

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

In re:	)	Chapter 11
	)	
DAYTON SUPERIOR CORPORATION,	)	Case No. 09-11351 (BLS)
	)	
Debtor.	)	
	)	Ref. Dkt. No. 16

**OBJECTION OF DK ACQUISITION PARTNERS LP AND SILVER POINT  
CAPITAL, L.P. TO DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS  
AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED  
FINANCING FROM THE PREPETITION REVOLVING LENDERS**

DK Acquisition Partners LP and Silver Point Capital, L.P. (on behalf of certain managed funds) (collectively, the "Prepetition Term Loan Lenders") hereby object (the "Objection") to the *Debtor's Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code (I) Authorizing the Debtor to (A) Obtain Post-Petition Financing, (B) Use Cash Collateral, and (C) Repay the Prepetition Revolving Obligations, (II) Granting Security Interests and Superpriority Administrative Expense Status to the DIP Lenders, (IV) Scheduling a Final Hearing and (V) Granting Related Relief* filed April 20, 2009 [D.I. 16] (the "DIP Motion"). In support of this Objection, the Prepetition Term Loan Lenders respectfully represent as follows:

**PRELIMINARY STATEMENT**

Prior to the Petition Date,<sup>1</sup> the Debtor received two proposals to provide post-petition debtor-in-possession financing, one from the lender under the Debtor's prepetition secured revolving credit facility, and the other from certain of the Debtor's existing bondholders. The Bondholder DIP Proposal (as defined below) is more favorable to the Debtor and its estate



and creditors in almost all material respects:

- It commits the same \$55 million of new money to fund the Debtor's operations, with fewer conditions on, and more flexibility with respect to, availability of these funds than under the GE DIP Proposal (as defined below).
- The interest rate under the Bondholder DIP Proposal (currently 7.5%) is approximately *half* that under the GE DIP Proposal (currently 15.25%), and there are approximately \$5 million less in fixed fees under the Bondholder DIP Proposal.
- The Bondholder DIP Proposal does *not* require the roll-up of any prepetition debt, whereas the GE DIP Proposal requires the *immediate* roll-up of approximately \$111 million in prepetition debt, thereby foreclosing all restructuring alternatives relative to the Prepetition Revolving Obligations (defined below) other than payment in full in cash on the effective date of a chapter 11 plan.

For these reasons, among others, the Prepetition Term Lenders object to approval of the GE DIP Proposal.

### **BACKGROUND**

1. The Debtor has a two-tiered prepetition secured debt structure comprised of: (i) a \$100 million term loan facility with the Prepetition Term Lenders asserted by the Debtor as having an outstanding principal balance of approximately \$103 million as of the Petition Date (the "Prepetition Term Loan Obligations") and (ii) a \$150 million Prepetition Revolving Facility with General Electric Capital Corp. ("GECC") and other lender parties from time to time (collectively, the "Prepetition Revolving Lenders") having an outstanding principal balance of approximately \$111 million as of the Petition Date (inclusive of approximately \$9 million in face amount of issued and outstanding letters of credit) (the "Prepetition Revolving Obligations," and together with the Prepetition Term Loan Obligations, the "Prepetition Secured Obligations").

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<sup>1</sup> Capitalized terms used herein but not otherwise defined herein have the meanings ascribed to them in the Motion.

2. The Prepetition Secured Obligations are secured by liens and security interests in substantially all of the Debtor's assets (the "Prepetition Collateral"). Pursuant to an Intercreditor Agreement attached as Exhibit C to the DIP Motion (the "Intercreditor Agreement"), the Prepetition Revolving Obligations are secured by senior liens and security interests in the working capital assets of the Debtor, such as accounts, inventory, instruments, and chattel paper (collectively, the "Revolving Credit Priority Collateral") and junior liens in all other collateral (the "Term Loan Priority Collateral"). The Prepetition Term Loan Obligations are secured by senior liens in the Term Loan Priority Collateral and junior liens in the Revolving Credit Priority Collateral.<sup>2</sup>

3. The Debtor is also an issuer of \$170 million in Senior Subordinated Notes, which are unsecured obligations of the Debtor that are subordinated in right of payment to the Prepetition Secured Obligations.

