

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

In re:

ONE AVIATION CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12309(CSS)

(Jointly Administered)

Hearing Date: July 1, 2019 at 11:00 a.m.

Objection Deadline: June 24, 2018 at 4:00 p.m.

**UNITED STATES TRUSTEE’S MOTION
FOR ENTRY OF AN ORDER DISMISSING THE
CHAPTER 11 CASE OR, ALTERNATIVELY, CONVERTING
THE CASE TO CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112(b)**

Andrew R. Vara, the Acting United States Trustee for Region 3 (“U.S. Trustee”), by and through his undersigned attorneys, moves the Court for entry of an order dismissing this Chapter 11 case or, alternatively, converting the case to Chapter 7 under 11 U.S. C. § 1112(b) (the “Motion”), and in support of the Motion states as follows:

1. This Court has jurisdiction to hear this Motion.
2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of Chapter 11 cases filed in this judicial district and specifically authorized to seek conversion or dismissal of a case under Section 1112. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys. Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

3. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on this Motion.

BACKGROUND

A. The Debtors’ “Prepackaged” Plan Remains Unconfirmed Eight Months After the Petition Date.

4. On October 9, 2018, the above-captioned Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. On the Petition Date, the Debtors filed their Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and its Debtor Affiliates, along with the related disclosure statement. (D.I. 13 & 14).

6. The Plan provides that holders of Allowed First Lien Credit Agreement Claims will receive the New Class A Common Stock and New Preferred Stock. Holders of General Unsecured Claims would have received no distribution on account of their claims, while holders of Senior Subordinated Secured Note Claims will receive New Class B Common Stock and New Warrants if they vote to accept the Plan, but will receive no distribution if they reject the Plan.

7. On October 15, 2019, the Court entered an order conditionally approving the Disclosure Statement for the Prepackaged Plan, setting November 20, 2018 as the confirmation hearing date, and establishing related deadlines. (D.I. 54).

8. On October 22, 2018, the U.S. Trustee appointed an official committee of

unsecured creditors (the “Committee”).

9. The Committee sought and obtained an order extending the deadlines relating to the Prepackaged Plan, extending the dates by approximately one month. (D.I. 123).

10. The Debtors subsequently received four additional extensions of the confirmation date and associated deadlines relating thereto. *See* D.I. 216, 362, 438, and 490.

11. On January 18, 2019, the Debtors filed an amended version of the Prepackaged Plan (the “First Amended Prepackaged Plan”). (D.I. 347).

12. On March 1, 2019, the Debtors filed their First Amended Joint Prepackaged Chapter 11 Plan of Reorganization (as Modified) for ONE Aviation Corporation and Its Debtor Affiliates (the “Modified First Amended Prepackaged Plan.”). (D.I. 444).

13. The Modified First Amended Prepackaged Plan incorporates a proposed settlement with the Committee. Through this settlement, the unsecured creditors of the Debtors are now separated into three separate classes: the Unsecured Notes Claims, the One Aviation General Unsecured Claims, and the Kestrel General Unsecured Claims. The Plan asserts that each of these classes are fully impaired and are not entitled to vote on the Modified First Amended Prepackaged Plan.

14. However, pursuant to the proposed settlement with the Committee, the Prepetition First Lien Lender will deposit \$850,000 into a segregated account maintained by the Debtors, which will be distributed pro rata to holders of allowed One Aviation General Unsecured Claims. No distributions will be made to Unsecured Note Claims or Kestrel General Unsecured Claims.

15. The most recent scheduling order called for objections to the Prepackaged Plan

and objections for opting out of releases to be April 29, 2019, the deadline to object to cure notices be May 3, 2019, and the combined hearing to be held on May 7, 2019. (D.I. 490).

16. On May 5, 2019, the Debtors filed a Notice of Agenda, indicating that the confirmation hearing would be adjourned to the “next omnibus hearing date,” and that the objection deadlines as to both confirmation and cure notices would be “adjourned to a date to be determined.” The Notice of Agenda was silent as to whether the deadline to opt out of the third party releases would be extended.

17. On May 13, 2019, the Court scheduled an omnibus hearing for July 1, 2019 at 11:00 a.m. (D.I. 533). The Debtors have not re-noticed the confirmation hearing for this date, and have not provided notice of the new objection deadlines relating thereto.

18. On May 7, 2019, the Debtors filed their Second Motion to Extend the Debtors’ Exclusive Periods to File and Solicit Votes on a Chapter 11 Plan. (D.I. 526).

19. On June 4, 2019, the Committee filed an objection (the “Committee Objection”) to the Exclusivity Motion. (D.I. 544).²

B. The Debtors’ Financial Condition

20. The last Monthly Operating Report filed by the Debtors covers the Reporting Period March 1, 2019 – March 31, 2019.³ (The March MOR, D.I. 519).

² The Debtors filed the Exclusivity Motion on the last date before exclusivity expired, without scheduling a hearing date. Pursuant to Delaware Bankruptcy Local Rule 9006-2, the Debtors obtained an automatic, indefinite extension of their exclusivity period, pending scheduling it for a hearing. After the Committee filed its objection, the Debtors scheduled the Exclusivity Motion to be heard on July 1, 2019.

