

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

<i>In re:</i>)	Chapter 11
)	
Vesttoo Ltd., <i>et al.</i> , ¹)	Case No. 23-11160 (MFW)
)	
Debtors.)	(Jointly Administered)
)	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO (A) MAINTAIN THEIR INSURANCE COVERAGE ENTERED
INTO PREPETITION AND PAY RELATED PREPETITION OBLIGATIONS, AND
(B) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE
COVERAGE, AND (II) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) objects to the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to (A) Maintain Their Insurance Coverage Entered Into Prepetition and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (II) Granting Related Relief* [Docket No. 213] (the “Insurance Motion”) filed by the above-captioned debtors (collectively, the “Debtors”). In further support of this objection, the Committee respectfully states as follows:

OBJECTION

1. The Insurance Motion seeks broad relief that would allow the Debtors to unnecessarily spend millions of dollars of very limited estate resources to replace, renew, or extend insurance coverage, including purchasing new types of insurance, with no oversight from this Court, the Committee, or any other party in interest. While the relief in the Insurance Motion may be “ordinary course” in a chapter 11 case with reorganizing debtors, these cases are

¹ Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/vesttoo>.

anything but routine. As detailed in the Committee's motion to terminate the Debtors' exclusive periods [Docket Nos. 268] (the "Exclusivity Motion"),² the foundation of the Debtors' prepetition business is fraud. The Debtors have no ongoing business, have generated no revenue since commencing these cases, have no concrete or actionable "trade forward" business plan, have few, if any, exploitable assets, and they do not have the Committee's support in their pursuit of an implausible, future going concern business. Moreover, the Debtors have yet to produce a budget or other discipline on their spending, there remains little to no understanding of the difference between the Debtors' restricted and unrestricted cash, and every dollar spent by the Debtors in these cases is tantamount to gambling with the recovery owed to unsecured creditors. Therefore, the Debtors have no viable business and there is no "ordinary course" for these Debtors.

2. To the extent the Debtors require any insurance, the majority of the relief sought in the Insurance Motion is premature. Of the eight policies identified by the Debtors on Schedule 1 to the Insurance Motion, only three policies – D&O, Professional Indemnity, and Workers' Compensation – expire within the next two months.

- D&O / Professional Indemnity. The facts and circumstances forming a basis for claims under the D&O and Professional Indemnity Policies are known to the Debtors, and the damages for such claims far exceed the limits of those policies. Thus, so long as the Debtors make such claims against the applicable insurers prior to the expiration of those policies, there is no basis for renewing or replacing the policies, which the Committee understands would cost more than \$1 million. Therefore, the Debtors should make or otherwise preserve such claims under the existing policies and the relief requested should be rejected.
- Workers' Compensation. The Committee does not object to the Debtors maintaining their Workers' Compensation coverage until the remaining employees are ultimately terminated in connection with the liquidation and winddown of the Debtors. However, to the extent the Debtors seek to obtain Workers' Compensation coverage that differs from the current policy, including

² The Committee's proposed redacted version of the Exclusivity Motion is filed at Docket No. 269.

any increased coverage or premium, the Debtors should be required to provide the Committee with prior notice and an opportunity to object. Additionally, any extension or maintenance of Workers Compensation coverage should be time limited to reflect the potential winding up of all employment and ongoing business effort at the Debtors, subject to local law requirements.

3. The remaining five policies do not expire until June 2024 or later.³ Thus, there is no basis for granting any relief with respect to those policies now and the Insurance Motion should be denied with respect to these policies. To the extent there are any additional policies or coverage not disclosed in the Insurance Motion, the Committee objects to any relief prior to the Debtors making appropriate disclosures with respect to such policies and providing the Committee a reasonable opportunity to review and object, if necessary.

4. In these cases, it is critical that the Committee, which represents the only creditor constituency in these cases, be able to closely monitor the Debtors' use of its limited and rapidly diminishing cash resources. There is no secured lender and no court-approved budget constraining the Debtors' spending. Moreover, the Committee has requested the Debtors to reduce their expenses. Any order on the Motion should require additional disclosure and notice, including, but not limited to, providing the Committee reasonable notice and an opportunity to object prior to renewing, supplementing, modifying, extending, terminating, or purchasing any insurance coverage, including (i) the type of coverage provided by the policy and detailed rationale for why the coverage is required and why the benefit is greater than the cost, (ii) the material terms of the proposed policy, including the amount of coverage under the policy and any deductible or self-insured retention, (iii) the premium due with respect to such policy, (iv) any broker fee due in connection with such policy, and (v) a comparison of the renewed or replacement coverage to the current policy.

³ These policies include Employment Practices Liability Insurance, Umbrella, Business Owners' Policy, Business Property, and Travel Insurance.

5. Finally, the proposed order attached to the Insurance Motion contains no limit on the amount the Debtors may spend in connection with the insurance program. Any order on the Motion should establish a reasonable cap under the circumstances of these chapter 11 cases and require the Debtors to come to the Court and justify any additional expenditures in connection with the insurance program to prevent further unnecessary depletion of estate resources.

6. As detailed in the Exclusivity Motion, the Committee is deeply concerned that the Debtors are rapidly depleting their liquid financial resources in pursuit of an amorphous “trade forward” plan that has no hope of success. The Committee objects to the Debtors continuing to waste estate resources leaving no distributable assets for unsecured creditors.

7. For the reasons stated herein, the Motion should be denied except with respect to the Workers’ Compensation policy, which relief may be granted subject to the issues raised herein.

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Dated: October 27, 2023
Wilmington, Delaware

Respectfully submitted,

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