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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 11
VISTA PROPPANTS AND LOGISTICS, LLC, et al.,	§	Case No. 20-42002-ELM-11
Debtors.[1]	§	(Jointly Administered)

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VISTA PROPPANTS AND LOGISTICS, LLC, ET AL., FOR ENTRY OF AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE PURSUANT TO 11 U.S.C. § 1112(B)

The Official Committee of Unsecured Creditors (the "Committee") of the above captioned debtors and debtors in possession (the "Debtors"), by and through its undersigned proposed counsel, Kilpatrick Townsend & Stockton LLP, hereby submits to this Court its motion (the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

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"Motion") requesting that the Court enter an order converting the Debtors' Chapter 11 Cases (as defined below) to cases under Chapter 7 of Title 11, United States Code (the "Bankruptcy Code"), and as grounds therefor, shows this Court as follows:

PRELIMINARY STATEMENT[2]

1. The Committee brings this Motion to convert the Debtors' cases to Chapter 7. The Debtors operations are all but shuttered. The Debtors' CFO describes it as a "near-cessation of business revenue," and "shutting down all operations to the minimal extent necessary" with "minimal operations." [Dkt. No. 35, ¶ 35]. Despite this backdrop, the Term Loan Secured Parties are proposing to layer $11 million dollars onto these estates for no reason other than to preserve the option value of their alleged collateral. While this in and of itself ordinarily wouldn't be cause for conversion, here the Tem Loan Secured Parties seek to completely eviscerate every right and protection afforded under the Bankruptcy Code to unsecured creditors in exchange for the collateral preservation loan they have no choice but to make. The rights and protections for unsecured creditors granted under the Bankruptcy Code being eviscerated under the Term Loan Secured Parties' DIP Financing scheme include (i) the encumbering of the first $11 million[3] of unencumbered assets[4] for their own benefit rather than for ratable distribution among all unsecured

[2] Capitalized terms used but not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them below or in the Committee objection to DIP Financing [Dkt. No. 157].

[3] Of the proposed $11 million DIP loan, over $2.5 million is being borrowed simply to pay lender fees (including professional fees).

[4] The Committee was formed only 15 days ago and it's professionals thereafter hired have only a few days ago been given some, let alone all, documents to begin to perform an analysis of the various lenders' liens. Moreover, the Debtors have not even filed schedules yet from which the Committee can be made aware of the universe of assets and asset classes owned by each Debtor. At a bare minimum, Avoidance Actions and their proceeds are unencumbered, and commercial tort claims (including potential claims against the ABL Lender, MAALT Lender and insiders), leasehold interests and motor vehicles appear to be unencumbered.

claims; (ii) through the mandated section 506(c) and 552(b) waivers contained in the proposed final DIP Financing order, absorbing even more unencumbered assets to fund the cost of preserving the Term Loan Secured Parties' alleged collateral if the budget proves insufficient; and (iii) a grossly inadequate (30 day) deadline to evaluate not only the liens and claims of the Term Loan Secured Parties, but also any claims the estate may have against the Term Loan Secured Parties.[5]

2. Conversion at this time will prevent the Term Loan Secured Parties from using the DIP Financing to strip away from unsecured creditors for no consideration these valuable rights to which they are entitled for their sole benefit. Upon conversion, not only will unencumbered assets be preserved for distribution in respect of unsecured claims, but a Chapter 7 trustee will have ample time (as opposed to a mere 15 days from today as provided in the proposed final DIP Financing order) to investigate the Term Loan Secured Parties' and ABL and MAALT Lenders' liens and claims as well as any causes of action or claims against the Term Loan Secured Parties, unimpeded by the Debtors' proposed DIP Financing that mandates an intentionally short investigation and challenge deadline. Moreover, a Chapter 7 trustee will be able to abandon or surcharge the Term Loan Secured Parties' collateral for protecting it whereas under the DIP Financing any shortfall in the Budget for doing so will be paid for out of the unencumbered assets to the detriment of unsecured creditors.

3. Section 1112(b) of the Bankruptcy Code empowers a court to convert a Chapter 11 case to one under Chapter 7 for cause. 11 U.S.C. § 1112(b). Converting the Chapter 11 Cases at this juncture will allow an independent Chapter 7 trustee, not influenced by the Debtors'

[5] Even worse, the 30 days also applies to the claims and liens of, and claims that could be asserted against, the ABL and MAALT Lenders who are not even entitled to adequate protection pursuant to the proposed DIP Financing.

management or the Term Loan Secured Parties, to pursue and seek to monetize encumbered and unencumbered assets for the benefit of **all** of the Debtors' creditors, including the Debtors' unsecured creditors (the Committee's constituents) whose claims could exceed $100 million.

