

**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.)	Hon. Pamela S. Hollis
)	
)	Date: March 3, 2016
)	Time: 10:30 a.m.
)	

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **March 3, 2016 at 10:30 a.m.** or as soon thereafter as counsel may be heard, the undersigned will appear before the Hon. Pamela S. Hollis, Bankruptcy Judge, or such other judge as may be sitting in her stead, in Courtroom 644, in the Dirksen Federal Courthouse, 219 S. Dearborn St, Chicago, Illinois and shall then and there present the attached **REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM**, at which time and place you may appear as you see fit.

Respectfully submitted,
XSYS, INC.

By: /s/ Kevin H. Morse

Konstantinos Armiros (0664000)
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CERTIFICATE OF SERVICE

I, Kevin H. Morse, an attorney, certify that I caused a copy of the foregoing NOTICE OF MOTION and REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM to be served on the parties listed on the service lists below by U.S. Mail, postage prepaid, and/or the Court's ECF System, on February 17, 2016.

By: /s/ Kevin H. Morse

Via U.S. Mail and ECF:

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REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM

Xsys, Inc. (“Xsys”), by and through its counsel, Konstantinos Armiros and Kevin H. Morse of Arnstein & Lehr LLP, pursuant to section 2.1 of the First Amended Chapter 11 Plan [Dkt. #317] (the “Plan”), requests payment of its \$62,006.10 administrative expense claim. In support of the Claim, Xsys states as follows:

I. Background Facts

Xsys is an information technology (IT) consulting firm located in Valparaiso, Indiana, and, since its inception, wholly owned and controlled by Melissa Sarkisian. Since 1981, Xsys has supported its clients’ IT needs through a variety of services, including, but not limited to, enterprise resource planning, offsite backup and disaster recovery, digital asset management, desktop and server virtualization, customer relationship management, voice over IP, and proactive site hosting and monitoring.

A. Xsys and Gulf Great Lakes

Gulf-Great Lakes Packaging Corporation (“Gulf Great Lakes”) was started in 1975 in Chicago, followed by Gulf Systems, Inc. in 1977, in Houston (“Gulf Houston”). Xsys started supporting Gulf Great Lakes’ IT needs in 1996 and expanded the relationship, in or around 1997,

when Gulf Great Lakes purchased accounting software from Xsys Inc., then known as Best and now known as Sage. Sage is a leading software application used by thousands of companies around the world and can be purchased via thousands of resale companies like Xsys. At this time, Gulf Great Lakes was supporting the related entity locations in Detroit and Carolina, and, as a result, Xsys began to support the Detroit and Carolina locations as well. In 1999, Gulf Houston, unsolicited, purchased the same SAGE software from Xsys for improved services and fear of “Y2K.” Through the Gulf Houston purchase of the software, by 1999, Xsys was supporting and serving Gulf-related entities in Chicago, Carolina, Detroit, Houston, Georgia, Florida, and St. Louis. In 2011, the Gulf-related entities in Los Angeles and Arizona also converted to be supported by Xsys.

On January 1, 2012, Joe Fleck, the son of the Gulf founder Carl Fleck and a long-time Apple employee, was hired as Director of IT for the Gulf-related entities. From that point forward, all decisions about IT, support, purchases and projects were under the direction of Joe Fleck. Xsys’ invoices had to be approved by Joe Fleck.

Gulf Packaging, Inc. (the “Debtor”) was formed as a Texas corporation on February 14, 2012. The concept at the time was for the independent Gulf-related entities to “roll-up” into the Debtor and operate, at least publicly, as one large national company. After the “roll-up” was put into effect, Xsys continued to provide the accounting, IT, and e-mail services to the Debtor and all Gulf-related entities. The Debtor and related entities still hosted – via their own servers – all of their respective IT data and information through a third party colocation facility.

Sales were generally down in 2013, while the Debtor experienced increased costs and capital expenditures to make acquisitions and help initiate the roll-up. In or around July 2013, Arman Sarkisian was named the new Chief Executive Officer of the Debtor in an effort to ebb

the Debtor's losses and turnaround the company. Arman Sarkisian is the husband of Melissa Sarkisian, the President of Xsys.

B. The Debtor's Bankruptcy Filing

On April 29, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Prior to the Petition Date, Xsys played a vital role in assisting the Debtor to prepare for bankruptcy. Xsys provided the Debtor and, after March 2015, the Chief Restructuring Officer Edward T. Gavin of Gavin/Solomonese, LLC (the "CRO") critical data, reports, and information that enabled the Debtor to prepare and file for bankruptcy. By this time, Arman Sarkisian had resigned as CEO of the Debtor.

On and after the Petition Date, the Debtor continued to utilize Xsys' services. In fact, a specific line-item was provided for Xsys in each of the Debtor's cash collateral budgets approved and entered in the bankruptcy case [Dkt. #62, 153]. A copy of the Debtor's final order and budget authorizing the use of cash collateral is attached as **Exhibit A**. The cash collateral budgets provided weekly payments to Xsys starting at \$7,000 per week and gradually decreasing to \$2,500 per week.

