

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

ENVISTACOM, LLC,

Debtor.

**KATIE S. GOODMAN, in her capacity as
the liquidating trustee of the Envistacom
Liquidating Trust,**

Objector,

V.

GEORGIA DEPARTMENT OF LABOR,

Claimant.

S

CHAPTER 11

CASE NO. 23-52696-jwc

CONTESTED MATTER

**GEORGIA DEPARTMENT OF LABOR’S RESPONSE IN OPPOSITION TO
LIQUIDATING TRUSTEE’S OBJECTION TO CLAIM**

NOW COMES the Georgia Department of Labor (the “DOL”), by and through counsel, Christopher M. Carr, Attorney General for the State of Georgia, and responds in opposition to the *Liquidating Trustee’s Objection to Claim No. 10156 Filed by the Georgia Department of Labor* (the “Objection”) (Doc. 282). in the above-styled involuntary Chapter 11 case of Envistacom, LLC (the “Debtor” or “Envistacom”) as follows:

1. The Liquidating Trustee's arguments for why DOL's s Claim No. 10156 should be disallowed in its entirety are misplaced. They are based on a mistaken belief that the penalty claimed in the amount of \$14,554.72 is imposed on an alleged non-payment of \$3.80. As explained, *infra*, the penalty is imposed pursuant to Georgia state law.

The Georgia Department of Labor

2. Unemployment insurance keeps many Georgia residents out of poverty. Providing this public good requires information about unemployed claimants and their employers.

3. DOL is responsible for processing claims for unemployment compensation, making eligibility determinations, and paying unemployment compensation to employees with successful claims.

4. The integrity of a state unemployment program depends upon accurate unemployment benefit payments and denied claims. To achieve such accuracy, Georgia employers are required to maintain records and file tax and wage reports (the “Report”), including the street address for each of its locations, the nature of its operations, and the number of employees and wages paid at each location. O.C.G.A. § 34-8-121(b)(1).

5. Sometimes employers intentionally or unintentionally fail to comply with obligations Georgia labor laws impose upon them. Georgia has developed a system of penalties to deter noncompliance and ensure accountability.

Envistacom, LLC

6. Envistacom is a Georgia limited liability company founded in 2011 with its headquarters previously located in Duluth, Georgia and 18 international locations throughout Europe, the Middle East, and Asia. *Debtor’s Second Modified First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation, Article III* (Doc. 197-1, Exhibit A).

7. Envistacom has been “... a significant contractor in design, integration, deployment, training, ... operations and maintenance for the United States military’s global strategic and tactical communications.” *Id.*

8. Not surprisingly, Envistacom has a history of lucrative operations requiring large numbers of employees.

9. Shortly before its creditors filed its involuntary petition in bankruptcy (Doc. 1) on March 21, 2023 (the “Petition Date”), Envistacom’s enjoyed gross revenue of \$10,368,026.11 in January 2023; \$129,547,185.79 in 2022; and \$133,918,724.31 in 2021. *Amended Statement of Financial Affairs, Part 1* (Doc.106).

10. In August 2018, Envistacom won a three-year \$18 million contract to provide the U.S. Army and U.S. Navy “... engineering and technical assessment enhancements through rapid-prototyping initiatives.” Intelligence Community News, *Envistacom Selected as Prime Contractor for \$18 Million DAGRS Task Order*, August 9, 2018.

Georgia Department of Labor’s Claim No. 10156

11. Claim No. 10156 includes \$3.80 in taxes with the balance in statutory penalties.

12. The taxes are based on reported wages. When wages are added to a report already filed, it understandably increases the amount of the tax. The \$3.80 is due to the difference in the wages reported. Stated differently, \$3.80 is the tax amount remaining when wages were added to a report previously submitted in the first quarter of 2019.

13. “Creditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, subject to any qualifying or contrary provision of the Bankruptcy Code.” *Raleigh v. Ill. Dep’t of Revenue*, 530 U.S.C. 15, 20 (2000).

