

In Re:
HORSEHEAD HOLDING CORP., et al.
Case No. 16-10287(CSS)

June 20, 2016

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 16-10287(CSS)

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In the Matter of:

HORSEHEAD HOLDING CORP., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

June 20, 2016

10:10 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

1

2 Debtors' Motion for Entry of an Order (I) Approving the
3 Disclosure Statement for the Debtors' Joint Plan of
4 Reorganization Pursuant to Chapter 11 of the Bankruptcy Code;
5 (II) Approving Certain Dates Related to Plan Confirmation;
6 (III) Approving Procedures for Soliciting, Voting, and
7 Tabulating Votes on, and for Filing Objections to, the Plan and
8 Approving the Forms of Ballots and Notices; and (IV) Granting
9 Related Relief (Filed April 29, 2016; Docket No. 828)

10

11 Debtors' Motion for Entry of an Order (I) Extending the
12 Debtors' Exclusive Periods to File a Chapter 11 Plan and
13 Solicit Acceptances Thereof Pursuant to Section 1121 of the
14 Bankruptcy Code and (II) Granting Related Relief (Filed May 27,
15 2016; Docket No. 994)

16

17 Application of the Official Committee of Equity Security
18 Holders to Employ and Retain Nastasi Partners as Co-Counsel to
19 the Committee nunc pro tunc to May 13, 2016 (Filed May 31,
20 2016; Docket No. 1004)

21

22 Application of the Official Committee of Equity Security
23 Holders to Employ and Retain Richards, Layton and Finger, P.A.
24 as Co-Counsel to the Committee nunc pro tunc to May 13, 2016
25 (Filed May 31, 2016; Docket No. 1005)

1 Application of the Official Committee of Equity Security
2 Holders for an Order Authorizing the Retention and Employment
3 of SSG Capital Advisors, LLC. as Financial Advisor to the
4 Committee nunc pro tunc to May 15, 2016 (Filed May 31, 2016;
5 Docket No. 1006)

6
7 Debtors' Motion for Entry of an Order (I) Authorizing the
8 Rejection of a Certain Agreement; (II) Authorizing the Debtors
9 to Enter into the Replacement Master Services Agreement and
10 Report Proposal; (III) Authorizing a Release of Hatch
11 Associates and Consulting, Inc.; (IV) Deeming Hatch to be the
12 Holder of an Allowed Claim; and (V) Granting Related Relief
13 (Filed May 31, 2016; Docket No. 1007)

14
15 Debtors' Ninth Omnibus Objection to Certain Claims Which Are
16 Filed by Shareholders Based on Ownership of Stock (Non-
17 Substantive) (Filed May 20, 2016; Docket No. 956)

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25 Transcribed by: Penina Wolicki

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ALSO PRESENT:

THOMAS BOSWELL, Boswell Capital Management Limited

(TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 Good morning.

5 MR. DAHL: Good morning, Your Honor. For the record,
6 Ryan Preston Dahl of Kirkland & Ellis on behalf of the debtors.
7 Your Honor, I'd note for the record, with me in court today are
8 also Mr. Jim Hensler, the debtors' chairman and chief executive
9 officer.

10 THE COURT: Mr. Hensler.

11 MR. DAHL: Mr. Tim Boates, the debtors' chief
12 restructuring officer.

13 THE COURT: Sir.

14 MR. DAHL: And then my colleague, Ms. Angela Snell,
15 who will be helping with the agenda today.

16 And we have some atmospheric music.

17 THE COURT: Please mute your phones, if you're on the
18 telephone. Thank you very much.

19 MR. DAHL: Your Honor, if it would please the Court,
20 we would proceed in the order of the agenda filed on June 16th,
21 although I think it may be a somewhat hearing than the agenda
22 might itself suggest.

23 In terms of uncontested matters for which
24 certifications of counsel or certifications of no objection
25 have been filed, as indicated on the agenda, orders have been

1 entered for each of the omnibus claims objections other than
2 with respect to omnibus objection number 9. I think Ms. Snell
3 will be handling that a little later in the agenda.

