.

13. The form of Ballots is hereby approved. The Debtor is hereby authorized to distribute Ballots to all known holders of Class III and Class VI Claims against the Debtor as of the Voting Record Date.

14. The Debtor is hereby authorized to mail or cause to be mailed Solicitation Packages to: (a) known holders of Class III and Class VI Claims; (b) the United States Trustee; (c) the S.E.C.; and (d) parties who have appeared and requested service of papers under Bankruptcy Rule 2002. The Debtor is further authorized to send each party who has or may have more than one Claim multiple Solicitation Packages and multiple Ballots.

15. If the Debtor does not object to a Claim evidenced by a timely filed proof of claim, the Claim amount for voting purposes shall be the Claim amount contained on a timely filed proof of claim.

16. When tabulating such votes, the following rules shall be implemented to determine the Claim amount associated with a creditor's vote is approved:

- (a) If the Debtor does not object to a Claim, the Claim amount for voting purposes shall be the Claim amount contained on a timely filed proof of claim or, if no proof of claim was filed, the non-contingent, liquidated and undisputed Claim amount listed in the Debtors' schedules of liabilities;
- (b) If the Debtor objects to a Claim, such creditor's Ballot shall not be counted in accordance with Bankruptcy Rule 3018(a), and
- (c) Ballots cast by creditors whose Claims are not listed on the Debtor's schedules of liabilities, but who timely file proofs of claim in unliquidated or unknown amounts that are not the subject of an objection filed before the commencement of the Confirmation Hearing, will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purpose of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code.

17. In order to ensure that each Class III and Class VI Claimholder's vote is counted, the Court requires that each Class III and Class VI Claimholder:

- (a) Complete a Ballot;
- (b) Indicate whether voting to accept or reject the Plan in the boxes provided in the respective Ballot; and
- (c) Sign and return the Ballot to the Balloting Agent at the address set forth on the envelope enclosed therewith.

18. In order to ensure that each Class VI Claimholder receives the appropriate treatment under the Plan, each Class VI Claimholder must select one of the following options:

- (a) Payment in full of such Claimholder's Allowed Claim that such Claimholder elects to reduce to \$1,000;
- (b) A lump sum payment of 5% of such Claimholder's Allowed Claim, plus an income promissory note equal to 75% of such Claimholder's Allowed Claim; or

- (c) An income promissory note equal to 100% of such Claimholder's Allowed Claim.

19. Any Class VI Ballot that is executed and returned but that does not indicate thereon one of the desired options described in paragraph 18 above may be deemed as selecting an income promissory note equal to 100% of such Claimholder's Allowed Claim.

20. Except to the extent determined by the Debtor in its reasonable discretion, or otherwise permitted by the Court, the Debtor will not accept or count any Ballot(s) received by the Balloting Agent after the Voting Deadline.

21. Creditors shall not split their vote within a Claim; thus, each creditor shall be deemed to have voted the full amount of its Claims either to accept or reject the Plan.

22. The method of delivery of Ballot(s) to be sent to the Balloting Agent is at the election and risk of each holder of a Claim, *provided that*, except as otherwise provided in the Plan, such delivery will be deemed made only when the *original* executed Ballot is *actually received* by the Balloting Agent.

23. The Balloting Agent must receive an original executed Ballot; *delivery of a Ballot by facsimile, email or any other electronic means will not be accepted.*

24. No Ballot sent to anyone other than the Balloting Agent shall be accepted or counted.

25. The Debtor expressly reserves the right to amend Plan terms at any time, and from time to time (subject to compliance with section 1127 of the Bankruptcy Code and the terms of the Plan regarding modification). If the Debtor materially changes any Plan term or waives a material condition, the Debtor will disseminate additional solicitation materials and will extend the solicitation period, in each case, to the extent directed by the Court.

26. If multiple Ballots are received from, or on behalf of, an individual holder for the same Claims prior to the Voting Deadline, the last Ballot or timely received Ballot will be deemed to reflect the voter's intent and supersede and revoke any prior Ballot.

27. Any trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, who signs a Ballot must (i) indicate his or her capacity as such when signing and, (ii) unless otherwise determined by the Debtor, submit proper evidence of such authority to act on behalf of a beneficial Interestholder in form and content satisfactory to the Debtor.

28. The Debtor, in its sole discretion, and without notice, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice if a defective Ballot clearly indicates the intent of the Claimholder. Except as otherwise provided herein, the Debtor may, in its sole discretion, reject any Ballot not timely submitted on or prior to the Voting Deadline as invalid and, therefore, not count such Ballot in connection with confirmation of the Plan.

29. If a designation is requested under section 1126(e) of the Bankruptcy Code, any vote to accept or reject the Plan cast with respect to any such Claim will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise.

30. Any holder of an impaired Claim who has delivered a valid Ballot may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a).

31. The Debtor's interpretation of the terms and conditions of the Plan pertaining to solicitation procedures shall be final and binding on all parties, unless otherwise directed by the Court.