

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

In re:	:	Chapter 11
	:	
DHP HOLDINGS II CORPORATION, <i>et al.</i> ,	:	Case No. 08-13422 (MFW)
	:	(Jointly Administered)
	:	
Debtors.	:	Hearing Date: October 13, 2009
	:	Objection Deadline: October 8, 2009

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY
CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The Official Committee of Unsecured Creditors (the “Committee”) of DHP Holdings II Corporation, *et al.* (the “Debtors”), by and through its undersigned counsel, hereby moves for entry of an order converting the Chapter 11 cases of the Debtors to cases under Chapter 7 (the “Conversion Motion”). In support of the Conversion Motion, the Committee states as follows:

PRELIMINARY STATEMENT

1. This bankruptcy proceeding should have been converted several months ago. In January of this year, the Debtors sold substantially all of their assets and ceased operations. The Debtors just obtained a second extension of their exclusive periods to file a Chapter 11 plan, yet it seems highly unlikely that such a plan could ever be feasible in these cases since there are no funds in the Debtors’ Estates to provide any distribution to their creditors. This case has been run for the sole benefit of the secured lenders to the detriment of the other Estate interests. Indeed, comparing the Debtors’ assets to the Debtors’ liabilities, it becomes painfully clear that these cases are administratively insolvent. Meanwhile, no meaningful actions are being taken in these cases while the fees of the estate professionals continue to accrue.

2. The facts and circumstances of these cases lead to only one result—conversion—and the law is clear: since the Debtors have liquidated a clear majority of their assets, ceased their operations, and are only continuing to sustain negative cash flows post-petition, “cause” exists for this Court to convert these cases from a Chapter 11 to ones under Chapter 7. Moreover, since the Debtors do not generate any income from operations, and do not have another independent source of funds from which to fund the expenses of a Chapter 11 case or liquidating plan, it is in the best interest of all creditors to conclude these cases in a Chapter 7. A Chapter 7 trustee’s primary purpose is to collect, liquidate, and distribute estate property. Accordingly, a Chapter 7 trustee is in the best position to pursue these remaining actions in the most cost-efficient way possible for the Debtors’ Estates.

PROCEDURAL HISTORY

3. On December 29, 2008 (the “Petition Date”), each of the Debtors filed a voluntary petition in the Bankruptcy Court for the District of Delaware (the “Court”) for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their assets as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed to date.

4. Before the Petition Date, the Debtors entered into that certain credit agreement, dated December 6, 2004 (the “Prepetition Senior Credit Facility”), with GE Business Financial Services (formerly known as Merrill Lynch Business Financial Services, Inc.), as administrative agent (the “Prepetition Senior Agent”), and certain other lenders specified therein (collectively, the “Prepetition Senior Lenders”). The Prepetition Senior Credit Facility is composed of (i) a term loan in the original amount of \$150,000,000; (ii) a revolving credit line in the original

amount of approximately \$22.6 million; (iii) unissued swing loan; and (iv) issued letters of credit in the amount of \$3.8 million.

5. Because of a number of defaults by the Debtors under the Prepetition Senior Credit Facility, the Prepetition Senior Lenders froze the Debtors' credit line, permitted the Debtors to obtain additional financing from H.I.G. Capital Partners III, LP ("HIG Capital"), and required the sale of the Debtors' most profitable operating division, Heath Zenith, with the proceeds to be used to pay down the credit line.

6. As of the Petition Date, the outstanding principal amount due under the Prepetition Senior Credit Facility was approximately \$40.8 million, exclusive of accrued but unpaid interest, costs, fees, and expenses, consisting of approximately (i) \$27.7 million outstanding on the term loan debt, and (ii) \$13.1 million outstanding on the revolving credit line.

7. On December 29, 2009, the Debtors, along with filing their voluntary petition for bankruptcy, filed a motion for the use of cash collateral (the "Cash Collateral Motion") (Docket No. 11), and on December 30, 2009, this Court signed and entered an interim order (1) Authorizing Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Prepetition Lenders, and (3) Setting Final Hearing.

8. The Cash Collateral Motion lists the following entities as the ones with interest in cash collateral: (i) GE Business Financial Services Inc., as the Prepetition Senior Agent and the Prepetition Senior Lenders, and (ii) HIG Capital as Prepetition Subordinated Agent and Prepetition Subordinated Lenders.

9. On January 9, 2009, the Office of the United States Trustee appointed the Committee.

10. On February 11, 2009, the Debtors filed a Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors' FMI Contractor Business Assets Outside the Ordinary Course of Business to FMI Products, LLC, or a Higher and Better Bidder; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (the "Sale Motion") (Docket No. 164).

