

**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.	)	Honorable Pamela S. Hollis
	)	
	)	<b>Hearing Date: May 5, 2015</b>
	)	<b>Hearing Time: 10:00 a.m.</b>
	)	<b>Courtroom: 644</b>

---

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **Tuesday, May 5, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in the courtroom usually occupied by her, No. 644, in the Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, or whomever may be sitting in her place and stead, and then and there present the **DEBTOR'S MOTION FOR THE ENTRY OF ORDER AUTHORIZING REJECTION OF UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY EFFECTIVE AS OF THE PETITION DATE (ST. LOUIS LEASE)**, a copy of which is attached hereto and hereby served upon you, at which time and place you may appear.

---

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

GULF PACKAGING, INC.

By:           /s/ Joseph D., Frank            
Joseph D. Frank (IL ARDC 6216085)  
Jeremy C. Kleinman (IL ARDC 6270080)  
**FRANKGECKER, LLP**  
325 North LaSalle Street, Suite 625  
Chicago, Illinois 60654  
Telephone: (312) 276-1400  
Facsimile: (312) 276-0035  
Email: [jfrank@fgllp.com](mailto:jfrank@fgllp.com)  
[jkleinman@fgllp.com](mailto:jkleinman@fgllp.com)

-and-

**GRAY REED & MCGRAW, P.C.**  
Jason S. Brookner (*pro hac vice* pending)  
Micheal W. Bishop (*pro hac vice* pending)  
1601 Elm Street, Suite 4600  
Dallas, Texas 75201  
Telephone: (214) 954-4135  
Facsimile: (214) 953-1332  
Email: [jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)  
[mbishop@grayreed.com](mailto:mbishop@grayreed.com)

**PROPOSED COUNSEL TO THE DEBTOR**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

**DEBTOR’S MOTION FOR THE ENTRY OF ORDER AUTHORIZING REJECTION OF UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY EFFECTIVE AS OF THE PETITION DATE (ST. LOUIS LEASE)**

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 Rejection of Unexpired Lease of Nonresidential Real Property Effective as of the Petition Date (St. Louis Lease), 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 its 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. No request has been made for the appointment of a trustee or examiner, and no statutory committee has yet been appointed.

---

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

### **BACKGROUND**

5. GPI is a national distributor of packaging equipment and supplies, which sells its product by and through several independent entities (“Affiliates”).<sup>2</sup> When GPI is combined with the Affiliates, there are over twenty (20) warehousing locations to better serve GPI’s customer base.

6. Additional information about the Debtor, its business and corporate and capital structure 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.

7. The Debtor is a party to that certain multi-tenant industrial/commercial lease (the “Lease”) dated effective May 1, 2013, by and between the Debtor and Westcore Delta LLC (the “Landlord”). Prepetition, the Debtor vacated the underlying premises and tendered possession back to the Landlord. The Debtor has no further need or use for the Lease or the underlying premises.

### **RELIEF REQUESTED**

8. By this Motion, pursuant to sections 105 and 365 of the Bankruptcy Code and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtor seeks to reject the Lease, with such rejection to be effective as of the Petition Date.

9. In support of the Motion, the Debtor submits the *Declaration of Edward T. Gavin, CTP in Support of the Debtor’s Motion for Entry of an Order Authorizing Rejection of Unexpired Lease of Nonresidential Real Property Effective as of the Petition Date (St. Louis Lease)* (the “Gavin Declaration”). The Gavin Declaration is attached hereto as **Exhibit A**.

---

<sup>2</sup> 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.

### **THE LEASE**

10. The Lease pertains to approximately 30,000 square feet of warehouse space located at 4774 Park 370 Boulevard, Suite 1B, Hazelwood, Missouri 63042 (the “Premises”). The Debtor used the Premises to store certain inventory acquired in the ordinary course of business.

11. On or about April 21, 2015, the Debtor vacated the Premises and tendered possession by mailing the keys to the Landlord. A copy of the letter sent to the Landlord tendering possession is attached hereto as **Exhibit B**. Because the Debtor no longer has a need for the Premises, there is no value or benefit to the estate from the Lease.

### **ARGUMENT AND AUTHORITIES**

12. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may . . . reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Thus, pursuant to section 365 of the Bankruptcy Code, a debtor may, for the benefit of the estate, relieve itself of burdensome agreements where performance still remains. *See In re StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004) (noting that “[s]ection 365(a) gives debtors a right to walk away before the contract’s end (with the creditor’s entitlement converted to a claim for damages...)”); *see also Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (stating that section 365 of the Bankruptcy Code “allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed”) (internal citation and quotation marks omitted).