On May 27, 2015, Xsys was informed by the CRO that the Official Committee of Unsecured Creditors (the "Committee") raised an objection to Xsys receiving payments until the Committee satisfied itself and its members that the payments were not for the benefit of an insider. A copy of the CRO's May 27, 2015 e-mail is attached as **Exhibit B**. The Committee agreed to a thirty (30) day period in which it would investigate Xsys' relationship and services. *Id.* Xsys was not to receive any payments during the investigation period and until the Committee had cleared Xsys for payments. *Id.* On June 24, 2015, the CRO informed Xsys that all payments to Xsys had been approved by the Committee in the normal course of business and

all past and future invoices would be paid. A copy of the CRO's June 24, 2015 e-mail is attached as **Exhibit C**. Unfortunately, as the Debtor's Chapter 11 case started to fall apart around August 2015, Xsys stopped receiving payments from the Debtor despite the Debtor's continued use of Xsys' services.

Prior to November 30, 2015, the Debtor's servers were located at an offsite colocation facility in Chicago. Initially, the Debtor intended to move all of the servers to the Debtor's Dolton, Illinois facility; however, this option was cost prohibitive given the \$25,000-\$30,000 in capital expenditures required. With the colocation lease expiring on November 30, 2015, the Debtor requested that Xsys breakdown the Debtor's equipment at the offsite colocation facility, move all the data and information to Xsys' own equipment, and for Xsys to begin hosting the Debtor's servers, data, and information in addition to all the regularly provided services

Xsys agreed to the Debtor's request and, after several days of preparation and three actual days of work to transfer the servers, Xsys began hosting the Debtor's data and information at the end of November 2015. Xsys' professional breakdown and packaging of the hardware permitted the Debtor to liquidate the hardware for the benefit of the bankruptcy estate. The sale of the hardware net the Debtor's bankruptcy estate \$42,350. A copy of the *Notice of Sale of Certain Assets* related to the hardware is attached as **Exhibit D**. From the end of November 2015 through February 12, 2016, Xsys continued to host and support all of the Debtor's data, IT, and e-mail services. Since February 12, 2016, the Debtor's data, IT, and e-mail services have been preserved and protected without any party being able to manipulate, destroy, delete or otherwise modify the electronic data.

II. Request for Administrative Claim

Xsys respectfully requests the Court enter an order for Joseph Myers, not individually, but solely in his capacity as creditor trustee for Gulf Packaging, Inc. (the “Creditor Trustee”) to pay Xsys \$62,006.10 as an administrative expense claim (the “Claim”). A summary of the Claim and all supporting invoices are attached as **Exhibit E**.

Section 1.1 of the Plan defines an “Administrative Expense Claim” as “any right to payment constituting a cost or expense of administration of the Chapter 11 Case Allowed pursuant to section 503(b) of 507 of the Bankruptcy including, without limitation (a) any fees or charges assessed against the Debtor’s Estate under 28 U.S.C. § 1930 and (b) other Administrative Expense Claims as may be ordered and Allowed by the Bankruptcy Court.

Section 503(b)(1) of the Bankruptcy Code allows administrative claims for the actual, necessary costs and expenses of preserving the bankruptcy estate. 11 U.S.C. § 503(b)(1). Section 503(b)(3)(D) allows administrative claims for the actual, necessary expenses incurred by a creditor “. . . in making a substantial contribution in a case under chapter . . . 11 . . . of this title.” 11 U.S.C. § 503(b)(3)(D).

There is no question that the services Xsys provided to the bankruptcy estate and Creditor Trustee have preserved the bankruptcy estate and made a substantial (and tangible) contribution to the Debtor’s Chapter 11 case. Until November 2015, Xsys provided the Debtor with all of its information technology services, excluding the hosting of the Debtor’s servers. Xsys had provided these services to the Debtor and/or the Debtor’s affiliates since 1996. Xsys’ pre-November 2015 services were all vetted through the Debtor, CRO, and the Committee, and a specific line-item for Xsys was included in the Debtor’s entered cash collateral orders. The Committee additionally took the extra step – and thirty (30) days – to investigate Xsys and the

relationship between Xsys and the Debtor. No objections were ever filed to Xsys' services or payments.

After August 2015, the Debtor stopped making payments to Xsys; however, Xsys continued to provide the Debtor necessary and critical services. Without Xsys, the Debtor would not have had IT support for its accounting, internet, or e-mails services. Then, after October 2015, the Debtor and CRO requested that Xsys expand its relationship and services to include hosting all of the Debtor's servers. These additional services required Xsys to "breakdown" the Debtor's existing hardware at the third party colocation facility in Chicago, appropriately package the hardware for re-sale, and transfer the three terabytes of data, information, and e-mails to Xsys' own servers. Xsys also marketed the hardware for sale to its customers. The hardware was sold to two Xsys customers who paid the estate more than \$42,000 for the hardware.

Xsys actively hosted, maintained, and supported the Debtor's data and information until Friday, February 12, 2016. Until that time, the Debtor's employees or agents contacted Xsys on a daily basis to produce reports, troubleshoot an issue, or assist on a technology related matter. Since February 12, 2015 at 5:00 p.m., Xsys continues to preserve and protect the Debtor's data and information pursuant to this Court's order [Dkt. #343]. Xsys' services have preserved and substantially contributed to the Debtor's Chapter 11 case and, as such, Xsys requests approval and payment of its Claim in the amount of \$62,006.10.

III. Conclusion

For the reasons detailed above, Xsys respectfully requests the Court enter an order: (1) approving Xsys' Claim in the amount of \$62,006.10; (2) requiring the Creditor Trustee to pay

the Claim as an Administrative Expense Claim as set forth in the Plan; and (3) for such other and further relief as the Court deem appropriate.

Respectfully submitted,
XSYS, INC.

By: /s/ Kevin H. Morse

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