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U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re.: **CHAPTER 11**

ENERGY CONVERSION DEVICES, INC., ET AL., Case No. 12-43166 (Jointly Administered)

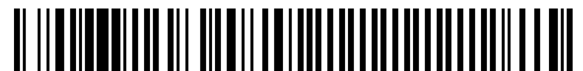
Debtors Hon. Thomas J. Tucker

OBJECTION OF 2/13/12 SHAREHOLDER TO THE SALE OF THE SUBSIDIARIES OF ENERGY CONVERSION DEVICES, INC. AND MOTION TO HAVE COMPETENT COUNSEL APPOINTED TO REPRESENT THE 2/13/12 SHAREHOLDERS

John Austin Murphy, owner of a substantial number of shares Energy Conversion Devices, Inc. (ENER) on 2/13/12 (most of which were purchased at the end of December 2011) and continuing owner of a tiny fraction thereof, objects to the proposed sale of ENER's subsidiaries and moves to enter an Order for the United States Trustee to appoint a committee or competent counsel to represent the 2/13/12 shareholder claim and respectively represents:

I. Summary

1. According to Delaware General Corporation Law, the officers and directors acting for ENER have a fiduciary responsibility (as well as duty-of-care obligations) to its shareholders and others that include creditors besides just its unsecured 3s13 convertible noteholders (with the responsibility to the latter being largely restricted to paying interest and principal as contracted, or allowing conversion into stock at a very high price, because of the nature of the notes' indenture that ENER referred to as "covenant light" at the 3/23/12 ENER creditors' committee hearing).



2. ENER secretly entered into a liquidation agreement with over 70% of the 3s13 noteholders to file for bankruptcy and engage in a quick fireside sale of its subsidiaries (as indicated in the 2/13/12 Plan Support Agreement that was publicly filed with the Bankruptcy Court on 3/15/12) without consulting other creditors or shareholders (as indicated in the 4/5/12 Ad Hoc Shareholders' Committee Motion for the Formation of an Official Equity Committee that provides further supporting documentation for these pleadings).
3. ENER announced and began carrying out this liquidation process with its February 14, 2012 Chapter 11 Bankruptcy filing, even though it had more than sufficient cash to pay its current liabilities, even though it would have remained in compliance with all contractual creditor agreements if it hadn't filed for bankruptcy (and likely would have continued to be so for at least a year), and even though it wasn't faced with any material lawsuits.
4. ENER has implicitly admitted at the 3/23/12 Creditors' Committee hearing (as recorded by the Bankruptcy Court) that it recognized the fireside liquidation would not result in more value than obtainable by either a less rushed sale under better marketing conditions or continuing operations in some form, that receiving any material bids whatsoever in the agreed-upon fireside sale was uncertain, and that it destroyed the substantial value of the common stock via the bankruptcy filing and liquidation agreement with the 3s13 noteholders as well as reduced the value to the current liability holders (as it also stated publicly on 2/14/12 when it also announced it recognized that it wouldn't be able to pay off its liabilities in full with the liquidation agreement even though it had earlier admitted numerous times, such as in

its SEC 10-K filing for 6/30/11 and its 10-Q filing for 9/30/11, that it had sufficient liquidity to pay off its current liabilities over the coming year).

5. ENER has publicly stated that it filed for bankruptcy in order to obtain permission from the 3s13 noteholders to sell its solar subsidiary and reaffirmed this statement at the 3/23/12 creditors' committee hearing where it pointed out a covenant in the 3s13 indenture, which actually only made all principal due immediately upon the sale of substantially all assets but in no way required the company to obtain permission first to sell any or all of its subsidiaries (and given that the value of the Ovonyx subsidiary and other ENER assets may be considerable, it's very questionable whether the sale of the solar subsidiary would trigger that covenant). Any optimal attempt to sell the solar subsidiary to maximize the value to ENER stakeholders would clearly have proceeded in a non-rushed manner for maximum value to stakeholders that likely could have been even greater if the company had used its extensive cash resources to engage in its modernization plans as it had long stated it intended to do while indicating it might have to wait until June 2013 to optimally be able to refinance the 3s13 note principal that was due then (as first indicated by ENER in a 3/21/11 *Forbes* article "Energy Conversion Devices Responds to Debt Concerns" that it intended to continue to try to improve its operations with its modernization plans in order to have a better opportunity to refinance the 3s13 notes in 2013 and subsequently tacitly confirmed in all subsequent public statements, including in its 9/30/11 SEC 10-Q, which indicates ENER would even try to undertake a reverse merger in order to avoid triggering a principal acceleration clause in the 3s13 note indenture as a result of the price of its stock not being above $1 for 10 days over the next year, with this risk

being eliminated in early February 2012 when the stock price rose manifold from its December 2011 level upon the announcement of continued progress in developing its solar technology). Since filing for bankruptcy, ENER has also stated (most recently reported in the Associated Press 4/24/12 article "Energy Conversion Devices extends auction deadline") that its "'current capital structure and legacy costs' have kept it from making necessary investments" (that are thereby implied to have a positive net present value), but there was nothing prior to the filing of bankruptcy that prevented the company from using its enormous cash resources to make those investments (that could greatly increase the value of the firm for all ENER stakeholders).