13. The decision to assume or reject an executory contract or unexpired lease is governed by the debtor’s business judgment. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *see also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (“it is well established that ‘the question whether a lease should be rejected . . . is one of business judgment’”); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (Bankr D. Del.

2006) (“Courts have uniformly deferred to the business judgment of the debtor to determine whether the rejection of an executory contract or unexpired lease by the debtor is appropriate under section 365(a) of the Bankruptcy Code”); *Johnson v. Fairco Corp.*, 61 B.R. 317, 320 (N.D. Ill. 1986) (noting that the debtor must only demonstrate that rejection “will benefit the debtor’s estate or reorganization efforts”). A court should defer to a debtor’s business decision unless it is the product of bad faith, whim, or caprice. See *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985); see also *Fairco Corp.*, 61 B.R. at 320 (“Only where the debtor’s actions are in bad faith or in gross abuse of its managerial discretion should the decision be disturbed”); *Software Customizer, Inc. v. Bullet Jet Charter, Inc. (In re Bullet Jet Charter, Inc.)*, 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995) (“This Court must ascertain whether rejecting such a contract will promote the best interests of Debtor’s estate, but only where the debtor acted in bad faith or grossly abused its retained managerial discretion should the decision be disturbed”).

14. The Debtor has determined that it is in the best interest of its estate to reject the Lease effective as of the Petition Date. Prepetition, the Debtor vacated the Premises and tendered the Premises back to the Landlord, and the Lease does not provide any value to the Debtor’s estate. Indeed, rejecting the Lease will save the Debtor approximately \$9,000 per month in rent and lease-related expenses. Therefore, rejecting the Lease effective as of the Petition Date is a reasonable exercise of the Debtor’s business judgment and will prevent the Debtor from incurring unnecessary administrative expenses during this chapter 11 proceeding.

**WAIVER OF BANKRUPTCY RULE 6004(H)**

15. The Debtor requests that the Court waive the fourteen (14) day stay period contained in Bankruptcy Rule 6004(h).

**NOTICE**

16. 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) the Landlord, and (v) 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**

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

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit C**, granting the relief requested herein and granting such other relief as may be just and proper.

Respectfully submitted this 29<sup>th</sup> day of April, 2015.

**FRANK GECKER LLP**

/s/ Joseph D. Frank

Joseph D. Frank  
Frances Gecker  
325 N. LaSalle Street, Suite 625  
Chicago, Illinois 60654  
Telephone: (312) 276-1400  
Facsimile: (312) 276-0035  
Email: [jfrank@fgllp.com](mailto:jfrank@fgllp.com)  
[fgecker@fgllp.com](mailto:fgecker@fgllp.com)

-and-

**GRAY REED & MCGRAW, P.C.**

Jason S. Brookner (pro hac vice pending)  
Micheal W. Bishop (pro hac vice pending)  
1601 Elm Street, Suite 4600  
Dallas, Texas 75201  
Telephone: (214) 954-4135  
Facsimile: (214) 953-1332  
Email: [jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)  
[mbishop@grayreed.com](mailto:mbishop@grayreed.com)

**PROPOSED COUNSEL TO THE DEBTOR**

**EXHIBIT A**

Gavin Declaration



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

In re:	)	
	)	Chapter 11
GULF PACKAGING, INC., <sup>1</sup>	)	
	)	Case No. 15- ____ (___)
Debtor.	)	

---

**DECLARATION OF EDWARD T. GAVIN, CTP IN SUPPORT OF DEBTOR'S  
MOTION FOR THE ENTRY OF AN ORDER AUTHORIZING REJECTION OF  
UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY EFFECTIVE  
AS OF THE PETITION DATE (ST. LOUIS LEASE)**

Edward T. Gavin, CTP declares under penalty of perjury, pursuant to 28 U.S.C. § 1746,  
as follows:

1. I am the Chief Restructuring Officer of Gulf Packaging, Inc. (the "Debtor," "GPI" or the "Company"), the above-captioned debtor and debtor in possession. Additionally, I am the Managing Director and Founding Partner of Gavin/Solmonese LLC ("G/S"). Prior to the commencement of this chapter 11 proceeding, G/S was hired by the Debtor to provide crisis management services and to assist the Debtor in its restructuring efforts. I am generally familiar with the Debtor's business, day to day operations, financial matters, and underlying books and records. Unless otherwise stated in this declaration, all facts set forth in this declaration are based upon my personal knowledge of the Debtor's business, information from my review of relevant documents, or information supplied to me by the Debtor.