4 THE COURT: Okay.

5 MR. DAHL: And also, Your Honor, an order, I'd note,
6 has been entered for the motion to approve -- the motion --
7 sorry, the motion to seal certain aspects of the Hatch motion
8 that we filed.

9 Which then, Your Honor, takes us, I think, all the way
10 to item number 15 on the agenda, which is the debtors' motion
11 seeking approval of our disclosure statement for the debtors'
12 plan of reorganization.

13 Here, Your Honor, as I believe the Court is aware, the
14 debtors have been engaged in what I'd call substantial and
15 certainly arm's-length negotiations with both our official
16 committee of unsecured creditors' committee (sic) and our ad
17 hoc group of secured noteholders, regarding the terms of the
18 debtors' Chapter 11 plan of reorganization, and to obtain,
19 hopefully, the support from both those significant stakeholder
20 constituencies regarding that plan.

21 Here, Your Honor, we are very pleased to report that
22 those negotiations have been a success and that we have an
23 agreement-in-principle with the official committee of unsecured
24 creditors as well as the ad hoc group of secured noteholders,
25 regarding modifications to the terms of the debtors' Chapter 11

1 plan that would provide for the support of both those groups to
2 the debtors' Chapter 11 plan and path going forward.

3 Your Honor, those negotiations, again, are successful,
4 but are still subject to definitive documentation. Obviously
5 there'll be some details to work out. But I would note for the
6 record that a key portion of that settlement involves a
7 significant improvement to the cash recovery for non-Zochem
8 general unsecured creditors, namely increasing the pool of cash
9 being made available for recoveries for the non-Zochem general
10 unsecured creditors from 2.5 million dollars, which is provided
11 in this new plan that's currently on file, up to a number that
12 is 11.875 million dollars in cash, being made available to fund
13 recoveries for non-Zochem general unsecured creditors.

14 Your Honor, for reference, the debtors presently
15 estimate that the pool of general unsecured claims for non-
16 Zochem or inclusive of non-Zochem general unsecured claims,
17 would be approximately fifty-five million. So roughly
18 speaking, this 11.875-million-dollar cash pool would provide
19 for an approximately twenty-one or twenty-two-cent recovery,
20 based on those estimates.

21 Your Honor, there would be also corresponding
22 adjustments to unsecured creditor recoveries with respect to
23 our other unsecured creditor classes, including our forty
24 million dollars of unsecured notes, as well as the Banco Bilbao
25 unsecured note. But again, those details are being worked out

1 and would be subject to definitive documentation among the
2 parties, but would roughly correspond with that recovery for
3 non-Zochem general unsecured creditor and net cash pool.

4 As I noted, Your Honor, this resolution is subject to
5 definitive documentation, and we are in the process of working
6 with both the unsecured creditors' committee and the ad hoc
7 group of secured noteholders to reflect these modifications to
8 our plan and related disclosure statement as quickly as
9 possible, and would be looking to file those documents, again,
10 as quickly as we can, to get in front of the Court to proceed
11 with disclosure statement approval, we hope, and then moving
12 forward with plan confirmation within a time frame that would
13 permit the debtors to -- subject of course to the Court's
14 approval -- confirm their plan and emerge from Chapter 11 this
15 summer, in the month of August.

16 Your Honor, this is obviously a tremendous step
17 forward from the debtors' perspective, in these Chapter 11
18 cases. And while I don't want to understate the work that will
19 be necessary to finalize the documentation here and work
20 through the issues that inevitably emerge as parties are
21 reducing settlements to definitive documentation, again, as I
22 noted, Your Honor, we do believe this will provide for, we
23 believe, the ultimate resolution of these Chapter 11 cases, on
24 certainly a consensual basis with our ad hoc group of secured
25 notes and the creditors' committee itself.

1 In terms of process, Your Honor, our goal, again,
2 would be to be back in front of the Court to request disclosure
3 statement approval for what would be a modified plan supported
4 by those two stakeholders groups. And the result, Your Honor,
5 we'd be requesting a continuance, and we would hope a brief
6 continuance, to be able to seek disclosure statement approval
7 to that later date.

