IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:	)	Chapter 11
	)	
Blackjewel, L.L.C., *et al.*,	)	Case No. 19-30289
	)	
Debtors.[1]	)	(Jointly Administered)

DEBTORS' OBJECTION TO JOINT MOTION OF BLACK DIAMOND INSURANCE GROUP, LLC, CLEARWATER INVESTMENT HOLDINGS, LLC, FORREST MACHINE, LLC, JEFFERY A. HOOPS, LEXINGTON COAL ROYALTY COMPANY, LLC, REPUBLIC SUPERIOR PRODUCTS, LLC, TRIPLE H AVIATION, LLC, TRIPLE H REAL ESTATE, LLC AND WALLS & ASSOCIATES, PLLC TO CONVERT TO CHAPTER 7

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") file this objection (the "Objection") to the *Joint Motion of Black Diamond Insurance Group, LLC, Clearwater Investment Holdings, LLC, Forrest Machine, LLC, Jeffery A. Hoops, Lexington Coal Royalty Company, LLC, Republic Superior Products, LLC, Triple H Aviation, LLC, Triple H Real Estate, LLC And Walls & Associates, PLLC to Convert to Chapter 7* [Docket No. 2595] (the "Motion to Convert").[2] In support of this Objection, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. By the Motion to Convert, the Moving Parties are seeking to convert the above-captioned chapter 11 cases (the "Chapter 11 Cases") to cases under chapter 7 because of their purported concerns regarding the incurrence of additional administrative expense claims, the Debtors' negative cash flow, the value obtained for assets sold early in these Chapter 11 Cases,

[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: Blackjewel, L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213).

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Motion to Convert or the Plan (as defined below), as applicable.

and the best interest of creditors as a whole. These concerns are mere pretext. The timing and circumstances of the Motion to Convert reveal it to be a self-serving, transparent and last-ditch litigation tactic by the Debtors' former President and Chief Executive Officer, Jeffery A. Hoops ("Hoops") and entities associated with, owned by or controlled by Hoops ("Hoops Entities"). On the eve of confirmation, Hoops seeks to derail confirmation of the Plan (defined below) and shift responsibility to an under-resourced chapter 7 trustee to pursue current and future litigation targeting Hoops and many of the Hoops Entities related to liability of Hoops and certain Hoops Entities for misconduct that materially damaged the Debtors and ultimately necessitated the filing of these Chapter 11 Cases.

2. As the Court is aware, the Debtors spent months fighting to obtain reasonable, targeted discovery pursuant to Bankruptcy Rule 2004 from Hoops and numerous Hoops Entities, including each of the Moving Parties (collectively, the "Hoops Parties").[3] The Debtors needed this information to investigate potential claims and causes of action against the Hoops Parties. Hoops and the Hoops Parties engaged in myriad self-dealing transactions that were often difficult to unravel, including because of the disorganized and incomplete state of the Debtors' prepetition business records.

3. Despite the delay and obfuscation tactics employed by the Hoops Parties, the Debtors' investigation has uncovered significant actionable conduct on the part of Hoops and certain of the Hoops Parties that caused real and substantial harm to the Debtors, their estates, and

[3] For the avoidance of doubt, the "Hoops Parties" include but are not limited to, the following entities: (1) Genesis Trucking; (2) Construction & Reclamation Services; (3) Lexington Coal Company, LLC; (4) Lexington Coal Royalty Company, LLC; (5) Aquatic Resources Management LLC; (6) Grand Patrician Resort, LLC; (7) Triple H Real Estate, LLC; (8) Black Diamond Insurance Group, LLC; (9) Clearwater Investment Holdings, LLC; (10) Hoops Dynasty Trust(s); (11) Clearwater Trust(s); (12) JBLCO, LLC; (13) Active Medical; (14) Forrest Machine, LLC; (15) Prep Plant Solutions LLC; (16) Blackjewel Trust; (17) Revelation Energy Trust; (18) Lexington Trust; (19) Walls & Associates, PLLC; and (20) Triple H Aviation, LLC. The "Hoops-Related Individuals" include, but are not limited to, the following individuals: (1) Patricia A. Hoops; (2) Jeffery Hoops, Jr.; (3) Jeremy Hoops; (4) Josh Hoops; (5) Jessica Hoops; (6) Lesley Hoops; (7) Amanda Hoops; and (8) Brent Walls.

their creditors and other stakeholders. The Debtors are moving forward with prosecuting the claims that they identified and analyzed in the course of their investigation.

