

**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.) Honorable Pamela S. Hollis
)
) **Hearing Date: May 26, 2015**
) **Hearing Time: 10:00 a.m.**
) **Court Room: 644**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **May 26, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, Courtroom No. 644, or whomever may be sitting in her place and stead, and then and there present the **Debtor's Motion for Order (i) Fixing Deadlines and Establishing Procedures for Filing Proofs of Claim and Requests for Payment of Certain Administrative Claims and (ii) Approving Form and Manner of Notice Thereof**, a copy of which is attached hereto and hereby served upon you.

Dated: May 15, 2015

Respectfully submitted,

GULF PACKAGING, INC.

By: /s/ Joseph D. Frank
One of its proposed attorneys

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

DEBTOR’S MOTION FOR ORDER (I) FIXING DEADLINES AND ESTABLISHING PROCEDURES FOR FILING PROOFS OF CLAIM AND REQUESTS FOR PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS AND (II) APPROVING FORM AND MANNER OF NOTICE THEREOF

Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor,” “GPI” or the “Company”) for its Motion (the “Motion”) for Order (i) Fixing Deadlines and Establishing Procedures for Filing Proofs of Claim and Requests for Payment of Certain Administrative Claims and (ii) Approving Form and Manner of Notice Thereof, respectfully represents:

JURISDICTION AND VENUE

1. This 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 April 29, 2015 (the “Petition Date”), GPI filed with this Court its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). GPI continues to operate its business and manage its properties as debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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

4. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the “Committee”) was appointed by the Office of the U.S. Trustee on May 11, 2015.

BACKGROUND

5. The Debtor is a national distributor of packaging equipment and supplies, which sells its product by and through several independent entities (“Affiliates”).² Many of these Affiliates are also guarantors under GPI’s credit facility with FCC, LLC d/b/a First Capital (“FCC”). When the Debtor is combined with the Affiliates, there are over twenty (20) warehousing locations to better serve the Debtor’s customer base. When the Debtor is combined with the Affiliates, the overall aggregate amount of historical monthly sales is approximately \$9.5 million.

6. Additional information about the Debtor, its business and corporate and capital structures is set forth in the *Declaration of Edward T. Gavin, CTP in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 14] (the “Gavin Declaration”), filed on the Petition Date.

RELIEF REQUESTED

7. By this Motion, the Debtor respectfully requests entry of an Order, pursuant to sections 501 and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c)(3), (i) establishing the date by which all entities, except governmental units, must file proofs of claim and requests for payment of administrative expenses pursuant to section 503(b)(9) of the Bankruptcy Code (the “General Bar Date”); (ii) establishing the date by which “governmental

² 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.

units” as such terms are defined in section 101(27) of the Bankruptcy Code, must file proofs of claim (the “Government Bar Date”); (iii) establishing the date by which proofs of claim relating to damages arising from the rejection of unexpired leases and executory contracts must be filed (the “Rejection Bar Date,” collectively with the General Bar Date and the Government Bar Date, the “Bar Dates”); (iv) approving procedures relating to the Bar Dates; and (v) approving the form and manner of notice of the same.

I. Establishment of the Bar Dates

8. The General Bar Date. Bankruptcy Rule 3003(c)(3) requires that the Court fix a time within which proofs of claim must be filed. The Debtor requests that the Court establish July 31, 2015 at 5:00 p.m. (prevailing Central Time) as the General Bar Date. The Debtor will serve upon all known entities holding potential prepetition claims notice of the Bar Dates and a proof of claim form within ten (10) days after the date that an order is entered approving this Motion and establishing the Bar Dates (the “Bar Date Order”).³ Except as provided below, the General Bar Date would apply to all entities,⁴ other than governmental units, holding claims against the Debtor, whether secured, unsecured priority or unsecured nonpriority, that arose prior to the Petition Date.

9. The Debtor further proposes that holders of claims arising under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims”) must submit a request for payment of such claims by the General Bar Date to satisfy the procedural requirements for asserting and requesting payment of administrative claims arising under section 503(b)(9) of the Bankruptcy Code.

³ The term “claim” as used herein has the meaning given to it in section 101(5) of the Bankruptcy Code.

⁴ The term “entity” as used herein has the meaning given to it in section 101(15) of the Bankruptcy Code.

10. The Government Bar Date. Section 502(b)(9) of the Bankruptcy Code provides that governmental units shall have at least 180 days from the Petition Date in which to file proofs of claim. The Debtor will serve upon all known governmental units holding potential prepetition claims notice of the Bar Dates and a proof of claim form. The Debtor requests that the Court fix October 26, 2015 at 5:00 p.m. (prevailing Central Time) as the Government Bar Date, as such date falls 180 days from the Petition Date.