8 And here, Your Honor, we understand that the Court's
9 schedule is quite full. And I know my colleagues in EFH aren't
10 assisting with that scheduling at all, for which we have taken
11 them to task back at my firm. But we note that our next
12 omnibus date scheduled with the Court is Thursday, July 7th,
13 for a time in front of the Court a 1 p.m. Eastern. Certainly,
14 it would be our hope to have documentation completed in advance
15 of that hearing, but we are mindful of the Court's very busy
16 calendar in terms of scheduling.

17 THE COURT: Well, I'm happy to continue the hearing to
18 allow negotiations to continue. I set aside a substantial bulk
19 of time today, assuming we would go forward today. I'm not
20 trying to force anyone to go forward, but only so much time on
21 the schedule, and today was the day. So when you start moving
22 things, you're subject to other people's scheduling and matters
23 that have been put on the Court's calendar.

24 And actually EFH isn't your problem, at least this
25 time.

1 MR. DAHL: I will not tell Mr. Kieselstein that, Your
2 Honor.

3 THE COURT: Yeah, don't. Don't. But I can hear you
4 July -- I can't hear you before that. So I know we had some
5 negotiations -- not negotiations -- conversations with your
6 local counsel on the telephone about what might be available.
7 But I can certainly accommodate the continued disclosure
8 statement hearing on July 7th at 1 o'clock. But I really don't
9 have room before that.

10 MR. DAHL: Understood, Your Honor. I'll still blame
11 Kieselstein.

12 THE COURT: You go right ahead. It would be a change
13 in that case not to be blaming Mr. Husnick, so I'm sure he'd be
14 happy to hear someone else has taken the fall, for once.

15 All right, so July 7th at 1 o'clock is fine.

16 MR. DAHL: Thank you, Your Honor.

17 THE COURT: What is that going to do to confirmation?
18 What are you looking for?

19 MR. DAHL: I think in terms of the timing, Your Honor,
20 we would still be looking for -- well, to the same time period
21 as to between disclosure statement approval and confirmation.
22 I believe our disclosure statement motion contemplated a forty
23 to forty-five-day period between disclosure statement hearing
24 and confirmation hearing. So at the risk of doing math in my
25 head, Your Honor, I think we would be looking at an August 15

1 to 20th date for a confirmation hearing from the Court.

2 THE COURT: Yeah. Now you can blame Mr. Kieselstein.
3 I could do the week of the 29th. Let's get you on the
4 calendar. I just don't -- partly it's my own personal
5 schedule. I'm on a vacation, so I won't even be in the
6 country. I'm returning August 15th. And I currently have the
7 T-Side confirmation hearing scheduled the entire week of the
8 15th and the 22nd. I'm anticipating a contested confirmation
9 hearing in this case. So I need to set aside some time. And
10 really we get to the week of August 29th before I have anything
11 available.

12 So why don't you chew on that, and you can contact Ms.
13 Gadson tomorrow if you wish or later this week -- she's not in
14 today -- to try to set aside -- let's do two full days for
15 confirmation. So the 30th and the 31st would work very well.
16 31st and the 1st would be fine -- really any time that week
17 starting the 30th would be fine.

18 MR. DAHL: Your Honor, could we take August 30th and
19 31?

20 THE COURT: Yeah. Give me a moment.

21 MR. DAHL: And Your Honor, would we be starting at 10
22 a.m. on those days?

23 THE COURT: Yeah. Yes.

24 MR. DAHL: Thank you, Your Honor.

25 THE COURT: Let me just -- let me get that on the

1 schedule here. So just give me a moment.

2 (Pause)

3 THE COURT: Okay.

4 MR. DAHL: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. DAHL: The next item on the agenda, Your Honor, is
7 the debtors' pending motion to extend exclusivity.

8 MR. FLAXER: Excuse me for one moment. May I be heard
9 on the phone?

10 THE COURT: Yes. Please identify yourself.

11 MR. FLAXER: Jonathan Flaxer of Golenbock Eiseman
12 Assor Bell & Peskoe, counsel to Delaware Trust as indenture
13 trustee on the 3.8 percent convertible notes.

14 I'm thinking Mr. Dahl just inadvertently may have not
15 mentioned that the plan involves an agreement-in-principle with
16 our constituency as well. Mr. Dahl, is that correct?