11. The Debtors' Balance Sheet for the period ending February 28, 2009 (Docket No. 261) shows the Debtors total assets were \$95,301,000, and total liabilities were \$141,338,000, of which \$53,979,000 was for secured debt. In the Debtors' most recent Balance Sheet for the period ending July 3, 2009 (Docket No. 590), the total assets were only \$32,458,000, while the total liabilities were \$119,364,000, of which \$36,556,000 was secured. Accordingly, within a four month period, the Debtors assets fell by 66%, while liabilities remained relatively stable.

RELIEF REQUESTED

12. By this Conversion Motion, the Committee respectfully requests that this Court enter an order pursuant to Section 1112(b)(1) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 1017 and 1019, converting these cases to cases under Chapter 7 of the Bankruptcy Code.

BASIS FOR RELIEF

13. Section 1112(b)(1) of the Bankruptcy Code provides in pertinent part that the court *shall* convert or dismiss a case if the movant establishes cause, unless the court determines that unusual circumstances exist such that conversion or dismissal would not be in the best interests of creditors and the estate. *See* 11 U.S.C. § 1112(b)(1); *In re Gateway Access Solutions, Inc.*, 374 B.R. 556, 560 (Bankr. M.D. Pa. 2007) (explaining that the statutory language changed

“from permissive to mandatory” and finding cause existed to convert the debtor’s cases where the value in the estate was diminished rapidly at the expense of creditors as extensive administrative costs from professional fees were accumulating while the case lingered in Chapter 11).

14. Section 1112(b)(4) provides a non-exhaustive list of sixteen factors under which the Court may find a showing of “cause” under Section 1112(b)(1) of the Bankruptcy Code, including if there is a substantial or continuing loss to or diminution of the estate in the absence of a reasonable likelihood of rehabilitation. *See* 11 U.S.C. § 1112(b)(4)(A). In the present case, the Debtors have no continuing operations, and the funds in the Debtors’ Estates that were generated by the sale of its business operations are depleting rapidly. Indeed, the Debtors have not yet made any payments to the bankruptcy professionals as required under this Court’s Interim Compensation Order entered on January 16, 2009 (Docket No. 85). Moreover, the Debtors’ Balance Sheets indicate the Debtors are hopelessly underwater in this case and have become more deeply entrenched in debt as this case has lingered in Chapter 11.

15. In general, the Debtors seem to have difficulty paying its business expenses. Not meeting their obligations and barely functioning under a negative post-petition cash flow constitutes cause to convert this Chapter 11 to one under Chapter 7. *See In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) (cause existed to convert the Chapter 11 cases in part because of the debtor’s negative cash flow and inability to pay current expense).

16. Conversion is further warranted under Section 1112(b)(4)(A) when there is an “absence of a reasonable likelihood of rehabilitation.” For this showing, Courts have consistently held that liquidation of the debtor does not and cannot equate to the “rehabilitation” contemplated by Section 1112(b)(1). *See Quarels v. United States Trustee*, 196 B.R. 94, 97

(W.D. Va. 1996) (finding that there was no likelihood of rehabilitation where debtor was losing money and only hope of reorganization depended on speculative outcomes in pending litigation); *In re Imperial Heights Apartments, Ltd.*, 18 B.R. 858, 863–64 (Bankr. S.D. Ohio 1982) (determining that there was no reasonable likelihood of rehabilitation where debtor’s only asset was a potential lawsuit). In the present case, the Debtors have made it clear from the outset of the case that they are merely liquidating any of their remaining assets and are in no way attempting to rehabilitate their business. As the Seventh Circuit explained, “although ‘reorganization’ may include a liquidating plan, rehabilitation does not.” *See Matter of Woodbrook Assoc.*, 19 F.3d 31, 317 (7th Cir. 1994). Under the current circumstances, it is unlikely that the Debtors will even be able to propose a feasible liquidating plan since they have not yet made any payments to Estate professionals, and it appears that the Debtors are indeed administratively insolvent.

17. After liquidating their assets, the Debtors have not generated any operating revenues for several months and have no prospects for doing so. Yet, the Estates continue to incur administrative expenses, which the Debtors seem to be unable to pay. Since the Debtors will continue to be cash flow negative, together with the fact that the Debtors have already liquidated their assets and therefore have no ability to rehabilitate, the Conversion Motion should be granted.

18. There are no unusual circumstances present such that conversion would not be in the best interests of the creditors and these Estates. To the contrary, these cases are simply liquidations that are being run by and for the sole benefit of the secured lenders. Other than prosecuting claim objections and Estate causes of action and attempting to convert any

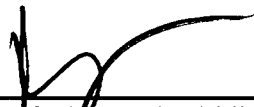
remaining Estate rights to cash, there is nothing left to do. If there should ever be a distribution to creditors, such distribution can be made more cost-efficiently by a Chapter 7 trustee.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order converting these Chapter 11 cases to Chapter 7 cases, and grant such other, further, and different relief as is just and proper.

Dated: October 1, 2009
Wilmington, Delaware

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