

**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: June 4, 2020 at 1:00 p.m. (ET)

Obj. Deadline: May 22, 2020 at 4:00 p.m. (ET)

**OPPOSITION OF CITIKING INTERNATIONAL US LLC TO
MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
CONVERT DEBTORS' CASE TO CHAPTER 7**

Citiking International US LLC (“Citiking”) respectfully submits this opposition to the *Motion of the Official Committee of Unsecured Creditors to Convert Debtors’ Case to Chapter 7* [Docket No. 831] the “Motion”), and in support thereof respectfully states as follows:

Preliminary Statement

1. After confirmation of the *Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and Its Debtor Affiliates* [Docket No. 659] (the “Plan”)² on September 18, 2019, Citiking has worked to overcome a series of obstacles, the most important of which was unforeseeable and outside the parties’ control. Citiking spent nearly five

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 (collectively, the “Debtors”).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

months navigating the complex regulatory landscape of the Committee on Foreign Investment in the United States (“CFIUS”) before its acquisition of the Debtors was finally greenlighted on February 24, 2020. At the same time, Citiking was negotiating with DW, whose portion of the Prepetition First Lien Debt was to be rolled into the New ABL / Term Loan Facility with the Debtors. However, those discussions, along with discussion over the revolving loan portion of the New ABL / Term Loan Facility were complicated by another major obstacle: the outbreak of the COVID-19 pandemic in the United States and around the globe.

2. The Official Committee of Unsecured Creditors (the “Committee”) completely ignores that economic reality. The current economic environment as a result of the pandemic and the related effects on the Debtors’ business and Citiking’s potential ability to re-finance the transaction following the Debtors’ exit from bankruptcy require adjustments to the specific mechanics of the two arms of the New ABL / Term Loan Facility, the new funds and repayment of the term loan. Citiking is not looking to absolve itself of any commitments required of it under the Plan. But it is working to make certain that the New ABL / Term Loan Facility is structured so that the Debtors are not back in bankruptcy court as a result of structuring the facility in a manner that does not make sense due to the rapid economic changes caused by the pandemic. Ignoring those realities, the Committee seeks conversion and the destruction of a confirmed Plan that provides significant value to the Debtors’ creditors as a whole, maintains the Debtors as going concerns, and preserves jobs.

Background

3. On October 9, 2018 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

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 “Original Plan”).

5. After extensive negotiations with the Committee and other stakeholders, on August 30, 2019 the Debtors filed the Plan, which was confirmed on September 18, 2019.

6. Pursuant to the Plan, Citiking’s prepetition first lien debt is to be converted into equity in the Reorganized Debtors, with Citiking acquiring 100 percent of the equity in Reorganized ONE Aviation (subject to potential dilution by the Employee Incentive Plan).

7. The effectiveness of the Plan is subject to the satisfaction or waiver of certain conditions, including, among other things, the approval or the consent of all requisite governmental authorities. *See* Plan, Section 9.1.4. Because Citiking is a Chinese-controlled entity, the acquisition required CFIUS approval. Accordingly, after entry of the Confirmation Order, Citiking focused its efforts on obtaining CFIUS clearance. Finally, several weeks after the parties’ February status conference with the Court, on February 24, 2020 Citiking successfully obtained CFIUS’s approval for the acquisition, a major step toward effectiveness.

8. The other conditions to be satisfied or waived as a condition to the Plan becoming effective include, among other things: the execution and delivery of the definitive documents and agreements governing the Plan and the transactions contemplated thereunder, closing on the New ABL / Term Loan Facility, and that certain amounts be funded and paid pursuant to the Plan. *See* Plan, Sections 9.1.2, 9.1.5, 9.1.6, 9.1.7, 9.1.8, 9.1.10. Citiking will address the status of these conditions at the hearing.

9. Immediately after obtaining CFIUS approval, Citiking shifted its focus to finalizing the financial terms of the New ABL / Term Loan Facility and its definitive documents and resolving any outstanding disputes regarding amounts to be funded under the Plan.

10. Unfortunately, just as the parties were beginning to make progress in these negotiations, the COVID-19 pandemic swept across the globe. The shutdowns implemented throughout the world have forced some businesses to grind to a halt and have required others to make major changes. Citiking needed additional time to understand how these rapid developments would affect the Reorganized Debtors' business, including their supply chain and revenue stream. This evolving understanding determines the level of financing that the Debtors will require going forward, which, in turn, shapes the terms of the New ABL / Term Loan Facility.