17 MR. DAHL: That's correct. The settlement I referred
18 to whose terms I noted only in summary format, also incorporate
19 revised recoveries with respect to treatment or the recoveries
20 to holders of the convertible notes. Again, my goal is not to
21 get into every term of the settlement.

22 Mr. Flaxer is quite right that this global resolution
23 with the unsecured creditors' committee does and will
24 contemplate modification to the treatment and improvement to
25 the treatment of holders of convertible notes.

1 Mr. Flaxer does that address your concern on that
2 point?

3 MR. FLAXER: That's fine, thank you.

4 MR. DAHL: Thank you.

5 Your Honor, as I was saying, I think that takes us
6 next on the agenda, the debtors' pending motion to extend
7 exclusivity. In light of the agreement-in-principle that we've
8 reached with the unsecured creditors' committee, we've agreed
9 with the unsecured creditors' committee to continue, if it
10 would please the Court, that motion to extend exclusivity,
11 which is presently being opposed both by the UCC and our equity
12 committee, to now July 7th, the date we'd be seeking disclosure
13 statement approval.

14 I believe we have the agreement both from the
15 creditors' committee and the equity committee for that
16 continuance, if the Court would permit us to set exclusivity
17 for that July 7th date.

18 THE COURT: Any objection?

19 No, not a problem. It's going to be a busy day.

20 MR. DAHL: Thank you, Your Honor. And on the agenda,
21 then, that takes us to the next series of items on the agenda,
22 which are the professional retention applications for the
23 official committee of equity security holders of Horsehead
24 Holding Corp. And Your Honor, with that, I can cede the
25 podium.

1 THE COURT: Just a moment, Mr. Collins. Sorry.

2 MR. COLLINS: Sure.

3 THE COURT: I'm making a note.

4 Good morning.

5 MR. COLLINS: Good morning. Your Honor, for the
6 record, Mark Collins of Richards, Layton & Finger on behalf of
7 the official committee of equity security holders, or proposed
8 counsel to the equity security committee.

9 Your Honor, I'd like to introduce Ancela Nastasi, with
10 whom we have the pleasure of being co-counsel. She's with
11 Nastasi Partners. And we did file a pro hac vice motion
12 previously, and I believe Your Honor has entered that. And she
13 would like to address the Court on agenda items 17, 18, and 19.
14 17 is the Nastasi Partners retention application; agenda item
15 18 is the Richards, Layton & Finger retention application; and
16 then agenda item number 19 is the SSG Capital Advisors
17 retention application.

18 THE COURT: Okay, thank you.

19 MR. COLLINS: Thank you.

20 THE COURT: Good morning.

21 MS. NASTASI: Good morning, Your Honor. My name is
22 Ancela Nastasi, and I am here on behalf of the official
23 committee of equity security holders in Horsehead. Before Your
24 Honor today is the retention application from my firm,
25 Richards, Layton & Finger, and SSG as financial advisors to the

1 committee. We also have an objection filed by the ad hoc group
2 seeking to impose a fee cap of 500,000 dollars for all the
3 professionals during the life of this case.

4 Before I address that, I just wanted to put the first
5 thing first. What are we doing here? In other words, what do
6 we see the mission of the equity committee and its
7 professionals? I was not at the hearing on May 2nd when you
8 appointed the equity committee, but I do know that this Court
9 empowered the equity committee for a very limited reason. And
10 the reason was to find out what happened to the value, how in a
11 few short weeks, pre-petition, did the value go from a billion
12 dollars, plus or minus, with equity completely in the money, to
13 after the petition is filed, the value is about 300 million,
14 and equity is totally underwater. How did that happen?

15 For lack of a better phrase, I'll call our mission the
16 find-out-what-happened-to-the-value mission. That's it.
17 Pretty pure and simple.

18 We also know -- if we know what we're here to do, we
19 know what we're not here to do. We're not here to lay blame at
20 someone's doorstep. We're not here on some kind of conspiracy
21 theory. We're not here on a crusade for the downtrodden. And
22 we are not here to chase shadows and burn up fees. We're just
23 not. We're here for one purpose and one purpose only, to
24 explain the large shift in value.

