

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
)
CORUS BANKSHARES, INC. ¹) Case No. 10-26881 (PSH)
)
Debtor.)
) Response Deadline: August 16, 2011 4:00 p.m., C.D.T.
) Hearing Date: August 23, 2011 11:00 a.m., C.D.T.

**NOTICE OF THE DEBTOR'S SIXTH OMNIBUS OBJECTION
TO CERTAIN CLAIMS BASED ON EQUITY INTERESTS AND RELATED HEARING**

PLEASE TAKE NOTICE that on **August 23, 2011** at 11:00 a.m. prevailing Central Time or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and present the attached **Debtor's Sixth Omnibus Objection to Certain Claims Based on Equity Interests** (the "Objection") at which time and place you may appear if you so desire.

Specifically, the Objection seeks to eliminate or modify your claim(s) in the manner listed below:

<p>Personalized Claim Information Here</p>

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not want the Court to eliminate or change your claim, then you or your lawyer should file a written response to the Objection in accordance with the response procedures set forth below. **If you do not object to the relief requested, an order will be presented to the Court and the relief requested may be granted.**

Every response to this Objection must contain, at a minimum, the following information:

- a. a caption setting forth the name of the Court, the name of the Debtor, the case

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor's corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

number and the title of the objection to which the response is directed;

- b. the name of the claimant, his/her/its claim number and a description of the basis for the amount of the claim;
- c. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- d. any supporting documentation, to the extent it was not included with the proof of claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and
- e. the name, address, telephone number and fax number (if available) of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

PLEASE TAKE FURTHER NOTICE that any response to this Objection must be filed with the Court so that it is received by **August 16, 2011 at 4:00 p.m.** prevailing Central Time and served by such time on: (a) counsel to the Debtor; (b) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604, Attn: M. Gretchen Silver; (c) counsel to the official committee of unsecured creditors; and (d) those parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 and the Case Management Procedures approved by the Court in this case.

IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM OR INTEREST, YOU SHOULD CONTACT THE CLAIMS AGENT AT THE ADDRESS OR TELEPHONE NUMBER SET FORTH BELOW.

<i>By Regular U.S. Mail:</i> BMC Group Inc. Attn: Corus Claims Processing PO Box 3020 Chanhassen, MN 55317-3020 Phone: (888) 909-0100	<i>By Messenger or Overnight Courier:</i> BMC Group, Inc. Attn: Corus Claims Processing 18750 Lake Drive East Chanhassen, MN 55317 Phone: (888) 909-0100
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Dated: July 21, 2011

Respectfully Submitted,

/s/ Jeffrey W. Gettleman

James H.M. Sprayregen, P.C. (IL Bar No. 6190206)

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Counsel to the Debtor and Debtor in Possession

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

In re:)	
)	Chapter 11
)	
CORUS BANKSHARES, INC. ¹)	Case No. 10-26881 (PSH)
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Debtor.)	
)	

**DEBTOR'S SIXTH OMNIBUS OBJECTION TO
CERTAIN CLAIMS BASED ON EQUITY INTERESTS**

The above-captioned debtor and debtor in possession (the "Debtor"), files this sixth omnibus objection (the "Objection") to those claims (the Equity Interest Claims as defined herein) annexed hereto as Exhibit 1 (the "Exhibit") and requests the entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), granting the relief requested herein. In support of this Objection, the Debtor relies on the *Declaration of Randy P. Curtis in Support of the Debtor's Sixth Omnibus Objection to Certain Claims Based on Equity Interests* filed contemporaneously herewith. In further support of this Objection, the Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are section 502 of chapter 11 of

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the United States Code (the “Bankruptcy Code”), Rules 3001, 3007 and 9014 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 Northern District of Illinois (the “Local Bankruptcy Rules”).

Background

4. On June 15, 2010 (the “Petition Date”), the Debtor filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case. On June 29, 2010, the United States Trustee for the Northern District of Illinois (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 39].

