

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

FILENE'S BASEMENT, LLC, et al.,¹

Reorganized Debtors.

Chapter 11

Case No. 11-13511 (CSS)

(Confirmed Plan)

Hearing Date:

July 22, 2020 at 10:00 A.M. (ET)

Re: D.I. 3423, 3449

**REORGANIZED DEBTORS' REPLY IN FURTHER SUPPORT OF THEIR
MOTION FOR ENTRY OF AN ORDER (I) ENFORCING THE TERMS OF THE PLAN
AND CONFIRMATION ORDER WITH RESPECT TO TRUST SETTLEMENT WITH
LOCAL 1102 RETIREMENT TRUST; AND (II) ENFORCING THE PERMANENT
INJUNCTION IN THE PLAN AND CONFIRMATION ORDER**

Trinity Place Holdings Inc. (f/k/a Syms Corporation) ("Syms") and its affiliated reorganized debtors in the above-captioned confirmed cases (the "Reorganized Debtors") hereby submit this reply (the "Reply") to the Local 1102 Retirement Trust's (the "Trust") *Objection of the Trustees of the Local 1102 Retirement Trust to the Reorganized Debtors' Motion for Entry of an Order (I) Enforcing the Terms of the Plan and Confirmation Order with Respect to Trust Settlement with Local 1102 Retirement Trust and (II) Enforcing the Permanent Injunction in the Plan and Confirmation Order* (D.I. 3449) (the "Objection") and in further support of the *Reorganized Debtors' Motion for Entry of an Order (I) Enforcing the Terms of the Plan and Confirmation Order with Respect to Trust Settlement with Local 1102 Retirement Trust and (II)*

¹ The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are as follows Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Reorganized Debtors' address is 340 Madison Avenue, New York, NY 10173.



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Enforcing the Permanent Injunction in the Plan and Confirmation Order (D.I. 3423) (the “Motion”).² In support of this Reply, the Reorganized Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. This is a dispute over the meaning of the Trust Settlement. At the Court’s suggestion, the parties agreed to bifurcate the dispute, beginning with a hearing on whether the Trust Settlement language is unambiguous, and then, only if the Court found the language to be ambiguous, proceeding to presentation of extrinsic evidence at a second stage. Recognizing that the plain language of the Trust Settlement is fatal to its case—indeed, the Trust does not even argue in its Objection that the Trust Settlement is ambiguous—the Trust ignores basic rules of interpretation and its agreement to bifurcate by selectively citing to extrinsic evidence in an effort to manufacture ambiguity or doubt where none exists on the face of the Trust Settlement.

2. This effort must be rejected. The Trust’s hindsight dissatisfaction with the Trust Settlement language that it agreed to and voted its claim to accept and confirm cannot be used to rewrite the Trust Settlement.

3. The language of the Trust Settlement is unambiguous. It provides that the Reorganized Debtors must pay the Trust \$203,232 quarterly until the Trust’s entire \$6,408,848 claim is paid in full. There is no dispute that the Reorganized Debtors have made quarterly payments totaling \$6,408,848. Thus, the Reorganized Debtors have paid the Trust’s entire \$6,408,848 claim in full. This ended the Reorganized Debtors’ obligations to the Trust.

4. For these reasons and the reasons discussed further herein and in the Motion, the Court should overrule the Trust’s Objection and grant the Reorganized Debtor’s Motion.

² Capitalized terms not defined herein are used as defined in the Motion.

BACKGROUND FACTS

5. The Reorganized Debtors incorporate by reference the background and facts set forth in paragraphs 8 through 24 of the Motion.

6. On May 13, 2020, the Reorganized Debtors' filed the Motion and *Reorganized Debtors' Motion (I) To Reopen Chapter 11 Cases of Filene's Basement, LLC and Certain Affiliates and (II) Granting Related Relief* [D.I. 3420] (the "Motion to Reopen").

7. On June 10, 2020, the Court held a hearing and granted the Motion to Reopen.

8. At the June 10 hearing, the Court directed the parties to confer regarding hearing on the Motion and suggested that the parties bifurcate the dispute so that the Court would first consider whether the Trust Settlement language was unambiguous, and then, only if the Court found the language to be ambiguous, proceed to extrinsic evidence at a second stage. Tr. at 28:20-29:7 (June 10, 2020).

