

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re	:	Chapter 11
	:	
SPECIALTY PACKAGING HOLDINGS, INC.,	:	Case No. 10-10142 (KG)
ET AL.,	:	
	:	Jointly Administered
Debtors <sup>1</sup> .	:	

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PERMIT THE PARTICIPATION OF WECKERLE MASCHINENBAU GMBH IN THE AUCTION SCHEDULED FOR MARCH 23, 2010**

The Official Committee Of Unsecured Creditors in the captioned matter (the “Committee”) hereby moves (the “Motion”) for an order permitting Weckerle Maschinenbau GmbH (“Weckerle”) to participate in the court-ordered auction for substantially all the assets (the “Assets”) of the above-captioned debtors (the “Debtors”), which is currently scheduled for March 23, 2010, beginning at 10:00 a.m., prevailing Eastern Time (the “Auction”).

As of now, there are only two bidders (the “Qualified Bidders”) – the stalking horse bidder and one additional bidder -- that submitted qualified bids to acquire the Assets. A third bidder, Weckerle, submitted a bid that contained a financing contingency provision that made its bid non-qualified; however, upon information and belief, Weckerle will waive its financing contingency prior to the start of the Auction. Because the Committee does not foresee the Qualified Bidders acceding to Weckerle’s participation in the Auction, the Committee submits that a court order is necessary to ensure that Weckerle – which has conducted substantial due diligence and, upon information and belief, will cure its bids prior to the start of the Auction – is able to bid, without either of the Qualified Bidders withdrawing its bid. This relief requested in

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<sup>1</sup> The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Specialty Packaging Holdings, Inc. (7942), The Specialty Packaging Group, Inc. (6668), Cosmetics Specialties, Inc. (0826), Cosmolab, Inc. (1367), Cosmetics Specialties East, LLC (0313), and Cosmolab New York, Inc. (2222). The primary mailing address for the Debtors is: 1100 Garrett Parkway, Lewisburg, TN 37091.



this Motion is in the best interest of the Debtors' estates and its creditors because it will ensure that the auction process is as robust as possible so that value is maximized.

In further support of this Motion, the Committee states as follows:

### **Jurisdiction & Venue**

1. This Court has jurisdiction to hear this Motion under 28 U.S.C. §§ 157 and 1334.

This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

3. On January 20, 2010, each of the Debtors filed a petition in bankruptcy under chapter 11 of title 11, United States Code, commencing the instant bankruptcy cases. On the same day, the Debtors filed the *Motion to Authorize (A) the Sale of Substantially All Assets of Certain Debtors Pursuant to 11 U.S.C. 363, (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. 365, (C) Establishing Auction Procedures for Sale and Assignment/Assumption, (D) Approving Bid Protections; (E) Setting Date of Auction and Date of Sale Hearing; and (F) Approving Form of Notice and Related Relief* [Docket No. 30].

4. On February 9, 2010, this Court entered the *Order (A) Approving Auction Procedures to Sell Substantially all Assets of Certain Debtors and to Assume and Assign Certain Executory Contracts and Unexpired Leases; (B) Approving Bid Protections; (C) Setting Date of Auction; (D) Setting Sale Hearing; and (E) Approving Form of Notice* [Docket No. 91] (the "Sale Order").

5. Pursuant to the Sale Order, all bidders were obligated to submit opening bids no later than 5:00 p.m. ET on March 19, 2010 (the "Bid Deadline"). Bids were to be written, accompanied by an executed Modified Purchase Agreement and Earnest Money Deposit,

identify the items that the bid covered, be free from any financing or diligence contingencies, evidence the wherewithal to close, and demonstrate the necessary corporate approval of the transaction. Two bids (excluding the previously received stalking horse bidder) were received, one being Weckerle's bid. Combined with the stalking horse bidder, this means that there are three potential Auction participants.