5. By order dated July 9, 2010 (the “Bar Date Order”) [Docket No. 70], this Court established August 13, 2010 (the “Bar Date”) as the deadline for each person or entity asserting a claim against the Debtor to file a written proof of claim against the Debtor.

6. On June 29, 2011, the Debtor filed the *Disclosure Statement for the Debtor’s Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 514] and the *Debtor’s Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Plan”) [Docket No. 515] with this Court.

Relief Requested

7. By this Objection, the Debtor objects to certain proofs of claim filed against the Debtor based only on ownership of equity interests in the Debtor (the “Equity Interest Claims”)

set forth on the Exhibit to the Proposed Order and, for the reasons set forth more fully below, seeks entry of the Proposed Order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9014 and Local Bankruptcy Rule 3007-1: (a) disallowing the Equity Interest Claims in their entirety; (b) authorizing the Debtor's claims, notice and balloting agent to expunge each Equity Interest Claim from the Debtor's claims register; and (c) reclassifying the Equity Interest Claims as equity interests.

I. This Objection is Permitted Under Bankruptcy Rule 3007(d).

8. Bankruptcy Rule 3007(c) provides that "[u]nless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection." Bankruptcy Rule 3007(c).

9. However, Bankruptcy Rule 3007(d)(7) permits omnibus objections where the objections to be joined "are based solely on the ground[] that the claims should be disallowed, in whole or in part, because . . . they are interests, rather than claims." Bankruptcy Rule 3007(d)(7).

10. For the reasons set forth more fully below, the Equity Interest Claims to which the Debtor objects fit within the parameters of Bankruptcy Rule 3007(d)(7).

11. Bankruptcy Rule 3007(e) requires omnibus objections to:

- (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;
- (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;
- (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;

- (4) state in the title the identity of the objector and the grounds for the objections;
- (5) be numbered consecutively with other omnibus objections filed by the same objector; and
- (6) contain objections to no more than 100 claims.

Bankruptcy Rule 3007(e).

12. Using a mail merge, the Debtor and the Claims Agent have created a customized, personalized form of notice pursuant to which each claimant with a claim included in this Objection is served with a notice of the Objection (the “Notice”) that prominently features the claimant’s name, address, applicable claim number(s), and the proposed treatment of the respective Claim(s) and does not include any other claimant’s information on the Notice (each, a “Personalized Notice”). Accordingly, claimants can easily identify the proposed treatment of their claim(s). Therefore, the Debtor submits that the Notice and Objection fully satisfy the notice requirements of Bankruptcy Rule 3007(e).

13. The Debtor has also fully complied with all the remaining relevant provisions of Bankruptcy Rule 3007(e) with respect to the format of omnibus objections. Specifically, the Debtor has: (1) prominently listed the claimant’s name and claim number on each Personalized Notice; (2) listed claimants alphabetically, cross-referenced claim numbers and categorized claims in the Exhibit; (3) stated the grounds for each objection and a cross-reference to the location of the claim in the Objection; (4) included in the title of the Objection the identity of the objector and the grounds for the Objection; (5) numbered this Objection the sixth omnibus objection to be filed by the Debtor; and (6) filed objections to fewer than 100 claims.

II. Objection to Claims.

14. By this Objection, the Debtor (a) objects to the Equity Interest Claims and (b) requests entry of an order pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rules 3007 and 9014, substantially in the form of the Proposed Order attached hereto as Exhibit A, disallowing and expunging the Equity Interest Claims from the claims register and reclassifying the Equity Interest Claims as equity interests.