25 So the second thing I want to do is answer the

1 question: are we fulfilling that mission? We are working very
2 closely with Richards, Layton & Finger, and I can tell Your
3 Honor we are not duplicating our efforts. To date, all of the
4 work we've done has been focused on value. Our pleadings are a
5 really good proxy for our focus, and we filed about three
6 pleadings, give or take, so far. The first was an objection to
7 the disclosure statement that pointed out the flaws in the
8 debtors' version of value. The second was an objection to the
9 extension of exclusivity, which we said you know what, let's
10 run a sale process in tandem with the plan so we get the market
11 to determine what the value is. And the third is Mr. Victor's
12 declaration, which also went to the flaws in valuation that the
13 debtors propose with their plan; and it also discussed certain
14 expressions of interest we've received to date, and the fact
15 that a sale would probably be the best arbiter of value here.

16 To save time and expense, we tried to build consensus
17 with the debtors on all this, but we just haven't had any luck
18 so far. For example, we offered to basically stand down
19 entirely in this case, have an uncontested confirmation
20 hearing, and take a total backseat, if the debtors would run a
21 market test in parallel with the plan process. We said we'd
22 live with that market test no matter what the result was, but
23 the debtors weren't interested.

24 That's okay, because we're only five weeks in, and so
25 far we haven't been successful in coming to some kind of

1 consensual agreement, but I think that's to kind of be expected
2 in a case like this. So as of today, where do we see all of
3 this going? I'm going to save our formal assessment of value
4 for the right time, which I think is going to be July 7; but
5 from where we sit right now, if today we gave Your Honor an
6 answer to the burning question about what happened to the value
7 here, our answer would be, absolutely nothing. That's right.
8 We don't think anything happened to the value. It's still
9 right there.

10 Sure, the company had a bunch of really bad things
11 happen to it in 2015 and early 2016, and that pushed it into
12 bankruptcy. But these were temporary blips on the radar screen
13 of the company's overall financial health. So even if the
14 company which finds itself in Chapter 11 today is in
15 bankruptcy, we think that we will ultimately be able to show
16 you that equity is in the money here. We do.

17 And how are we going to do that? Well, as I said
18 before, we could have a market test that would run alongside
19 the plan process, and that would be the ultimate proof of
20 value. I think it would save a lot of time and a lot of money;
21 and we think it's the best option. But if that doesn't happen,
22 we obviously have two other options. We have SSG that's going
23 to put on its valuation testimony alongside the debtors', and
24 then we also believe that we will have letters from qualified
25 buyers which document their interest in some or all of the

1 assets here and put the value in the range that it was pre-
2 petition.

3 As an aside, we've been dealing with interested buyers
4 and it has been one of our important tasks, because the debtor
5 has chosen not to do that. So all of this will be presented at
6 the right time in this case, Your Honor, which is not today;
7 but I wanted to let you know where we are going.

8 So we know why you appointed this committee, and we
9 also know the work that needs to be done. And I want to
10 address the next thing is that what we believe will happen when
11 we get to the point where our work is done.

12 So if we ever get to the point where we understand
13 that the value of this company puts equity out of the money,
14 either because we ran a market test and we just didn't get the
15 offers, or because we believe that even without a market test,
16 equity is not in the money, or some variation of those two, if
17 we ever get to the place where we have the answer to the find-
18 the-value question and the answer is, Your Honor, the value is
19 gone, then at that point, we recommend and we would recommend
20 to the committee that it would be disbanded. You have our word
21 on that.

22 We are far from that place today, and we expect to
23 give the Court more substantive information about value on July
24 7. But I just wanted to reiterate what Mr. Spier said on the
25 record at May 2nd, which is that we are not here to get ransom

1 money from the estate. We are not here to throw bombs in the
2 hopes of getting nuisance value. We are not here to bill for
3 fees and churn in this estate in the name of making a quick
4 buck. We are not here to do that.

5 And so with that background, I just wanted to briefly
6 address the ad hoc's objection and the notion of a fee cap. I
7 read Federal Mogul and I don't think it's applicable for two
8 primary reasons. First is, in that case, it was retention of
9 accountants that were in issue. We're not accountants; we're
10 lawyers. I think if I asked Ryan Dahl if he'd show us their
11 legal research files, he would say absolutely not.

12 The other thing is that in Federal Mogul, the court
13 capped the fee because it believed the debtors were insolvent
14 and there was not a reasonable prospect that there'd be a
15 distribution. We don't have that here. That is not what we
16 have here today in Horsehead.

17 But forget what the case law says, and I just want to
18 talk about practicalities about that. If a fee cap is in
19 place, Your Honor, it has a really big chilling effect on the
20 efficacy of the committee. If the other parties in the case
21 know that our hands are tied and every interaction is affected,
22 reasonable compromises are not attainable. Everything becomes
23 a fight, which only creates larger fees, fees the others know
24 we won't be compensated for.

25 Your Honor, of course, gets to review our fees at the

1 end of the case and decide if what we did was reasonable.
2 We're willing to take that risk, and like Your Honor, go out on
3 a limb, because we really believe in what we're doing; because
4 we are confident of the outcome here.

5 So in close, I would like to say, we know our mission;
6 we have the right focus; we have the right intentions; we
7 really believe there's value for equity here; we really believe
8 in this case. And I want to say thank you for allowing us to
9 go forward.

10 THE COURT: You're welcome. Thank you.

11 Response?

12 MS. LAHAIE: Good morning, Your Honor. Meredith
13 Lahaie, Akin Gump Strauss Hauer & Feld, for the ad hoc secured
14 noteholder group and the DIP lenders. And Your Honor, I'm
15 going to be very brief. I'm certainly not going to address the
16 valuation issues, the market test issues. They're not before
17 you and today is not the appropriate time to address those
18 questions.

19 And Your Honor, we certainly heard you at Thursday's
20 discovery conference, and I expect that the equity committee
21 and the equity's professionals did as well.

22 I rise only to note, Your Honor, that although the
23 purpose of the equity committee -- they acknowledge that
24 there's a very limited reason for which they're in existence,
25 the fees that they have incurred to date and the projected

1 anticipated fees that they tell us they're going to continue to
2 accrue are simply not consistent with that mandate, and with
3 the acknowledgement that they have a "very limited purpose in
4 this case."

5 And Your Honor, we continue to believe that the best
6 and most effective way to control the spend that frankly, our
7 clients would have to be providing, would be to impose a fee
8 cap. And as set forth in our pleadings, we're proposing a fee
9 cap of 500,000 dollars in the aggregate. So unless Your Honor
10 has questions, I will rest on the balance of my papers.

11 THE COURT: No, I have no questions.

12 I read the debtors' reservation of rights basically.
13 Do you have anything further to say?

14 MR. DAHL: No, Your Honor. We have no objection to
15 the retention.

16 THE COURT: Okay. All right.

17 Well, equity committees are certainly the exception
18 rather than the rule in bankruptcy, because most cases by far
19 are clearly insolvent and there's no projected return to
20 equity. That is certainly one value thesis that is in play in
21 this case. And the argument was made forcefully at the motion
22 to appoint the equity committee that there was no value here,
23 and if the Court were to appoint an equity committee, it would
24 simply be running up administrative expenses and wasting estate
25 resources.

1 When equity committees are appointed, also usually
2 when examiners are appointed, it's not at all unusual to have a
3 party ask to impose a fee cap on those committees'
4 professionals' or examiners' professionals'/examiner fees, in
5 order to control costs. To a certain extent it's the sour
6 grapes principle. We didn't want you to appoint the committee
7 or the examiner in the first place, and now that you've done
8 it, despite what you should have done, which wasn't do it,
9 we're going to cut the ground out from under you, Judge, and
10 not allow them to get paid for their work.

11 So at the same time, committees are expensive.
12 Official committee of unsecured creditors are expensive. I'm
13 often told -- not in the context of a fee cap but in the
14 context of whether I should pay any attentions to committees or
15 not, that unsecured creditors are out of the money. And I've
16 heard at many a conference, especially with my colleagues in
17 Canada that don't have the concept of official committees, that
18 they're puzzled by why we empower those types of costs in cases
19 where there clearly isn't any potential recovery.