6. Weckerle has long been considered a potential bidder and has conducted over three weeks of diligence in the period leading up to the Auction. However, due to circumstances beyond its control, Weckerle was unable to submit a fully conforming bid by the Bid Deadline. Specifically, Weckerle, a German entity, has raised funding from two lenders located in Germany. Each of those lenders require that its respective Board approves the financing before it will extend a final financing commitment. Each of the Boards will be meeting prior to the start of the Auction, and Weckerle has relayed to the Committee that it believes approval from the Boards is formality. Because of the timing of the meeting of the Weckerle's proposed lenders, Weckerle was unable to submit a bid that did not contain a financing contingency.

7. That said, Weckerle has indicated to the Committee that it is extremely confident that it will receive approval from its lenders' respective Boards prior to the start of the Auction, and thus will be able to waive its financing contingency by the time the Auction begins. Put another way, upon information and belief, Weckerle fully believes that it will be able to participate in the Auction, bidding on the same terms as the Qualified Bidders. The Committee believes that, if Weckerle is correct in its assessment and therefore receives financing commitments prior to the start of the Auction, it should be permitted to participate in order to ensure a robust auction.

### **Relief Sought**

8. Based on these facts, the Committee requests the entry of an order permitting Weckerle to participate in the Auction notwithstanding the financing contingency set forth in its bid, *provided that* such contingency is waived prior to the Auction.

### **Basis for Relief Sought**

9. In order to participate in the Auction, Weckerle will have to waive the financing contingency contained in its initial bid *prior to the commencement of the Auction*, meaning that it will compete on same footing as the other bidders. This means that Weckerle's participation will prejudice neither the auction process nor any other party to the Auction.

10. At the same time, Weckerle's participation means that there will be another serious bidder in the Auction, and an accordingly greater chance to maximize the value of these estates. For these reasons, the Committee believes that the participation of Weckerle inures to the benefit of all creditors and its participation should be permitted provided that the financing contingency is waived prior to the commencement of the Auction.

### **Notice**

11. Copies of this motion have been provided to (1) counsel for the Debtors; (2) the Office of the United States Trustee; (3) counsel for Bank of America; (4) counsel for each of the Qualified Bidders; and (5) all parties requesting notice pursuant to Bankruptcy Rule 2002. Under the circumstances, the Committee submits that no further notice need be given.

### **No Prior Request**

12. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Committee requests entry of an Order authorizing Weckerle to participate in the Auction provided that it waives its financing contingency and granting such other and further relief as is just and proper.

Dated: March 22, 2010

PACHULSKI STANG ZIEHL & JONES LLP

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re : Chapter 11  
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SPECIALTY PACKAGING HOLDINGS, INC., : Case No. 10-10142 (KG)  
ET AL., :   
: Jointly Administered  
Debtors<sup>1</sup>. :

**ORDER GRANTING THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PERMIT THE PARTICIPATION OF WECKERLE MASCHINENBAU GMBH IN THE AUCTION SCHEDULED FOR MARCH 23, 2010**

Upon the *Motion of the Official Committee of Unsecured Creditors to Permit the Participation of Weckerle Maschinenbau GmbH in the Auction Scheduled for March 23, 2010* (the "Motion")<sup>2</sup> filed by the official committee of unsecured creditors in the above-captioned matter (the "Committee") to permit Weckerle to participate in the Auction notwithstanding the financing contingency set forth above, provided that such contingency is waived prior to the Auction; and it appearing that Weckerle's participation in the Auction in the best interest of the Debtors' estates and their creditors; that due and proper notice of the Motion has been given; and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor; it is hereby:

ORDERED that the Application is GRANTED; and it is further

ORDERED Weckerle may participate in the Auction notwithstanding the financing contingency set forth in its opening bid provided prior to the Bid Deadline, *provided*

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<sup>2</sup> All capitalized terms not defined herein retain the meanings provided by the Motion.

*that* such contingency is waived prior to the commencement of Auction on March 23, 2010 at 10:00 a.m. ET, and it is further .

ORDERED that no Qualified Bidder (as that term is defined in the Motion) may withdraw its bid for the Assets.

BY THE COURT:

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
The Honorable Kevin Gross  
United States Bankruptcy Court Judge