4. The Plan proposes to pay zero to unsecured creditors. If the Term Loan Secured Parties want to preserve the going concern value of the business for future upside (clearly their goal), they cannot pay for it on the backs of the unsecured creditors whose claims they seek to wipe out in their entirety. For these reasons, and those that follow, the Chapter 11 Cases should be converted to cases under Chapter 7 of the Bankruptcy Code.

JURISDICTION

5. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). The statutory basis for the relief requested is section 1112(b) of the Bankruptcy Code.

BACKGROUND

6. On June 9, 2020 (the "Petition Date"), the Debtors commenced voluntary cases (the "Chapter 11 Cases") under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On June 10, 2020, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules*

4001(b) and 4001(c), and (IV) Granting Related Relief [Dkt. No. 32] (the "DIP Motion" and the DIP financing facility contemplated therein, the "DIP Financing").

8. On June 12, 2020, the Court entered its *Interim Order (I) Authorizing the Debtors to (A) Obtain Post-petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief* (the "Interim Order") [Dkt. No. 80].

9. On June 23, 2020, pursuant to Section 1102 of the Bankruptcy Code, the United States Trustee for the Northern and Eastern Districts of Texas (Region 6) appointed the Committee [Dkt. No. 109]. The Committee consists of the following five members: (i) The Andersons, Inc.; (ii) MP Systems Co., LLC; (iii) Schlumberger Technology Corporation; (iv) Trinity Industries Leasing Co.; and (v) Twin Eagle Sand Logistics, LLC.

10. On June 24, 2020, the Committee selected Kilpatrick Townsend & Stockton LLP as its proposed counsel. On June 25, 2020, the Committee selected Province, Inc. as its proposed financial advisor.

11. On July 3, 2020, the Debtors filed the *Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") [Dkt. No. 158] and their *Disclosure Statement in Support of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [Dkt. No. 159]. Under the Plan, general unsecured creditors are classified in Class 6. Class 6 is deemed to reject the Plan because claims of general unsecured creditors are cancelled and released without any distribution. Plan at (III)(D)(6), p. 9.

RELIEF REQUESTED

12. By this Motion, the Committee requests entry of an order, substantially in the form attached hereto as Exhibit A, converting the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code.

BASIS FOR RELIEF

13. Pursuant to section 1112(b)(1) of the Bankruptcy Code:

> Except as provided in paragraph (2) and subsection (c) …, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). Accordingly, where "cause" is found to exist, and upon the request of a party in interest, a court is required to convert a Chapter 11 case to Chapter 7, so long as "unusual circumstances" are not present. *See In re Reserves Resort, Spa & Country Club LLC*, No. 12-13316(KG), 2013 WL 3523289, at *2 (Bankr. D. Del. July 12, 2013) ("The statute thus makes conversion mandatory once a court finds, as the Court has done here, any of the elements of 'cause.'"). Thus, although the moving party has the burden to show "cause," once that showing has been made, a court must grant the motion for conversion, absent circumstances not normally found in Chapter 11 cases.

14. Although the Bankruptcy Code provides a list of what constitutes "cause," *see* 11 U.S.C. § 1112(b)(4), the list is not exhaustive. *See In re Irasel Sand, LLC*, 569 B.R. 433, 439 (Bankr. S.D. Tex. 2017); *In re Strug-Division, LLC*, 375 B.R. 445, 448 (Bankr. N.D. Ill. 2007); *see also In re Timbers of Inwood Forest Assocs., Ltd., 808 F.2d 363, 371–72 (5th Cir. 1987) (en banc) ("The inquiry under § 1112 is case-specific, focusing on the circumstances of each*

debtor."); In re Koerner, 800 F.2d 1358, 1367 (5th Cir. 1986) (holding that "in acting upon a request for conversion, the bankruptcy court is afforded wide discretion");

15. Section 1112(b)(4)(A) expressly provides that "cause" *per se* exists where there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). To satisfy this "*per se* cause," "the moving party must demonstrate that there is both (1) a substantial or continuing loss to or diminution of the estate and (2) the absence of a reasonable likelihood of rehabilitation." *In re TMT Procurement Corp*., 534 B.R. 912, 919 (Bankr. S.D. Tex. 2015) (citing *In re Creekside Sr. Apartments, L.P.*, 489 B.R. 51, 61 (B.A.P. 6th Cir. 2013)).