³ The Debtors have not yet filed the Monthly Operating Report for April 2019. The Debtors are current in payment of U.S. Trustee quarterly fees.

21. The Consolidated Schedule of Cash Receipts and Disbursements contained in the March MOR reveals that the Debtors have brought in \$5,304,588 during the course of these cases, but have spent \$10,753,678, for a negative cash flow of \$5,449,090, and ending March with a perilously low cash balance of only \$97,786. The unaudited Statement of Operations shows a cumulative net loss during these cases of \$5,853,613.⁴

22. The March MOR also demonstrates that the Debtors have been operating at a cumulative loss of \$4,739,970 *before factoring in reorganization costs*.

23. The Consolidated Summary of Unpaid Post Petition Accounts Payables discloses \$4,453,266 of unpaid administrative expense claims, \$3,642,839 of which are more than 31 days past due.

C. Committee Allegations

24. The Committee Objection asserted facts that, if true, support the conversion or dismissal of the cases, including:

12. . . . Since the mid-January 2019 settlement with the Committee and Citiking International US LLC (“Citiking”), the Debtors have failed to reach any resolution with their pre-petition first lien lender and DIP financing lender, Citiking, as well as other parties who took issue with the Plan. Upon information and belief, because of Citiking’s financial inability to consummate the transaction with the Debtors as set forth in the Plan, the party that sold Citiking a portion of its debt holdings, DWC Pine Investments I, Ltd., has taken back that debt and now controls approximately half of the pre- petition senior secured debt.

13. In addition, despite the passage now of several months, Citiking has not approved a revised DIP budget despite requests to do so, in contravention of the Final DIP Financing Order entered by the Court on November 27, 2018

⁴ There appears to be a calculating error in this document, as the cumulative Total Reorganization Expenses is listed as (510,884), which is the same as the Total Reorganization Expenses listed for March 2019. The amounts listed in the cumulative Total Reorganization Expenses column lists \$7,648,418 in reorganization expenses. If this number is utilized, the cumulative net loss during these cases is \$12,480,263.

[Docket No. 208].

14. Further, as the Court is well aware, Citiking was an entity created just prior to the bankruptcy by a Chinese national for the purpose of purchasing the pre-petition secured debt, and acting as both the DIP lender and stalking horse buyer. Thus, Citiking is simply a shell entity, other than its DIP lien on the Debtors' assets. Despite the Committee's requests, Citiking has not provided the Committee with a business plan or coherent statement of what Citiking, the plan proponent, would do with the Debtors' assets if it were the successful bidder. Simply put, the Committee has seen no evidence of progress towards confirmation of a plan.

15. . . . Based on the most recent unapproved DIP budget shared with the Committee's professionals, the unpaid professional fee obligations will reach \$9 to \$10.1 million by May 31, 2019, and will likely increase thereafter. Upon information and belief, the Debtors current availability under the DIP Facility is less than \$2 million. Given that the Debtors' monthly payroll and related payroll costs average \$650,000 per month, the Debtors' liquidity situation is precarious and they may soon run out of cash. The Debtors' liquidity crisis is not entirely due to the cost or duration of these bankruptcy cases because a significant contributing factor to the cash burn is the lack of profitable post-petition operations and the failure, inability or unwillingness of the Debtors' management to implement cost reductions and improvements. The Debtors' total payroll and related costs and inventory purchases, both of which are the Debtors' largest variable costs, continue to exceed total cash receipts (excluding DIP financing) through March 31, 2019. Accordingly, for every dollar of revenue the Debtors presently earn, they incur greater costs for parts and labor, thus losing cash post-petition.

BASIS FOR RELIEF

25. This case should be dismissed pursuant to 11 U.S.C. § 1112(b)(1), which provides:

Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

26. It is grounds to convert or dismiss a chapter 11 cases if there is a “continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). “Rehabilitation,” as the term is used in 11 U.S.C. § 1112(b)(4)(A), means “to put back in good condition; re-establish on a sound, firm basis.” 5 COLLIER ON BANKRUPTCY § 1112.03(2) (15th ed. 1980) (quoted in *re L.S. Good & Co.*, 8 B.R. 315, 317 (Bankr. N.D. W.Va. 1980)).

27. The Debtors are operating at a substantial loss, even before factoring in the restructuring fees and expenses. The Debtors have millions of unpaid post-petition expenses and an apparent inability to pay such expenses. The cases appear administratively insolvent. Both the DIP facility and unpaid administrative expenses continue to increase each month that the Debtors remain in bankruptcy.

28. The Debtors have been unable to confirm their “prepackaged” plan for over eight months. The Debtors have even been unable to confirm the modified plan, which had the support of the Committee, for nearly five months since entering into a proposed settlement with the Committee.

29. Based on the above facts, the Debtor has a substantial or continuing loss to or diminution of the estate, and there is an absence of a reasonable likelihood of rehabilitation, which constitutes cause to dismiss or convert the case under 11 U.S.C. § 1112(b)(4)(A).

