IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ONE AVIATION CORPORATION, et al.,[1]	Case No. 18-12309 (CSS)
Debtors.	(Jointly Administered)
	Hearing Date: June 4, 2020 at 1:00 p.m. (ET) **Objection Deadline: May 22, 2020 at 4:00 p.m. (ET)**

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO CONVERT DEBTORS' CASE TO CHAPTER 7

The Official Committee of Unsecured Creditors (the "Committee"), appointed in the Chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this motion (the "Motion") for entry of an order converting this chapter 11 case to one under chapter 7. In support of this Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

[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.

BACKGROUND

2. On October 9, 2018 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Chapter 11 Cases").

3. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession. No trustee or examiner has been appointed in these Chapter 11 Cases.

4. On the Petition Date, the Debtors filed a *Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and Its Debtor Affiliates* [Docket No. 13] (the "Plan," and as subsequently amended).

5. On October 22, 2018, the Office of the United States Trustee appointed the Committee pursuant to Section 1102(a) of the Bankruptcy Code [Docket No. 62].

6. In mid-January 2019, the Debtors and Citiking International US LLC ("Citiking"), the Debtors' pre-petition secured lender, DIP Lender and Plan Sponsor, reached a settlement with the Committee pursuant to which the holders of ONE Aviation General Unsecured Claims[2] would receive a distribution (from the OAC GUC Distribution Pool) under the Debtors' plan of reorganization (the "Committee Settlement").

7. On January 18, 2019, the Debtors filed a *First Amended Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and Its Debtor Affiliates* (the "First Amended Plan") [Docket No. 347]. The First Amended Plan incorporated and implemented the terms of the Committee Settlement and sought approval of the same as part of confirmation of the Debtors' plan of reorganization. *See id.*, Section 5.17.

[2] Defined terms not defined in this Motion shall have the meaning ascribed to them in the Plan.

8. On March 1, 2019, the Debtors filed a *First Amended Joint Prepackaged Chapter 11 Plan of Reorganization (As Modified) for ONE Aviation Corporation and Its Debtor Affiliates* (the "Modified First Amended Plan") [Docket No. 444]. As with the First Amended Plan, the Modified First Amended Plan incorporated and implemented the terms of the Committee Settlement. *See id.*, Section 5.17.

9. On August 30, 2019, the Debtors filed a *Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and Its Debtor Affiliates* (the "Second Amended Plan") [Docket No. 659]. As with the First Amended Plan and the Modified First Amended Plan, the Second Amended Plan incorporated and implemented the Committee Settlement. *See id.*, Section 5.13.

10. Section 9.1 of the Second Amended Plan, captioned "Conditions to Effective Date", provides that the Second Amended Plan shall not become effective and the Effective Date (as defined in the Second Amended Plan) shall not occur unless and until the conditions enumerated in Section 9.1 were satisfied or waived. *See id.*, Section 9.1. Crucially, those conditions included that:

(a) "the Debtors shall have closed on the New ABL / Term Loan Facility, and the New ABL / Term Loan Facility Documents shall be in form and substance acceptable to the Debtors, [Citiking] (and DW if it is providing any financing thereunder)";

(b) "the [Second Amended] Plan shall have become effective on or before December 1, 2019"; and

(c) that "[a]ll amounts required to be funded or paid on or before the Effective Date pursuant to this Plan or the Confirmation Order shall have been funded or paid."

Id., Sections 9.1.2, 9.1.9 and 9.1.10.

11. On September 18, 2019, the Court entered an *Order (A) Approving the Adequacy of the Debtors' Disclosure Statement and (B) Confirming the Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization (As Modified) of ONE Aviation Corporation and Its Debtor Affiliates* (the "Confirmation Order") [Docket No. 707]. Among other things, the Confirmation Order approved the Committee Settlement, to be effectuated as set forth in Section 5.13 of the Plan. *Id.*, ¶ 87.

12. The Second Amended Plan did not become effective by December 1, 2019, the deadline set forth in the Second Amended Plan, nor in subsequent months.