16. Cause for conversion exists here under section 1112(b)(4)(A) because there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

17. The first prong of section 1112(b)(4)(A) is satisfied upon demonstration of loss that is either "substantial" or "continuing." *Creekside*, 489 B.R. at 61 (citing 7 Collier On Bankruptcy, ¶1112.04[6][a][i] (16th ed. 2014) (hereinafter 7 Collier)). A loss is "substantial" if it "is sufficiently large given the financial circumstances of the debtor as to materially negatively impact the bankruptcy estate and interest of creditors." *TMT*, 534 B.R. at 918 (*citing* 7 Collier, *supra*, ¶1112.04[6][a][i]). To determine whether there is a "continuing loss," a court must "look beyond a debtor's financial statement and make a full evaluation of the present condition of the estate." *Irasel*, 569 B.R. at 441 (quoting *In re Moore Constr., Inc.*, 206 B.R. 436, 437–38 (Bankr. N.D. Tex. 1997)).

18. This prong may be satisfied by "demonstrating that the debtor suffered or has continued to experience a negative cash flow or declining asset values following the order for

relief." *TMT*, 534 B.R. at 918; *see also Irasel*, 569 B.R. at 440 (citing *TMT*, 534 B.R. at 918); *Loop Corp. v. U.S. Tr.*, 379 F.3d 511, 515-16 (8th Cir. 2004) ("Under the interpretation of § 1112(b)(1) consistently used in bankruptcy courts, this negative cash flow situation alone is sufficient to establish 'continuing loss to or diminution of the estate.'"); *In re Kanterman*, 88 B.R. 26, 29 (S.D.N.Y. 1988) ("All that need be found is that the estate is suffering some diminution in value."); 7 Collier, *supra*, ¶1112.04[6][a] ("[Section 1112(b)(4)(A)] tests whether, after the commencement of the case, the debtor has suffered or continued to experience a negative cash flow, or, alternatively, declining asset values.").

19. The Debtors are suffering negative cash flow. The Debtors CFO admits that the Debtors "incurred, and continue to incur, significate (sic) costs without the benefit of offsetting sales revenue." [Dkt. No. 35, ¶ 36]. The Debtors budget attached to the Interim Order (the "Budget") [Dkt No. 80, p. 194 of 194] reveals that the Debtors' declining revenue is insufficient to fund these Chapter 11 Cases.

20. The second prong of section 1112(b)(4)(A) is satisfied upon demonstration that there is no reasonable likelihood of "rehabilitation." "Rehabilitation" is not simply a question of whether a debtor can confirm a plan, but whether "the debtor's business prospects justify continuance of the reorganization effort." *TMT*, 534 B.R. at 920 (quoting *In re LG Motors, Inc.*, 422 B.R. 110, 116 (Bankr. N.D. Ill. 2009)). In other words, it refers to a "debtor's ability to restore the viability of its business." *Loop Corp.*, 379 F.3d at 516 (citing *In re Gonic Realty Trust*, 909 F.2d 624, 626 (1st Cir. 1990)).

21. Here, the Debtors business prospects do not justify continuance of the reorganization effort. The reorganization effort in these Chapter 11 Cases is designed to benefit the Term Loan Secured Parties at the expense of the unsecured creditors. The Debtors proposed

rehabilitation is nothing more than the mothballing of a company that may or may not restart in the future, while stripping unencumbered assets from unsecured creditors whose claims are being expunged. Rehabilitation is not justified here where restoration of viability of the business is unknown and the Term Loan Secured Parties are requiring, through the DIP Financing, unsecured creditors to give up their entitlement to a recovery from unencumbered assets.

22. On top of the fact that the proposed business rehabilitation here is not justified, the Proposed Plan is not confirmable because it violates section 1129(a)(7) of the Bankruptcy Code. Section 1129(a)(7) of the Bankruptcy Code requires that a debtor's plan of reorganization provide each creditor in an impaired class with at least as much as that creditor would receive in a Chapter 7 liquidation. 11 U.S.C. § 1129(a)(7)(A)(ii). A plan of reorganization "may not be confirmed where the evidence is not sufficient on which to base an independent factual determination that the proposed plan is in the best interests of the creditors pursuant to § 1129(a)(7)." *In re MCorp Fin., Inc.*, 137 B.R. 219, 228 (Bankr. S.D. Tex. 1992); *see also In re Cantu*, 784 F.3d 253, 262 (5th Cir. 2015) ("A reorganization plan must either be accepted by each creditor or satisfy the Code's 'best interests of the creditor' rule, which requires that the holder of a claim receive under the reorganization plan at least as much as the holder would receive in the event of [a] chapter 7 liquidation"); 7 Collier, *supra*, ¶ 1129.02[7] (Section 1129(a)(7) provides "an individual guaranty to each creditor or interest holder that it will receive at least as much in reorganization as it would in liquidation").