15. Section 502(b) of the Bankruptcy Code provides in pertinent part:

If such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured

11 U.S.C. § 502(b)(1).

16. A filed proof of claim is deemed allowed unless a party in interest objects thereto. See 11 U.S.C. § 502(a); see also id. § 1111(a) (“A proof of claim . . . is deemed filed under section 501 of this title for any claim . . . that appears in the schedules . . . except a claim . . . that is scheduled as disputed, contingent, or unliquidated.”). Where the claimant alleges sufficient facts to support its claim, its claim is afforded prima facie validity. Carlson v. United States (In re Carlson), 126 F.3d 915, 921–22 (7th Cir. 1997). A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim’s prima facie validity. Id. In practice, the objecting party must produce evidence that would refute at least one of the allegations essential to the claim’s legal sufficiency. Id. Once the objecting party produces such evidence,

the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. Id.

17. Pursuant to Bankruptcy Rule 3007(d)(7), a debtor may file an omnibus objection to proofs of claim that “are interests, rather than claims.” Bankruptcy Rule 3007(d)(7). Permitting such objections is consistent with the manner in which the Bankruptcy Code differentiates between creditors and equity security holders. Under the Bankruptcy Code, those who have “claims” against the debtor are defined as “creditors,” 11 U.S.C. § 101(10), while those who hold equity securities are defined as “equity security holders,” id. § 101(17). While creditors are entitled to file proofs of claim to preserve their rights to payment on account of such claims, equity security holders may file only proofs of interest, not proofs of claim, to preserve their rights, if any, to a distribution from a debtor based solely on their ownership of equity interests. 11 U.S.C. 501(a) (“A creditor . . . may file a proof of claim. An equity security holder may file a proof of interest.”); see also Fed. Commc’ns Comm’n v. Airadigm Commc’ns, Inc. (In re Airadigm Commc’ns, Inc.), 616 F.3d 642, 659 (7th Cir. 2010) (“[C]laims and interests are separate animals in bankruptcy law. . . . There is simply no way that a claim could be ‘allowed’ as a claim if it were, in fact, an equity interest.”); Margaret B. McGimsey Trust v. USA Capital Diversified Trust Deed Fund, LLC (In re USA Commercial Mortg. Co.), 377 B.R. 608, 615–16 (B.A.P. 9th Cir. 2007) (“It is axiomatic that an allowed proof of claim requires something more than mere equity ownership.”); In re Insilco Techs., Inc., 480 F.3d 212, 217–18 (3d Cir. 2007) (“In the Bankruptcy Code, the distinction between creditors (who hold ‘claims’ against the estate) and equity investors (who hold ‘interests’ in the estate) is important, for holders of claims receive much more favorable treatment than holders of interests.”). As such, while the equity security holders in this chapter 11 case were entitled to file proofs of claim to the extent they

held “claims” against the Debtor distinct from rights arising solely from the ownership of equity interests, the equity security holders were entitled to file only proofs of interest to assert their rights arising solely from their ownership of equity interests in the Debtor, since such interests give rise to no claim at all.² See, e.g., In re USA Commercial Mortg. Co., 377 B.R. at 615.

18. In this chapter 11 case, approximately 385 proofs of claim were filed against the Debtor based solely on ownership of equity interests in the Debtor. The majority of such Equity Interest Claims were filed by claimants who erroneously believed that they could assert a claim for the purchase price of their equity investment or that filing such proof of claim was necessary to preserve their right to any potential distribution on account of their equity interests after the claims process is completed.³

19. Following a thorough review of the filed proofs of claim, the Debtor determined that the Equity Interest Claims set forth on the Exhibit were asserted solely on account of equity interests in the Debtor. Therefore, the Debtor objects to the Equity Interest Claims set forth on the Exhibit and seeks entry of the Proposed Order: (a) disallowing the Equity Interest Claims in their entirety; (b) expunging the Equity Interest Claims from the claims register; and (c) reclassifying the Equity Interest Claims as equity interests. Reclassifying the Equity Interest

² Furthermore, as set forth in the Bar Date Order approved by this Court, equity security holders were notified that they were not required to file proofs of claim based exclusively on ownership interests in the Debtor’s stock. The Bar Date Order provides, in relevant part, as follows:

A Proof of Claim need not be filed for any Entity holding or wishing to assert Claims against the Debtor of the types set forth in clauses (a) through (f) below:

(f) Claims made by any holder of equity securities of the Debtor solely with respect to such holder's ownership interest in or possession of such equity securities

Bar Date Order at ¶ 5(f).

³ Some Equity Interest Claims were filed as unsecured claims, some as priority claims, and some as secured claims.

Claims as equity interests will preserve the right of the holders of such claims to a distribution from the Debtor, if any, arising solely out of the ownership of such equity interests.⁴

Separate Contested Matters

20. Each Equity Interest Claim and the objections by the Debtor to such Equity Interest Claims, as addressed herein and as set forth on the Exhibit to the Proposed Order, constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014 and Local Rule 3007-1. The Proposed Order shall be deemed a separate order with respect to each Equity Interest Claim. Any stay of the Proposed Order pending appeal by any claimants whose Equity Interest Claims are subject to such Proposed Order shall only apply to the contested matter which involves such Claimant and shall not act to stay the applicability or finality of such Proposed Order with respect to the other contested matters listed herein or in the Proposed Order.

Responses to Objection

21. As set forth in detail in each Personalized Notice of this Objection sent to holders of the Claims, the Debtor proposes that, to contest this Objection, each holder of a Equity Interest Claim must file and serve a written response to this Objection (each, a “Response”) so that it is received no later than 4:00 p.m. prevailing Central Time on August 16, 2011 (the “Response Deadline”).

22. Every Response to this Objection must contain, at a minimum, the following information:

⁴ In this case, however, the Debtor’s Plan currently provides that Class 8, which consists of all equity interests in the Debtor, shall receive no distribution. Plan at Art. III.B.8. The Plan further provides that all notes, stock instruments, certificates and other documents evidencing equity interests in the Debtor shall be deemed automatically cancelled as of the Plan’s effective date. Plan at Art. IV.D.1. The Plan has not yet been confirmed.

- a. a caption setting forth the name of the Court, the name of the Debtor, the case number and the title of the Objection to which the Response is directed;
- b. the name of the claimant, his/her/its claim number and a description of the basis for the amount of the claim;
- c. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- d. any supporting documentation, to the extent it was not included with the proof of claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and
- e. the name, address, telephone number and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

23. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor shall present the Proposed Order to the Court granting the relief requested herein without further notice or a hearing.

Replies to Responses

24. The Debtor may, at its option, file and serve a reply to a claimant's Response no later than 4:00 p.m. prevailing Central Time on August 19, 2011 or, to the extent the hearing on this Objection, or any portion thereof, is adjourned, by no later than 4:00 p.m. prevailing Central Time four (4) days prior to the day of the adjourned hearing.

Reservation of Rights

25. The Debtor hereby reserves the right to object in the future to any of the Equity Interest Claims listed in this Objection or on the exhibits attached hereto on any ground, and to

amend, modify and/or supplement this Objection, including, without limitation, to object to amended or newly-filed claims. Separate notice and hearing will be provided and scheduled, respectively, for any such objection.

26. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have: (a) to bring avoidance actions under the applicable sections of the Bankruptcy Code against the holders of claims or interests subject to the Objection; or (b) to exercise its rights of setoff against the holders of such claims or interests relating to such avoidance actions.

Notice

27. The Debtor has provided notice of this Objection to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) Counsel to the Committee; (c) counsel to the indenture trustee for each of the Debtor's subordinated debentures; (d) any person who has filed a request for notice in this chapter 11 case pursuant to the Order Establishing Certain Notice, Case Management, and Administrative Procedures [Docket No. 20] and Bankruptcy Rule 2002; and (e) to each claimant holding an Equity Interest Claim. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

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

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WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto, granting the relief requested herein, and granting such other and further relief as the Court deems just and proper.

Dated: July 21, 2011

KIRKLAND & ELLIS LLP

/s/ Jeffrey W. Gettleman

James H.M. Sprayregen, P.C. (IL Bar No. 6190206)

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EXHIBIT A

Proposed Order