4. Indeed, the Debtors have already commenced litigation against certain of the Hoops Parties, including Hoops, Clearwater Investment Holdings, LLC, and Lexington Coal Company, LLC, seeking tens of millions of dollars in damages related to numerous prepetition transactions and the conduct of many Hoops Parties. The Debtors filed another complaint today against numerous Hoops Parties [Adversary Proceeding No. 3:20-ap-03015] and will be filing additional complaints against various other Hoops Parties related to additional self-dealing and improper conduct. These additional claims include numerous instances of diversion of assets from the Debtors to Hoops and other Hoops Parties.

5. Under these circumstances, it is not surprising that the Hoops Parties prefer conversion to chapter 7 over confirmation of the Debtors' proposed Plan. The Hoops Parties have a choice of taking their chances with a chapter 7 trustee or defending against the certainty of litigation pursuant to a Plan that plainly states that recoveries for creditors are dependent on amounts recovered from the Hoops Parties. While the Debtors have no doubt that a chapter 7 trustee would also pursue some claims against the Hoops Parties, he or she (i) would not have the extensive institutional knowledge accumulated by the Debtors and their professionals (and thus the Liquidation Trustee to be appointed under the Plan) over the course of these cases, and (ii) likely will not have access to the resources necessary to prosecute numerous complex claims and causes of action against the Hoops Parties simultaneously and vigorously as the circumstances will require. The Hoops Parties are keenly aware of this and the filing of the Motion to Convert reflects a calculated attempt to avoid effective prosecution by having the Chapter 11 Cases converted to chapter 7 rather than under the proposed Plan.

6. While the Motion to Convert professes to be concerned with the best interest of creditors generally, that is simply not the case. Indeed, the great irony of the Motion to Convert is that a significant portion of it is dedicated to complaining about circumstances created by Hoops himself. For example, the Motion to Convert suggests the Debtors mismanaged the sale process because the Debtors' assets had a book value of $357 million prepetition, but the Debtors realized less than $44 million from the sale of assets. *See* Objection at ¶ 22. This statement is misleading for a number of reasons, including becuase: (i) book value is an accounting measure based on Generally Accepted Accounting Principles, and is absolutely not a measure of the true market value of assets; and (ii) the asserted book value does not reflect any of the obligations of the Debtors that are specifically associated with, and for the purposes of a sale are effectively attached to, the assets that were sold which effectively decreases or eradicates the realizable value of such assets.

7. In essence, the hypothetical realizable value the Moving Parties assert fails to attribute any impact to the considerable liabilities assumed by the asset purchasers as part of the sale transactions, including, among other liabilities, approximately $471.1 million in reclamation liabilities alone, representing over 90% of the total reclamation obligations outstanding at the time.[4] It needs to be noted that the Debtors were deeply insolvent as of the Petition Date, on both a book and market value basis, and this had been the case for years prior to the filing. Addressing the liabilities accumulated under Hoops' management of the Debtors was of the utmost importance to the Debtors during the sale process, particularly those obligations due to employees and on account of reclamation liabilities. The degree to which the Debtors were able to address and satisfy

[4] In at least the last four audits from 2015 through 2018, the Debtors' liabilities exceeded the value of the Debtors' assets. In these years, the liabilities exceeded assets by $188.3 million in 2015, $234.1 in 2016, $250.5 in 2017, and $192.2 in 2018. As of the Petition Date, the reclamation liabilities alone were $520.6 million, based on the amounts bonded against the permits.

the vast majority of these obligations is one of the most meaningful accomplishments in these Chapter 11 Cases.

