

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) **Chapter 11**
) **Case No. 11 B 49744 (PSH)**
HARTFORD COMPUTER HARDWARE,) **(Jointly Administered)**
INC., et al.,¹)
) **Hon. Pamela S. Hollis**
Debtors.)
) **Hearing Date: July 24, 2012**
) **Hearing Time: 9:30 a.m.**

**CREDITORS' COMMITTEE'S REPLY TO THE
OBJECTION TO THE JOINT DISCLOSURE STATEMENT**

The Official Committee of Unsecured Creditors (the "Committee") submits this response to the objection of certain of the Debtors' shareholders and subordinated creditors (the "Objectors") [Dkt #384] to the Joint Disclosure Statement, and in support thereof states as follows:

1. The Committee believes that, subject to inclusion of certain items that are the subject of pending discussions among the Committee, the Debtors, and Delaware Street,² the Disclosure Statement should be approved as containing "adequate information" within the meaning of Bankruptcy Code §1125.

2. The Committee provided the Debtors with a proposed insert to the Disclosure Statement, expounding upon the Committee's investigation into potential Causes of Action against Delaware Street and its principals. Among other things, it:

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Old NS LLC f/k/a Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc. (FEIN 20-0845960/ Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Disclosure Statement.

² These items, as to which resolution is expected shortly, relate primarily to, (A) identification on Plan Exhibit B of Causes of Action to be transferred to the Hartford Liquidating Trust, (B) agreement regarding the parties to be included within the group of Identified Avoidance Actions, and (C) confirmation of the projected range of Allowed Class III General Unsecured Claims based upon the Debtors' review of filed proofs of claim and comparison of those filed claims to the Debtors' scheduled amounts.



- a. Explains the methods undertaken in the investigation, the documents reviewed, and the negotiations leading to the settlement; and
- b. Discusses the factors significant to the Committee's decision to settle based on a review of the facts in light of the potential Causes of Action which could be asserted against Delaware Street and its principals, the range of reasonably expected outcomes, the risks, expense, and delay associated with contentious future litigation and unfunded continuation of the Debtors' chapter 11 cases, and the advantages of a certain outcome.

3. The Committee reviewed a revised version of the Disclosure Statement shortly before filing this Reply and has confirmed that it incorporates the Committee's insert.

Accordingly, the objections going to lack of adequate information regarding the Committee's investigation and the rationale underlying the settlement have been addressed.

4. Also misplaced is the Objectors' contention that the claims raised in the Shareholder Suit are not derivative claims that can be settled by the Committee (Objection at ¶ 14). As the Debtors assert, these claims are either entirely derivative or have been rendered moot by the Avnet Transaction.

5. Counts I, II, III, and V assert claims for breach of fiduciary duty, Count VI asserts a "derivative claim" for failure to refinance, Count VII asserts a claim for corporate waste, and Count X asserts claims for aiding and abetting breaches of fiduciary duty. All these counts are entirely derivative. *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1343-44 (7th Cir. 1987) (the estate includes any action a debtor corporation may have "to recover damages for fiduciary misconduct, mismanagement or neglect of duty" and the trustee succeeds to the right to bring such actions); *In re Ambac Financial Group, Inc.*, No. 11-4643, 2012 WL 2849748 (2d Cir. July 12, 2012) ("[W]hile normally the fiduciary obligation of officers, directors and shareholders 'is enforceable directly ... through a stockholder's derivative action, it is, in the

event of bankruptcy of the corporation, enforceable by the trustee’ “ or debtor-in-possession.”) (quoting *Pepper v. Litton*, 308 U.S. 295, 307 (1939)).

6. Count IV attempts to void a possible sale of the Debtors’ assets, but that count has been rendered moot by the Avnet Transaction, which was approved by the Sale Order and so cannot be reversed or voided. 11 U.S.C. § 363(m).

7. Finally, Counts VIII and IX must fail for several, independent reasons.

- a. First, the Committee agrees with the Debtors that the Objectors, by failing to submit a “Challenge” (as required by the Final Order approving the DIP Loan), waived any right to pursue individual claims against Delaware Street for equitable subordination (Count VIII) or recharacterization of debt as equity (Count IX).
- b. Further, in order to sustain a claim for equitable subordination under the Bankruptcy Code, the alleged misconduct must harm other creditors. *In re Kreisler*, 546 F.3d 863, 866 (7th Cir. 2008) (for an equitable subordination claim to be actionable, “only misconduct that harms other creditors will suffice”). Count VIII, however, only seeks to equitably subordinate Delaware Street’s loans “to the interests of the Series A Preferred and Class B Common Stockholders” and so does not assert a valid claim for equitable subordination under Bankruptcy Code section 510(c). (See Objection at Ex. A, ¶ 98.)
- c. Objectors also have no standing to assert Counts VIII and IX for recharacterization and equitable subordination because these claims are general ones that could be brought by any creditor. As such, the Debtors’ estates own the claims, not individual creditors. *Board of Trustees of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 169-70 (3d Cir. 2002) (“In order for [a] claim to be the ‘legal or equitable interest of the debtor in property,’ the claim must be a ‘general one, with no particularized injury arising from it.’ ”); *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 701 (2d Cir. 1989) (“If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim, and the creditors are bound by the outcome of the trustee's action.”)

8. The Committee also concurs with the Debtors that the Plan properly classifies the claims of MRR and HCG Financial in a separate class consisting of all claims which are contractually subordinated to Delaware Street’s claims. *In re Orfa Corp. of Philadelphia*, 129 B.R. 404, 416–17 (Bankr. E.D. Pa. 1991) (plan may place a creditor's secured and unsecured

claims in the same class when the claims arise out of the same obligation). In any event, this is a confirmation issue, not a disclosure statement issue.

WHEREFORE, the Committee respectfully requests that, subject to consensual resolution of the items identified in footnote 2 hereof, the Court approve the Disclosure Statement and allow solicitation of votes on the Joint Plan to proceed.

Dated: July 23, 2012

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By: /s/ Jonathan P. Friedland
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Steve Jakubowski, hereby certify that on July 23, 2012, I electronically filed the foregoing **CREDITORS' COMMITTEE'S RESPONSE TO OBJECTIONS TO DISCLOSURE STATEMENT** with the Clerk of the Court using the CM/ECF system, which automatically and electronically sends notification of such filing to the attorneys of record in this case listed below:

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