

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTCO HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

**Objection Deadline: September 27, 2019 at 4:00 p.m.
Hearing Date: October 21, 2019 at 10:00 a.m.**

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OMNIBUS
SUBSTANTIVE OBJECTION TO THE CLASSIFICATION OF PROOFS OF CLAIM
NOS. 92, 94, 97–123, 125–137, 139–158, 160–214 FILED BY WELLSRING CAPITAL
MANAGEMENT LLC, WELLSRING CAPITAL PARTNERS IV, L.P.,
WCM GENPAR IV, L.P. AND WCM GENPAR IV GP, LLC**

The Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned Chapter 11 bankruptcy cases (the “Chapter 11 Cases”) of SportCo Holdings, Inc., and certain of its affiliates (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this omnibus substantive objection (the “Classification Objection”), pursuant to section 502(b) of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the classification of proofs of claim nos. 92, 94, 97-123, 125-137, 139-158, 160-214 (the “Wellspring Claims”) filed by Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P. and WCM

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355), and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

GenPar IV GP, LLC (collectively, “Wellspring”) and seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, reclassifying the Wellspring Claims, to the extent based on the Expense Reimbursement Agreement (as defined below) as claims subordinated to General Unsecured Claims (as defined in the *Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* (the “Combined Plan”) [Docket No. 308]).²

PRELIMINARY STATEMENT

1. Wellspring, the Debtors’ prepetition equity sponsor and target of a state court lawsuit by Prospect, filed one hundred and thirteen (113) separate proofs of claim in order to manufacture standing for the Wellspring Objection. One hundred and five (105) of these proofs of claim are speculative claims for unliquidated contingent liabilities. Only eight proofs of claim—the Liquidated Claims (as defined below)—create any basis for Wellspring to assert that it holds General Unsecured Claims entitled to vote on the Combined Plan. However, as explained below, Wellspring voluntarily agreed to subordinate the payment of all amounts owed under the Expense Reimbursement Agreement until the Debtors have paid in full all Prepetition Term Loan Claims. As a result, Wellspring does not hold General Unsecured Claims and is not entitled to vote on the Combined Plan.

JURISDICTION AND VENUE

2. The Court has jurisdiction over these Cases (defined below) and this Objection pursuant to 28 U.S.C. §§ 157 and 1334, and paragraph 34 of the Confirmation Order (defined below). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Combined Plan.

3. The predicates for the relief requested herein are sections 502(b) and 510(a) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1.

BACKGROUND

4. On June 10, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 [Docket No. 38].

5. The Debtors continue to operate their business and manage their properties and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. Information regarding the Debtors' history and business operations, capital and debt structure, and the events leading up to the commencement of these Chapter 11 Cases can be found in the Declaration of Bradley P. Johnson, Chief Executive Officer, in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration") [Docket No. 9].

7. On June 17, 2019, the U.S. Trustee appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No. 58]. The Committee is comprised of the following seven (7) members: (i) Vista Outdoor Sales, LLC; (ii) Magpul Industries Corporation; (iii) American Outdoor Brands Corporation and subsidiaries; (iv) Garmin USA, Inc.; (v) Fiocchi of America, Inc.; (vi) FN America, LLC; and (vii) Remington Arms Company, LLC. That same day, the Committee selected the law firm of Lowenstein Sandler LLP as its lead counsel, Morris James LLP as its Delaware counsel, and Emerald Capital Advisors ("Emerald") as its financial advisors.

8. On August 22, 2019, the Debtors filed the Combined Plan.

9. On August 26, 2019 through August 29, 2019, Wellspring filed the Wellspring Claims, which total 113 separate proofs of claim filed by four separate Wellspring entities against nine Debtors. Broadly, they assert: (i) liquidated claims under that certain Amended and Restated

Expense Reimbursement Agreement (the “Expense Reimbursement Agreement”),³ dated as of November 16, 2009, by and between Ellett Brothers, LLC and Wellspring Capital Management LLC, in the amount of \$3,486,259.00 (the “Liquidated Claims”);⁴ (ii) unliquidated and contingent indemnification claims under the Expense Reimbursement Agreement;⁵ (iii) unliquidated and contingent contribution and indemnification claims pursuant to a stockholder agreement;⁶ and (iv) unliquidated and contingent protective claims under section 502(h) of the Bankruptcy Code.⁷

10. On September 4, 2019, Wellspring filed an objection to conditional approval of the Combined Plan (the “Wellspring Objection”) [Docket No. 343].

BASIS FOR RELIEF

A. Wellspring’s Claims, to the Extent Based on the Management and Expense Reimbursement Agreement, are Contractually Subordinated to the Prepetition Term Loan Claims.