4. Prior to the Petition Date, the Debtor solicited and obtained competing debtor-in-possession financing proposals from GECC (the "GE DIP Proposal") and Oaktree Capital Management, a substantial holder of the Debtor's Senior Subordinated Notes (the "Bondholder DIP Proposal"). Both proposals purport to meet the Debtor's post-petition liquidity needs of approximately \$55 million. The Debtor rejected the Bondholder DIP Proposal and, instead, opted to seek the Court's approval of the GE DIP Proposal.

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<sup>2</sup> The Intercreditor Agreement contains, among other things, certain waivers of rights by the Prepetition Term Loan Lenders to object to certain postpetition financing arrangements proposed by the Prepetition Revolving Lender. (Intercreditor Agr. § 6.1.) Assuming for argument's sake that such provisions are enforceable in a bankruptcy proceeding, they are of no moment here. Specifically, section 6.01(c) the Prepetition Term Loan Lenders to object to a post-petition financing proposal made by the Prepetition Revolving Lenders if such proposal is "materially less favorable" to the Debtor than is otherwise available to it in the market. (Intercreditor Agr. § 6.1(c).) As established below, the Bondholder DIP Proposal is not just "not materially less favorable" than the GE DIP Proposal. It is, in fact, substantially more favorable than the GE DIP Proposal.

## OBJECTION

### **The Debtor's selection of the GE DIP Proposal over the Bondholder DIP Proposal is unreasonable; the Debtor dramatically overvalues the avoidance of a dispute with the Prepetition Revolving Lenders**

5. The Debtor claims to have reviewed the GE DIP Proposal and the Bondholder DIP Proposal side-by-side when choosing between them (Hootnick Decl. ¶ 19). Notably, however, the Debtor does not provide the Court or other parties in interest with such a comparison.<sup>3</sup> A true side-by-side comparison of the GE DIP Proposal and the Bondholder DIP Proposal demonstrates that the terms of the Bondholder DIP Proposal are superior *in all material respects*.

#### 6. *Amount, Availability of Borrowing.*

(a) GE DIP Proposal: \$165 million, approximately \$111 million of which is a roll-up of all outstanding Prepetition Revolving Obligations. The approximately \$55 million of new availability is subject to availability blocks of (i) \$5 million through July 31, 2009, (ii) \$10 million from August 1-October 15, 2009, and (iii) \$15 million thereafter. Interim availability includes immediate roll-up of approximately \$101 million in prepetition debt obligations and re-issuance of approximately \$9 million of prepetition letters of credit. Availability is generally tied to a Borrowing Base that is subject to an automatic reduction of \$15 million and a further reduction in the amount of any discretionary reserves.<sup>4</sup>

(b) Bondholder DIP Proposal: Approximately \$55 million of new money, without any roll-up of prepetition indebtedness, conversion of prepetition letters of credit to post-petition letters of credit, or availability blocks; availability is tied to a budget rather than Borrowing Base.

(c) Unnecessary Cost to the Estate of the GE DIP Proposal: The Debtor is forced to borrow an extra \$111 million it does not need to fund its

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<sup>3</sup> Instead of providing the Court with a side-by-side comparison of the terms of each proposal, the DIP Motion and Hootnick Declaration focus entirely on a single aspect of the Bondholder DIP Proposal, namely, that the loans would be secured by liens sharing *pari passu* with the Prepetition Revolving Lender's liens in the Prepetition Collateral. Based on this single justification, the Debtor capitulated to GECC's demand, among others, to roll-up the entire \$111 million prepetition revolving indebtedness *on the first day of the bankruptcy case*.

<sup>4</sup> The Borrowing Base is defined as an amount equal to: (i) 85% of the value of Eligible Accounts; plus (ii) the lesser of (a) 60% of the value of Inventory at cost and (b) 85% of the value of Inventory at liquidation value (exclusive of the value of the Rental Fleet); plus (iii) the lesser of (a) 60% of the value of the Rental Fleet at cost and (b) 85% of the value of the Rental Fleet at liquidation value; minus (iv) discretionary reserves; minus (v) \$15 million.

operations and sacrifices flexibility as a result of availability blocks on the new money.