11. Citiking is continuing to work closely with the Debtors and other parties-in-interest to finalize the terms of the New ABL / Term Loan Facility satisfy the remaining conditions to effectiveness set forth in the Plan.

Argument

12. By its Motion, the Committee seeks to squander all of the hard-fought progress that has been made in these Chapter 11 Cases, including by the Committee. The Plan implements the Committee Settlement, which provides \$825,000 in recoveries to the Committee's own constituents, the unsecured creditors, and some funding of fees relating to the claims resolution process holders. Citiking has already funded this amount in an account that bears interest. Converting these Chapter 11 Cases would wipe out these recoveries, preventing unsecured creditors from accessing funds that would otherwise be set aside for them pursuant to the Plan.

13. While Citiking shares the Committee’s frustration with the gradual pace of progress in recent weeks, Citiking notes that there has been progress. The parties are not at an impasse. Abruptly moving to a Chapter 7 liquidation is not the solution.

14. The parties are faced with an unprecedented situation. As they approached the finish line of a lengthy and complex Chapter 11 process, the Debtors’ business was forced to respond to sudden economic upheaval and uncertainty. To help ensure that the Reorganized Debtors are adequately capitalized for the new business environment, Citiking and potential sources of debt or equity financing have needed additional time to evaluate the impact of the global pandemic on the Debtors’ operations. The appropriate solution in this case is to allow the parties the additional time that they need to resolve any open issues and consummate the Plan, *not* to liquidate a viable business.

15. Courts have consistently recognized that debtors “should be permitted a reasonable period of time . . . to reorganize,” and that “[t]he reasonableness of a period should be determined on a case by case basis.” *In re Powell Bros. Ice Co.*, 37 B.R. 104, 106–07 (Bankr. D. Kan. 1984) (internal quotation marks and citations omitted). “Reorganization, rather than liquidation through conversion or dismissal, is favored.” *Id.* at 107.

16. The delay in this case, far from being “unreasonable,” (Motion ¶ 19), is an appropriate and prudent response to a series of hurdles that Citiking and the Debtors have had to overcome. Securing the necessary regulatory approvals and ensuring proper capitalization are critical steps toward successful consummation of the Plan.

17. The cases cited in the Motion uniformly stand for the proposition that conversion may be necessary in “the absence of a reasonable likelihood of rehabilitation.” *In re Alston*, 756 Fed. Appx. 160, 164 (3d Cir. 2019); *see also In re Am. Capital Equip., LLC*, 688 F.3d 145, 163

(3d Cir. 2012) (cause for conversion may exist where there is not “a reasonable possibility of a successful reorganization within a reasonable period of time”). Here, on the other hand, emergence from Chapter 11 is in the near term. While Citiking is sympathetic to the Committee’s concerns about delayed distributions, “[t]he existence of one or more of the grounds set forth above does not compel conversion or dismissal.” *In re Justus Hosp. Properties, Ltd.*, 86 B.R. 261, 265 (Bankr. M.D. Fla. 1988). The Committee offers no basis for leaping to the conclusion that the additional time taken to navigate regulatory approvals and a global economic crisis eliminates any possibility of successful reorganization.

18. The present situation has virtually nothing in common with the cases cited by the Committee. *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 161-62 (3d Cir. 2012) (finding cause for conversion where debtors’ fifth plan was proposed in bad faith and patently unconfirmable); *Alston*, 756 Fed. Appx. at 164 (affirming dismissal of individual debtor’s case after debtor filed six disclosure statements that were met with numerous objections and failed to comply with reporting requirements); *Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortg. Entities)*, 248 B.R. 368, 375, 378 (9th Cir. BAP 2000) (affirming conversion where Chapter 7 trustee would be equipped to liquidate and distribute assets in place of liquidated corporation formed pursuant to plan). While there is no dispute that conversion can be appropriate where reorganization clearly is unlikely, or where the plan already provides for liquidation such that conversion would not negatively impact the value of the estate, in this case conversion would destroy all of the value that the parties have worked so hard to preserve.

19. In contrast to the cases cited by the Committee in its Motion, where successful reorganization was all-but-impossible, here the parties have successfully achieved confirmation of and are satisfying the conditions to effectiveness of the Plan. Citiking has already met key

conditions to effectiveness, including obtaining CFIUS approval. Citiking is working diligently with the Debtors and DW to finalize the terms of the New ABL / Term Loan Facility and other definitive documents.