9. The Reorganized Debtors thereafter conferred with the Trust and, consistent with the Court's suggestion, proposed the parties "bifurcate the hearing such that the court first determines whether the plan is ambiguous and then only holding an evidentiary hearing if the court finds ambiguity in the plan."³ The Trust agreed.⁴

10. On July 3, 2020, the Trust filed its Objection to the Motion. Notwithstanding the parties' agreement to bifurcate, the Trust's Objection inappropriately cites to and attaches selective extrinsic evidence, including language from a *draft* exhibit to a version of the Disclosure Statement that appears nowhere in the Court-approved Disclosure Statement or its

³ See Exhibit A hereto, E-mail from Curtis Miller, attorney at Morris, Nichols, Arsht & Tunnell, counsel for the Reorganized Debtors, to Jeff Marwil and Joshua Esses, attorneys at Proskauer, counsel for the Trust (June 11, 2020, 09:19 EDT).

⁴ See Exhibit B hereto, E-mail from Joshua Esses, attorney at Proskauer, counsel for the Trust, to Curtis Miller, attorney at Morris, Nichols, Arsht & Tunnell, counsel for the Reorganized Debtors (June 11, 2020, 11:26 EDT).

Court-approved exhibits. As discussed below, however, extrinsic evidence is irrelevant at this stage. To the extent it ever becomes relevant, however, the Reorganized Debtors dispute the Trust's allegations and reserve all rights with respect thereto.

REPLY

I. The Trust Settlement is Unambiguous, and the Debtors Have Satisfied Their Obligations to the Trust under the Trust Settlement's Plain Meaning.

11. The Trust Settlement is unambiguous, and the Debtors have satisfied their payment obligations to the Trust under the Trust Settlement's plain meaning.

12. As the Trust recognizes, the Trust Settlement is to be interpreted in accordance with Delaware law. Obj. ¶ 29 (citing Plan § I(E)). Under well-settled Delaware law, "clear and unambiguous language found in a contract is to be given its ordinary and usual meaning." *Templeton v. EmCare, Inc.*, 868 F. Supp. 2d 333, 339 (D. Del. 2012). "Ambiguity does not arise merely from the presence of differing interpretations." *In re Ryckman Creek Res. LLC*, C.A. No. 16-10292-KJC, 2018 WL 4178692, at *3 (Bankr. D. Del. Aug. 29, 2018) (citing *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)). Rather, "a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings." *In re Ryckman*, 2018 WL 4178692, at *3. "If a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.* 702 A.2d 1228, 1232 (Del. 1997). Further, "[a]bsent some ambiguity, Delaware courts will not destroy or twist [contract] language under the guise of construing it." *Wells Fargo Bank, N.A. v. Am. Home Mortg. Inv. Corp.*, C.A. No. 07-51741, 2008 WL 4753342, at *4 (Bankr. D. Del. Oct. 30, 2008) (J. Sontchi) (citing *Rhone-Poulenc*, 616 A.2d at 1195-96).

13. Furthermore, under well-settled Delaware law, “extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract, or to create an ambiguity.” *Benner v. Council of Narrows Ass’n of Owners*, C.A. No. 7503-ML, 2014 WL 7269740, at *8 (Del. Ch. Dec. 22, 2014) (citing *Eagle Indus.*, 702 A.2d at 1232; *Pellaton v. Bank of N.Y.*, 592 A.2d 473, 478 (Del. 1991)). Where contract language is unambiguous, a “court will ascertain the parties’ intent by according the language its plain and ordinary meaning.” *Benner*, 2014 WL 7269740, at *8; *see also Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006).

14. As set out above, the Court should look to the Trust Settlement, and not extrinsic evidence, to determine whether there is ambiguity. The terms of the Trust Settlement in the Plan are as follows:

(a) On the Effective Date, Syms will pay to the Local 1102 Retirement Trust the amount of \$203,232, representing one minimum funding payment due April 21, 2012, plus interest accruing at a rate of 3.25% per year from April 21, 2012.