11. The Rejection Bar Date. The Debtor anticipates that certain entities may assert claims in connection with the Debtor's rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Debtor proposes that, unless a different deadline has previously been established by an order of this Court, for any claim arising from the Debtor's rejection of an executory contract or unexpired lease (a "Rejection Damages Claim"), the Rejection Bar Date shall be the later of (i) the General Bar Date and (ii) twenty (20) days after the date the Court enters an order authorizing rejection of the lease or contract in question and of the Rejection Order.

12. The Amended Schedule Bar Date. The Debtor expects to file its schedules of assets and liabilities (as they may be amended from time to time, the "Schedules") on or prior to May 29, 2015.⁵ In the event the Debtor amends its Schedules to reduce the undisputed, noncontingent and liquidated amount of a particular claim, or to change the nature or classification of a particular claim, the Debtor proposes that the affected claimant have until the later of (i) the General Bar Date and (ii) twenty (20) days after the date that notice of the applicable amendment to the Schedules, if any, is served on the claimant, to file a proof of claim

⁵ The Debtor retains the right to: (i) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to the nature, amount, liability, classification or otherwise; (ii) subsequently designate any claim as disputed, contingent or unliquidated; and (iii) otherwise amend its Schedules.

or amend any previously filed proof of claim in respect of the amended scheduled claim (the “Amended Schedule Bar Date”). To the extent that the Debtor amends its Schedules relating to the claim of any creditor, the Debtor will serve notice of both the amendment and the Amended Schedule Bar Date on such affected creditor.

II. Entities that Must File Proofs of Claim by the General Bar Date

13. The Debtor proposes that, subject to the provisions set forth herein for holders of claims subject to the Government Bar Date, the Rejection Bar Date or the Amended Schedule Bar Date, the following entities must file proofs of claim on or before the General Bar Date if they wish to participate or share in any distribution in this Case:

- (a) any entity whose prepetition claim against the Debtor is not listed in the Debtor’s Schedules or is listed as disputed, contingent and unliquidated;
- (b) any entity that believes it holds a 503(b)(9) Claim; and
- (c) any entity that believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount.

III. Entities Not Required to File Proofs of Claim by the General Bar Date

14. The Debtor proposes that the following entities, whose claims otherwise would be subject to the General Bar Date, need not file proofs of claim:

- (a) any entity that already has properly filed a proof of claim against the Debtor in accordance with the procedures described herein;
- (b) any entity (i) whose claim against the Debtor is not listed as disputed, contingent and unliquidated in the Schedules and (ii) that agrees with the nature, classification and amount of its claim as identified in the Schedules;
- (c) any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court;

- (d) any holder of an administrative claim allowable under sections 503(b) and 507(a) of the Bankruptcy Code, *except for* holders of 503(b)(9) Claims; and
- (e) any entity that holds of a claim solely against any of the Debtor's non-debtor Affiliates.

IV. No Requirement to File Proofs of Interest

15. The Debtor proposes that any entity holding an equity interest in the Debtor (an "Interest Holder"), which interest is based exclusively upon the ownership of common or preferred stock, a membership interest in a limited liability partnership or warrants or rights to purchase, sell or subscribe to such a security or interest (any such security or interest being referred to herein as an "Interest"), need not file a proof of interest on or before the General Bar Date; *provided, however*, that Interest Holders who wish to assert claims against the Debtor arising out of or relating to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file proofs of claim on or before the General Bar Date, unless another exception identified herein applies.

V. Effect of Failure to File Proofs of Claim

16. The Debtor proposes that, pursuant to Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim in this case pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, with respect to a particular claim against the Debtor, but that fails to do so by the applicable Bar Date, shall be forever barred, estopped and enjoined from asserting any such claim against the Debtor. This includes all entities holding claims that are (i) not listed in the Debtor's Schedule, (ii) listed in the Debtor's Schedules as contingent, unliquidated or disputed, (iii) in an amount greater than that set forth in the Schedules and (iv) of a different nature or classification than as set forth in the Schedules (with all such claims listed in (i) through (iv) being referred to as "Unscheduled Claims"). Finally, the Debtor

proposes that, pursuant to Bankruptcy Rule 3003(c)(2), holders of Unsecured Claims should be barred from voting upon, or receiving distributions under, any plan of reorganization or liquidation in this case.