---

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

2. I submit this declaration in support of the *Debtor's Motion for Entry of Order Authorizing Rejection of Unexpired Lease of Nonresidential Real Property Effective as of the Petition Date (St. Louis Lease)* (the "Motion").<sup>2</sup>

3. The Debtor entered into that certain multi-tenant industrial/commercial lease (the "Lease") with Westcore Delta LLC (the "Landlord") effective May 1, 2013. The Lease pertains to approximately 30,000 square feet of warehouse space located at 4774 Park 370 Boulevard, Suite 1B, Hazelwood, Missouri 63042 (the "Premises"). The Debtor used the Premises to store certain inventory acquired in the ordinary course of its business. The term of the Lease is for a period of five (5) years and four (4) months, commencing on June 1, 2013 and expiring on September 30, 2018. As of the Petition Date, there are approximately three (3) years and five (5) months remaining in the life of the Lease.

4. Under the Lease, the Debtor is obligated to pay monthly base rent of \$9,251.70 through September 30, 2016, and then monthly base rent increases to \$10,151.17 for the last two (2) years of the Lease. The Debtor paid a security deposit of \$13,928.95.

5. On or about April 17, 2015, the Debtor vacated the Premises and tendered possession back to the Landlord by sending back the keys.

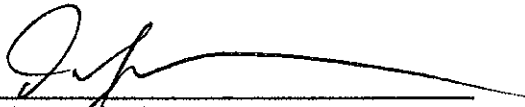
6. The Lease does not provide any value to the Debtor's estate. By rejecting the Lease, the Debtor will save approximately \$400,000.00 in base rent due over the remaining life of the Lease. In my judgment, it is in the best interests of the Debtor's bankruptcy estate to reject the Lease.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

---

<sup>2</sup> Capitalized terms not otherwise defined herein will have the meanings ascribed to them in the Motion.

Executed this 29<sup>th</sup> day of April, 2015



---

Edward T. Gayin, CTP

**EXHIBIT B**

Letter to Landlord



April 21, 2015

Westcore Delta, LLC  
P.O. Box 844405  
Los Angeles, CA 90084-4405

RE: Notice of Intent to Vacate  
Account: 32819 t0000670

To Whom It May Concern,

This letter is to constitute written notice of intention to vacate the property located at 4774 Park 370 Blvd, Hazelwood, MO 63042 on this date of April 21, 2015 and end the current lease.

Please find enclosed all keys for this property.

Regards,

Gulf Packaging

**EXHIBIT C**

Proposed Order

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)		
In re:	)	Chapter 11	
	)		
GULF PACKAGING, INC., <sup>1</sup>	)	Case No. 15- _____ (___)	
	)		
Debtor.	)		
	)		

**ORDER AUTHORIZING REJECTION OF UNEXPIRED LEASE  
OF NONRESIDENTIAL REAL PROPERTY EFFECTIVE AS OF  
THE PETITION DATE (ST. LOUIS LEASE)**

Upon the Motion (the "Motion") for Entry of Order Authorizing Rejection of Unexpired Lease of Nonresidential Real Property Effective as of the Petition Date (St. Louis Lease), filed by Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the "Debtor"); and the Court having jurisdiction to consider the Motion 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 the Court finding that the relief requested in the Motion is in the best interests of the Debtor and its estate; and it appearing that due and sufficient notice of the Motion has been provided by the Debtor and that no other or further notice is required; and upon the hearing on the Motion conducted on \_\_\_\_\_, 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.<sup>2</sup>
2. Pursuant to section 365 of the Bankruptcy Code, the Lease is hereby deemed rejected, with such rejection to be effective as of the Petition Date.

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

3. Nothing in the Motion or this Order shall be deemed or construed as a waiver of any claims that the Debtor has or may have against the Landlord, whether or not such claims arise under, are related to the rejection and termination of, or are independent of the rejected and terminated Lease.

4. The Landlord shall file a rejection damages claim, if any, relating to the rejection of the Lease by the claims bar date established in this chapter 11 proceeding.

5. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2015  
Chicago, Illinois

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE