

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

In re: ) Chapter 11  
)  
GULF PACKAGING, INC., ) Case No. 15-15249  
)  
Debtor. ) Hon. Pamela S. Hollis  
)  
) Hearing Date: April 12, 2016 at 10:30 a.m.  
)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on April 12, 2016 at 10:30 a.m., the undersigned shall appear before the Honorable Pamela S. Hollis in Courtroom 644, or whomever may be sitting in her place and stead, at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois and will then and there present the *Motion to Establish Procedures Governing Adversary Proceedings* a copy of which is attached hereto and herewith served upon you.

Dated: April 6, 2016

**JOSEPH MYERS, CREDITOR TRUSTEE  
OF THE GULF PACKAGING, INC.  
CREDITOR TRUST**

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

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*Counsel for the Creditor Trustee*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
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In re:	)	Chapter 11
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**CERTIFICATE OF SERVICE**

I, Shelly A DeRousse, an attorney, hereby certify that on April 6, 2016, I caused a true and correct copy of the foregoing *Notice of Motion* and *Motion to Establish Procedures Governing Adversary Proceedings* to be filed with the Court and served via the Court's CM/ECF system upon all parties who have filed appearances and requested notices.

\_\_\_\_\_  
/s/ Shelly A. DeRousse

**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  
)

**MOTION TO ESTABLISH PROCEDURES  
GOVERNING ADVERSARY PROCEEDINGS**

Joseph Myers, not individually but solely as trustee (the “*Creditor Trustee*”) of the Gulf Packaging, Inc. Creditor Trust (the “*Creditor Trust*”), by and through his undersigned counsel, hereby moves this Court (the “*Motion*”) for entry of an order (the “*Procedures Order*”) pursuant to sections 102(1), 105(a), 502, 547, 548, and 550 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 7026, 7029, 9006(c), 9007, and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) approving case management procedures that will apply to certain adversary proceedings that may be filed by the Creditor Trustee in connection with the above-captioned bankruptcy case. In support of this Motion, the Creditor Trustee respectfully states as follows:

**JURISDICTION AND VENUE**

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

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

2. The statutory predicates for the relief requested herein are sections 502, 547, 548, 550, 102(1), and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 7026, 7029, 9006(c), 9007, and 9019(a).

### **INTRODUCTION**

3. The Creditor Trustee has begun notifying parties that received transfers from Gulf Packaging, Inc. (the “*Debtor*”) prior to the filing of the Debtor’s bankruptcy case of their potential liability for avoidance and recovery of certain transfers pursuant to sections 547, 548, 549 and/or 550 of the Bankruptcy Code (the “*Avoidance Claims*”) by serving demand letters upon such persons or entities. The Creditor Trustee estimates that there are more than 200 persons and/or entities (collectively, the “*Transferees*”) who received such transfers and that may be the subject of an Avoidance Action. Many of these Avoidance Claims will demand recoveries in excess of \$50,000. Given the considerable number of Avoidance Claims that may be filed as adversary proceedings, the Creditor Trustee believes that the establishment of case management procedures is in the best interests of all parties.

4. The proposed case management procedures will ensure fair, efficient and orderly adjudication of the claims underlying the Avoidance Claims, and will promote judicial economy.

5. Specifically, pursuant to this Motion, the Creditor Trustee requests that the Court authorize the Creditor Trustee to: (a) establish discovery and mediation procedures for adversary proceedings (the “*Adversary Proceedings*”) which seek to avoid and recover Avoidance Claims’ (b) settle Avoidance Claims seeking the avoidance and/or recovery of transfers aggregating over \$50,000<sup>2</sup> on fourteen-day negative notice triggered by the filing a notice of settlement and objection deadline on the main case docket; and (c) schedule omnibus monthly status

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<sup>2</sup> Pursuant to Section 3.4 of the Creditor Trust Agreement, the Creditor Trustee already has authority to settle Avoidance Claims whose demand aggregates \$50,000 or less without Court approval.

conferences during which the Creditor Trustee will provide the Court with the status of the Avoidance Claims and during which any motion practice related to an Adversary Proceeding will be conducted.

6. The Creditor Trustee believes that the procedures proposed herein will ensure that adequate notice of settlements of the estate's largest claims is provided to creditors, while at the same time allowing the Creditor Trustee an efficient and cost-effective method by which he may dispose of smaller claims. The Creditor Trustee believes that the settlement protocols and the other case management procedures proposed herein will ensure that the Avoidance Claims are pursued in a fair, organized, and efficient manner, and that the Court and parties-in-interest will be kept well-informed of all significant developments in the Avoidance Claims.

### **BACKGROUND**

7. On April 29, 2015, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the "*Court*").

8. On December 15, 2015, the Court entered an order (the "*Confirmation Order*") confirming the Debtor's First Amended Chapter 11 Plan, as amended (the "*Plan*"), including the Gulf Packaging, Inc. Creditor Trust Agreement (the "*Creditor Trust Agreement*") separately filed with the Plan Supplement.

9. The Plan became effective on January 22, 2016.

10. Pursuant to Section 3.4 of the Creditor Trust Agreement, the Creditor Trustee is not required to obtain Court approval of settlements where the amount demanded or claimed totals less than or equal to \$50,000 (a "*De Minimis Claim or Cause of Action*").

11. The Creditor Trustee has issued demand letters to many of the recipients of potentially avoidable transfers. The Creditor Trustee has begun negotiating settlement

agreements with certain of these recipients and intends to continue his efforts to negotiate settlements short of the commencement of formal litigation with other recipients. Notwithstanding these efforts, the Creditor Trustee anticipates the he will file complaints against (1) those parties that have not responded to the Creditor Trustee's demand letters and (2) parties with whom the Creditor Trustee has been unable to reach settlement.

### **RELIEF REQUESTED**

12. Since the resolution of the respective claims asserted against the numerous Transferees may be time-consuming, the Creditor Trustee proposes certain procedures to streamline the administration of the Avoidance Claims for the efficiency and convenience of the parties and the Court. Specifically, the Creditor Trustee respectfully requests entry of an order establishing: (i) proposed discovery and mediation procedures; (ii) settlement procedures; and (iii) omnibus hearing dates. The procedures proposed by the Creditor Trustee are set forth in further detail below.

#### **A. Proposed Discovery and Mediation Procedures**

13. The Creditor Trustee proposes that the Court establish procedures governing discovery and mediation in the Adversary Proceedings as set forth in the proposed order submitted with this Motion.

14. The proposed procedures include the following key components:<sup>3</sup>

**Discovery Procedures:** The proposed procedures modify the procedures and deadlines set by the Federal Rules of Civil Procedure. Among other things, parties shall not be required to participate in Rule 26(f) conferences and initial disclosures pursuant to Federal Rule 26(a) shall be served within thirty (30) days from the date the answer is filed (the "*Initial Disclosure Date*"). Further, fact and expert discovery shall close within six (6) months after the Initial Disclosure Date. Initial expert reports and disclosures shall be made within ninety (90) days after the Initial Disclosure Date and rebuttal reports

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<sup>3</sup> The procedures described in the Motion are merely a summary and parties should refer to the proposed order for a complete description of the proposed procedures.

and disclosures shall be made within one hundred and twenty (120) days after the Initial Disclosure Date.

**Mediation Procedures:** The parties may agree to engage in non-binding mediation. The proposed procedures require that mediations take place in Chicago, Illinois unless otherwise agreed by the parties and provide a list of mediators who shall conduct mediations.

15. These procedures enhance the opportunity for parties to Adversary Proceedings to resolve their differences quickly and effectively by eliminating cumbersome mandatory discovery procedures under the Federal Rules that need only be invoked if parties cannot reach a resolution in the early stages of litigation. The Creditor Trustee submits that such modifications are appropriate and authorized by section 105(a) of the Bankruptcy Code.

**B. Proposed Procedures for Resolution of Avoidance Claims Aggregating Over \$50,000<sup>4</sup>**

16. The Creditor Trustee proposes that with respect to settlements involving Avoidance Claims in which the Creditor Trustee seeks the avoidance and recovery of transfers exceeding \$50,000 in the aggregate, the Creditor Trustee be authorized to file notices of settlement (“*Notices of Settlement*”) with the Court, which shall contain: (a) the identity of the parties to the settlement and (b) the salient terms of the settlement. The Notices of Settlement will be filed on the main case docket (and therefore will be electronically served on all parties requesting notice under Bankruptcy Rule 2002), and will also be served upon the Transferee, the Debtor’s counsel, counsel for FCC, LLC (the Debtor’s secured lender), and the Office of the United States Trustee. No further notice shall be required.

17. Unless, within fourteen (14) days of the service of a Notice of Settlement, a party files a written objection to the proposed settlement with the Court stating the factual and legal

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<sup>4</sup> Pursuant to Section 3.4 of the Creditor Trust Agreement, the Creditor Trustee already has authority to settle Avoidance Claims whose demand aggregates \$50,000 or less without Court approval.

basis for such objection and serves such objection on counsel for the Creditor Trustee, a hearing will not be held regarding the settlement agreement. If no objection is timely filed, the Creditor Trustee shall file a certificate of no objection (“CNO”) attaching a proposed order approving the settlement agreement and the Court may enter the proposed order without any further notice or hearing. In the event that a party objects to the proposed settlement in the manner described above, the Court shall hold a hearing on the objection at the next Omnibus Hearing following the expiration of the notice period.

