IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
AHI LIQUIDATING 123, INC., *et al.*,	)	Case No. 17-10635 (KG)
	)	Jointly Administered
	)	**Ref. Dkt. Nos. 277, 275, 206, 179**
Debtors.	)	**Hearing Date: Oct. 5, 2017 at 2:30 p.m. (ET)**
	)	**Obj. Deadline: Sept. 29, 2017 at 4:00 p.m. (ET)**

ROHR, INC.'S LIMITED OBJECTION TO CONFIRMATION
OF THE DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION

Rohr, Inc. ("**Rohr**"), by and through its undersigned counsel, hereby files this Limited Objection to the Chapter 11 Plan of Liquidation proposed by the Debtors and the Official Committee of Unsecured Creditors (the "**Plan**," Dkt. No. 275), pursuant to the Court's Order (I) Scheduling a Combined Disclosure Statement and Plan Confirmation Hearing, (II) Establishing a Plan and Disclosure Objection Deadline and Related Procedures, (III) Approving (A) The Solicitation Procedures, (B) the Confirmation Hearing Notice, and (C) Vote Tabulation Procedures, and (IV) Granting Related Relief. (Dkt. No. 277.) In support of this Protective Objection, Rohr states:

1. Rohr, a UTC Aerospace Systems company, is a Delaware corporation with an office and place of business in Chula Vista, California. Rohr is an aerospace manufacturing company whose product line includes aerostructures, such as engine-related components and assemblies.

2. Pursuant to a Supply Agreement, Debtor NCDI123, Inc. (formerly known as NC Dynamics Incorporated, "**NC Dynamics**" or the "**Debtor**") supplied certain ailerons and

related components to Rohr for incorporation into assemblies that Rohr supplies to aircraft manufacturers and other customers.[1]

3. On April 21, 2017, the Debtors filed their Notice of Filing Executory Contract List. (Dkt. No. 120.) Rohr also received the Debtors' Notice of (I) Possible Treatment of Executory Contract and Unexpired Leases, (II) Fixing Cure Amounts and (III) Deadline to Object (the "**Cure Notice**"). The Executory Contract List attached to the Cure Notice and filed on the docket listed the Supply Agreement at entry number 84 and stated a proposed cure amount of $0. (Dkt. No. 120-1; Cure Notice, Ex. A)

4. The proposed cure amount stated on the Executory Contract List is incorrect because, pursuant to the parties' contract and the common law of recoupment, Rohr is entitled to compensation for $346,903.67 in costs it incurred as a result of nonconforming ailerons that NC Dynamics supplied to Rohr prior to the petition date. (*See* Dkt. No. 179.) Rohr filed a Limited Objection and Reservation of Rights in response to the Executory Contract List on May 4, 2017 (the "**Cure Notice Objection**," Dkt. No. 179). Since the Cure Notice Objection was filed, the parties, including Harlow, have been attempting to negotiate a consensual resolution of the issues that Rohr raised in the objection. Those negotiations are ongoing but no agreement has been reached.

5. The Debtors filed their Notice of Assignment and Assumption of Executory Contracts and Unexpired Leases (the "**Notice of Assignment**," Dkt. No. 206) on May 26, 2017. The Notice of Assignment identified the Supply Agreement at entry number 54 as an agreement

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1 The "Supply Agreement" is a term defined in Rohr's Limited Objection and Reservation of Rights (discussed *infra*), and refers to a collection of interrelated agreements between Rohr and NC Dynamics together with associated terms and conditions. (*See* Dkt. No. 179 ¶ 3.) The Supply Agreement is currently performed by Harlow Aerostructures LLC ("**Harlow**"), or an affiliate of Harlow, pursuant to the Asset Purchase Agreement approved by the Court on May 1, 2017. (Dkt. No. 155.)

to be assumed and assigned to Harlow in connection with the section 363 sale of the Debtor's assets. However, the Notice of Assignment contains a footnote that states:

> UTC/Rohr's [Cure Notice] Objection to assumption remains pending. The parties are working to resolve the appropriate cure amount. ***Harlow's assumption of the Master Terms Agreement [between Rohr and the Debtor] remains subject to resolution of the pending objection***, which the parties intend to be heard at the July 6 Omnibus Hearing in the event they cannot reach agreement on the appropriate cure amount.

(Dkt. No. 206, Annex I at 5 (emphasis added).)

6. The Plan provides for the treatment of executory contracts and unexpired leases. In pertinent part, the Plan provides:

> All executory contracts and unexpired leases to which any of the Debtors are parties are hereby rejected as of the Effective Date except for an executory contract or unexpired lease that (i) previously has been assumed pursuant to Final Order of the Bankruptcy Court, (ii) is specifically designated as an executory contract or unexpired lease to be assumed in this Plan, or (iii) is the subject of a separate assumption motion filed by the Debtors under section 365 of the Bankruptcy Code prior to the Effective Date.

(Dkt. No. 275 at 45 § 11.1.)

7. Because Harlow's assumption of the Supply Agreement is contingent on resolving the Cure Notice Objection, there is an ambiguity in the interaction between the Notice of Assignment and the Plan. The Notice of Assignment might not be interpreted as an assumption of the Supply Agreement that satisfies conditions (i), (ii), or (iii) of Section 11.1 of the Plan because assignment and assumption remains "subject to resolution of the pending objection." If so, and if the Cure Notice Objection remains pending on the Effective Date, then the Plan might be construed to reject the Supply Agreement while negotiations between Rohr and Harlow are ongoing.

8. That unintended outcome would risk interruption of deliveries to Rohr under the Supply Agreement and needlessly complicate discussions between Rohr and Harlow, who are

working to resolve the Cure Notice Objection and continue doing business together under the Supply Agreement. In addition, an unintended rejection of the Supply Agreement would leave Rohr with a sizeable claim against the Debtor's estate for damages in connection with the prepetition delivery of nonconforming ailerons as well as for rejection damages. That outcome would reduce the recovery of the Debtor's other general unsecured creditors.

WHEREFORE, Rohr respectfully objects to the Plan to the extent it could be construed to reject the Supply Agreement on the Plan's Effective Date in the event the Cure Notice Objection remains unresolved at that time and Harlow has not yet formally committed to taking assignment of the contract. Alternatively, any Plan confirmation order should clarify and assure that the Plan will not cause the Supply Agreement to be rejected unless the parties cannot resolve the Cure Notice Objection and the Debtor affirmatively rejects the Supply Agreement.

[Signature Page Follows]

Dated: September 28, 2017

MORRIS JAMES LLP

/s/ Brett D. Fallon
Brett D. Fallon (Del. Bar ID 2480)
Morris James LLP
500 Delaware Avenue
Suite 1500
Wilmington, DE 19801-1494
Tel: (302) 888-6888
Fax: (302) 571-1750
bfallon@morrisjames.com

Of counsel:

Thomas D. Goldberg
Kevin C. Brown
Day Pitney LLP
One Canterbury Green
Stamford, CT 06901
Tel: (203) 977-7383
tgoldberg@daypitney.com
kbrown@daypitney.com

Attorneys for Rohr, Inc.