(b) On November 15, Syms will pay Local 1102 Retirement Trust \$406,464, representing (i) one minimum funding payment due July 1, 2012, plus interest accruing at a rate of 3.25% per year from July 1, 2012, and (ii) one minimum funding payment due November 1, 2012, plus interest accruing at a rate of 3.25% per year from November 1, 2012.

(c) Syms will thereafter make quarterly payments to Local 1102 Retirement Trust in the amount of \$203,232, beginning February 1, 2013 and on the first of every third month thereafter, **until Local 1102 Retirement Trust’s entire \$6,408,848 claim is paid in full.**

Plan § II.B.1 (emphasis added).

15. The Trust makes no effort to argue that the Trust Settlement language is ambiguous. The Trust also makes virtually no argument to construe the four corners of the Trust Settlement in its favor. Nor can it make either such argument because the Trust Settlement is

plain on its face and consistent with the Reorganized Debtor's position. It requires that the Reorganized Debtors make quarterly payments of \$203,232 "until Local 1102 Retirement Trust's entire \$6,408,848 claim is paid in full." Nowhere does the Trust Settlement state or require that the Reorganized Debtors pay interest on the \$6,408,848 claim, or even a dollar above that amount, in order for the claim to be paid in full.

16. The other provisions of the Trust Settlement support this plain reading by showing that the parties knew how to provide for the accrual and payment of interest. Sections (a) and (b) of the Trust Settlement state that the payments made under those sections include the accrual and payment of interest at a rate of 3.25% per year. Despite the parties clearly knowing how to provide for accrual and payment of interest, section (c) of the Trust Settlement makes no mention of the accrual or payment of interest.

17. Instead of arguing that the settlement language is ambiguous or that it supports the Trust's argument, the Trust argues that because general unsecured creditors were to be paid in full with interest, the Trust clearly would not have accepted payment without interest. Obj. ¶ 42. Yet the Trust ignores the fact that the Debtors disputed the Trust's claim and its asserted priority, as plainly stated in the Trust Settlement. Plan § II.B ("Syms disputes the asserted Claim and its asserted priority status."). The Trust Settlement, on its face and by its terms, is a settlement of that dispute. *Id.* (stating that the parties had reached a "global settlement" of their disputes). It is hardly surprising that the settlement of a disputed claim would involve an agreed reduction in exchange for allowance and payment. That is a feature of nearly all bankruptcy claim settlements.

18. Additionally, the fact that general unsecured creditors received interest is irrelevant to the settlement with the Trust. As discussed above, the settlement language makes

clear that the parties knew how to require the payment of interest when they intended to do so; indeed, the first two payments scheduled for the Trust expressly required that interest be paid. There is no mention of interest with respect to the remaining payment obligation.

19. In sum, the Trust Settlement unambiguously provides that the Reorganized Debtors must pay the Trust \$203,232 quarterly until the Trust's entire \$6,408,848 claim is paid in full. There is no dispute that the Reorganized Debtors have made quarterly payments totaling \$6,408,848. Thus, the Reorganized Debtors have paid the Trust's entire \$6,408,848 claim in full as required by the plain language of the Trust Settlement. This ended the Reorganized Debtors' obligations to the Trust. For these reasons, the Court should overrule the Trust's Objection and grant the Motion.

II. The Trust May Not Rely on Parol Evidence to Create Ambiguity Where None Exists.

20. Recognizing that the plain language of the Trust Settlement is fatal to its case, the Trust ignores its agreement to bifurcate and the canons of contract interpretation by selectively citing to extrinsic evidence in an effort to manufacture ambiguity or sow doubt where none exists on the face of the Trust Settlement. The Trust's citation to extrinsic evidence is an inappropriate effort to "torture contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty." *Wells Fargo*, 2008 WL 4753342, at *4. The Court should reject this effort because, under Delaware law, "extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract, or to create an ambiguity." *Benner*, 2014 WL 7269740, at *8. Rather, where, as here, language is unambiguous, a "court will ascertain the parties' intent by according the language its plain and ordinary meaning." *Id.* And "when two sophisticated parties bargain at arm's length and enter into a contract, the presumption is even stronger that the contract's language should guide the Court's interpretation." *Tilton v. Zohar III Corp.*, C.A.