6. ENER's 2/13/12 sale of its profitable battery division enhanced ENER's capacity to finance its expected lucrative investments in new solar technology and manufacturing processes that had long been planned for 2012 and that could easily result in ENER being able to obtain financing to pay off all liabilities due in 2013 and beyond. The battery division sale, which might have resulted in a large enough reported profit in the most recent quarter to have a listed positive book value for its equity, and which likely would have resulted in a market value of the equity to significantly exceed the levels of near $100 million that existed in early 2012 if it hadn't been announced on the same day as the 2/14/12 bankruptcy filing) seems to have been for a fairly low price given the division's profits and technology and would clearly fall in the realm of discretionary "business judgment" only if there weren't any bankruptcy filing/liquidation agreement that was announced at the same time but implemented after said sale (as a buyer of that profitable division would inevitably have paid far more to get the battery division profits if it were accompanied by the tax loss carry-

forwards of ENER that have a potential value of $170 million, as indicated in the 4/13/12 Ad Hoc Shareholders' Supplement to the Motion for the Appointment of an Official Equity Committee, and that could easily have been arranged to be transferred in realizable value to a buyer of the battery division if ENER's solar subsidiary had been sold separately earlier—the enormous drop in the value of the tax loss carry-forwards resulting from the liquidation/bankruptcy agreement makes realization of their full value even through a reverse merger largely infeasible, as indicated by the recent offer for them reported in Marketwire's 4/18/12 article "Salamon Group, Inc. (SLMU) Tenders Offer to Shareholders and Board of Directors to Energy Conversion Devices (ENERQ.PK)" that implies a current market value of only about $2.5 million for them).

7. The foregoing #3-6 indicates that a drop in the total present value to ENER stakeholders must therefore have clearly been anticipated as a result of entering into the Plan Support Agreement that resulted and the filing for bankruptcy on 2/14/12.

8. The value of the entire ENER enterprise fell substantially as a result of the 2/14/12 bankruptcy filing that was combined with the quick liquidation agreement. Although the market value of the 3s13 notes rose significantly after the filing (due to the fact that the 3s13 note principal due on 6/15/13 became immediately payable upon the bankruptcy filing and thereby enhanced the interests of the noteholders to the detriment of shareholders and other creditors), that rise of less than $40 million in the value of the 3s13 notes was much more than offset by the drop in the market value of ENER's common stock by over $60 million, not to mention the approximately $30 million fall in the value of the current liabilities, which have a current estimated

payoff of about half that of the full payoff which was likely and expected without the bankruptcy liquidation agreement with the 3s13 noteholders as is indicated by the current market value of less than 50% for unsecured claims of ENER. This market ex-post appraisal of the amount by which the bankruptcy/liquidation agreement destroyed total ENER firm value may not have been precisely known, but a very large drop in total value to ENER stakeholders had to have been recognized ex-ante.

9. ENER stated on 2/14/12 that it believed its liquidation agreement was best serving its "stakeholders", as it reaffirmed at the 3/23/12 creditors' committee hearing when referring to its "constituents". However, the Plan Support Agreement detracts from overall firm value (by well over $50 million, as clearly indicated in #8) and provides no benefits to the company or any "stakeholders" except the 3s13 noteholders (by accelerating their principal by 16 months) and management (through extra compensation provided for them in that agreement that has the exact terms listed as "confidential" and could be enormous).

II. Deductions

10. It can be deduced from the foregoing #2-9 that ENER was destroying the value of the firm as a whole by entering into the liquidation/bankruptcy agreement, which served only its long-term creditors (i.e., principally the 3s13 noteholders) to the detriment of all other ENER "stakeholders" and total company value. There therefore seems to exist sufficient evidence to believe that there has been a violation of #1 that may create a large indemnification liability for ENER to the 2/13/12 ENER shareholders, who therefore should have a right to have their claim investigated and considered for payment by ENER.