11. Each of the Liquidated Claims contains a rider asserting that the Debtors owe Wellspring \$3,000,000 on account of accrued management fees and \$486,259 on account of accrued reimbursable expenses under the Expense Reimbursement Agreement.⁸ In short, the Liquidated Claims are based entirely on the Expense Reimbursement Agreement. However, In the First Amendment to the Expense Reimbursement Agreement, Wellspring explicitly agreed that—

until such time as the obligations under the Senior Loan Agreement and Second Priority Loan Agreement are paid in full in cash and the commitments thereunder have been terminated, all obligations owing to Wellspring under Sections 2.1 and 2.2 are expressly

³ See Proof of Claim No. 92 at Ex. A (the “Sample Claim”).

⁴ See Proofs of Claim Nos. 92, 94, 97–103.

⁵ See, e.g., Proofs of Claim No. 104 (filed by WCM GenPar IV GP, LLC), No. 118 (filed by Wellspring Capital Management LLC).

⁶ See, e.g., Proofs of Claim No. 113 (filed by WCM GenPar IV GP, LLC), No. 130 (filed by Wellspring Capital Management LLC).

⁷ See, e.g., Proofs of Claim No. 158 (filed by WCM GenPar IV GP, LLC), No. 140 (filed by Wellspring Capital Management LLC).

⁸ See Sample Claim at Claims Detail, ¶ 1-2.

subordinate to the obligations of the Company under the Senior Loan Agreement and the Second Priority Loan Agreement.

Sample Claim at Ex. A.

12. Wellspring's agreement to subordinate claims under the Expense Reimbursement was subsequently reflected in that certain Sixth Amendment to the Prepetition Term Loan Agreement, dated as of May 2, 2017, which provides that the Borrowers thereunder are authorized to make "payments to Wellspring of fees and expenses in accordance with the Expense Reimbursement Agreement as in effect on the Closing Date... provided, further, that no such payments shall be made in cash from and after the Sixth Amendment Effective Date until all [Prepetition Term Loan] Obligations are indefeasibly paid in full." *See* Ex. B at § 1(h).

13. As such, the Liquidated Claims, and all of the Wellspring Claims to the extent based on the Expense Reimbursement Agreement, are subordinated to the Prepetition Term Loan Claims. *See* 11 U.S.C. § 510(a) ("A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.").

B. Because the Prepetition Term Loan Deficiency Claims are *Pari Passu* with General Unsecured Claims, the Wellspring Claims are Subordinated to General Unsecured Claims.

14. The Combined Plan estimates a \$223,828,000 shortfall in payment of the Prepetition Term Loan Claims. *See* Combined Plan at Ex. A. The Plan further provides that holders of allowed Prepetition Term Loan Claims shall be entitled to a deficiency claim equal to a portion of their allowed Prepetition Term Loan Claims that are not paid. Combined Plan at Part VII.A.2.d.

15. The Combined Plan provides that the Prepetition Term Loan Deficiency Claims are *pari passu* with General Unsecured Claims and groups such claims together, for the purposes of voting, in class 4 of the Combined Plan. *See* Combined Plan at Part VII.A.4. Holders of claims

in Classes 2 and 4 are the only holders of claims entitled to vote on the Combined Plan. *See* Combined Plan at Part V.B.2.

16. Because the Wellspring Claims, to the extent based on the Expense Reimbursement, are subordinated to the Prepetition Term Loan Deficiency Claims, the Wellspring Claims are also subordinated to General Unsecured Claims.

17. As a result, in voting upon the Combined Plan, Wellspring is not entitled to vote the Liquidated Claims as General Unsecured Claims. Consequently, permitting Wellspring to initiate a costly contested confirmation (on the premise that their rights to recovery as a creditor of the Debtors' estates are being treated improperly) is an exercise in futility and prejudicial to the Debtors and their estates.

RESERVATION OF RIGHTS

18. The Liquidating Trustee hereby reserves the right to (i) file subsequent objections to the Wellspring Claims on any ground; (ii) amend, modify, or supplement this Classification Objection, including, without limitation, the filing of objections to further amended or newly-filed claims; or (iii) seek to expunge, reduce or equitably subordinate the Wellspring Claims.

NOTICE

19. The Committee will provide notice of this Objection to: (i) the U.S. Trustee; (ii) Wellspring; and (iii) all parties who, as of the filing of the Objection, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Liquidating Trustee submits that no other or further notice is necessary.

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CONCLUSION

WHEREFORE, based upon the foregoing, the Committee respectfully requests that the Court enter the Proposed Order: (i) subordinating the Wellspring Claims to the extent such claims are based on the Expense Reimbursement Agreement; (ii) ordering that Wellspring is not entitled to vote such claims as General Unsecured Claims for the purposing of approving the Combined Plan and (iii) granting such other and further relief as determined by the Court at the hearing.

Dated: September 10, 2019

MORRIS JAMES LLP

/s/ Brya M. Keilson

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