VI. Procedures for Providing Notice for Bar Dates and Filing Proofs of Claim

17. The Debtor proposes to serve on all known entities holding potential prepetition claims: (i) a notice of the Bar Dates substantially in the form of the notice attached hereto as Exhibit "A" (the "Bar Date Notice"); and (ii) a proof of claim form substantially in the form of Official Form No. 10 (the "Proof of Claim Form" and, collectively with the Bar Date Notice, the "Bar Date Notice Package").

18. The Bar Date Notice states, among other things, that proofs of claim must be filed with the Debtor's proposed claims agent, BMC Group, Inc. ("BMC"), on or before the applicable Bar Date. As soon as practicable, but in any event no later than ten (10) days after the date that the Court enters the Bar Date Order, the Debtor intends to mail the Bar Date Notice Package by first class United States mail, postage prepaid, to all known potential claimants and their counsel (if known), all parties that have requested notice in this Case, all equity security holders, all indenture trustees, counsel to the Committee, the Office of the United States Trustee and all taxing authorities for the jurisdictions in which the Debtor does business. The Debtor has fixed the General Bar Date to ensure that potential claimants receive at least twenty-one (21) days' notice of the General Bar Date, in accordance with the requirements of Bankruptcy Rule 2002(a)(7) and 2002(p).

19. The Proof of Claim Form mailed to potential claimants will state, along with the claimant's name, whether the entity's claim is listed in the Schedules and, if so, (i) whether the claim is listed as disputed, contingent or unliquidated; and (ii) whether the entity's claim is

listed as secured, unsecured or priority. If a claim is listed in the Schedules in a liquidated amount that is not disputed or contingent, the dollar amount of the claim (as listed in the Schedules) also will be identified on the Proof of Claim Form. Any entity that relies on the information in the Schedules will bear responsibility for determining that its claim is accurately listed therein.

20. For any claim to be validly and properly filed, a signed original of a completed proof of claim, together with any accompanying documentation required by Bankruptcy Rules 3001(c) and 3001(d),⁶ must be delivered to BMC at the address identified on the Bar Date Notice **so as to be received no later than 5:00 p.m., prevailing Central Time, on the applicable Bar Date.** The Debtor proposes that claimants be permitted to submit proofs of claim in person or by courier service, hand delivery or mail. Proofs of claim submitted by facsimile or e-mail will be deemed *not* properly filed. Proofs of claim will be deemed filed when actually received by BMC. If a claimant wishes to receive acknowledgement of BMC's receipt of a proof of claim, the claimant also must submit to BMC by the applicable Bar Date and concurrently with submitting its original proof of claim (i) a copy of the original proof of claim and (ii) a self-addressed, stamped return envelope.

21. Establishing July 31, 2015 as the General Bar Date and October 26, 2015 as the Government Bar Date in this case will provide potential claimants with ample time after the mailing of the Bar Date Notice to review the Schedules and compare the information contained therein with their own books and records. The Debtor submits that this proposed notice period

⁶ Bankruptcy Rule 3001(c)(1) requires in pertinent part, as follows:

[W]hen a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

Bankruptcy Rule 3001(d) states that “[i]f a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.”

will provide an adequate amount of time for creditors to review the Schedules and prepare and file proofs of claim, if necessary.

VII. Publication of Notice

22. In addition to those parties listed on the Debtor's Schedules or having filed a notice of appearance in this case, the Debtor believes that potential claims against the Debtor may exist of which the Debtor is unaware or unable to identify. Accordingly, the Debtor believes that it is necessary to provide notice of the Bar Dates to entities whose names and addresses may be unknown to the Debtor. Therefore, pursuant to Bankruptcy Rule 2002(*I*),⁷ the Debtor requests authority to publish notice of the Bar Date (the "Publication Notice"), on the Packaging World website (www.packworld.com), as follows:⁸

1. One (1) left-margin sponsorship ad in June 4 eClip eNewsletter. Distributed to 81,565 subscribers' emails. Described as Breaking News, Web Exclusives, applications oriented. The ad on packworld.com would link to the full-length Bar Date Notice on BMC Group's website; and
2. An interstitial ad that superimposes over the screen when a user first visits the Packaging World website on any given day. This ad would appear for full week starting on June 1, 2015, and is estimated to reach approximately 10,000 people. This ad would link to the full-length Bar Date Notice on BMC Group's website.

23. The Debtor will be limited to approximately 300 characters in the Packaging World advertisements, and will include not only the relevant Bar Dates, but as stated above, will also include a link to the full Bar Date Notice at the BMC website.

⁷ Bankruptcy Rule 2002(*I*) provides that "[t]he court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice."