14. O.C.G.A. § 34-8-165 provides:

(a)

(1) In accordance with such regulations as the Commissioner may prescribe, ***tax and wage reports shall become due and be filed by each employer on or before the last day of the month next following the end of the calendar quarter*** to which such reports apply.

.....

(b) An employer who fails to file a tax and wage report on or before the due date as provided in subsection (a) of this Code section ***shall be penalized in the sum of \$20.00 or .05 percent of total wages, whichever is greater, for each month or fraction of a month such report remains delinquent.*** Such penalty

assessments shall be due and payable in the same manner as delinquent contributions. Penalty collection assessments shall be due and payable in the same manner as delinquent contributions. Penalty collection shall be enforced under procedures established by this chapter.

O.C.G.A. § 34-8-165 (emphasis added).

15. The Debtor's Report for the third quarter of 2019 (July, August, September) was due October 31, 2019. The Debtor didn't file the Report until May 2020.

16. When the Debtor failed to file a Report on or before the due date, as set forth, *supra*, O.C.G.A. § 34-8-165(b) required assessment of a penalty in the sum of \$20.00 or .05 percent of total wages, **whichever is greater**, for each month or fraction of a month such report remains delinquent. Given the scope of the Debtor's operations, 05 percent of its total wages is obviously far greater than \$20.00.

17. Penalty claims are allowed in Chapter 11 bankruptcy cases. *See, e.g., In re Hillsborough Holdings Corp.*, 247 B.R.510,512 (Bankr. M.D. Fla. 2000) (allowing a claim for punitive damages where the feasibility and the debtor's ability to consummate the confirmed plan of reorganization were not in jeopardy); *In re Russo*, 63 B.R. 335, 337 (Bankr. D. Mass. 1986) (holding that a taxing authority is allowed to collect penalties in Chapter 11 cases); *In re Allied Mech. Services, Inc.*, 38 B.R. 959, 963-64 (Bankr. N.D. Ga. 1984) (allowing a Secretary of Labor's claim for a fine imposed for the debtor's OSHA violation since, due to debtor's reorganization and continued operation, the remedial effect of the fine could be achieved).

18. Here, the Debtor's Post-Confirmation Report for the quarter ending December 31, 2024, and filed on January 16, 2025 (Doc. 275) shows \$1,294,237 in cash transfers since its effective date of January 28, 2024, and \$52,408 in cash transfers at the end of the quarter. The Debtor operated its business as a debtor in possession pursuant to Bankruptcy Code §§ 1107(a)

and 1108 from the March 21, 2023, Petition Date and to the January 28, 2024, effective date of its confirmed plan. As in *Allied*, the remedial effect of the penalties may be achieved.

19. The Liquidating Trustee's statement in paragraph 11 of her Objection that "[t]he Schedules list no claims for the Claimant" is incorrect. DOL is listed as a priority creditor with a claim for potential tax liability in an unknown amount on page 38, paragraph 2.84 of the original Schedule EF filed June 9, 2023 (Doc. 100) and on page 26, paragraph 2.84 of the Amended Schedule EF filed July 27, 2023 (Doc. 147).

Reservation of Rights

20. DOL reserves the right to amend, modify, or supplement this Response in all respects. Nothing herein constitutes a waiver of DOL's rights or remedies.

WHEREFORE, DOL prays the Court to deny the Liquidating Trustee's Objection to Claim No. 10156, allow its claim in full as filed, and to grant such other and further relief as the Court deems just and proper.

DATED: April 3, 2025

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CERTIFICATE OF SERVICE

This is to certify that I have electronically filed the foregoing *Georgia Department of Labor's Response in Opposition to the Liquidating Trustee's Objection to Claim No. 10156 Filed by the Georgia Department of Labor* in the Bankruptcy Court's Electronic Case filing program, which sends a notice of this document and an accompanying link to this document to parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

This is to further certify that on this day I caused a copy of this document to be served via U.S. First Class Mail, with adequate postage prepaid on the following parties at the following addresses:

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DATED: April 3, 2025

/s/ Shawna Y. Staton
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