8. Similarly, the Motion to Convert alludes to the Department of Justice's investigation of the Debtors pursuant to the False Claims Act, the various permit violations, and outstanding healthcare claims, but omits that the False Claims investigation relates to prepetition actions and that Hoops himself is the specific focus of that investigation, or that the permits violations, reclamation liability, and unfunded healthcare claims are all the direct result of the Debtors' prepetition actions under Hoops' control. *See* Motion to Convert at ¶ 24. In other words, the Motion to Convert points to deficiencies that are the direct result of Hoops' conduct that benefitted himself and the other Hoops Parties to the detriment of the Debtors' creditors and ultimately ran the Debtors' business into the ground. The suggestion that the eleventh-hour effort to frustrate litigation claims against the Hoops Parties is in the best interest of the creditors is disingenuous at best.

9. Beyond its fundamentally self-serving nature, the Motion to Convert is materially deficient in several additional respects, including:

- The Motion to Convert is set for hearing the same day as the Combined Hearing to consider final approval of the Debtors' Disclosure Statement. To the extent the Court confirms the Debtors' Plan, the Motion to Convert will be moot. By definition, there can be no diminution or continuing loss when the Debtors are dissolved and all assets and causes of action transferred to the Liquidation Trust or the Reclamation Trust, as applicable.

- The Motion to Convert fails to demonstrate how a single creditor constituency would be benefited by conversion to chapter 7. Clearly, conversion would benefit the Hoops Parties, but there is no evidence that any other parties in interest would be benefitted. It is telling that no creditors other than certain of the Hoops Parties (*i.e.*, no parties that are not the subject of litigation to be pursued by the Liquidation Trust, or which are associated with parties subject to litigation claims by the Liquidation Trust), have joined in the Motion to Convert. Indeed, the Debtors have been advised that key stakeholders including

the Official Committee of Unsecured Creditors, the United States Government and the Office of the United States Trustee all oppose conversion.

- The combination of the Moving Parties' unique self-interest and the fact that the Debtors are on the cusp of confirming a plan with the support of general unsecured creditors rises to the level of "unusual circumstances" necessary to deny the Motion to Convert.

- The Motion to Convert fails to acknowledge that the Debtors (and the Liquidation Trustee following confirmation) are actively pursuing valuable causes of action and other estate assets that may provide a recovery to creditors, including claims against the Hoops Parties and litigation against United Bank. Additionally, the Court recently ruled that approximately $2 million held in escrow pending the outcome of a dispute with United Bank is unencumbered by United Bank's liens. Such estate causes of action alone constitute valuable estate assets.

10. Accordingly, for all the foregoing reasons and as discussed in detail below, the Debtors respectfully submit that the Motion to Convert is fundamentally flawed, has nothing to do with the best interest of creditors as a whole and should be denied.

BACKGROUND

A. General Background

11. On July 1, 2020 and July 24, 2020 (each, respectively, the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

12. The Debtors have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 3, 2019, the Office of the United States Trustee for Region 4, the District of West Virginia (the "U.S. Trustee"), appointed an Official Committee of Unsecured Creditors [Docket No. 46] (the "Committee").

13. A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the *Declaration of Jeff A. Hoops, Sr. in Support of Chapter 11 Filings and First Day Motions* [Docket No. 14].[5]

B. Plan of Liquidation

14. On October 21, 2020, the Debtors filed the *First Amended Disclosure Statement for the Joint Chapter 11 Plan of Liquidation for Blackjewel, L.L.C. and its Affiliated Debtors* [Doc. No. 2500] (as amended, supplemented or otherwise modified from time to time, according to its terms, the "Disclosure Statement") and the *First Amended Joint Chapter 11 Plan of Liquidation for Blackjewel, L.L.C. and its Affiliated Debtors* [Doc. No. 2499] (as amended, supplemented or otherwise modified from time to time, according to its terms, the "Plan").

15. On October 16, 2020, the Court entered an order [Docket No. 2470] (the "Solicitation Procedures Order"): (a) authorizing the Debtors to solicit votes on the Plan; (b) conditionally approving the Disclosure Statement as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to confirmation of the Plan and final approval of the Disclosure Statement.

16. Pursuant to the Solicitation Procedures Order, on October 23, 2020, the Debtors commenced solicitation of votes to accept the Plan. The deadline to submit votes in favor of or against confirmation of the Plan was December 10, 2020, at 4:00 p.m. (prevailing Eastern time) (the "Voting Deadline").

[5] Mr. Hoops resigned his positions as officer and director of each of the Debtors on July 3, 2019 and is no longer involved in the management of the Debtors or their businesses.