23. Under the Plan, unsecured creditors are in Class 6. The Plan cannot be clearer as to the treatment for unsecured creditors – unsecured claims are cancelled without any distribution, and are deemed to reject the Plan. [Dkt. No. 158, p. 13 of 60]. Here, the proposed Plan does not provide recoveries to Class 6 unsecured creditors that meet, much less exceed, the

recoveries that could be obtained in a Chapter 7 liquidation in which the unencumbered assets are available for distribution to all creditors. Although the Debtors' Disclosure Statement to date fails to attach a liquidation analysis, the unencumbered assets are presumed to have material value or else the DIP Lenders would not have conditioned providing the DIP Financing on obtaining liens on the unencumbered assets.

24. Even if cause under section 1112(b)(4)(A) is not established, as noted above, the list of possible causes for conversion enumerated in section 1112(b)(4) is not exhaustive. Here, cause also exists because the Term Loan Secured Parties are running these Chapter 11 Cases for their sole benefit and to the detriment of unsecured creditors, as evidenced by the following actions:

a. the proposed encumbrance of the unencumbered assets;

b. the proposed section 506(c) surcharge, section 552(b) equities of the case, marshaling and automatic stay waivers;

c. the truncated period for a lien challenge and claim objection;

d. the shortening of the statute of limitations for assertion of claims;

e. restrictive, fast-paced case milestones; and

f. a wide range of insider, lender and third party releases.

25. The Term Loan Secured Parties claim these provisions in the name of providing the DIP Financing, but in reality the Term Loan Secured Parties negotiated the DIP Financing for their own benefit and would easily provide the funding under the DIP Financing without this collection of egregious provisions in order to preserve their collateral.

26. Once "cause" has been shown, the burden of proof shifts to the party opposing conversion to demonstrate "unusual circumstances" establishing that conversion is not in the best

interests of the Debtors' creditors and bankruptcy estates. Unless the Debtors make this showing, the Court must convert the case. 11 U.S.C. § 1112(b)(1); *In re Riverbend Cmty., LLC*, No. 11-11771 KG, 2012 WL 1030340, at *3 (Bankr. D. Del. Mar. 23, 2012) (conversion of case is mandatory absent a showing of unusual circumstances once cause is established). The term, "'[u]nusual circumstances,' contemplates conditions that are not common in chapter 11 cases." *LG Motors*, 422 B.R. at 116 (citations omitted). No conditions exist in these Chapter 11 Cases that could render "cause" overcome and conversion inappropriate. Accordingly, no unusual circumstances – and certainly none that establish that conversion is not in the best interests of the Debtors' estates or creditors – exist at this time, and the Debtors cannot sustain their burden to overcome "cause" shown to convert their Chapter 11 Cases to cases under Chapter 7.

CONCLUSION

27. For the reasons set forth above, and pursuant to section 1112(b) of the Bankruptcy Code, the Committee submits that the Chapter 11 Cases should be converted to cases under Chapter 7 of the Bankruptcy Code.

WHEREFORE, the Committee respectfully requests the entry of an order, pursuant to section 1112(b) of the Bankruptcy Code, converting the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code and granting such other relief as is just and proper.

Dated: July 9, 2020
Dallas, Texas

/s/ Patrick J. Carew

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Proposed Counsel to the Official Committee of Unsecured Creditors of Vista Proppants and Logistics, LLC, et al.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 11
VISTA PROPPANTS AND LOGISTICS, LLC, et al.,	§	Case No. 20-42002-elm11
Debtors.[6]	§	(Jointly Administered)

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VISTA PROPPANTS AND LOGISTICS, LLC, *ET AL.* FOR ENTRY OF AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE PURSUANT TO 11 U.S.C. § 1112(b)

[6] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

This matter is before the Court upon the *Motion of the Official Committee of Unsecured Creditors of Vista Proppants and Logistics, LLC, et al., for Entry of an Order Converting the Debtors' Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code Pursuant to 11 U.S.C. § 1112(b)* (the "Motion"), filed by the Official Committee of Unsecured Creditors of Vista Proppants and Logistics, LLC, *et al.* (the "Committee"); and due and proper notice of the Motion having been given; and it appearing that no other or further notice is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. §157(b)(2); and it appearing that the relief requested is in the best interest of the Committee, the Debtors, their estates, and creditors, and after due deliberation and sufficient cause appearing; it is **ORDERED** as follows:

1. The Motion is GRANTED as provided herein.

2. Pursuant to section 1112 of the Bankruptcy Code and Bankruptcy Rules 1017 and 1019, the Chapter 11 Cases are hereby converted, effective as of the date and time of entry of this Order, to cases under Chapter 7 of the Bankruptcy Code.

3. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

 # # # END OF ORDER # # #

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