11. The 2/13/12 "Plan Support Agreement" provides no consideration to ENER, and in fact only explicitly takes value out of the company (including in the form of that Plan Support Agreement's extra compensation to ENER management in the form of the Bonus and Incentive Pay which may be quite substantial but whose value isn't publicly known because it is listed as "confidential" in the "Agreement" filed publicly with the Court but must be paid by ENER according to the "Agreement", and the $1 million in payments to the 3s13 Noteholders' attorneys and financial advisers which the "Agreement" stipulates ENER must pay), as well as implicitly destroys an enormous amount of firm value (as indicated in the foregoing #2-8 for the benefit of the 3s13 Noteholders. Without due consideration given to both parties to the contract, the "Plan Support Agreement" does not appear to be a valid contract according to contractual law (while the "Agreement" does provide substantial value to the 3s13 noteholders by accelerating the principal owed by over 16 months, as well as paying the costs of their legal and financial advisers, nothing at all positive is provided to the company). For these reasons, as well as for the apparent violation of #1 through ENER's unprecedented bankruptcy filing (that creates pressing claims on the company, such as that of the 2/13/12 shareholders, as opposed to protects the firm against existing pressing claims, that benefits one class of creditors at the expense of other stakeholders, and that was clearly realized ex-ante as well as ex-post to reduce the value of the company as a whole, therefore possibly creating legal precedent for similar unfair treatment by debtors for the benefit of an existing set of long-term creditors that can be motivated by pressure from a particular set of creditors for special treatment and possibly even by management self-dealing and thus potentially

causing a financially catastrophic denial of short-term trade credit to all companies that have no material lawsuits or liabilities over the coming year that couldn't be covered from existing liquidity and that have just an arbitrarily low chance of coming near to a zone of insolvency), there is cause to dismiss the ENER bankruptcy case as per *11 U.S.C. § 1112(b)*, as is clearly in the best interests of estate as indicated in the foregoing #8 alone, especially since ENER clearly has more than sufficient cash to make payments on its liabilities for at least the next year (as has been confirmed by the most recent auditor's statement for ENER in the SEC 10-K for the year ending 6/30/11 that cast no doubt on the company's viability as a going concern or its ability to meet its obligations over the coming year) and engage in its announced modernization plans. A dismissal of the bankruptcy case is especially justified because the bankruptcy filing was made in conjunction with ENER's side agreement with just the 3s13 note "stakeholders" to liquidate without any consulting with its other "constituents" or apparent concern for the well-recognized negative effects on them of that agreement/filing, and such obvious service to one set of creditors to the detriment of total firm value and to the disadvantage of all other "stakeholders" does not fall under the definition of discretionary "business judgment" but appears to be a clear violation of #1 regardless of whether it was merely motivated by pressure from that set of creditors, by the extra compensation that management received as indicated in the Plan Support Agreement agreed to by ENER on 2/13/12 and filed on 3/15/12 with the Court, and/or other reasons.

12. Having deliberately destroyed shareholder value by entering into the Plan Support Agreement and filing for bankruptcy on 2/14/12 that seems to be a violation of #1,

ENER appears to owe the 2/13/12 shareholders at least the $1.46-$0.29=$1.17 per share drop that occurred upon the announcement of the liquidation agreement. Upon dismissal of the ENER bankruptcy case, all liabilities would return to their 2/13/12 maturity dates and terms, while valid claims of the 2/13/12 would be due and payable immediately. The 2/13/12 shareholder claim could likely be satisfied in full with the issue of new shares of ENER stock only if ENER were allowed to continue operations of its solar subsidiaries (although legal representation would be required to determine what other 2/13/12 want).

13. The foregoing facts along with the facts that ENER's operations have a very viable brighter future (as indicated by all of ENER's continued stream of announcements of its technology improvements that have generated substantial interest among customers and joint venture partners as well as by ENER's statements about the value of the operations, as are briefly summarized in the 4/5/12 Ad Hoc Shareholders' Committee Motion for the Formation of an Official Equity Committee), that a fireside sale of assets in a bankruptcy process would generate far less interest than an unrushed manner that could have including using at least some of the company's cash to being carrying out ENER's planned modernization process to illustrate the potential, that there may be tax loss benefits equal to $170 million if the company isn't liquidated (that is destroyed by the liquidation/bankruptcy agreement because of the proposed cancelling of the ENER stock), and that continued investments in ENER's technology creates a positive net present value (as has been tacitly reaffirmed by allowing those investments to continue during the bankruptcy process) imply that ENER should not be liquidated and its subsidiaries shouldn't be sold off in

a fireside sale. Instead, since #8 alone indicates the company is worth more as an operating concern that engages in previously announced modernization plans than as a liquidated one, the company should be allowed to continue operations and use its cash to implement its new technology and production processes as it has so often previously announced that it would.