30. “Cause” has been established under 11 U.S.C. § 1112(b)(4)(A). When read together, sections 1112(b)(1) and (2) of the Bankruptcy Code indicate that, if a movant establishes “cause,” the Court “shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate,”

unless “the court finds and specially identifies unusual circumstances establishing that converting or dismissing the case is not in the best interest of the creditors and the estate.” There are no such “unusual circumstances” here, and therefore conversion or dismissal is mandated.

RESERVATION OF RIGHTS

31. The U.S. Trustee reserves all rights, remedies and obligations to, amongst other things, complement, supplement, augment, alter, substitute and/or modify this Motion and to conduct any and all discovery as may be required or deemed necessary, and to assert such other grounds as may become apparent.

WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order dismissing the case or converting it to a case under chapter 7 of the Bankruptcy Code (proposed orders attached as Exhibit A), and/or such other relief as this Court deems appropriate, fair and just.

Respectfully submitted,

ANDREW R. VARA
ACTING UNITED STATES TRUSTEE
Region 3

Dated: June 10, 2019

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

In re: ONE AVIATION CORPORATION, <i>et al.</i> , ¹ Debtors.		Chapter 11 Case No. 18-12309(CSS) (Jointly Administered) Hearing Date: July 1, 2019 at 11:00 a.m. Objection Deadline: June 24, 2019 at 4:00 p.m.
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**NOTICE OF UNITED STATES TRUSTEE’S MOTION FOR ENTRY OF AN ORDER
DISMISSING THE CHAPTER 11 CASE OR, ALTERNATIVELY, CONVERTING THE
CASE TO CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112(B)**

PLEASE TAKE NOTICE that on June 10, 2019, Andrew R. Vara, Acting United States Trustee for Region 3, filed the attached United States Trustee’s Motion For Entry Of An Order Dismissing The Chapter 11 Case Or, Alternatively, Converting The Case To Chapter 7 Pursuant To 11 U.S.C. § 1112(B) (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **July 1, 2019 at 11:00 a.m. Eastern Time**, before the Honorable Christopher S. Sontchi, Chief Judge for the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801.

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon the undersigned, so as to be received on or before **June 24, 2018, at 4 p.m. Eastern Time.**

Dated: June 10, 2019

**ANDREW R. VARA
ACTING UNITED STATES TRUSTEE
REGION 3**

By: /s/ Linda J. Casey
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EXHIBIT A

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

In re:	Chapter 11
ONE AVIATION CORPORATION, <i>et al.</i> , ¹	Case No. 18-12309(CSS)
Debtors.	(Jointly Administered)

ORDER DISMISSING CASE

This matter came before this Court on the Motion of United States Trustee for entry of an Order Dismissing this Chapter 11 case or, alternatively, Converting the case to Chapter 7 under 11 U.S. C. § 1112(b) (the “Motion”); and finding that due and sufficient notice of the Motion having been given; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding under 28 U.S.C. § 157(b)(2); and after due deliberation and sufficient cause appearing therefore, based upon the record, the Court finds that grounds exist to dismiss the above-captioned case. Based on the foregoing and on the record in these cases, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

1. The Motion is GRANTED insofar as it seeks dismissal of the above-captioned bankruptcy case and the case is hereby DISMISSED.

DATED: _____
Wilmington, Delaware

The Honorable Christopher S. Sontchi
Chief Judge of the United States Bankruptcy
Court for the District of Delaware

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

In re:	Chapter 11
ONE AVIATION CORPORATION, <i>et al.</i> , ²	Case No. 18-12309(CSS)
Debtors.	(Jointly Administered)

ORDER CONVERTING CASE

This matter came before this Court on the Motion of United States Trustee for Entry of an Order Dismissing this Chapter 11 case or, alternatively, Converting the case to Chapter 7 under 11 U.S. C. § 1112(b) (the “Motion”); and finding that due and sufficient notice of the Motion having been given; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding under 28 U.S.C. § 157(b)(2); and after due deliberation and sufficient cause appearing therefore, based upon the record, the Court finds that grounds exist to convert the above-captioned Chapter 11 case to a case under Chapter 7, pursuant to 11 U.S.C. §1112(b). Based on the foregoing and on the record in these cases, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. The Motion is GRANTED insofar as it seeks to convert the above-captioned Chapter 11 case to a case under Chapter 7, and this case is hereby converted to a case under Chapter 7.

² The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

IT IS FURTHER ORDERED that:

1. The Debtor shall:
 - a. Forthwith turn over to the Chapter 7 trustee all records and property of the estates under their custody and control as required by Federal Rule of Bankruptcy Procedure (“FRBP”) 1019 (4); and
 - b. Within 15 days of the date of this order file a schedule of unpaid debts incurred after commencement of the superseded case including the name and address of each creditor, as required by FRBP 1019(5).
2. The Debtor shall, within 30 days from the date of this order, file and transmit to the United States Trustee a final report and account as required by FRBP 1019(5)(A).

DATED: _____
Wilmington, Delaware

The Honorable Christopher S. Sontchi
Chief Judge of the United States Bankruptcy
Court for the District of Delaware