17. The hearing at which the Court will consider confirmation of the Plan and final approval of the Disclosure Statement (the "Combined Hearing") will commence seven days from the filing of this Objection on December 17, 2020 at 9:30 a.m. (prevailing Eastern Time).

C. The Debtors' Substantial Successes in Chapter 11

18. Beyond the Debtors' recent efforts to obtain confirmation of the Plan, the history of these cases tells a story of significant success in the face of almost certain failure at the outset. As the Court is aware, these cases were nearly converted to chapter 7 in the first days after the Initial Petition Date, due to an inability to obtain sufficient financing, and have lived under that threat throughout the cases.

19. Notwithstanding the initial difficulties the Debtors faced, they have managed to accomplish a great deal in chapter 11 with the support of their key creditor constituencies, including:

- obtaining several short term debtor in possession financing facilities necessary to sustain the cases;
- completing an auction and sale process for substantially all of the Debtors' assets over the course of eleven days;
- closing ten separate sales arising from that extremely successful process;
- closing two additional post-auction, private sales of the Debtors' assets, including the sale of the Debtors' significant Wyoming assets;
- resolving prepetition employee wage disputes with the United States Department of Labor, and securing payment of all prepetition wages outstanding as of the Petition Date;
- resolving all claims and disputes with the Debtors' primary prepetition secured lender group agented by, Riverstone Credit Partners – Direct, L.P.;
- resolving all disputes with Blackjewel Marketing & Sales Holding, L.P.;
- obtaining the agreement of Highbridge Capital Management, LLC and Whitebox Advisors LLC to forego any recovery on the debtor in possession financing they extended to the Debtors;

- developing procedures for, and successfully executing on, the sale, transfer, or abandonment of numerous *de minimis* assets (including the sale of numerous mining permits along with the assumption of significant reclamation obligations);

- working with purchasers on issues related to assumption and assignment of executory contracts and unexpired leases of nonresidential property;

- working with sureties and regulators to identify potential resolution strategies related to various remaining mining assets, related mining permits, and the associated reclamation obligations;

- pursuing an injunction against health care providers pursuing claims against former employees while the Debtors work with United HealthCare Services, Inc. to understand the amount and nature of unprocessed claims under the Debtors' self-insured health plan and potential sources of satisfaction;

- engaging in extensive efforts with state regulators and the Debtors' sureties to transfer mining permits to qualified transferees, including those that remained in the estates after the original sale process concluded;

- filing joint motions with the Committee seeking Bankruptcy Rule 2004 discovery from the Hoops Parties and United Bank to investigate, among other things, potential fraudulent transfers and other claims involving tens of millions of dollars of prepetition related party transactions between the Debtors and the Hoops Parties;

- commencing adversary proceedings against United Bank, Clearwater Investment Holdings, LLC, Lexington Coal Company, Hoops, and Construction and & Reclamation Services, LLC, and preparing to file additional adversary proceedings against other Hoops Parties; and

- formulating the Plan and Disclosure Statement, obtaining conditional approval of the Disclosure Statement, and soliciting votes thereon.

17. Converting these cases to chapter 7 now, on the cusp of the Combined Hearing and following the successes achieved to date, and just as the Debtors' efforts to complete the investigation of, and initiate the prosecution of, significant claims against various Hoops Parties are maturing, threatens to harm and unnecessarily prejudice the Debtors' stakeholders and is not in the best interests of the Debtors' creditors as a whole.

ARGUMENT

A. The Hoops Parties Cannot Demonstrate Cause under 11 U.S.C. § 1112(b)(4)(A) or on the basis of administrative insolvency.

18. The Hoops Parties argue that cause exists pursuant to 11 U.S.C. § 1112(b)(4)(A) because of alleged "substantial or continuing losses" and "absolutely no reasonable ability whatsoever to pay any expenses as they come due." *See* Motion to Convert ¶ 36. The Hoops parties bear the burden of establishing cause for a motion to convert. *See In re Burgess*, No. 11-1257, 2013 WL 5874616, at *1 (Bankr. N.D. W.Va. Oct. 30, 2013). They fail to satisfy that burden.