14. The fact that the damages deliberately inflicted on the 2/13/12 shareholders were not pre-petition liabilities but instead related to the same 2/14/12 bankruptcy filing that benefitted the 3s13 noteholders and management to the detriment of total firm value and other stakeholders, the 2/13/12 shareholder claim may represent claims that are senior to those of the 3s13 noteholders (especially since their claims are owed earlier than those of the 3s13 noteholders as explained in #12 if a motion for a dismissal of the case is granted by the Court) and clearly would seem to be senior to those of the compensation payments to ENER management that generated the very 2/13/12 shareholder claim, and so the 2/13/12 shareholder claim merits representation. Appointment of a legal or committee representative for the 2/13/12 shareholders (over 10 of whom are in contact on their claim by email) would permit the most efficient means of having their claims represented that would permit an investigation into the validity of the Plan Support Agreement and of the apparent violation of #1, as well as permit a filing of a legal motion for dismissal of the case or other actions deemed fair and just (including possibly file an alternative bankruptcy resolution plan immediately if allowed by the Court according to *11 U.S.C. § 1121(d)*, as has already been prepared in outline form to have the 3s13 notes replaced by preferred stock with a more attractive dividend rate and conversion price that is believed to be beneficial

to all, if details can be agreed to by all the parties in lieu of a case dismissal). Since the formation of a committee to represent the existing shareholders (who likely are mostly different than the 2/13/12 shareholders given the massive turnover of shares after the declaration of bankruptcy that included over 75% of the shares outstanding on 2/14/12 alone) is being considered by the Court, it seems equitable to have at least a legal representative for the 2/13/12 ENER shareholders and priority claims be appointed, since it is practically infeasible for that large group that likely exceeds a thousand to collectively pay attorney fees, since ENER's actions generated the 2/13/12 shareholder claim, since the 2/13/12 shareholder claim is definitely senior to those of existing shareholders, since the 2/13/12 shareholder claim may be senior to those of the noteholders as well as management, and since ENER is paying the costs of the special attorneys and financial advisers of the 3s13 noteholders who have shown interests that are averse to those of ENER shareholders. The 2/13/12 shareholder claim merits investigation and consideration, and since equity or other securities in the operations of ENER are likely to be the optimal means of resolving that claim, the sale of ENER's subsidiaries should at least be suspended until there has been a fair and just investigation of that claim.

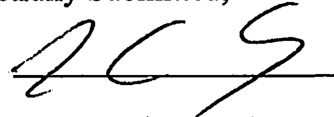
III. Conclusion

15. To ensure fair and just treatment for all stakeholders and maximize the total firm value of ENER, all the foregoing evidence on the validity of the 2/13/12 shareholder claim, the invalidity of the bankruptcy filing and Plan Support Agreement, and the greater value to all ENER stakeholders that arise from continuing operations, indicates that the proposed sale of the ENER subsidiaries should optimally be

terminated and a legal representative for the 2/13/12 ENER shareholders should be appointed.

WHEREFORE, John Austin Murphy respectfully requests that this Court enter an order ordering the United States Trustee to appoint a legal representative or committee to represent the 2/13/12 shareholder claim and to halt the sale of ENER's subsidiaries, or at least postpone it until after said requested representative and others have had an opportunity to move on the issues raised in this objection.

Respectfully Submitted,

By: 

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Dated: April 26, 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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E.D. MICHIGAN-DETROIT

IN RE:
Energy Conversion Devices, Inc., et al.,
Debtor.
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CASE NO: 12-43166
CHAPTER: 11
JUDGE: Hon. Thomas J. Tucker

PROOF OF SERVICE

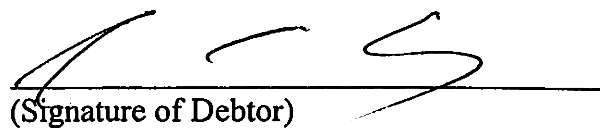
I hereby certify that on April 26, 2012 (date of mailing), I served copies as follows:

1. Document(s) served: Objection of 2/13/12 Shareholders to the Sale of the Subsidiaries of Energy Conversion Devices, Inc. and Motion to Have Competent Counsel Appointed to Represent the 2/13/12 Shareholders

2. Served upon [name and address of each person served]:
   a. Attorneys for the Creditors Committee:
   Foley + Lardner LLP
   500 Woodward Ave., Ste. 2700
   Detroit, MI 48226
   b. Attorney for Debtors:
   Honigman Miller Schwartz and Cohn LLP
   2290 First National Building
   660 Woodward Ave.
   Detroit, MI 48226

3. By First Class Mail.

Dated: 4/26/12


(Signature of Debtor)

Print Name: John Austin Murphy

____
(Signature of Co-Debtor)

Print Name: _______________________