

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
GULF PACKAGING, INC., <sup>1</sup>	)	Case No. 15-15249
	)	
Debtor.	)	Hon. Pamela S. Hollis
	)	
	)	
	)	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
DEBTOR’S MOTION FOR ENTRY OF AN ORDER EXTENDING PERIOD WITHIN  
WHICH DEBTOR HAS THE EXCLUSIVE RIGHT TO FILE A PLAN AND SOLICIT  
ACCEPTANCES THEREOF**

The Official Committee of Unsecured Creditors (the “*Committee*”) of Gulf Packaging, Inc. (“*GPI*” or the “*Debtor*”), by and through its undersigned counsel, hereby submits this objection (the “*Objection*”) to the Motion (the “*Motion*”) of the Debtor for Entry of an Order Extending Period Within Which Debtor Has the Exclusive Right to File a Plan and Solicit Acceptances Thereof. In support of this Objection, the Committee states as follows:

**BACKGROUND**

The Debtor is in the very late stages of liquidating its assets. At the time of filing of the case, the Debtor and FCC both asserted that the value of FCC’s collateral was worth over \$11 million and that FCC’s claim was worth about \$9 million. They both made those representations to the Committee and to the Court in support of the Debtor’s request to use FCC’s cash collateral on extremely favorable terms to FCC. Both the Committee and presumably the Court relied on those representations in agreeing to the terms of that order, including the §506(c) waivers, in hopes that after liquidating the collateral, some additional funds would be available to pay unsecured creditors. The Debtor has spent months selling its assets at discounts approved by

FCC and the sole beneficiary of those sales has been FCC. The Debtor has done nothing to bring unencumbered assets into the estate for the benefit of unsecured creditors. Now, it is blatantly obvious that FCC's collateral is worth much less than the original \$11 million amount asserted by the Debtor and FCC and that FCC will have a deficiency of about \$2 million after the collateral is liquidated. The inventory is packaging materials- not perishable goods and clearly did not decrease in value in the few months this case has been pending.

The Debtor asserts in the Motion that it "anticipates seeking input from the Committee and its secured lender" in connection with a proposed plan of liquidation. However, when the Committee asked the Debtor if the Committee and the Debtor could file a joint plan, the Debtor's counsel quickly rejected that notion. Based on discussions with FCC's counsel and a review of a proposed plan, it has become obvious to the Committee that the Debtor intends to file a disguised lender's plan, which directs all assets, whether they are subject to FCC's security interest or not, to FCC and leaves little chance of recovery to unsecured creditors. It appears that the Debtor is trying to do a cram down on the general unsecured creditor class.

Allowing the Debtor the extension of time to have the exclusive right to file a plan when the estate assets are depleting rapidly and there is a short window of time for this case to even continue to exist in Chapter 11 (versus a necessary conversion to Chapter 7), will effectively eliminate any hope that the unsecured creditors could file a fair plan.

### **OBJECTION**

There are several factors laid out in the Motion the Debtor asserts are cause to grant it an extension of the exclusivity period to file a plan, but those factors actually demonstrate why exclusivity should be terminated in this case. The Debtor cites the following factors from *In re Adelphia Communications Corp.*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006):

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<sup>1</sup> The last four digits of the Debtor's tax identification number are 5030.

- a. the size and complexity of the case;
- b. the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- c. whether the debtor has made progress toward negotiations with its creditors;
- d. the existence of good faith progress toward reorganization;
- e. whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands;
- f. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- g. the fact that the debtor is paying its bills as they become due;
- h. the amount of time which has elapsed in the case; and
- i. whether an unresolved contingency exists.

**Size and Complexity of the Case**

This is not a mega-case and it is not a difficult case. It is a very simple liquidation case, which should result in a very simple liquidating plan, transferring all of the assets of the estate to a trust for the benefit of the unsecured creditors. The lender should receive a return of its collateral in full satisfaction of its secured claim. Such a plan can be drafted and filed in a day.

**No Need for Time Negotiate Plan or Prepare Information**

If the Debtor were to file a plain liquidating plan, there would be nothing to negotiate and, given the stage of this case, there is very little information to prepare. This is not a complex reorganization.

