

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
GULF PACKAGING, INC.,) Case No. 15-15249
)
Debtor.) Honorable Pamela S. Hollis
)
) **Hearing Date: June 23, 2015**
) **Hearing Time: 10:00 a.m.**
) **Court Room: 644**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **June 23, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, Courtroom No. 644, or whomever may be sitting in her place and stead, and then and there present the **DEBTOR’S MOTION FOR ENTRY OF ORDER AUTHORIZING TERMINATION OF DEBTOR’S 401(K) PLAN**, a copy of which is attached hereto and hereby served upon you.

Dated: June 2, 2015

Respectfully submitted,

GULF PACKAGING, INC.

By: /s/ Joseph D. Frank
One of its attorneys

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
)	Chapter 11
)	
GULF PACKAGING, INC., ¹)	Case No. 15-15249 (PSH)
)	
Debtor.)	
)	

**DEBTOR’S MOTION FOR ENTRY OF ORDER AUTHORIZING
TERMINATION OF DEBTOR’S 401(K) PLAN**

Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor,” “GPI” or the “Company”), for its Motion (the “Motion”) For Entry of Order Authorizing Termination of the Debtor’s 401(K) Plan, respectfully represents:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

INTRODUCTION

3. On this date (the “Petition Date”), the Debtor filed with this Court a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On May 11, 2015, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “Committee”). No request has been made for the

¹ The last four digits of the Debtor’s tax identification number are 5030.

appointment of a trustee or examiner.

BACKGROUND

4. GPI is a national distributor of packaging equipment and supplies, which sells its product by and through several independent entities (“Affiliates”).² When GPI is combined with the Affiliates, there are over twenty (20) warehousing locations to better serve GPI’s customer base. Additional information about the Debtor, its business and corporate and capital structures is set forth in the *Declaration of Edward T. Gavin, CTP in Support of Chapter 11 Petition and First Day Pleadings* filed on the Petition Date.

5. Prior to the Petition Date, the Debtor implemented the Gulf Packaging, Inc. 401(k) Retirement Plan (the “401(k) Plan”), effective January 1, 2013. Pursuant to the terms and conditions of the 401(k) Plan, the Debtor was not required to and did not contribute any funds, matching or otherwise, to such plan. Additionally, the Debtor never exercised its discretion pursuant to the terms of the 401(k) Plan to authorize any matching or profit sharing payments to the plan participants.

6. As of the Petition Date, there are ten (10) participants in the 401(k) Plan, nine (9) of which are former employees of either the Debtor or Gulf Packaging Equipment and Service LLC. Of the Debtor’s two (2) remaining active employees, only one (1) is a participant in the 401(k) Plan, and that employee is not currently contributing to the 401(k) Plan. All amounts owing to the 401(k) Plan that were previously withheld from participants’ paychecks have been paid to the 401(k) Plan in accordance with applicable law.

² As used herein, “Affiliate” means a company that has a relationship – formal or informal – to the Debtor, and sells packaging products under a variation of the Gulf name. Unless otherwise set forth, use of the term “Affiliate” is not intended to have the same meaning as the “affiliate” term of art defined in section 101(2) of the Bankruptcy Code. All rights with respect to this issue are reserved.

7. CUNA Mutual Retirement Solutions (“CUNA”) is acting as the third party administrator of the 401(k) Plan. The Debtor pays certain administration fees to CUNA for its services.

RELIEF REQUESTED

8. The funds in the 401(k) Plan are not property of Debtor’s bankruptcy estate pursuant to section 541 of the Bankruptcy Code. 11 U.S.C. § 541(b)(7) (excluding amounts withheld by or received by an employer for payments as contributions to certain employee benefits plans or deferred compensation plans); *see also* 5 COLLIER ON BANKRUPTCY ¶ 541.23[1] (Alan N. Resnick & Henry J Somme eds., 16th ed.) (section 541(b)(7) exception appears to apply in bankruptcy proceedings of both employer and employee). However, out of an abundance of caution, to the extent Bankruptcy Court approval is required pursuant to section 363 of the Bankruptcy Code or otherwise, the Debtor seeks authority from this Court to terminate, wind up and distribute the assets of the 401(k) Plan to the participants thereof pursuant to the terms of the 401(k) Plan and under the Employee Retirement Income Security Act of 1974, as amended, the Internal Revenue Code of 1986 and other applicable non-bankruptcy law.

9. Section 363(b) of the Bankruptcy Code authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts generally hold that a debtor’s decision to enter into a transaction outside of the ordinary course of business is governed by the business judgment standard. *See, e.g., Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) of the Bankruptcy Code is whether the debtor has “an articulated business justification”) (citation omitted).

10. The Debtor asserts that termination of the 401(k) Plan is in the best interest of the Debtor, its estate, and the participants in the 401(k) Plan. Through the Debtor's bankruptcy case, the Debtor's business operations are winding up and the Debtor anticipates that most, if not all, of the Debtor's employees will likely be terminated over the course of this case. Termination of the 401(k) Plan will eliminate ongoing expenses to CUNA or any other third party administrator to administer the 401(k) Plan. The termination will additionally allow the 401(k) Plan participants to roll over or otherwise obtain distributions from the 401(k) Plan pursuant to applicable non-bankruptcy law.

11. The Debtor intends to comply with all notices and other requirements of the terms of the 401(k) Plan and under the Employee Retirement Income Security Act of 1974, as amended, the Internal Revenue Code of 1986 and other non-bankruptcy law to implement the contemplated termination of the 401(k) Plan.

12. Additionally, the Debtor requests (i) authority to pay any reasonable administrative charges and fees imposed by CUNA to assist in the winding up and termination of the 401(k) Plan; and (ii) to take any and all actions necessary or appropriate to consummate these transactions. The Debtor anticipates that such termination fees shall not exceed \$3,000.

NOTICE

13. Notice of this Motion has been provided to (i) the office of the United States Trustee for the Northern District of Illinois, (ii) the holders of the twenty (20) largest unsecured claims against the Debtor, (iii) counsel to FCC, (iv) counsel to the Committee, (v) the 401(k) Plan participants, and (vi) all other parties requesting notice in this chapter 11 case. The Debtor respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

14. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Respectfully submitted this 2d day of June, 2015.

FRANKGECKER LLP

/s/ Joseph D. Frank

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COUNSEL TO THE DEBTOR

EXHIBIT A

Proposed Order

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)	BK No.: 15-15249
)	
GULF PACKAGING, INC.,)	Chapter: 11
)	Honorable Pamela S. Hollis
)	
Debtor(s))	

ORDER AUTHORIZING TERMINATION OF DEBTOR’S 401(K) PLAN

Upon the Motion (the “Motion”) For Entry of Order Authorizing Termination of the Debtor’s 401(K) Plan, filed by Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor”); and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that due and sufficient notice of the Motion has been provided by the Debtor under the circumstances and that no other or further notice is required; and upon the hearing on the Motion conducted on June 23, 2015 and the record made thereat; and after due deliberation and good cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.
3. The Debtor is authorized to take any and all actions necessary or appropriate including, but not limited to, seeking a determination letter, if appropriate, from the Internal Revenue Service, to terminate, wind up and thereafter distribute the funds in the Debtor’s 401(k) Plan (as defined in the Motion) to the plan participants pursuant to applicable non-bankruptcy law.
4. The Debtor is authorized to pay the reasonable administrative fees and expenses that may be charged by CUNA for assistance in the winding up and termination of the Debtor’s 401(k) Plan in an amount not to exceed the sum of \$3,000.00 about further order of this Court.
5. Notwithstanding anything to the contrary contained herein, the relief granted in this Order and any payment to be made, or any authorization contained, hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in this chapter 11 case, including with respect to any budgets governing or relating to such use (collectively, the “Cash Collateral Order”), and to the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.
6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

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