No. 19-1874-MN, 2020 WL 3960820, at *6 (D. Del. July 13, 2020) (quoting *JFE Steel Corp. v. ICI Ams., Inc.*, 797 F. Supp. 2d 452, 469 (D. Del. 2011)). That the Trust now wishes for a different meaning under the terms of the Plan does not mean that the language is ambiguous. *Id.* at *7 (“[I]t [is] not the Bankruptcy Court’s role ‘to relieve sophisticated parties of the burdens of contracts they wish they had drafted differently but in fact did not.’” (citing *DeLucca v. KKAT Mgmt. LLC*, 2006 WL 224058, at *2 (Del. Ch. Jan. 23, 2006))).

21. Moreover, even the Trust’s hand-selected citations to extrinsic evidence do not support its arguments. For example, the Trust relies heavily on Exhibit E to the Disclosure Statement, which it quotes as stating that “the \$6.9 million Local 1102 multi-employer withdrawal liability is paid over time in **44 quarterly installments.**” Obj. ¶ 34 (quoting Exhibit E, note 5, of D.I. 1641) (emphasis supplied by the Trust), ¶ 41 (arguing that quoted language supports the Trust’s position). But the Trust is quoting from a version of Exhibit E to the Disclosure Statement stamped “DRAFT” that never was approved by the Court. In fact, there is no reference to “44” quarterly installments in the Disclosure Statement or its Exhibit E approved by the Court for solicitation. Rather, Exhibit E to the *Court-approved* Disclosure Statement provides at note 5, in relevant part, that: “the \$6.4 million Local 1102 multi-employer withdrawal liability is paid over time in quarterly installments.”⁵ There is no reference to 44 quarterly installments as argued by the Trust. Moreover, the Court-approved language is fully consistent with the settlement language in the Plan, and does not provide for payment beyond the

⁵ Attached as Exhibit C are (1) the redline of Exhibit E to Court-approved Disclosure Statement against the earlier “DRAFT” of Exhibit E cited by the Trust and (2) Exhibit E to the Court-approved Disclosure Statement.

\$6.4 million required by the Trust Settlement.⁶ Thus, the Disclosure Statement provides no support for the Trust's position.⁷

22. The Trust also cites to Exhibit C to its proof of claim, arguing that “the reference [in the Plan settlement language] to ‘the entire \$6,404,408 claim’ means the payment schedule attached to the Claim as Exhibit C, which[,] under applicable law, is considered part of the contract.” Obj. ¶¶ 34, 39. But the Trust misconstrues the case it cites for the proposition that its *proof of claim* is part of the Plan. That case, *In re Sugarhouse Realty, Inc.*, states that “the confirmed plan or contract includes all documents which were confirmed together to form the contract.”⁸ 192 B.R. 355, 363 (E.D. Pa. 1996) (internal quotation and citation omitted). The case does not state, as the Trust suggests, that a creditor's claim is part of a confirmed plan.

23. Moreover, the Trust does not cite to any provision of the Confirmation Order to support its argument that the Confirmation Order “confirms” its proof of claim, nor can it because no such provision exists. And, as the Trust is undoubtedly aware, bankruptcy courts do

⁶ The Trust admits in footnote 6 of its Objection that the draft version of Exhibit E also was incorrect in another respect. The draft of Exhibit E describes the Local 1102 withdrawal liability as a “\$6.9 million” liability. The Trust recognizes that this is a “scrivener's error”, and the correct amount is \$6,404,848. The version of Exhibit E approved by the Court states the correct amount of \$6.4 million.

⁷ The Trust's citation to *In re Plymouth House Health Care Ctr.*, 2005 WL 2589201, at *4 n. 5 (Bankr. E.D. Pa. Mar. 15, 2005), does not aid its efforts to have the Court review the Disclosure Statement—plainly an extrinsic document—in an attempt to create an ambiguity in the Trust Settlement language. *Plymouth House* stands for the unremarkable proposition that a court may review a disclosure statement as extrinsic evidence *if* a provision in a plan is ambiguous.