### **No Progress with Negotiations with Creditors**

The Debtor shut down any suggestion of doing a joint plan with the Committee. After discussions with counsel for FCC and a review of a draft plan, it is clear why the Debtor does not want to file a joint plan- because the Debtor and FCC are filing a lender's plan which tries to cram down the unsecured creditors. This is the opposite of progress with negotiations with creditors- anti-progress. Specifically, the Debtor and FCC seek to propose a plan that would grant FCC a fully secured claim, with post-petition interest, fees, costs and expenses, even though the record of this case makes it very clear that FCC's claim is woefully under-secured based on the actual marketing of its collateral at the supervision and direction of FCC. The Debtor and FCC now are crafting an argument that, while FCC does not have a security interest in the unencumbered assets and it is clear that the value of its collateral is less than its claim, nevertheless, it is entitled to receive a first priority recovery from the unencumbered assets before general unsecured creditors. In other words, FCC wants the first \$2 million from the proceeds of non-insider Chapter 5 actions and wants such actions to be pursued prior to any actions against insiders. Effectively, the Debtor and FCC would have a trustee to sue the general unsecured creditors of the estate for preference recovery, give that money to FCC, and leave the general unsecured creditors with no recovery in a worse position than before this case was filed. The only fathomable reason the Debtor would agree with this tactic is that it is trying to eliminate guarantor liability on the backs of the unsecured creditors.

The Debtor and FCC also agree that FCC should control the post-confirmation trust through "Board Members" appointed by FCC.

Further, the Debtor's insiders seek broad releases to be granted in a plan, which would eliminate a major potential source of recovery for the unsecured creditors. Yet the insiders have not offered any consideration to unsecured creditors for such releases.

### **No Progress Toward Reorganization**

This case is a liquidation case; not a reorganization. There is nothing to reorganize. With respect to the liquidation, for the reasons stated above, there is no progress.

### **The Debtor is Seeking to Extend Exclusivity to Pressure Creditors**

This Chapter 11 case has very little life left. The assets have either been liquidated or a liquidation has failed. The remaining inventory and receivables should be turned over to FCC for collection at FCC's cost. The cash collateral budget is being extended two weeks at a time with FCC's consent. If FCC withdraws its consent, the Court will have to overrule FCC's objection to the use of cash collateral in order to allow for plan confirmation. It is unlikely the Court will allow such non-consensual use of cash collateral for very long. Therefore, there is really only one shot to confirming a plan. The Debtor has made clear it does not want the Committee to file a plan or joint plan. Even if there are competing plans, they should be done contemporaneously, not successively because the case will not last that long.

The Debtor appears to be seeking to extend exclusivity in order to force the creditors to accept a lender's plan or get a cram down before the case is converted. Given the fact that there is no real reason to extend exclusivity, that lever should be taken away from the Debtor and the Committee should be allowed to propose a very simple plan.

### **The Debtor Has Not Proposed a Viable Plan**

The plan the Debtor and FCC have proposed to the Committee is not confirmable. It improperly classifies FCC as impaired, even though FCC would receive a full recovery- way more than what it is entitled to receive and leaves the unsecured creditors with no recovery and no funding to pursue claims. It is very unlikely that FCC will be deemed unimpaired by the Court and equally as unlikely that the actual impaired unsecured creditors would accept the plan.

### **The Debtor Has Had Plenty of Time**

The Committee recognizes that the extension of exclusivity is routinely granted at least one time. However, this case is unusual in that the Debtor is not operating a business and, to the extent that it is paying employees and incurring other business related expenses, it should stop. The Debtor could have quickly drafted a very simple liquidating plan months ago. The failed §363 sale was weeks ago. There is no need to drag this case out or incur additional unnecessary expenses given the fact that there is nothing left to do but liquidate assets and pursue litigation claims.

### **CONCLUSION**

The Debtor and FCC have indicated to the Committee that they intend to file a plan of reorganization which would treat FCC's claim as fully secured, even though no party in this case could truly make the assertion with a straight face that the collateral was worth anywhere near what they said it was worth at the onset of the case. The attempted and actual sales of the Debtor's assets have proven that FCC was and always has been under-secured and not entitled to post-petition interest or fees. The Debtor and FCC are trying to find a way to argue that FCC should be entitled to a priority claim with respect to its deficiency claim which is actually a general unsecured claim.

The Committee naively believed that this case would result in a very basic liquidation plan filed jointly by the Debtor and the Committee. Since that was clearly not the Debtor's intentions, the estate should not have to suffer through a futile process of allowing the Debtor the right to exclusively file a plan which will never be confirmed, when there is only a limited amount of time or life left in this case.

Dated: August 14, 2015

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF GULF PACKAGING, INC.**

By: /s/ Shelly A. DeRousse  
One of Its Proposed Attorneys

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