

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

*Caption in Compliance with D.N.J. LBR 9004-1(b)*

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*Proposed Counsel to the  
Official Committee of Unsecured Creditors*

In Re:

ALUMINUM SHAPES, L.L.C.,

Debtor.

Chapter 11

Case No. 21-16520-JNP

Hon. Jerrold N. Poslusny, Jr.

**RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO THE DEBTOR'S MOTION TO APPROVE THE BIDDING  
PROCEDURES AND SALE MOTION AND TO THE DEBTOR IN POSSESSION'S  
AUTHORITY TO OBTAIN POST-PETITION FINANCING**

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 case for the above-captioned Debtor respectfully submits this reservation of rights (the "Reservation of Rights") to the (i) *Combined Motion of Aluminum Shapes, L.L.C. for the Entry of an Order Granting (A) Authority to Obtain Post-Petition Financing, (B) Liens and Super Priority Administrative Expense Status Pursuant to 11 U.S.C. §§ 364(c)(1), (2) and (3) and 364(d)(1), (C) Relief from the Automatic Stay, (D) Authority to Enter Into Agreements With Tiger*

*Finance, LLC, (E) Authorization to Use Cash Collateral Pursuant to 11 U.S.C. §§ 361 and 363, Bankruptcy Rule 4001 and D.N.J. LBR 4001-4 and to Provide Adequate Protection to Parties With an Interest in Cash Collateral and (F) Related Relief (the “DIP Motion”) [D.I. 15], and (ii) the Debtor’s Motion For (I) an Order (A) Approving the Bidding Procedures and Form of Asset Purchase Agreement for the Sale of the Debtor’s Assets Including Approval of Provisions for Designation of a Stalking Horse and Bid Protections, (B) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof, (C) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Scheduling a Sale Hearing, (E ) Granting Expedited Consideration, and (F) Granting Related Relief, and (II) An Order (A) Approving the Sale of the Debtor’s Business or Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief [D.I. 94] (the “Bidding Procedures Motion” and with the DIP Motion, the “Motions”).*

## **BACKGROUND**

1. On August 15, 2021 (the “Petition Date”), the Debtor commenced its case by filing a voluntary petition for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). No trustee or examiner has been appointed in the Debtor’s case, and the Debtor continues to operate its business as a debtor-in-possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

2. On September 1, 2021, the Office of the United States Trustee for Region 3, appointed five members to the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No. 77]. The members of the Committee are: (i) Indigo Global, LLP; (ii) PSE&G; (iii) Nathan H. Kelman, Inc., (iv) Energy Power Investment Company, LLC (EPIQ); and (v)

Southeastern Extrusion & Tool, Inc. The Committee chose Fox Rothschild LLP as its counsel on September 2, 2021 and on September 3, 2021, the Committee chose Berkley Research Group (“BRG”) as its financial advisor.

**A. The DIP Motion**

3. The DIP Motion was among several “first day” motions filed by the Debtor on the Petition Date. The DIP Motion sought approval for the Debtor to obtain post-petition financing from its pre-petition secured lender, Tiger, and authorization for the use of cash collateral, and granting adequate protection, post-petition liens and superpriority claims to Tiger, among other relief, pursuant to the terms of a Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as August 15, 2021, between Tiger and the Debtor (the “DIP Agreement”), attached as Exhibit B to the Interim Order (as defined below).

4. On August 18, 2021, the Court held a hearing on the Debtor’s various first day motions and entered an order approving the DIP Motion on an interim basis (the “Interim Order”) [D.I. 47], including scheduling a final hearing (the “Final Hearing”) for September 15, 2021. The Debtor, the Committee, and Tiger subsequently agreed to adjourn the Final Hearing to September 22, 2021.

5. Notably, the DIP Facility includes a roll-up of the Prepetition Secured Debt of \$9,270,525.89. Interim Order ¶ 4(a). The Interim Order authorized the Debtor to draw up to \$12,070,526 on the DIP Facility on an interim basis, to be used in the first instance to satisfy in full all outstanding Prepetition Secured Debt under the Prepetition Credit Agreement and Note. Id. ¶¶ 3, 4(a). Therefore, the Debtor was authorized to borrow up to approximately \$2.8 million in new money under the Interim Order.

6. The Committee had numerous objections to the DIP Motion, which have been communicated to the respective counsel for the Debtor and Tiger.

**B. The Bidding Procedures Motion**

7. The Debtor filed its Bidding Procedures Motion on September 14, 2021, seeking approval of the Bidding Procedures, on an expedited basis, by September 21, 2021.

8. The Bidding Procedures Motion contemplates an expedited marketing and sale process with a proposed bid deadline of October 11, 2021, an auction date of October 15, 2021, and a Sale Hearing on October 19, 2021.

9. The Committee had numerous objections to the Bidding Procedures Motion, which again were communicated to the respective counsel for the Debtor and Tiger.

10. Accordingly, the Committee entered into discussions with the DIP Lender and the Debtor to address its concerns with the Motions.

11. The parties have just reached a settlement in principle relating to the Committee's various objections to the DIP Financing and the Sale and Bidding Procedures. The terms of the settlements will be incorporated into the Final DIP Order and into the Bidding Procedures Order.

**RESERVATION OF RIGHTS**

12. The Committee, the Debtor, and the DIP Lender are in the process of documenting updated forms of orders to reflect the terms of the settlements. The Committee reserves all rights to appear, supplement or otherwise adopt additional arguments in connection with these Motions at the hearing on the Motions and, to the extent the definitive forms of orders are not satisfactorily resolved, the Committee reserves all rights to be heard at a hearing to consider any unresolved issues with respect thereto.

13. Further, nothing contained herein shall be deemed as a waiver of any right of the Committee to object to the sale of substantially all of the Debtor's assets pursuant to 11 U.S.C. § 363 or otherwise and the Committee specifically reserves all rights with respect thereto.

WHEREFORE, based on the foregoing, the Committee respectfully requests that the Court grant the Committee relief that is consistent with the foregoing or such other and further relief as the Court may deem just and proper.

Dated: September 21, 2021

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**FOX ROTHSCHILD LLP**

/s/ Joseph J. DiPasquale

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