19. As a threshold matter, the Hoops Parties' argument regarding losses and diminution of the estates will be moot if the Plan is confirmed at the Combined Hearing. The hearing on the Motion to Convert is scheduled to occur contemporaneously with the Combined Hearing to consider confirmation of the Plan. The Debtors are confident that they will be able to satisfy all of the confirmation requirements of section 1129 of the Bankruptcy Code such that the Court will be presented with a record sufficient to justify confirmation of the Plan.

20. If the Court enters an order confirming the Plan, the Debtors will be dissolved and all their assets will be transferred to the Liquidation Trust or Reclamation Trust, as applicable. Therefore, upon confirmation and effectiveness of the Plan, there can be no continuing loss to or diminution of the Debtors' estates. This fact also negates the Hoops Parties' assertions that the Debtors are improperly attempting to benefit from the protection of chapter 11 "indefinitely" (Motion to Convert ¶ 59) and will continue to incur administrative expenses. Contrary to the Hoops Parties' assertions, the Debtors are working to conclude these Chapter 11 Cases as quickly and efficiently as possible. Indeed, conversion of the cases, rather than Plan confirmation, would result in the incurrence of additional unnecessary administrative expenses. And the support of the

Debtors' unsecured creditors for the Plan and the fact that no creditor other than the Hoops Parties has joined the Motion to Convert evidences that the Moving Parties do not represent the best interests of creditors as they profess.

21. The Bankruptcy Code provides for conversion or dismissal of a chapter 11 case based on continuing loss to or diminution of the estate in order to prevent the debtor-in possession from "gambling" on continued reorganization efforts at the creditors' expense. *See In re Lizeric Realty Corp.*, 188 B.R. 499, 503 (Bankr. S.D.N.Y. 1995). No such concern is present in these cases for general unsecured creditors because the Hoops Parties seemingly acknowledge that general unsecured creditors are out of the money under the current financial condition of the estates. *See* Motion to Convert at ¶ 40 ("[t]here can be no denying that the Debtors have significant unpaid administrative costs which only continue to increase and no income or funds with which to pay those costs"). In this case, there is no risk of speculative continuation of chapter 11 because the requested confirmation of the Plan is imminent.

22. Moreover, the Debtors cannot be risking the financial interests of unsecured creditors when the Hoops Parties themselves acknowledge that unsecured creditors have no remaining financial interests and fail to offer any evidence to support the proposition that general unsecured creditors—or any creditors—would be better off by converting these cases. Courts have recognized this logical and common sense conclusion. *E.g., In re GPA Tech. Consultants, Inc.*, 106 B.R. 139, 141 (Bankr. S.D. Ohio 1989) (rejecting a motion to convert based on diminution of value and observing that "the unsecured creditors and equity holders will not get anything from the estate whether the business is liquidated in a Chapter 11 or Chapter 7" and therefore "there is no estate as far as the unsecured creditors and equity holders are concerned"); *In re Western Pac. Airlines*, 218 B.R. 590, 594 (Bankr. D. Colo. 1998) (declining to order conversion on the basis of

diminution of value where "the unsecured creditors and equity holders will not receive a distribution from the Estate whether the case is a Chapter 11, a Chapter 7, or under state law").[6] Moreover, the Hoops Parties plainly do not speak for general unsecured creditors. The Committee and other key stakeholders have advised the Debtors that they fully support the Plan and oppose the Motion to Convert and general unsecured creditors voted in favor of the Plan.

23. The same logic applies to the Hoops Parties' claims regarding administrative insolvency. It might support conversion only where creditors are more likely to recover greater amounts in chapter 7. Like the Hoops Parties' argument concerning diminution in value, that concern is not present in this case where the Hoops Parties themselves contend there is nothing currently available to distribute to unsecured creditors. *See* Motion to Convert at ¶ 36 ("[t]he Debtors have only minimal cash available, untold amounts of administrative and priority claims, and absolutely no reasonable ability whatsoever to pay any expenses as they come due").