⁸ Packaging World is one of the best-read publications in the packaging industry, with a monthly print magazine and a digital edition. Packaging World also sends out regular newsletters via e-mail to over 81,000 subscribers. The Debtor considered publishing notice of the Bar Dates in the Wall Street Journal and other newspapers, but determined that potential creditors were more likely to see the notice in an industry publication. In addition, ads in national newspapers are very expensive (ranging from approximately \$6,000 to over \$12,000) in relation to the size of this Chapter 11 case, and only run for one day. The cost of the Packaging World Publication Notice will be less than \$5,000 and will run for an entire week.

BASIS FOR RELIEF

24. Section 501(a) of the Bankruptcy Code provides that a creditor or an indenture trustee may file a proof of claim and an equity security holder may file a proof of interest. Section 502(b)(9) of the Bankruptcy Code states that governmental units shall have a minimum of 180 days after the entry of the order for relief to file proofs of claim. With the exception of governmental units, however, neither the Bankruptcy Code nor the Bankruptcy Rules specify the time within which entities must file a proof of claim or interest.

25. Although the statute does not provide a timeframe within which an entity other than a governmental unit must file a proof of claim or interest, Bankruptcy Rule 3003(c)(3) states in pertinent part, that “[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” Fed. R. Bankr. P. 3003(c)(3). In addition, Bankruptcy Rule 2002(a)(7) generally provides that all parties in interest must receive at least twenty-one (21) days notice of the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c).⁹

26. In the context of providing notice of a claims bar date, the Seventh Circuit Court of Appeals has held that providing actual written notice to known creditors and constructive notice through publication to unknown creditors is sufficient to meet the statutory notice requirements. *See In re Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 974 F.2d 775, 788 (7th Cir. 1992) (explaining that “actual notice is necessary only as to known creditors, whereas constructive notice is sufficient for unknown creditors”); *see also Fogel v. Zell*, 221 F.3d 955, 963 (7th Cir. 2000). In *In re Chemetron Corp.*, the Third Circuit stated that “a ‘known’ creditor is one whose identity is either known to or is ‘reasonably ascertainable by the debtor.’”

⁹ Bankruptcy Rule 2002(p)(2) requires 30 days’ notice for foreign creditors:

Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days’ notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

Chemetron Corp. v. Jones (In re Chemetron Corp.), 72 F.3d 341, 346 (3d Cir. 1995) (citing *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490 (1988)). The *Chemetron* court added that an “unknown” creditor is one whose “interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to the knowledge [of the debtor].” *Id.* (citing *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)). With respect to the procedure for identifying a “known” creditor, the *Chemetron* Court stated:

Precedent demonstrates that what is required is not a vast, open-ended investigation The requisite search instead focuses on the debtor’s own books and records. Efforts beyond a careful examination of these documents are generally not required. Only those claimants who are identifiable through a diligent search are ‘reasonably ascertainable’ and hence ‘known’ creditors.

Id. at 346-47 (citations omitted).

27. As explained more fully above, the Debtor proposes to mail notice of the Bar Dates to all known creditors. The Debtor also proposes to publish notice of the Bar Dates at the Packaging World website (www.packworld.com) in the manner set forth above, in an effort to provide constructive notice to unknown creditors. In identifying its “known” creditors, the Debtor conducted a diligent search of its books and records in an effort to compile a vast, over-inclusive list of the Debtor’s creditors. The Debtor also solicited the help of its CRO and his firm in compiling the list of known creditors. In that regard, the Debtor submits that its noticing procedures are consistent with applicable case law and practice in this district.

28. Relief similar to that requested herein has been granted by courts in this District. *See, e.g., In re ITR Concession Co.*, Case No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 2, 2014) [Docket No. 122] (approving a general claims bar date approximately 46 days after entry of the order); *In re Edison Mission Energy*, Case No. 12-49219 (JPC) (Bankr. N.D. Ill. Apr. 10, 2013) [Docket No. 669] (same but 68 days); *In re Clare Oaks*, Case No. 11-48903 (PSH) (Bankr. N.D.

Ill. Dec. 13, 2012) [Docket No. 445] (same but 40 days); *In re Corus Bankshares, Inc.*, Case No. 10-26881 (PSH) (Bankr. N.D. Ill. July 9, 2010) [Docket No. 70] (same but 35 days).

NOTICE

29. 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 the Committee, (iv) counsel to FCC, and (v) all other parties requesting notice in these chapter 11 cases. The Debtor respectfully submits that such notice is appropriate and that no other or further notice need be provided.

NO PRIOR REQUEST

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

WHEREFORE, the Debtor respectfully requests that this Court enter an Order, substantially in the form of Exhibit "B" attached hereto (i) granting the relief requested herein and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this ___ day of May, 2015.

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