20 Although often asked, the Court is similarly often
21 reluctant to impose fee caps. They can have negative effects
22 in that it empowers those who don't have a cap to perhaps
23 engage, themselves, in scorched earth litigation against
24 parties that do have a cap as opposed to preventing the parties
25 that would have a cap from engaging in the same scorched earth

1 litigation. The incentives can actually be perverse if the
2 Court appoints -- or if the Court imposes a fee cap.

3 At the same time, usually committees of equity or
4 examiners have a very focused, discrete purpose, and that is
5 certainly the case here. And I think Ms. Nastasi does a nice
6 job of reviewing what I believe was the proper reason to
7 appoint an equity committee in this case and the purpose for
8 which that equity committee was appointed.

9 There can be no question, though, that this is, at
10 least from a cash flow perspective, a difficult case, and that
11 recoveries -- excuse me -- increases in administrative expense
12 claims will have, at least as it exists now, a direct effect on
13 recoveries to nonadministrative-expense creditors. So where
14 does that leave us?

15 I think that this is the rare case where it would be
16 appropriate to appoint a -- excuse me -- to impose a reasonable
17 preliminary cap on equity committee fees and expenses for
18 professionals. I think that 500,000 for the life of the case
19 is a nonstarter, given the economic realities of professional
20 retention and the costs of obtaining competent -- and clearly
21 the proposed professionals here are competent. There's no
22 question here. That would -- I might as well not have
23 appointed the committee.

24 I appointed the committee because and I continue to
25 believe that they have a proper role in this case. Value in

1 this case is the critical question, and there can be no
2 question that the value thesis as propounded by the debtors
3 changed dramatically in six weeks. I think that's significant.
4 I thought it was significant when I appointed the committee.
5 And as I said then, something doesn't smell right, and I want
6 somebody with the resources and the sophistication necessary to
7 investigate what happened to value.

8 If the debtors were wrong all along, and the value is
9 what it is, so be it. If the value is, in fact, larger than
10 the plan currently contemplates, we'll deal with that then.
11 But somebody needs to be able to do the work.

12 So given two difficult decisions, I'm going to do what
13 judges do when they're faced with those kind of decision and
14 split the baby. A bit of a cop-out; but that's what we do.

15 I think that it is important that the cap allow for a
16 reasonable ability to get between the committee formation and
17 retention of those professionals, at least until the next
18 significant event in these cases -- truly significant event in
19 these cases, which is confirmation. And I'm not going to
20 impose a professional-by-professional cap. And I am going to
21 fully reserve the right to expand the cap if I believe and
22 find, based on evidence, that the debtors' counsel or the ad
23 hoc committee's counsel are running up their fees in an attempt
24 to pressure the equity committee, or if there is a significant
25 change in circumstances that would sort of blow my thoughts as

1 to what the case should reasonably cost, out of the water.

2 But that would be the exception as well, not the rule.
3 And counsel and the financial professionals shouldn't sort of
4 assume they're going to be successful in that.

5 So the cap is going to be 1.75 million dollars through
6 August 31st. I believe that runs a little over or
7 approximately 500,000 per month over that period. And while
8 that is not a large amount of money, it's not a small amount of
9 money at the same time. And I believe that if the case is
10 properly staffed, that professionals should be able to get
11 compensated fairly for the work they're going to perform in
12 that time period.

13 I understand that that might blow the budget; and the
14 lender has the ability to not agree and force an event of
15 default, which would result in a liquidation of the company. I
16 think that would be unfortunate. I can't make anybody lend
17 money, though. But I won't fund an administratively insolvent
18 estate, and if this case ends up administratively insolvent, as
19 soon as I find out it's administratively insolvent, I will
20 convert the case and I will kill the company.

21 I think it's appropriate to impose a fee cap here, but
22 I expect the parties to live with it; and I expect it to be
23 funded. And that's the price of doing business when the Court
24 believes it's appropriate to appoint an equity committee.