24. The Hoops Parties also argue without support that a chapter 7 trustee would not be "unwilling [or] unable to provide at a significantly reduced cost to the estate and ultimately the unsecured creditors" the same services the estate professionals are currently providing. Motion to Convert at ¶ 41. They do not, however, argue that recoveries will be increased in a conversion to chapter 7. They essentially argue that a chapter 7 trustee will be able to continue the same workstreams that the Debtors are performing today at a lower cost. While the Debtors do not accept that chapter 7 is the lower cost option (particularly where a trustee would not have the

[6] Moreover, there is no rigid temporal requirement to convert a chapter 11 case even where diminution in value has existed. "Bankruptcy judges have wide discretion to determine whether cause exists to convert a case under section 1112(b)." *In re Emerald Grande, LLC*, No. 17-bk-21, 2018 Bankr. LEXIS 1614, at *5-6 (Bankr. N.D.W. Va. June 4, 2018). They may consider, among other things, whether a debtor may improve its financial condition within a "reasonable amount of time." *Id.* (citing and quoting *In re Burgess*, 2013 Bankr. LEXIS 4540(Bankr. N.D.W. Va. Oct. 30, 2013). "Courts have routinely rejected motions to dismiss under Section 1112 where, as here, the purpose of the bankruptcy is to conduct an orderly liquidation of the debtor's assets for the benefit of all creditors." *Santa Fe Minerals, Inc. v. BEPCO, L.P. (In re 15375 Mem. Corp.)*, 382 B.R. 652, 683 (Bankr. D. Del. 2008).

knowledge gained from months of investigation), the issue for the Debtors' creditors is not whether the cost of pursuing litigation is lower in chapter 7 than pursuant to the Plan. The real issue is which alternative is most likely to produce the greatest recovery to the most creditors. The Hoops Parties fail to demonstrate how conversion to chapter 7 will benefit a single creditor (other than the Hoops Parties) or how a chapter 7 trustee, without any current knowledge of these cases, the months-long investigation of claims, or the resources available to the Liquidation Trust, could possibly generate greater recoveries for creditors than allowing the cases to conclude through Plan confirmation and the establishment of the Liquidation Trust. In stark contrast, the Debtors will establish at the Combined Hearing that recoveries to creditors will be enhanced, not diminished, as a result of the confirmation of the Plan.

B. The Hoops Parties Manufactured Cause under 11 U.S.C. § 1112(b)(4)(I).

25. The Hoops Parties also argue that cause exists pursuant to 11 U.S.C. § 1112(b)(4)(I) because the Debtors have failed to file several tax returns and "refuse to do so." *See* Motion to Convert ¶ 55. The Hoops Parties, however, fail to acknowledge that the circumstances which prevent the Debtors from filing the necessary tax returns are a product of Hoops' poor business practices and his own refusal to execute the tax returns for periods during which he was controlling the prepetition Debtors. Before resigning, Hoops' mismanagement left the Debtors' records in such disarray that completing the tax returns proved to be extremely challenging and subject to vagaries into which only the parties in charge at the time would have the necessary insight.

26. Specifically, the tax returns due for 2018, which are part of the unfiled returns, are for a period in time during which Hoops was in clear and complete control of the Debtors. Hoops was similarly in control of the Debtors during the first half of 2019 until he was forced to resign

on July 3, 2019. Hoops, as the owner or controller of certain entities that are members of the Debtors, should clearly be able to sign the returns himself but has refused to do so.

27. Moreover, the assertion that the Debtors refuse to file the appropriate tax returns is patently false. The Debtors are working closely with counsel for the IRS to determine how to best resolve the IRS's tax return request. As the Debtors have previously indicated, the Debtors' 2018 tax returns have been completed for some time and drafts have been provided to the IRS. The Debtors' 2019 tax returns are in the process of being completed now by a new accounting firm. Previous tax returns were completed by Walls & Associates, PLLC, but that firm declined to prepare the 2019 returns which is why the Debtors have had to find a new accounting firm with limited knowledge of the Debtors' accounting records. Notably, Walls & Associates, PLLC is one of the Moving Parties to the Motion to Convert and is a Hoops Party. This adds to the disingenuousness of the Moving Parties. The Debtors are hopeful the issues concerning both the 2018 and 2019 tax returns will be resolved to the IRS's satisfaction in advance of the Combined Hearing.

