

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

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| In re: |) | Chapter 11 |
| |) | |
| ARMSTRONG FLOORING, INC., <i>et al.</i> , ¹ |) | Case No. 22-10426 (MFW) |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | |
| |) | UST Obj. Due: April 6, 2023 at 11:00 a.m. |
| |) | Hearing Date: April 11, 2023 at 10:30 a.m. |
| |) | Related to Docket Nos. 1284, 1249 |
| |) | |

**OBJECTION OF UNITED STATES TRUSTEE TO DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR THE DISMISSAL
OF THE DEBTORS' CHAPTER 11 CASES, (II) AUTHORIZING THE DEBTORS
TO MAKE DISTRIBUTIONS TO CLAIMANTS HOLDING ALLOWED
ADMINISTRATIVE CLAIMS; (III) ESTABLISHING PROCEDURES WITH
RESPECT TO FINAL FEE APPLICATIONS; (IV) DIRECTING THE DEBTOR
ENTITIES TO BE DISSOLVED; AND (V) GRANTING RELATED RELIEF**

Andrew R. Vara, United States Trustee for Regions Three and Nine ("U.S. Trustee"), files this objection (the "Objection") to the *Debtors' Motion for Entry of an Order (I) Approving Procedures for the Dismissal of the Debtors' Chapter 11 Cases, (II) Authorizing the Debtors to Make Distributions to Claimants Holding Allowed Administrative Claims; (III) Establishing Procedures with Respect to Final Fee Applications; (IV) Directing the Debtor Entities to be Dissolved; and (V) Granting Related Relief* [D.I.141] (the "Motion"), and respectfully represents:

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Armstrong Flooring, Inc. (3305); AFI Licensing LLC (3265); Armstrong Flooring Latin America, Inc. (2943); and Armstrong Flooring Canada Ltd. (N/A). The address of the Debtors' corporate headquarters is PO Box 10068, 1770 Hempstead Road, Lancaster, PA 17605.

I. BACKGROUND FACTS

1. The Debtors' bankruptcy cases are administratively insolvent and have no prospect of confirming a chapter 11 plan. The Debtors' administrative claimants, including trade creditors who provided goods and services to the Debtors prior to the sale of their assets, will likely receive only pennies on the dollar on their administrative expense claims.

2. Upon information and belief, the Debtors' DIP Lenders² continue to be owed \$15 million in secured DIP obligations. In addition, the Debtors estimate that Allowed Administrative Claims other than DIP obligations will likely total approximately \$22 million.

3. The Debtors informed the Court that it holds only approximately \$2 million in cash. However, it appears that the majority of these funds are earmarked as part of the Carve-Out for professional fees. It is unclear how much of the existing \$2 million in cash will be available for payment of general Administrative Expense Claims.

4. It appears that the Debtors, through their professionals, have liquidated miscellaneous assets of the estates for the benefit of the DIP Lenders, all while having a wind-down budget that was insufficient to pay Professional Fees in full.

5. The Debtors assert that the following must be completed prior dismissal of these cases: (a) prosecuting 47 Avoidance Actions, each of which were commenced less than 3 months ago; (b) recovering a potential reimbursement of prepetition litigation expenses; (c) recovering a potential reversion to the Debtors that may be available following the completion of the termination of the qualified defined benefit pension plan, an audit by the Pension Benefit Guaranty Corporation, and all other required plan audits and regulatory filings; and (d) distributing all proceeds from estate assets.

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

6. An administrative claimant filed a motion to convert the Debtors' bankruptcy cases to cases under chapter 7. *Mexichem Specialty Resins, Inc.'s Motion to Convert Debtors' Chapter 11 Cases to Chapter 7*, filed on March 7, 2023 (D.I. 1249). In response, the Debtors have filed the Motion, seeking "dismissal" of the cases.

7. The dismissal would occur in three steps. First, this Court will enter the dismissal procedures order. After the Subsidiary cases file final monthly operating reports, pay U.S. Trustee fees, and Professional Fees are Allowed and paid, the Court will enter an order dismissing the Subsidiary cases.

8. The Lead Debtor will continue to prosecute the Avoidance Actions, recover any other remaining assets of the estates, file monthly operating reports, finalize any remaining objections to Administrative Expense Claims, file a distribution schedule and distribute payments to holders of Allowed Administrative Expense Claims.

9. After administering all estate assets and distributing the proceeds thereof, the Lead Debtors' case would then be dismissed.

II. ARGUMENT

10. The Bankruptcy Code requires that the court convert a chapter 11 case to a chapter 7 case, or dismiss the case, whichever is in the best interest of creditors and the estate, if there is substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation, or if the debtor fails to file a disclosure statement, or to file or confirm a plan, within the time fixed. 11 U.S.C. §1112(b).

11. Section 1112(b) was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L. No. 109-9, 119 Stat. 23 (2005), to make conversion or dismissal mandatory, rather than permissive. *In re Gateway Access Solutions, Inc.*, 374 B.R. 556,

560 (Bankr.M.D.Pa.2007) (with the enactment of BAPCPA, the statutory language of § 1112(b) has been changed from permissive to mandatory).

12. The Debtors acknowledge that they are unable to confirm a plan and that they are administratively insolvent, constituting “cause” to convert or dismiss the cases under 11 U.S.C. § 1121(b)(4)(A). Yet they do not request immediate dismissal of their cases, but rather seek to remain in chapter 11 for a prolonged, indefinite period, while litigating adversary cases that have just recently been filed, monetizing other assets of the estate, and distributing the proceeds thereof.

13. This “structured dismissal,” which could occur months or even years from now, does not satisfy Section 1112(b)’s requirement that a case be converted or dismissed upon a finding of “cause.” A debtor remaining in possession and administering the estate is not a “dismissal” despite a dismissal *procedures* order being entered.

14. Rather, given that the Debtors admit that there is “cause” to convert or dismiss the cases, the Court must determine which is in the best interests of creditors. As there remains assets to be monetized, including the Avoidance Actions, and the resulting proceeds distributed to creditors in the order of priority provided by the Bankruptcy Code, the best interests of creditors requires conversion of the cases, rather than dismissal at an undetermined, future date.

15. If there is cause to convert or dismiss the cases, section 1112(b)(2) only permits the Debtors to remain in chapter 11 if (i) the court determines that the appointment of a chapter 11 trustee or examiner is in the best interest of the creditors and the estates or (ii) (x) there are “unusual circumstances,” (y) the debtor or another party establishes that there is a likelihood that a plan will be confirmed, and (z) the “cause” for relief is not “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation” under

section 1112(b)(4)(A). Here, the Debtors have acknowledged that there is no likelihood that a plan can be confirmed, and the “cause” to convert or dismiss the cases is “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” As such, Section 1112(b) mandates either conversion or prompt dismissal.

WHEREFORE, the United States Trustee respectfully requests that the Court grant relief consistent with the foregoing objection; and such other and further relief as may be just and proper under all of the circumstances.

Dated: April 6, 2023
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE,
REGIONS 3 AND 9

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