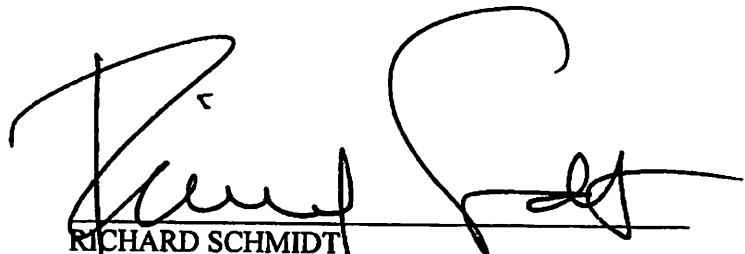


E. Good Faith. The Trustee and Seashore negotiated and entered into the Sale Agreement in good faith. Seashore is a bona fide purchaser entitled to all of the protections of Bankruptcy Code section 363(m). There has been no collusion or other misconduct by the Trustee or Seashore, therefore the transaction may not be avoided under Bankruptcy Code section 363(n). The Trustee and Seashore acted in good faith in negotiating, following the Trustee's entry into a settlement agreement with Paul Black, the Sale Agreement and in reaching the Sale Agreement, and moreover, the Trustee was obligated to do so pursuant to the requirements of the Trustee's fiduciary duty as found in *Cadle Company v. Mims (In re Moore)*, 608 F.3d 253 (5th Cir. 2010). Neither Seashore nor the Trustee breached the Black Settlement Agreement or violated any duties to Paul Black by entering into the Sale Agreement.

F. Settlement. The Settlement that constitutes all of the covenants in the Sale Agreement is fair and equitable taking into account the Trustee's probability of success in the litigation against Seashore, the uncertainty in the law, and the complexity, expense and likely duration of the litigation against both Seashore and Paul Black and his family members. Taking all relevant factors into account, including the sound business judgment of the Trustee and the views of Seashore, the largest creditor of these estates, the settlement should be approved under Bankruptcy Rule 9019.

Signed this 26 day of July, 2011.


RICHARD SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

applicable law. Furthermore, the Trustee was properly concerned that any remedy for an increase in the Seashore loan amount (if any), would simply be a reduction in the loan amount, since the loan is still substantially unpaid, as reflected in the Seashore Judgment. Additionally, the Trustee properly concluded that any claims for "aiding and abetting" would almost certainly be waived and lost if, under the Black Settlement, Paul Black and all of the other Black Entities were released. Moreover, the Arbitration Award specifically denied the claims of Paul Black and BNP Oil & Gas for "aiding and abetting." Thus, the Trustee concluded that any "sharing" of the claims against Seashore under the Black Settlement, as adopted by the Oblach Proposal, were not of any value to the estate.

CONCLUSIONS OF LAW

A. **Jurisdiction.** This 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). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The parties have consented to the Court's jurisdiction in this matter and stipulated that the Court may make a final judgment in this matter notwithstanding any argument to the contrary provided in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

B. **Business Judgment.** The Trustee has exercised sound business judgment in entering into the Sale Agreement.

C. **Business Justification.** The Trustee has good business justification for entering into the Sale Agreement.

D. **Fair Value.** The Trustee is receiving fair value from Seashore pursuant to the Sale Agreement.

vii) Walter Oblach purchased approximately 25% of the approximate \$4 million in Frost Bank debt (the "Oblach Share of the Frost Bank Debt") owed by BNP Petroleum, BNP Oil and Gas and guaranteed by Paul Black; viii) Walter Oblach resides now in Venezuela; ix) Walter Oblach testified in support of Paul Black in the arbitration proceeding between Paul Black and Seashore; and x) the Court found that all of the Oblach Share of the Frost Bank Debt was paid in full upon the sale of the BNP Oil and Gas assets to Blackgate. On the morning of the hearing on the Black Settlement Agreement, counsel for Walter Oblach presented a letter as an alternative to the Seashore Sale Agreement, and such letter was specifically contingent on approval of the Black Settlement Agreement (the "Oblach Proposal"). Mr. Oblach was not present in the Bankruptcy Court to substantiate or testify concerning the validity of such proposal. The Court finds that the Trustee was legitimately concerned, based on the facts before the Court, that Walter Oblach would have no interest in pursuing any claims against Paul Black or any of Paul Black's family, entities or affiliates. Thus, the Trustee properly assigned little weight or value to the Oblach Proposal with regard to any alleged sharing of litigation proceeds against any of the Black Entities--the Trustee properly assumed that such "sharing" would result in no proceeds to the estate. The Trustee also concluded that any "sharing" of recoveries relating to claims against Seashore was unlikely to provide any meaningful proceeds to the estate, based on the facts stated by the Proffer of Jeff Spilker, in particular those stated paragraph 8 of the Proffer, along with the exhibits offered by Seashore including Exhibits 9, 10 and 11, demonstrating nearly all (in amount) of the payments made to Seashore were loan repayments (approximately \$729,000 of the \$765,000 in total payments identified in the Third Amended Complaint) and, during the same time period as such payments, Seashore had loaned BNP Oil and Gas the sum of \$2,000,000. Thus, the Trustee properly concluded that the loan repayments would not be recoverable under

The Trustee has concluded that the causes of action against Paul Black and the Black Entities are viable as further evidenced by the Arbitration Award and the Judgment affirming same. Paul Black was found to have defrauded Seashore and violated his fiduciary duties to Seashore as a result of his misconduct involving (among others) BNP Oil and Gas, a party in the arbitration proceeding. The Spilker Proffer, and supporting exhibits, also outlines numerous improper transfers by Paul Black to himself and others (including the Black Entities) including \$10,425,108 in improper transfers from jointly owned entities, and \$5,096,767 in improper transfers from Land & Bay Gauging as well. Seashore has a Judgment against Paul Black, personally, in excess of \$28 million, which includes a \$5 million exemplary damage award (which is non-dischargeable in any personal bankruptcy proceeding). The Examiner's Report also outlines numerous claims and causes of action against Paul Black and the Black Entities including but not limited to the \$5.1 million of funds taken by Paul Black from BNP Petroleum through his entity Land & Bay Gauging, along with numerous improper transactions with family members of Paul Black. The Black Settlement Agreement improperly seeks to release Paul Black and the Black Entities from these claims.

G. Findings Regarding Walter Oblach and the Proposal of Walter Oblach. The Court

finds, based on the prior sworn testimony of Walter Oblach before this Court on January 10, 2011, other representations made to this Court by counsel for Walter Oblach and the testimony of Michael Schmidt, as follows: i) Walter Oblach is a lifelong friend of Paul Black; ii) Walter Oblach went to Churchill High School with Paul Black; iii) Walter Oblach was a college roommate of Paul Black for three years; iv) Walter Oblach was a drinking buddy of Paul Black's during their college days in Austin; v) Walter Oblach was Paul Black's best man in Paul Black's first marriage; vi) Walter Oblach has stayed in frequent contact with Paul Black since college;

mathematical approach, using averages and mathematical calculations, and not premised on any analysis or judgment that Mr. Bowman provided. There was no testimony presented by anyone who had first hand knowledge of any of the income or expenses of the Prosperity Bank Building, the Staples Building or HBP. Mr. Bowman was not aware of the relevant partnership agreements or partnership obligations, including the approximate 45% share of such entities owned by Seashore, relating to the entities which own the Prosperity Bank Building and the Staples Building, or any of the legal prohibitions in such agreements which limit the conveyances which Paul Black has intended to hypothecate under the Black Settlement. Mr. Bowman was not aware of any indebtedness owed by the entities which own the Prosperity Bank Building (500 Water Street) and the 5262 Staples Building, and none of the exhibits offered by Paul Black reflected any obligation for payment of debt obligations owed by the entities which own the Prosperity Bank Building and the 5262 Staples Building. The applicable provisions of the partnership agreements, Exhibits 13 and 14 offered by Seashore, found in Article 11, Restrictions on Certain Transfers, pages 27-30, in the Agreement of Limited Partnership of 500 N. Water St. Property, LP and Article VIII, Transfers, Additional Partnership Interests, pages 21-26, in the Limited Partnership Agreement of 5262 Staples, Ltd., prohibit the transfers proposed by the Black Settlement Agreement and the contemplated payments addressed in the testimony of Mr. Bowman.

Neither Paul Black nor Walter Oblach demonstrated at the hearing that they are creditors of the estate. Following the hearing, Paul Black filed a proof of claim and the Trustee has filed an objection thereto. The Bankruptcy Court has previously ruled that Walter Oblach (and any affiliate which later made a claim) was paid in full from the sale of the BNP Oil and Gas assets to Blackgate.

weight in these proceedings. The Proffer of Jeff Spilker (the "Proffer") and the facts stated there by Jeff Spilker are credible, reasonable and in support of the findings and conclusions reached herein. Jeff Spilker's testimony, including the Proffer, was credible, reliable and is entitled to significant weight in these proceedings.

F. Factors Favoring Disapproval of the Settlement Agreement with Paul Black.

There is a significant risk that the Black Settlement Agreement and the conveyance of Paul Black's equity interests on the very day of Seashore's hearing for turnover of such equity interests in state court constitutes a fraudulent transfer to "delay" and "hinder" Seashore's collection efforts. There is also a significant risk that the Black Settlement Agreement and the transfer of Paul Black's ownership interests directly violates provisions of the entities' governing documents that restrict the transfer and/or encumbrance of such interests, and possibly violates applicable securities laws.

The testimony of Thomas Bowman is entitled to little weight. Mr. Bowman testified that he was employed only two days prior to the hearing, had spent no more than 20 hours on the engagement, and the scope of all information reviewed by him was only that information provided specifically by Paul Black. Mr. Bowman did not exercise any independent judgment or analysis in creating any report or evidence that was provided to the Court, other than conducting a mathematical exercise (such as averaging monthly income). Nor did he exercise any independent research or analysis to verify any of the information offered as an exhibit. Mr. Bowman did not render an opinion on the collectability of the Seashore judgment against Paul Black and had reviewed no information to make any informed judgment about collectability of the Seashore judgment. Mr. Bowman also presented certain charts of the potential returns to the estate of the alternative settlement or sale proposals, and such analysis was based strictly on a

The Trustee's causes of action against Seashore therefore have significant risk of loss, and also will be costly and time consuming to prosecute. Discovery has just begun and it may take years to try the case and resolve appeals.

The paramount interest of creditors is served by approval of the Sale Agreement. The Debtors' estates will receive immediate cash, and will get 50% of the initial \$500,000 of any collections on Seashore's existing Final Judgment against Paul Black and others. It is reasonable, given the pending Seashore Motion for Turnover, that this 50% portion will be collected soon. Seashore will bear all costs of prosecution and collection against the Black Entities. Therefore, the Debtors' estates will no longer have to bear the costs of obtaining a Judgment against Paul Black and the Black Entities and collecting against them. At present, the adversary suit by the Trustee against Paul Black and his family members has not even been answered, let alone has there been any progress toward judgment. The Debtors' estates will no longer bear the risk and expense of litigation against them, but will obtain a portion of any collections Seashore is able to recover against them. Additionally, the Trustee will not have to bear the huge costs in prosecuting his case against Seashore. Finally, Seashore is the largest creditor in these bankruptcy cases, and proper deference should be given to its views in favor of approval of the Sale Agreement, and disapproval of the Black Settlement Agreement. The Sale Agreement is a fair and equitable settlement that has been negotiated at arms length. Given all other factors in these cases, including the length of time these cases have been pending, the settlement should be approved. The Affidavit of Michael B. Schmidt, Trustee in Support of the Motion (the "Affidavit") given as a proffer of direct testimony, and facts stated therein by the Trustee are credible, reasonable and in support of the findings and conclusions reached herein. The Trustee's testimony, including the Affidavit, was credible, reliable and is entitled to significant

D. Best Interests of the Debtors' Estates. The Trustee has demonstrated good, sufficient and sound business purposes and justifications and compelling circumstances for entering into the Sale Agreement under Bankruptcy Code section 363(b). The Sale Agreement is in the best interests of the Debtors' estates and provides higher and better value to the Debtors' estates than the Black Settlement Agreement (defined in the Motion) or any other viable alternative. The terms of the Sale Agreement are more beneficial to the Debtors' estates than the Black Settlement Agreement and the last minute letter proposal submitted by Walter Oblach.

E. Factors Favoring Approval of the Sale Agreement. There is a significant risk that the Trustee may not succeed in his lawsuit against Seashore. The money paid to Seashore that the Trustee seeks to recover are transfers clearly labeled as debt repayments on the General Ledger of BNP Oil & Gas. Therefore, there is a significant likelihood that these payments were made in exchange for fair value and may not be recovered as fraudulent transfers under applicable law. There is a significant risk that Seashore has a valid defense of res judicata to the Trustee's causes of action based on the specific rulings against BNP Oil & Gas in the Arbitration Award and the Final Judgment. An example of this is the finding in the Arbitration Award that Seashore and Toby Shor owed no fiduciary duties to the various Black-related entities, including BNP Oil & Gas. Seashore and Toby Shor had no management or control of the Debtors in any way, as all decisions related to the Debtors were made by Paul Black. Thus, the Trustee would not be able to show that Seashore and/or Toby Shor provided "substantial assistance" with the fraud engaged in by Paul Black against the Debtors' estates. There is a significant risk that, given the recent Supreme Court decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), that this Bankruptcy Court does not have jurisdiction over the Trustee's lawsuit against Seashore, making prosecution of the case in another court more costly and more lengthy.

Agreement¹ attached to the Motion) has been proposed, negotiated and entered into by the Trustee and Seashore without collusion, in good faith, and from arm's-length bargaining positions. The Sale Agreement expressly sets forth that it would only become effective if the Court denied the Black Settlement Agreement. Nothing in the Sale Agreement precludes the Trustee from presenting the Black Settlement Agreement to the Court for approval, and in fact the Trustee has done so. Seashore is a bona fide purchaser of the assets described in the Motion and has proceeded in good faith in all respects in connection with this proceeding. Accordingly, Seashore is entitled to all of the protections of Bankruptcy Code Section 363(m). Neither the Trustee nor Seashore have engaged in collusion or in any conduct that would cause or permit the transaction to be avoided under Bankruptcy Code section 363(n).

C. Consideration. The Sale Agreement provides the Debtors' estates with fair and reasonable consideration and reasonably equivalent value for the assets sold and the claims being settled. The Sale Agreement represents a fair and reasonable offer to purchase the purchased assets under the circumstances of these chapter 11 cases. No other person or entity, including Paul Black or Walter Oblach, have offered to purchase these assets for an amount that would provide higher and better value to the Debtors' estates than that provided by the Sale Agreement. The Trustee's determination that the Sale Agreement constitutes the highest and best offer for the purchased assets constitutes a valid and sound exercise of the Trustee's business judgment. The Motion to approve the Sale Agreement was filed on June 28, 2011, more than 20 days prior to the July 19, 2011 hearing, with electronic notice to all creditors requesting notice. All parties who realistically would have an interest in purchasing the causes of action being sold had adequate notice and an opportunity to bid.

¹ All capitalized terms not defined herein are defined in the Motion.



ENTERED
07/26/2011

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE:	§	
	§	
BNP PETROLEUM CORPORATION, AND BNP OIL & GAS PROPERTIES, LTD.	§	CASE NO. 09-20206
	§	CASE NO. 09-20612
	§	(Chapter 7)
	§	
DEBTORS.	§	JOINTLY ADMINISTERED UNDER
	§	CASE NO. 09-20206

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JOINT MOTION OF SEASHORE AND MICHAEL B. SCHMIDT, CHAPTER 7 TRUSTEE, TO SELL CERTAIN ASSETS OF THE DEBTORS' ESTATES PURSUANT TO BANKRUPTCY CODE SECTION 363(b) AND TO APPROVE SALE AGREEMENT (docket no. 1185)

On this day came on for consideration the Joint Motion of the Trustee and Toby Shore, Seashore Investments Management Trust, and 2004 GRAT (collectively, "Seashore"), to Sell Certain Assets of the Debtors' Estates Pursuant to Bankruptcy Code Section 363(b) and to Approve Sale Agreement (the "Motion"). The Court, having heard the evidence and arguments of counsel, and subject to the Court's oral rulings on July 26, 2011, makes the following additional findings of fact and conclusions of law:

FINDINGS OF FACT

A. Notice. Under the circumstances, the notice given by the Trustee of the Motion and the relief requested therein constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002 and 6004.

B. Good faith. The Sale and Conveyance of Estates' Rights, Settlement and Mutual Release agreement by and Between Michael B. Schmidt, Trustee and Seashore (the "Sale

EXHIBIT D

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JOINT MOTION OF SEASHORE AND MICHAEL B. SCHMIDT, CHAPTER 7 TRUSTEE, TO SELL CERTAIN ASSETS OF THE DEBTORS' ESTATE PURSUANT TO BANKRUPTCY CODE SECTION 363(b) AND TO APPROVE SALES AGREEMENT