20. While Citiking acknowledges that the Debtors are incurring ongoing administrative expenses until the Plan becomes effective, creditors are not being impacted by these expenses, as the creditor recovery pools have already been funded. Thus, the Committee's stated concerns about delays being "prejudicial to creditors" are inapplicable here. *See* Motion ¶ 19.

21. To the extent that the Committee is concerned about unfunded professional fees, if the parties are unable to resolve the remaining fee disputes before the Effective Date, then Citiking will ensure that on the Effective Date, the Professional Fees Escrow account is funded in an amount equal to all asserted but unpaid Professional Fee Claims in accordance with Section 2.2(b) of the Plan. Any objections will then be resolved in accordance with the process set forth in Section 2.2(a) of the Plan. The Committee's value-destroying and irreversible solution to its concerns surrounding compensation is simply not justified.

22. Of note, general unsecured creditors would be among the stakeholders most negatively impacted by conversion to Chapter 7. Under the Plan, holders of Allowed ONE Aviation General Unsecured Claims will receive *pro rata* distributions from the OAC GUC Distribution Pool that has already been funded by Citiking. *See* Plan, Section 3.2.7. Under the Debtors' liquidation analysis attached to the *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization for ONE Aviation Corporation and Its Debtor Affiliates* [Docket No. 14] (the "Disclosure Statement"), unsecured creditors would receive *no recovery* in the event of liquidation. *See* Exhibit C to Disclosure Statement, p. 7. This liquidation analysis

was filed immediately after the Petition Date. If a liquidation was conducted in the current economic environment, unsecured creditors would be even less likely to receive recoveries.

23. Based on this analysis, conversion would be inappropriate here even in normal circumstances. In the current environment, bankruptcy courts across numerous jurisdictions have been proactive in responding to the extraordinary, multifaceted economic complications caused by the COVID-19 pandemic. Recognizing the profound impact that the pandemic has had in destabilizing businesses, clouding economic visibility, and impeding transactions of all forms, bankruptcy courts in several circuits, including the Third Circuit, have issued unusually expansive relief in order to preserve estate value for all stakeholders and promote the aims of the Bankruptcy Code. *See, e.g., In re Modell's Sporting Goods, Inc.* 20-14197 (VFP) (Bankr. D. N.J., Mar. 23, 2020) *Order Temporarily Suspending the Debtors' Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105 and 305* [Dkt. No. 166]; *In re CraftWorks Parent, LLC*, 20-10475 (BLS) (Bankr. D. Del., Mar. 30, 2020) *Order (I) Establishing Temporary Procedures and (II) Granting Related Relief* [Dkt. No. 217] (temporarily modifying procedural rules in connection with COVID-19 outbreak); *In re True Religion Apparel, Inc.*, 20-10941 (CSS) (Bankr. D. Del., May 12, 2020) *Order Granting Motion of Debtors for Entry of an Order (I) Extending Time for Performance of Obligations Arising under Unexpired Real Property Leases, (II) Establishing Temporary Procedures and (III) Granting Related Relief* [Dkt. No. 221] (temporarily modifying procedural rules and suspending certain payments in connection with COVID-19 outbreak).

24. Here, Citiking does not seek such extraordinary relief. Rather, Citiking respectfully requests that the Court consider the impact of the COVID outbreak when exercising its discretion under Section 1112 of the Bankruptcy Code. Significant progress has already been made in these Chapter 11 Cases, and considerable resources have been expended by many

parties-in-interest in furtherance of confirming and effectuating the Plan. Despite recent headwinds, the parties are now within striking distance of achieving the most positive outcome for all stakeholders involved—the emergence of the Reorganized Debtors as a going concern.

25. While Citiking shares the Committee’s frustration with the gradual pace of progress, the Committee’s Motion should be denied. Conversion to Chapter 7 would destroy an otherwise viable business, eliminate sixty (60) jobs and would almost surely eradicate any recovery that unsecured creditors are set to receive under the Plan.

Though it may be tempting for frustrated parties-in-interest to blame only Citiking and the Debtors for the delay in these Chapter 11 Cases, that is a matter of convenience not reality and conversion, at this juncture, is contrary to the economic interest of most stakeholders. Ironically, it is the Committee’s constituents who arguably have the most to lose from converting these Chapter 11 Cases. With some additional time to effectuate the Plan, a far superior outcome to conversion can be reached for the Debtors and the vast majority of stakeholders in these Chapter 11 Cases.

Conclusion

Accordingly, and for the reasons set forth herein, Citiking respectfully requests that this Court deny the Motion in all respects and grant such other and further relief as the Court may deem just and proper.

Dated: May 22, 2020
Wilmington, Delaware

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