⁸ In *Sugarhouse*, the documents at issue were expressly “confirmed” by the plan. 192 B.R. at 363 (quoting the confirmation order in that case as stating “[t]he Plan, the Asset Purchase Agreement, and all transactions, documents, instruments and agreements referenced to therein, contemplated thereunder or executed and delivered in connection therewith, are approved . . .”). Nothing in the Plan in this case expressly or implicitly provides that the Trust's proof of claim was one of the documents that the Court “confirmed” when approving the Plan. Moreover, the *Sugarhouse* decision was predicated on Pennsylvania law which required the court to consider extrinsic evidence to determine whether an ambiguity exists. This is contrary to Delaware law, which as the Trust acknowledges in the Objection, prohibits the Court from considering extrinsic evidence *unless* there is an ambiguity in the contract. See Obj. ¶ 29.

not “confirm” claims when they confirm a plan. So there is no basis for the Trust’s argument that an exhibit to its proof of claim forms part of the Plan or the Plan’s settlement provision. Rather, the Trust’s attempt to rely on an exhibit to its proof of claim is merely another inappropriate and unavailing effort to resort to extrinsic evidence.

24. The Trust also attaches and relies upon, as Exhibit B to its Objection, a “schedule of payments” that it states was “provided for by the Plan.” Obj. ¶ 5. This “schedule of payments” appears to be a newly-created document put together by the Trust to serve as an exhibit to its Objection. There is no “schedule of payments” or any document or information like it in the Plan or attached to the Plan or any plan supplement. The “schedule of payments” is not evidence of anything other than what the Trust wishes the Plan to say.

25. Finally, the Trust resorts to ad hominem attacks on the Reorganized Debtors, arguing that the Reorganized Debtors in “January of 2020 . . . decided to ‘pull a fast one’”. This offensive allegation is belied by the plain language of the Plan. The Debtors have acted consistently with that language, and, in January 2020, the Reorganized Debtors fully and finally fulfilled their obligations to the Trust under the Plan by completing “payment in full” of “the entire \$6,404,848 claim”.

26. At bottom, the Trust’s decision to ignore the plain language or argue that it is ambiguous, and instead immediately resort to ad hominem attacks and extrinsic evidence is an implicit acknowledgment that its argument on the plain language fails. Extrinsic evidence cannot be used to torture a contract’s plain meaning or create ambiguity where none exists on the face of a contract. Accordingly, the Court should reject the Trust’s efforts, and rule in favor of the Reorganize Debtors based on the plain and unambiguous language.

CONCLUSION

27. For the reasons set forth in the Motion and this Reply, the Reorganized Debtors respectfully request that the Court overruled the Objection and grant the Motion.

Dated: July 15, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Curtis Miller

Robert J. Dehney (Bar No. 3578)

Curtis S. Miller (Bar No. 4583)

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ssimonetti@mnat.com

Counsel for Reorganized Debtors

13937231.4

Exhibit A

From: Miller, Curtis
Sent: Thursday, June 11, 2020 9:19 AM
To: Marwil, Jeff J. (jmarwil@proskauer.com); Esses, Joshua (JEsses@proskauer.com)
Cc: Dehney, Robert; Simonetti, Sarah
Subject: Syms - Schedule for Motion to Enforce

Jeff and Josh,

Per the court's instructions, we are writing to discuss scheduling for the motion to enforce the plan. We agree with the court's comments that it makes sense to bifurcate the hearing such that the court first determines whether the plan is ambiguous and then only holding an evidentiary hearing if the court finds ambiguity in the plan. We think this will be the most cost effective and efficient way to move forward for both sides. Also, as we have already filed the motion to enforce, let us know when you believe you can file a response. As the parties have largely already explained their positions on the plan language, would 2 weeks suffice for a response? We would file a reply 1 week thereafter and ask for a hearing the following week, subject to everyone's schedule.

Finally, our NY co-counsel has told us that they need to provide an update to the NY court. As Judge Sontchi has reopened the case to hear this dispute, let us know if 1102 is willing to withdraw its complaint. That would avoid the incurrence of fees to provide status updates to the Magistrate Judge in NY.