18. Bankruptcy Rule 9019(a) provides that “after notice and a hearing, the court may approve a compromise or settlement...[and notice] shall be given to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.” Fed. R. Bankr. P. 9019(a). Bankruptcy Rule 2003(a)(3) provides that “all creditors” shall be given twenty-one days’ notice of a hearing on a settlement of a controversy. Fed. R. Bankr. P. 2002(a)(3).

19. Pursuant to section 102(1)(A)<sup>5</sup> of the Bankruptcy Code and Bankruptcy Rule 9006(c),<sup>6</sup> however, bankruptcy courts may limit notice of proposed settlements to fewer than “all creditors.” In order to expedite the resolution of the claims for which settlement has been reached between the Creditor Trustee and a given Transferee, as well the receipt by the Creditor Trustee of settlement funds related thereto, the Creditor Trustee requests that this Court exercise its discretion to approve the fourteen-day “negative notice” period and to approve the procedures requested above as appropriate in these circumstances.

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<sup>5</sup> Section 102(1)(A) provides that “‘after notice and a hearing’...means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances....” 11 U.S.C. § 102(1)(A).

<sup>6</sup> Bankruptcy Rule 9006(c) provides that “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c).



20. The Creditor Trustee believes good cause exists to limit notice of the settlements to certain parties as described above. If the Creditor Trustee were to attempt to serve all of the Debtor's creditors with notice of the settlements, the lack of electronic mail address records for numerous creditors would necessitate service by mail, which would impose prohibitive costs to the process of settling the Avoidance Claims and decrease the assets available to distribute to Creditor Trust beneficiaries.

**C. Omnibus Hearings**

21. The Creditor Trustee seeks to schedule monthly omnibus hearing dates (the "*Omnibus Hearings*") for the Avoidance Claims and Adversary Proceedings to provide the Court with periodic updates regarding the status of the Avoidance Claims and Adversary Proceedings and to conduct other hearings concerning the Adversary Proceedings.

22. The defendants in Adversary Proceedings would not be required to appear at the Omnibus Hearings unless: (i) the defendant made a request for relief from the Court that will be heard at the Omnibus Hearing, (ii) the Creditor Trustee has made a request for relief against such defendant that will be heard at the Omnibus Hearing and the defendant intends to contest that relief, or (iii) the Court directs the defendant to appear.

23. Section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). By scheduling Omnibus Hearings in advance, the Court will facilitate the fair and efficient resolution of the Avoidance Claims by enabling the parties to prepare and present matters in an orderly fashion. Otherwise, the Creditor Trustee will incur unnecessary costs and expenses associated with preparing for and attending numerous hearing dates, to the direct detriment of the estate and its creditors.

24. The setting of Omnibus Hearings will not prejudice any party's right to request emergency hearings where appropriate under the Local Rules.

25. The Creditor Trustee further request that this Court order that all motions or other pleadings filed by a party to an Adversary Proceeding be noticed only for Hearing Dates, unless a legitimate emergency exists which necessitates the presentation of such pleading on a separate hearing date. In the event that a party to an Adversary Proceeding schedules a hearing in connection with a motion or other pleading on a date other than an Omnibus Hearing, the Creditor Trustee requests authority to re-notice the hearing on such pleading for the next available Omnibus Hearing.

**D. Opt Out**

26. The proposed procedures require that the Creditor Trustee serve each defendant with a copy of the order approving this Motion and the proposed procedures. Defendants have the opportunity to opt out of the procedures by filing and serving a written objection to the procedures within twenty one (21) days of being served with a copy of the order approving this Motion. Such objection shall be heard at the next Omnibus Hearing for resolution by the Court.

**NOTICE**

27. Notice of this Motion has been or will be provided to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) counsel to FCC, LLC; and (c) all parties that have filed a notice of appearance in this chapter 11 case pursuant to Bankruptcy Rule 2002. The Creditor Trustee submits that, in light of the nature of the relief requested, no other or further notice is required.

**WHEREFORE**, the Creditor Trustee respectfully requests that the Court enter an order: (i) establishing discovery and mediation procedures substantially similar to that proposed herein; (ii) establishing a settlement protocol for the Avoidance Claims substantially similar to that

proposed herein; (iii) establishing notice procedures and omnibus hearing dates with respect to the Avoidance Claims; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: April 6, 2016

**JOSEPH MYERS, CREDITOR TRUSTEE  
OF THE GULF PACKAGING, INC.  
CREDITOR TRUST**

By: /s/ Shelly A DeRousse  
One of His Attorneys

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