25 So I don't know exactly how to build it into the

1 retention orders. I don't necessarily believe it's necessary
2 to build it into the retention orders. I can -- this is my
3 ruling. This is what it is. It probably makes sense to do it.
4 But since I assume we were going to have three different
5 retention orders and this is a sort of global cap, if you will,
6 on those three professionals, what I'd like to do is leave it
7 to the parties to figure out exactly how they want to
8 incorporate what I just said.

9 But I will otherwise approve the retentions and there
10 can be no question and there is no question in the Court's mind
11 that the professionals being retained are more than competent
12 to represent the equity committee. I don't have any experience
13 with Ms. Nastasi's firm, but I have more than enough experience
14 with the Richards Layton firm and Mr. Victor's firm to know how
15 qualified they are and how reasonable their fees could be,
16 especially Mr. Victor. He's very reasonable.

17 So with that, I'll approve the retention.

18 MR. COLLINS: Thank you very much, Your Honor. We
19 will work with the counsel for the company and others to
20 revise, potentially, the form of our retention orders and then
21 submit --

22 THE COURT: Okay.

23 MR. COLLINS: -- under certification of counsel.

24 THE COURT: Very good. It shouldn't take long.

25 MR. COLLINS: It won't.

1 THE COURT: Okay.

2 MR. COLLINS: Thank you, Your Honor.

3 MS. SNELL: Good morning, Your Honor. Angela Snell
4 from Kirkland & Ellis on behalf of the debtors. Moving on to
5 agenda item number 20, the Hatch motion.

6 Your Honor, the debtors have resole the objection and
7 the joinder of the equity committee to this motion, so we'll be
8 submitting a revised proposed order to chambers following this
9 hearing, if it's okay?

10 THE COURT: Yes.

11 MS. SNELL: Great. I do have -- I do believe counsel
12 to Hatch is on the phone, and they have local counsel also in
13 the room, if they want to say anything -- I don't think so.

14 THE COURT: Anybody wish to be heard? Okay, that's
15 fine. I'll await an order.

16 MS. SNELL: All right. Thank you, Your Honor. The
17 next and final matter is number 21, the debtors' omnibus
18 objection to equity claims.

19 Your Honor, we did receive a response from Mr. Joel
20 Swadesh, who filed a letter on the docket. We attempted
21 several times reach Mr. Swadesh and have not been successful.
22 We did offer to adjourn the objection to the July 7th hearing.
23 We did not receive a response to that.

24 We are still willing to adjourn our objection to his
25 claim, if the Court would prefer.

1 THE COURT: I don't --

2 MS. SNELL: If not we're --

3 THE COURT: -- I don't see him on -- is anyone present
4 on behalf of the claimant, or is the claimant himself present?

5 All right, I hear none.

6 MS. SNELL: Your Honor, we did send him the telephonic
7 procedures as well, so I'm not sure --

8 THE COURT: Okay.

9 MS. SNELL: So we're ready to proceed --

10 THE COURT: Yeah, no, you can --

11 MS. SNELL: -- but we're also fine with adjourning as
12 well.

13 THE COURT: No, no, let's proceed.

14 MS. SNELL: Okay.

15 THE COURT: And we can make it brief. The claim is
16 clearly an unsecured claim that's being asserted on behalf of
17 an equity position. So I think it's pretty clear under the law
18 that it should be amended -- or --

19 MS. SNELL: Expunged?

20 THE COURT: -- expunged, thank you.

21 MS. SNELL: Right. Well, then, Your Honor, if you
22 have no other questions for us, we would ask that the order be
23 entered.

24 THE COURT: Yeah. You have an order?

25 MS. SNELL: I do. I'll --

1 THE COURT: Please approach. Thank you.

2 Any differences?

3 MS. SNELL: No.

4 THE COURT: Okay. I got it. Okay.

5 MS. SNELL: Okay. All right, Your Honor, I think that
6 concludes --

7 THE COURT: Okay. Is there anything anyone else has
8 before the Court today?

9 All right, I hear none. Thank you very much. We're
10 adjourned.

11 (Whereupon these proceedings were concluded at 10:46 AM)

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I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

June 21, 2016

PENINA WOLICKI

DATE

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