28. While the Debtors are making every effort to have the returns in question filed, their failure to file them before now was caused by issues outside of the Debtors' control (issues which largely emanate from Hoops himself) and is not a basis upon which to convert these Chapter 11 Cases.

C. The Unusual Circumstances in these Chapter 11 Cases Render Conversion Inappropriate.

29. Section 1112(b)(2) provides that:

> The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of

> creditors and the estate, and the debtor or any other party in interest establishes that –
>
> (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
>
> (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A) – (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2).

30. Section 1112(b)(2) affords bankruptcy courts discretion to deny a motion to convert where unusual circumstances are present. As discussed above, these Chapter 11 Cases have been plagued with unusual circumstances stemming in large part from the Hoops Parties' misconduct, and the same is true today. The fact that (i) the Hoops Parties' motivation for filing the Motion to Convert is self-serving and not in the best interest of creditors generally; and (ii) the Debtors are on the eve of confirmation with support from the general unsecured creditors, are unusual circumstances that warrant denial of the Motion to Convert.

31. The Court should take notice of the timing of the Motion to Convert. While the Chapter 11 Cases have been ongoing for over a year, the Hoops Parties chose to move to convert these Chapter 11 Cases immediately prior to confirmation of a Plan pursuant to which the Liquidation Trustee intends to pursue various significant causes of action against many of the Hoops Parties. To say the Hoops Parties come before the Court with unclean hands is a gross understatement. Indeed, the Debtors believe that the only parties that could possibly benefit from conversion of these Chapter 11 Cases are the Hoops Parties.

32. The existence of these opposing motives constitutes "unusual circumstances" for purposes of section 1112(b)(2). *See In re Hermanos Torres Perez, Inc.*, No. 09-05585-EAG, 2011

Bankr. LEXIS 4527 (Bankr. D.P.R. Nov. 21, 2011) (denying a motion to convert and finding that the debtor's adversary proceeding against the movant on the motion to convert "qualifies as an 'unusual circumstance' that defeats conversion"); *In re GPA Technical Consultants, Inc.*, 106 B.R. 139, 143 (Bankr. S.D. Ohio 1989) ("[t]he existence of claims against third parties is a factor in favor of denial of the motion [to convert] . . . it will not necessarily be in the best interest of the creditors and the estate to dismiss the case because doing so might result in a windfall in favor of those who received preferential transfers or might encourage defendants to delay the adversary proceedings until the debtor-in-possession surrenders").

33. Moreover, converting the cases now would frustrate the months-long investigation into Hoops Parties' activities and waste the substantial investment of time and effort by the estates in investigating and preparing claims. Indeed, the Debtors have already commenced various adversary proceedings and are preparing to file additional complaints alleging substantial claims for the benefit of the beneficiaries of the proposed Liquidation Trust.

34. The Hoops Parties are dismissive of the impact of confirmation of the Plan. *See* Motion to Convert at ¶ 61 ("[w]hether or when the Debtors can confirm a plan is irrelevant to the issue of whether these cases should be converted"). The other parties in interest to these cases disagree. Based on the voting report available as of today, the Voting Deadline, the Debtor's Plan has received the necessary creditor support. As more fully set forth above, confirmation of the Plan would moot the Hoops Parties' basis for cause to convert these Chapter 11 Cases thereby making the possibility of confirming the Plan far from "irrelevant." Stated another way, there is no basis for the Moving Parties to seek conversion of the case based on substantial or continuing loss or diminution to the estates when imminent confirmation of the Plan itself establishes that no such loss or diminution can or will occur.

35. The Debtors believe these circumstances clearly demonstrate both: the failure of the Hoops Parties to justify conversion, and the inappropriateness of conversion at this juncture of the Chapter 11 Cases. The Hoops Parties seek conversion as the Debtors are on the verge of confirmation of a plan of liquidation intended to conclude these Chapter 11 Cases. The Debtors also believe that the Hoops Parties' improper motives for attempting to derail the imminent confirmation simply cannot be ignored. Accordingly, the Debtors respectfully submit that the Motion to Convert is fundamentally inappropriate and should be denied.

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WHEREFORE, the Debtors respectfully request that the Court enter an order sustaining this Objection and denying the Motion to Convert; or in the alternative.

DATED: December 10, 2020

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