13. The Committee understands that Citiking is using the declaration of the Second Amended Plan effective date as leverage to negotiate concessions of fees requested by the Debtors' professionals. The Committee further understands that Citiking has yet to finalize the New ABL / Term Loan Facility with DW Partners. To be clear, DW Partners is not providing any new funds post effective date but merely rolling forward its prepetition obligations.

14. Although the Committee had hoped that Citiking would perform its obligations in accordance with the Confirmation Order and Seconded Amended Plan without the need to seek an Order of the Court compelling Citiking to do so, on January 15, 2020, the Committee filed a request for a status conference to discuss these issues (the "Committee Request") [ECF No. 782]. The Committee argued that delaying the occurrence of the Effective

Date for, at the time four months, is detrimental to all parties in interest in these Chapter 11 Cases and wholly inappropriate.

15. At the status conference on the Committee Request held on February 4, 2020, the Debtors claimed to be "on the brink" of being able to declare the Second Amended Plan effective. Although the Court expressed concern that the Debtors did not have a "fully baked transaction" as they are represented at confirmation, the Court opined that conversion to chapter 7 was premature, but if the Seconded Amended Plan was not effective in six to eight weeks, by late March or early April, a motion for conversion, such as this Motion, might be appropriate.

16. Now, almost **eight months** have passed since the entry of the Confirmation Order, **five months** after the December 1, 2019 deadline for the Seconded Amended Plan to become effective, and **three months** from the Court's warning of possible future conversion, the Effective Date has not still not occurred. In light of the Plan sponsor Citiking's failure to consummate the Plan in a timely manner, and pay all administrative expense claims when due, conversion of these cases to Chapter 7 is warranted.

ARGUMENT

17. Section 1112(b) of the Bankruptcy Code provides that a party in interest may seek conversion to chapter 7 or dismissal of a case "for cause," "whichever is in the best interests of creditors and the estate."

18. Section 1112(b)(4) cites examples of cause, including: "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation" (1112(b)(4)(A)); "inability to effectuate substantial consummation of a confirmed plan" (1112(b)(4)(M)); and "termination of a confirmed plan by reason of the occurrence of a

condition specified in the plan" (1112(b)(4)(O)). However, cause for dismissal may exist beyond the various examples cited in 11 U.S.C. § 1112(b)(4). *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 161-62 (3d. Cir. 2012).

19. For example, unreasonable delay which is prejudicial to creditors may be considered cause for conversion of a case post-confirmation. *See Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortg. Entities)*, 248 B.R. 368, 375, 378 (9th Cir. BAP 2000) (finding the bankruptcy court did not abuse its discretion by converting a case to Chapter 7 post-confirmation as a result of unreasonable delay in accomplishing plan goals which was prejudicial to creditors).

20. In light of the critical effect the post-confirmation delays have on the administration of these Chapter 11 Cases, cause exists for conversion to Chapter 7.

21. In spite of the Debtors' characterization of these bankruptcy proceedings as a "prepack", the Chapter 11 Cases have been plagued by delay, disputes, and funding issues that continue to date. Despite regular inquiry from the Committee for status updates and repeated assurances from Citiking (as Plan sponsor) that the Debtors' Second Amended Plan would become effective by the end of 2019, the Effective Date has still not occurred.

22. This contravenes the Second Amended Plan's explicit requirement that the Effective Date occur on or before December 1, 2019 and the basis of the Committee Settlement. *See* Second Amended Plan, Sections 9.1 and 9.1.9. Five months have passed since the deadline set forth in the Second Amended Plan and, still, the Second Amended Plan has not gone effective, which is cause to convert this case to Chapter 7. *See* 11 U.S.C. § 1112(b)(4)(O).

23. Section 1112(b)(4)(M), noting that cause to convert exists where the debtors are unable to effectuate substantial consummation of a confirmed plan, directs that the

case should be converted to Chapter 7. Far from substantial consummation, this case has yet to even become *effective* nearly eight months after entry of the Confirmation Order.