If you'd prefer to have a call to discuss, let us know. Thanks.

Curtis S. Miller

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Exhibit B

From: Esses, Joshua [<mailto:JEsses@proskauer.com>]
Sent: Thursday, June 11, 2020 11:26 AM
To: Miller, Curtis; Marwil, Jeff J.
Cc: Dehney, Robert; Simonetti, Sarah
Subject: [EXT] RE: Syms - Schedule for Motion to Enforce

Curtis, thanks for your email. We think your construct makes sense, although we would like 3 weeks for the response. Then you can have 1 to 2 weeks for your reply (up to you), and the hearing 10 days to 2 weeks after your reply.

In light of the Judge's comments at the hearing that this is a "good faith dispute", we would ask that you no longer go forward with the parts of your motion that request sanctions.

Once we have established how to proceed in Delaware, we will also withdraw our complaint in NY. That should also moot any need for injunctive relief, as this will be decided in Delaware.

Please let us know if this works.

Best,
Josh

Joshua A. Esses

Associate - Business Solutions, Governance, Restructuring & Bankruptcy Group

[Proskauer](#)

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c 203.912.2064

jesses@proskauer.com

From: Miller, Curtis <CMiller@MNAT.com>
Sent: Thursday, June 11, 2020 9:19 AM
To: Marwil, Jeff J. <jmarwil@proskauer.com>; Esses, Joshua <JEsses@proskauer.com>
Cc: Dehney, Robert <RDehney@MNAT.com>; Simonetti, Sarah <Simonetti@MNAT.com>
Subject: Syms - Schedule for Motion to Enforce

This email originated from outside the Firm.

Jeff and Josh,

Per the court's instructions, we are writing to discuss scheduling for the motion to enforce the plan. We agree with the court's comments that it makes sense to bifurcate the hearing such that the court first determines whether the plan is ambiguous and then only holding an evidentiary hearing if the court finds ambiguity in the plan. We think this will be the most cost effective and efficient way to move forward for both sides. Also, as we have already filed the motion to enforce, let us know when you believe you can file a response. As the

parties have largely already explained their positions on the plan language, would 2 weeks suffice for a response? We would file a reply 1 week thereafter and ask for a hearing the following week, subject to everyone's schedule.

Finally, our NY co-counsel has told us that they need to provide an update to the NY court. As Judge Sontchi has reopened the case to hear this dispute, let us know if 1102 is willing to withdraw its complaint. That would avoid the incurrence of fees to provide status updates to the Magistrate Judge in NY.

If you'd prefer to have a call to discuss, let us know. Thanks.