7. ***Interest.***

(a) GE DIP Proposal: Prime (subject to a 4.25% floor) plus 11% for Base Rate Loans (initially, *approximately 15.25% per annum*). LIBOR (subject to a 3.25% floor) plus 12% for Eurodollar Rate Loans (initially *approximately 15.25% per annum*).

(b) Bondholder DIP Proposal: LIBOR (subject to a 3% floor) plus 4.5% (initially approximately 7.5%).

(c) Unnecessary Cost to the Estate of the GE DIP Proposal: The Debtor pays more than *twice* the rate of interest on potentially *three times* the principal balance of money lent (insofar as GE DIP Proposal requires the Debtor to borrow an additional \$111 million).

8. ***Fees.***

(a) GE DIP Proposal: Commitment fee of \$1.65 million; Administration Fee of \$200,000; Facility Fee of \$4.95 million (4% of \$165 million, less the Commitment Fee); Unused Commitment Fee of 1% per annum on daily unused amount of Commitments; Letter-of-Credit Fees equal to maximum undrawn face amount multiplied by the Applicable Margin for Eurodollar Rate Loans (*i.e.*, interest equal to the spread).

(b) Bondholder DIP Proposal: Commitment Fee of \$825,000 (1.5% of aggregate Commitments); Administration Fee of \$150,000; Facility Fee of \$825,000 (1.5% of aggregate Commitments); Unused Commitment Fee of 0.375% per annum on daily unused amounts of Commitments; no Letter-of-Credit Fees.

(c) Unnecessary Cost to the Estate of the GE DIP Proposal: \$5 million in additional fixed fees that will be rolled into the principal of the loan and accrue interest at more than twice the rate applicable under the Bondholder DIP Proposal, and that will further reduce new money availability; 0.625% more fees on unused commitments, payment of Letter-of-Credit Fees.

9. It is inexplicable that the Debtor would saddle its Estate with these significant – and unnecessary – financial burdens on the first day of the case, before the formation of an official creditors' committee and with limited notice to parties in interest. It is

especially disappointing because the Debtor failed to describe to the Court just how egregious the terms of the GE DIP Proposal are relative to the Bondholder DIP Proposal.

10. Under certain circumstances, it may make sense for a debtor to avoid litigation by rejecting a postpetition financing proposal that, like the Bondholder DIP Proposal, seeks to create liens *pari passu* with prepetition senior liens. Such circumstances are not present here, however, given the steep cost to the Debtor's estate of the GE DIP Proposal outlined above. As one of the Debtor's largest creditor constituencies – and, therefore, among those who would have the most to lose if the Debtor were unsuccessful in litigating a priming fight – the Prepetition Term Loan Lenders believe that the speculative litigation risk that may be associated with opting for the Bondholder DIP Proposal is far more palatable than the Debtor's current plan to turn over control of the case to GECC on the first day.

11. In sum, the Court should not permit the Debtor, to the detriment and prejudice of its estate and creditors, to pay so dear a price for post-petition financing when alternative financing on much better terms is available.<sup>5</sup>

### **RESERVATION OF RIGHTS**

12. In the short amount of time since the commencement of this bankruptcy case and the filing of the DIP Motion, the Prepetition Term Loan Lenders have not had an opportunity to meaningfully evaluate, or confer with the Debtor or the Prepetition Revolving Lender regarding, the proposed DIP financing agreement or the form of order approving the same. The Prepetition Term Loan Lenders reserve the right to modify or supplement this Objection at the hearing on the DIP Motion or by supplemental pleading.

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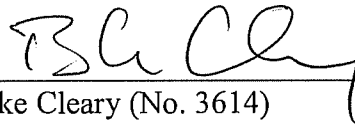
<sup>5</sup> Even if the Court is inclined to permit the Debtor to enter into the GE DIP Proposal notwithstanding that its terms are materially less favorable to the Debtor and its creditors than the Bondholder DIP Proposal, the Prepetition Term Loan Lenders are not in agreement with the proposed form of order and, if necessary, reserve the right to raise additional objections at the hearing on the DIP Motion or in a supplemental pleading.

**CONCLUSION**

WHEREFORE, the Prepetition Term Loan Lenders respectfully request entry of an order denying the DIP Motion and granting the Prepetition Term Loan Lenders such other and further relief as is just and appropriate.

Dated: Wilmington, Delaware  
April 21, 2009

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