24. In addition, the Debtors are not paying all administrative claims as they become due, such as including professional fees. Failure to pay administrative expenses provides cause to convert the case to Chapter 7. *See* 11 U.S.C. § 1112(b)(4)(A); *In re Alston*, 756 Fed. Appx. 160, 164 (3d Cir. 2019) (finding mounting unpaid administrative expenses as "continuing loss or diminution of the estate" and cause to convert or dismiss).

25. The Committee understands that Citiking may want to negotiate with the Debtors' professionals to reduce chapter 11 fees. But Citiking had almost eight months to do so since entry of the Confirmation Order. Similarly, during the same period Citiking should have been able to prepare the New ABL Facility / Term Loan Facility documents with DW. The parties agreed to this well before confirmation to provide for treatment of DW's outstanding obligations (*i.e.,* DW is not providing new financing under the Plan). Simply put, it shouldn't take nearly eight months to negotiate fee concessions and prepare simple credit documents.

26. The delay in the declaration of Effective Date clearly prejudices unsecured creditors. *See In re Motors Liquidation Company*, 539 B.R. 676, 686 (Bankr. S.D.N.Y. 2015) (finding that "[t]here can be no serious dispute that [creditors] will be prejudiced by a delay in [plan] distributions"); *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 352 n.70 (S.D.N.Y. 2007) (recognizing that "[t]here is also an inherent loss to the creditors in any delay" in plan distributions). This is particularly egregious given the Debtors' insistent characterization of its plan as a prepack and because the Debtors, Citiking and the Committee reached the Committee Settlement over a year ago. Moreover, the Committee Settlement does not provide unsecured creditors with interest on their plan payments. This prejudice to the unsecured creditors presents

further cause to convert the case to Chapter 7. *See Pioneer Liquidating Corp.*, 248 B.R. at 375, 378.

27. Despite the prejudice to unsecured creditors, the Committee remained patient. When the Committee raised these issues with the Court, the Committee was hopeful that the status conference with the Court held on February 4, 2020 would spur the parties to reach reasonable resolutions. Debtors' stated at the February 4 status conference that the Second Amended Plan was "on the brink" of going effective, and the Court permitted the parties additional time. Now, another 3 months have elapsed and nothing has happened. It is clear that the Effective Date was not on the horizon in February. Unsecured creditors should not be forced to bear the prejudice resulting from a promised prepack plan that was anything but.

28. Now, nearly eight months after entry of the Confirmation Order, cause exists for the Court to convert these Chapter 11 Cases to Chapter 7.

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

Dated: May 8, 2020

LANDIS RATH & COBB LLP

/s/ Matthew R. Pierce

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Counsel to the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ONE AVIATION CORPORATION., *et al*.,[1]	Case No. 18-12309 (CSS)
Debtors.	(Jointly Administered)
	Hearing Date: June 4, 2020 at 1:00 p.m. (ET) **Objection Deadline: May 22, 2020 at 4:00 p.m. (ET)**

NOTICE OF HEARING

TO: (i) the Debtors; (ii) the UST; (iii) Citiking International US LLC (iv) all creditors on the Debtors' **mailing** matrix; and (v) all other parties that have filed requests for notices pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that on May 8, 2020, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion of the Official Committee of Unsecured Creditors to Convert Debtors' Case to Chapter 7* (the "Motion").

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **May 22, 2020 at 4:00 p.m. (ET).**

At the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on May 22, 2020.**

A HEARING ON THE MOTION WILL BE HELD ON **JUNE 4, 2020 AT 1:00 P.M. (ET)** BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES BANKRUPTCY COURT JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5th FLOOR, COURTROOM #6, 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.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 8, 2020
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew R. Pierce

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Proposed Counsel to the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ONE AVIATION CORPORATION, et al.,[1]	Case No. 18-12309 (CSS)
Debtors.	(Jointly Administered)
	Re: Docket No. ____

ORDER COVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY

This matter coming before the Court upon the motion (the "Motion") of the Official Committee of Unsecured Creditors (the "Committee"), appointed in the Chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an order (the "Order") pursuant to section 1112(b) of the Bankruptcy Code, converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and the Court having considered the Motion and any opposition thereto, and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding; and the filing of the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the Committee's notice of the Motion and opportunity for a hearing were appropriate under the circumstances and that no other notice need

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be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish cause for the relief granted herein; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtors' chapter 11 cases are hereby converted, pursuant to 11 U.S.C. § 1112(b), to cases under chapter 7 of the Bankruptcy Code, effective as of the date of the entry of this Order (the "Conversion Date").

