

1 **NOT FOR PUBLICATION**

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6 CLERK, US BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

7 UNITED STATES BANKRUPTCY COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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11 In re
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13 PROTOCOL SERVICES, INC., et al.,
14 Debtors.

Bankruptcy Nos. 05-06782-
JM11 through 05-06786-JM11
(Jointly Administered)

MEMORANDUM DECISION

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16 On December 22 and December 23, 2005, the Court held hearings
17 regarding confirmation of the debtor' ("Debtors") plan of
18 reorganization ("Plan"). At the conclusion of the hearing on December
19 23, 2005, the Court ruled that the Plan would be confirmed. The order
20 on confirmation ("Confirmation Order") was entered that same date.

21 OFSI Fund II, LLC ("OFSI") has filed a motion to amend the
22 Confirmation Order ("Motion"). OFSI contends that an indemnification
23 provision in ¶ X of the Confirmation Order, and a related provision
24 in the Plan (¶ 11.05), were ordered stricken by the Court. It also
25 argues that the indemnification provisions would improperly limit its
26 rights against third parties.

27 The Court has considered the Motion, as well as an objection to
28 the Motion filed by the Senior Lenders and a reply filed by OFSI. The

1 Court also provided OFSI with time to obtain a transcript of the
2 hearings. The Court has reviewed the portions of the transcript which
3 OFSI believes are pertinent to this issue.

4 At the hearing on confirmation, the Court ordered that the Plan
5 and Confirmation Order needed to be amended so that the so-called
6 exculpation provision in ¶ 11.03 of the Plan would not be any broader
7 than what is already provided for under the current law. The Court
8 explained that the Plan and Confirmation Order could not bar third
9 party creditors from asserting claims against other creditors.

10 The indemnification provision, however, does not act as a bar
11 against third party creditors from asserting claims against other
12 creditors. It simply provides that the Debtors will indemnify various
13 parties if they are sued in connection with the formulation and
14 implementation of the Plan, as well as related activities. This
15 provision does not violate the requirements for plan confirmation
16 under Bankruptcy Code Section 1129(a), and it is not prohibited by
17 existing case law.

18 Furthermore, a review of the transcript confirms that the Court
19 did not require the plan proponent to strike the indemnification
20 provision. For these reasons, the Court will not amend the
21 Confirmation Order as requested by OFSI.

22 The Motion is DENIED.

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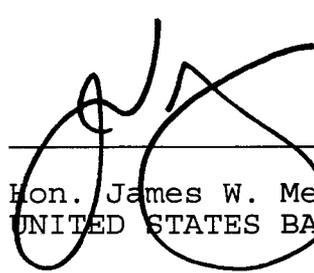
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Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE