

**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
)	

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **March 22, 2016 at 10:00 a.m.** or as soon thereafter as counsel may be heard, the undersigned will appear before the Honorable Pamela S. Hollis, or such other judge as may be sitting in her stead, at 219 S. Dearborn, Courtroom 644, Chicago, Illinois 60604, and shall then and there present the attached **MOTION FOR (I) AUTHORITY TO ISSUE RULE 2004 SUBPOENAS AND CONDUCT RULE 2004 EXAMINATIONS; AND (II) EXTENSION OF TIME TO FILE REPLY TO OBJECTION TO ADMINISTRATIVE CLAIM**, at which time and place you may appear as you see fit.

XSYS, INC.

By: /s/ Kevin H. Morse

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CERTIFICATE OF SERVICE

I, Kevin H. Morse, an attorney, certify that I caused a copy of the foregoing **MOTION FOR (I) AUTHORITY TO ISSUE RULE 2004 SUBPOENAS AND CONDUCT RULE 2004 EXAMINATIONS; AND (II) EXTENSION OF TIME TO FILE REPLY TO OBJECTION TO ADMINISTRATIVE CLAIM** to be served on the parties listed on the attached service list by Overnight Mail or Messenger, and by delivery through the Court's ECF System to the parties entitled to electronic notice, on March 16, 2016.

By: /s/ Kevin H. Morse

Via Overnight Mail or Messenger:

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(Former CRO of Debtor)

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(Former Shareholders)

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June 2, 2015, the Court entered an order authorizing the Official Committee of Unsecured Creditors to employ Freeborn & Peters LLP (“Freeborn”) as its counsel [Dkt. #150].

5. Since 1996 and continuing after the Petition Date, Xsys provided data hosting and storage services to the Debtor and its non-debtor affiliates. Xsys is an information technology (IT) consulting firm located in Valparaiso, Indiana.

6. On June 30, 2015, Xsys filed a prepetition unsecured claim in the amount of \$264,918.00 for unpaid fees related to services provided to the Debtor [Claim No. 252].

7. On September 14, 2015, Freeborn filed its First Interim Application for Compensation [Dkt. #213]. Freeborn’s time entries indicate that Xsys was discussed in a number of conversations between Freeborn and other parties involved in this case, including, but not limited to: (a) Ted Gavin, the former CRO of the Debtor, and his firm Gavin Solomese; (b) Julius Pohlenz, former Committee member; and (c) Jason Brookner, counsel for the Debtor. A copy of the relevant portions of Freeborn’s first fee application is attached as **Exhibit A**. These conversations related to, *inter alia*, whether Xsys was entitled to payment and Xsys’ status as an alleged insider.

8. Furthermore, on information and belief, Freeborn, as counsel for the committee and subsequently the Creditor Trustee (as defined below), communicated with: (a) Carl and Maggie Fleck, the Debtor’s former shareholders; and (b) counsel for the Debtor’s secured lender, FCC, LLC d/b/a First Capital with regard to Xsys’ services and funding Xsys through use of cash collateral [Dkt. #153].

9. On December 15, 2015, the Debtor’s plan of liquidation was confirmed. The effective date of the Debtor’s plan of liquidation occurred on January 22, 2016 [Dkt. 332]. That same day, Joseph E. Myers was appointed creditor trustee of the Debtor’s creditor trust (the “Creditor Trustee”) [Dkt. #331]. On January 6, 2016, sixteen (16) days *prior to* the effective

date of the plan, Freeborn – on behalf of the Creditor Trustee – sent a demand letter to Xsys. A copy of the demand letter is attached as **Exhibit B**.

10. On February 12, 2016, Freeborn filed its Second and Final Fee Application as counsel to the official committee of unsecured creditors and request for approval of shortened and limited notice [Dkt. #342]. Pages 14-16 of Exhibit A to Freeborn’s fee application detail that Freeborn spent 17.3 hours and more than \$8,545.50 in fees analyzing and discussing potential preference claims “for professional services rendered and expenses incurred through January 22, 2016.” A copy of pages 14-16 of Exhibit A is attached as **Exhibit C**. The committee did not file any preference actions. Additionally, the committee did not charge for the preparation of any demand letters during the month of January 2016, including the preparation of the demand letter sent to Xsys.

11. On February 17, 2016, Xsys filed a Request for Payment of an Administrative Claim in the amount of \$62,006.10 for post-petition services provided between August 2015 and February 2016 (the “Administrative Claim”) [Dkt. #344]. On March 10, 2016, the Creditor Trustee filed an objection to the Administrative Claim (i) requiring “Xsys to explain which of its invoices services were provided to the Debtor and which . . . were provided to the Debtor’s affiliates;” and (ii) denying the Administrative Claim to the extent it seeks payment of an administrative claim for alleged services provided after January 22, 2016 [Dkt. #359].

III. Relief Requested

12. Xsys seeks (I) authority to issue Rule 2004 subpoenas and/or conduct a Rule 2004 examination of (1) Carl and Maggie Fleck, the former shareholders of the Debtor; (2) Freeborn & Peters LLP, counsel to the committee and Creditor Trustee; (3) Joseph Myers, not individually, but as Creditor Trustee; (4) Gavin/Solmonese LLC, as former CRO of the Debtor; (5) Julius Pohlenz, former committee member; (6) Gray Reed & McGraw, PC, counsel for the

Debtor; and (7) Goldberg Kohn, Ltd., counsel for FCC, LLC d/b/a First Capital; and (II) an extension of time to file a reply to the Creditor Trustee's objection to the Administrative Claim to conduct the requested examinations.

13. Bankruptcy Rule 2004 provides that any party in interest may examine any entity, on matters that relate to:

the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge . . . the examination may also relate to the operation of any business . . . , the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefore, and any other matter relevant to the case of the formulation of a plan.

Fed. R. Bankr. P. 2004(b). Pursuant to Fed. R. Bankr. P. 2004(c), the Court may compel the attendance of an entity for an examination and the production of documents.

14. Courts agree that the scope of a Bankruptcy Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted. *See, e.g., In re Handy Andy Home Improvement Ctr., Inc.*, 199 B.R. 376, 379 (Bankr. N.D. Ill. 1996); *In re Fin. Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990). The scope is so broad, in fact, that examinations allowed under Bankruptcy Rule 2004 "can legitimately be in the nature of a 'fishing expedition.'" *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985).

15. Xsys believes that the proposed respondents have intimate knowledge and information as to the administration of the Debtor's bankruptcy estate and, more specifically, (i) the prior investigation into Xsys and Xsys' fees; (ii) the services and benefits Xsys provided to the Debtor's bankruptcy estate; (iii) any benefits that Freeborn's investigation into preference actions provided to the bankruptcy estate; (iv) any actions Freeborn took on behalf of the Creditor Trustee prior to the effective date; and (v) any fees Freeborn may have requested or been paid from the Creditor Trustee for actions prior to the effective date. The information

sought pursuant to Rule 2004 examinations and subpoenas unquestionably relates to the administration of the Debtor's bankruptcy estate and the ultimate distribution of funds to administrative claimants and creditors, such as Xsys.

16. Xsys further requests an extension of time to file its reply in support of the Administrative Claim. The extension of time will permit Xsys to obtain the relevant information from the respondents and further resolution of the issues related to the Administrative Claim and Freeborn's final fee application.¹ Rather than actually object to the specifics of the Administrative Claim, the Creditor Trustee has demanded that Xsys explain the basis for its time entries and, even if Xsys provides specific explanations, the Creditor Trustee "reserves the right to object to Xsys' allocation of services among the Debtor and its affiliates" [Dkt. #359, at p. 3, n.2]. The information requested will confirm the benefits provided to the bankruptcy estate and support Xsys' claim for the Administrative Claim.

17. The extension of time is necessary to permit Xsys to review each of the invoices and explain how the Debtor was the recipient of all services rendered on the respective invoice. Additional time will also clarify what, if any, benefit Freeborn's extensive examination into unfiled preference actions provided to the bankruptcy estate. Xsys also seeks clarity as to what role Freeborn was fulfilling when it sent the demand letter and whether the bankruptcy estate or creditor trust is being required to pay for such services.

¹ Xsys anticipates filing a limited objection to Freeborn's final fee application to determine whether any benefit was derived on the bankruptcy estate's behalf for: (i) the \$8,545.50 in fees for analyzing and discussing potential preference claims; (ii) the extensive intra-Freeborn correspondence and conversations; (iii) whether Freeborn has sought payment for the preparation of pre-effective date demand letters and other services; and (iv) other items or inconsistencies in the fee application.

WHEREFORE, Xsys, creditor and party-in-interest, seeks (I) authority to issue Rule 2004 subpoenas to and conduct Rule 2004 examinations of the respondents listed above; (II) an extension of time to file its reply to in support of the Administrative Claim; and (III) , and for any additional relief this Court deems necessary.

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