Curtis S. Miller

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Exhibit C

(\$ in millions)	Emerg. 9/30/12	Quarter Ending								Cumulative
		12/31/12	3/31/13	6/30/13	9/30/13	12/31/13	3/31/14	6/30/14	9/30/14	
Beginning Cash	\$6.3	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$6.3
Less: Cash Held in Reserves (Beginning of Period)	-	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-
Unrestricted Cash	\$6.3	-	-	-	-	-	-	\$1.2	\$1.2	\$6.3
Rights Offering Proceeds	\$25.0	-	-	-	-	-	-	-	-	\$25.0
Other Chapter 11 Recoveries ⁽¹⁾	0.9	-	4.7	-	-	-	-	-	-	5.5
Draw from Operating Reserves	-	1.4	6.6	1.3	3.2	2.2	1.0	0.8	4.3	20.8
Net Proceeds	\$25.9	\$1.4	\$11.3	\$1.3	\$3.2	\$2.2	\$1.0	\$0.8	\$4.3	\$51.4
Net Property Cash Flows	\$4.0	\$23.5	\$23.4	\$19.9	\$16.4	(\$0.4)	\$29.0	-	-	\$115.8
Pension Related Expenses (Single Employer) ⁽²⁾	-	(0.7)	-	-	-	(0.9)	-	-	-	(1.6)
Pension Related Expenses (Local 1102) ⁽³⁾	-	(0.4)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(1.8)
Overhead & Other Expenses	-	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(4.9)
Total Cash Flows	\$4.0	\$21.7	\$22.6	\$19.1	\$15.6	(\$2.2)	\$28.2	(\$0.8)	(\$0.8)	\$107.4
Funding to Operating Reserves	(1.4)	(19.4)	-	-	-	-	-	-	-	(20.8)
Cash Available for Distribution	\$34.8	\$3.7	\$33.9	\$20.4	\$18.8	-	\$29.1	\$1.2	\$4.7	\$144.2
Priority & Admin Paydown ⁽⁴⁾	(\$34.8)	-	-	-	-	-	-	-	-	(\$34.8)
Distributions to Unsecured Creditors ⁽⁵⁾	-	(2.2)	(24.7)	(20.4)	(18.8)	-	(20.9)	-	-	(87.0)
Distributions to Majority Shareholder	-	(1.5)	(9.2)	-	-	-	(7.1)	-	-	(17.8)
Total Paydowns & Distributions	(\$34.8)	(\$3.7)	(\$33.9)	(\$20.4)	(\$18.8)	-	(\$27.9)	-	-	(\$139.6)
Gross Ending Cash Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$4.7	\$4.7
Less: Cash Held In Reserves (End of Period)	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-	-
Ending Excess Cash Balance	-	-	-	-	-	-	\$1.2	\$1.2	\$4.7	\$4.7
<hr/>										
<u>Operating Reserves⁽⁶⁾</u>										
Beginning Balance	-	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-
Fund	1.4	19.4	-	-	-	-	-	-	-	20.8
Draw	-	(1.4)	(6.6)	(1.3)	(3.2)	(2.2)	(1.0)	(0.8)	(4.3)	(20.8)
Ending Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-	-
<u>Outstanding Obligations & Payments Due</u>										
Unsecured Creditors	\$87.0	\$84.8	\$60.1	\$39.7	\$20.9	\$20.9	-	-	-	-
Majority Shareholder	17.8	16.3	7.1	7.1	7.1	7.1	-	-	-	-
Outstanding Pension Obligations ⁽⁷⁾	12.7	11.6	11.4	11.2	11.0	9.9	9.6	9.4	9.2	9.2
Net Remaining Payments	\$117.5	\$112.7	\$78.5	\$57.9	\$38.9	\$37.8	\$9.6	\$9.4	\$9.2	\$9.2

- (1) For purposes of conservatism, assumes additional Ch.11 recoveries (including the return of the Liberty Mutual Letters of Credit, estimated IP sale proceeds and certain other items) are received 6 months post-emergence.
- (2) Includes minimum catch-up contributions to single employer plan.
- (3) Includes quarterly withdrawal liability payments associated with the Local 1102 multi-employer plan.
- (4) Assumes all professional fees payable in July-September are deferred through the emergence date.
- (5) Excludes ~~\$13.7 million of~~ pension termination claims. Assumes the single employer pension plan (~~\$7.3mm underfunded status~~) is not terminated at emergence, and the ~~\$6.9~~6.4 million Local 1102 multi-employer withdrawal liability is paid over time in ~~44~~ quarterly installments.
- (6) Total reserves (~~\$20.6~~\$20.8 million) comprised of a \$5.0 million working capital reserve, ~~\$3.6~~\$3.8 million pension reserve, and a combined TI & carry cost reserve of ~~\$1.0~~\$12.0 million.
- (7) Represents the remaining balance associated with the ~~\$13.7 million of~~ Syms single employer and multi-employer pension plan obligations ~~at emergence. Total future liability for the single employer pension assumed to be the underfunded status of \$7.3mm.~~

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)
Debtors.¹ : Jointly Administered
----- X : Related Docket Nos. 1364, 1534 & 1653

ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) APPROVING BALLOT SOLICITATION AND TABULATION PROCEDURES, KEY DATES AND DEADLINES RELATED THERETO, FORMS OF BALLOTS, AND MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO

A hearing having been held on July 13, 2012 (the "Hearing"), to consider the motion of the Debtors, dated June 22, 2012 (the "Motion"), pursuant to sections 105(a), 502, 1125, 1126 and 1128 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 3003, 3017, 3018, 3020 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules") seeking an order (i) approving the form and content of the proposed Disclosure Statement with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, filed on May 24, 2012 (as same may be amended or modified, the "Disclosure Statement"), (ii) approving the Ballot Solicitation and Tabulation Procedures and certain key dates and deadlines related thereto, a copy of which is annexed hereto as Exhibit A (the

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

(\$ in millions)

	Emerg. 9/30/12	Quarter Ending								Cumulative
		12/31/12	3/31/13	6/30/13	9/30/13	12/31/13	3/31/14	6/30/14	9/30/14	
Beginning Cash	\$6.3	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$6.3
Less: Cash Held in Reserves (Beginning of Period)	-	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-
Unrestricted Cash	\$6.3	-	-	-	-	-	-	\$1.2	\$1.2	\$6.3
Rights Offering Proceeds	\$25.0	-	-	-	-	-	-	-	-	\$25.0
Other Chapter 11 Recoveries ⁽¹⁾	0.9	-	4.7	-	-	-	-	-	-	5.5
Draw from Operating Reserves	-	1.4	6.6	1.3	3.2	2.2	1.0	0.8	4.3	20.8
Net Proceeds	\$25.9	\$1.4	\$11.3	\$1.3	\$3.2	\$2.2	\$1.0	\$0.8	\$4.3	\$51.4
Net Property Cash Flows	\$4.0	\$23.5	\$23.4	\$19.9	\$16.4	(\$0.4)	\$29.0	-	-	\$115.8
Pension Related Expenses (Single Employer) ⁽²⁾	-	(0.7)	-	-	-	(0.9)	-	-	-	(1.6)
Pension Related Expenses (Local 1102) ⁽³⁾	-	(0.4)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(1.8)
Overhead & Other Expenses	-	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(4.9)
Total Cash Flows	\$4.0	\$21.7	\$22.6	\$19.1	\$15.6	(\$2.2)	\$28.2	(\$0.8)	(\$0.8)	\$107.4
Funding to Operating Reserves	(1.4)	(19.4)	-	-	-	-	-	-	-	(20.8)
Cash Available for Distribution	\$34.8	\$3.7	\$33.9	\$20.4	\$18.8	-	\$29.1	\$1.2	\$4.7	\$144.2
Priority & Admin Paydown ⁽⁴⁾	(\$34.8)	-	-	-	-	-	-	-	-	(\$34.8)
Distributions to Unsecured Creditors ⁽⁵⁾	-	(2.2)	(24.7)	(20.4)	(18.8)	-	(20.9)	-	-	(87.0)
Distributions to Majority Shareholder	-	(1.5)	(9.2)	-	-	-	(7.1)	-	-	(17.8)
Total Paydowns & Distributions	(\$34.8)	(\$3.7)	(\$33.9)	(\$20.4)	(\$18.8)	-	(\$27.9)	-	-	(\$139.6)
Gross Ending Cash Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$4.7	\$4.7
Less: Cash Held In Reserves (End of Period)	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-	-
Ending Excess Cash Balance	-	-	-	-	-	-	\$1.2	\$1.2	\$4.7	\$4.7
<hr/>										
<u>Operating Reserves⁽⁶⁾</u>										
Beginning Balance	-	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-
Fund	1.4	19.4	-	-	-	-	-	-	-	20.8
Draw	-	(1.4)	(6.6)	(1.3)	(3.2)	(2.2)	(1.0)	(0.8)	(4.3)	(20.8)
Ending Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-	-
<u>Outstanding Obligations & Payments Due</u>										
Unsecured Creditors	\$87.0	\$84.8	\$60.1	\$39.7	\$20.9	\$20.9	-	-	-	-
Majority Shareholder	17.8	16.3	7.1	7.1	7.1	7.1	-	-	-	-
Outstanding Pension Obligations ⁽⁷⁾	12.7	11.6	11.4	11.2	11.0	9.9	9.6	9.4	9.2	9.2
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- (7) Represents the remaining balance associated with the Syms single employer and multi-employer pension plan obligations.