3. The following Conversion Procedures are hereby approved:

   a. **Professional Fees.** To the extent professionals retained in the chapter 11 cases have not already submitted final fee applications to the Court (the "Final Fee Applications"), all professionals (excluding professionals retained in the ordinary course of business pursuant to the *Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date* [Docket No. 189]) shall submit final fee applications (the "Final Fee Applications") in accordance with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and orders of this Court by no later than fourteen (14) days after the Conversion Date (The "Final Fee Application Deadline"). The Court will schedule a hearing, at the Court's convenience, on such Final Fee Applications on _____, 2020 at __:__ __. All approved amounts owed for professionals' fees and expenses shall be paid (x) first, from each professional's retainer, to the extent such retainers exist; and thereafter (y) from the Debtors' chapter 7 estates.

   b. **The Committee.** On the Conversion Date, the Committee shall be immediately dissolved, and all professionals retained by the Committee shall be immediately discharged, with no further action required by the Debtors or the Committee.

   c. **Books and Records.** As soon as reasonably practicable, but in no event more than fourteen (14) days after the assumption of duties by the chapter 7 trustee, the Debtors shall turn over to the chapter 7 trustee the books and records of the Debtors in the Debtors' possession and control, as required by Bankruptcy Rule 1019(4).

For purposes hereof, the Debtors may provide copies (including electronic copies) of such books and records to the chapter 7 trustee, or instructions for locating and accessing such books and records, and may retain copies of such books and records to the extent necessary to complete the reports required herein.

d. **Lists and Schedules.** To the extent not already filed with the Court, within fourteen (14) days after the Conversion Date, the Debtors shall file the statements and schedules required by Bankruptcy Rules 1019(1)(A) and 1007(b).

e. **Schedule of Unpaid Debts.** Within fourteen (14) days after the Conversion Date, the Debtors shall file a schedule of unpaid debts incurred after commencement of the Debtors' chapter 11 cases, including the name and address of each creditor, as required by Bankruptcy Rule 1019(5).

f. **Final Report.** Within thirty (30) days after the Conversion Date, the Debtors shall file and transmit to the chapter 7 trustee a final report and account in accordance with Bankruptcy Rule 1019(5)(A).

g. **Claims.** Within fourteen (14) days after the Conversion Date, Epiq shall (i) forward to the Clerk of this Court an electronic version of all imaged claims; (ii) upload the creditor mailing list to CM/ECF; (iii) docket a final claims register in the Debtors' chapter 11 cases; and (iv) box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, PA 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

4. The U.S. Trustee is hereby directed to appoint a chapter 7 trustee to oversee the Debtors' chapter 7 bankruptcy cases.

5. A representative of the Debtors, and, if so requested by the chapter 7 trustee, counsel to the Debtors in this case, shall appear at the First Meeting of Creditors pursuant to sections 341(a) and 343 of the Bankruptcy Code and such representative shall be available to testify at such meeting.

6. Subject to its compliance with Del. Bankr. L.R. 2002-1(f)(x)-(xi), Epiq shall be

relieved of its responsibilities as the Debtors' claims and noticing agent in the Debtors' chapter 11 cases as of the Conversion Date and will have no further obligations to the Court, the Debtors, the chapter 7 trustee (once appointed), or any party in interest with respect to the Debtors' chapter 11 cases or the chapter 7 cases.

7. All orders entered by the Court in the Debtors' chapter 11 cases shall remain in full force and effect.

8. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order in accordance with the Motion.

9. The terms of this Order shall be effective and enforceable immediately upon its entry.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated _____, 2020
Wilmington, Delaware

_____
THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE