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Counsel for the Official
Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

RPM HARBOR SERVICES, INC.,

Debtor and Debtor in Possession.

Case No.: 2:17-bk-14484-WB

Chapter 11

**NOTICE OF MOTION AND MOTION
OF OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO
TERMINATE PLAN EXCLUSIVITY.;
DECLARATION OF DANIEL H. REISS**

DATE: January 18, 2018

TIME: 10:00 a.m.

PLACE: Ctrm 1375

Roybal Federal Bldg.

255 E. Temple Street

Los Angeles, CA 90012

**TO THE HONORABLE JULIA W. BRAND, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND PARTIES IN
INTEREST:**

NOTICE IS HEREBY GIVEN THAT the Official Committee of Unsecured Creditors (the
“Committee”) in the above-captioned chapter 11 bankruptcy case hereby submits its motion (the

1
2 “Motion”) for an order terminating the exclusivity period of RPM Harbor Services, Inc., the
3 debtor and debtor possession (the “Debtor”) to file a plan of reorganization and solicit acceptances
4 thereto under 11 U.S.C. § 1121.

5 **PLEASE TAKE FURTHER NOTICE** that this Motion shall be heard on January 18,
6 2018 on the Court’s 10:00 a.m. calendar before the Honorable Julia W. Brand in Courtroom 1375,
7 Roybal Federal Building, 255 E. Temple Street, Los Angeles, CA 90012.

8 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this Notice of Motion
9 and Motion, the annexed Memorandum of Points and Authorities and Declaration of Daniel H.
10 Reiss, 11 U.S.C. §§ 105, and 1121, Fed.R.Bankr.P. 2002, and L.B.R. 9013-1.


11 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(f) and (g)
12 require that (1) any opposition to the Motion must be in writing and filed and served at least
13 fourteen (14) days before the hearing on the Motion, and (2) any reply to an opposition must be in
14 writing and filed and served at least seven (7) days before the hearing on the Motion. Pursuant to
15 Local Bankruptcy Rule 9013-1(h), failure to timely file an opposition to the Motion may be
16 deemed to constitute consent to the granting of the Motion and the relief requested therein.

17 **WHEREFORE**, the Committee respectfully requests that the Court enter an order:

- 18 (1) terminating the Debtor’s exclusivity period to file a plan of reorganization and
19 solicit acceptances thereto under 11 U.S.C. § 1121; and
20 (2) Granting such other relief as the Court deems appropriate.

21
22 Dated: December 28, 2017

LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.

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24 By: 
25 Daniel H. Reiss
26 Counsel for the Official Committee of
27 Unsecured Creditors
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **STATEMENT OF FACTS**

5 **A. Background.**

6 RPM Harbor Services, Inc., debtor and debtor in possession herein (the "Debtor"),
7 commenced this bankruptcy case by filing a voluntary bankruptcy petition under chapter 11 of the
8 United States Bankruptcy Code on April 12, 2017 (the "Petition Date"). The Committee was
9 appointed by the Office of the United States Trustee as reflected in the Notice of Appointment
10 filed on May 8, 2017 [Dkt. No. 26].

11 The Debtor has repeatedly stated in pleadings filed in this bankruptcy case and in oral
12 presentations that it intends to close down the Debtor's business unless it obtains certain litigation
13 victories – which the Committee believes are highly speculative. As discussed in greater detail
14 below, the Committee recently succeeded in achieving a \$1,150,000 recovery for the Debtor's
15 estate through a settlement with the Debtor's owner – RPM Transportation, Inc. Therefore, the
16 value of the estate may be currently at its highest point. As of December 14, 2017, the Debtor's
17 general bank account had a balance of \$2,013,016.10.¹ Rather than allow the Debtor to diminish
18 the value of the estate by incurring the high cost of litigation with questionable motives and
19 merits, it appears to be in the best interests of creditors to pursue a plan of liquidation so that the
20 Debtor's cash assets can be distributed to its creditors. The Committee expects that a liquidating
21 plan would also preserve other value that may be available through post-bankruptcy investigation
22 and litigation to be conducted by an independent fiduciary and liquidating trust with oversight by a
23 post-confirmation committee. Notably, through its continuing investigations, the Committee has
24 determined that the Debtor has understated the transfers during the 90-day period prior to the
25 Petition Date by over \$1.5 million.²

26 ¹ Reiss Declaration, ¶ 7 & Exhibit "A".

27 ² According to the Statement of Financial Affairs filed by the Debtor on April 26, 2017, transfers
28 by the Debtor within 90 days prior to the Petition Date totaled \$1,326,651.87. See Dkt. No. 18, p.
53. However, based on the Committee's investigation and information provided by the Debtor,

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B. There is A Substantial Risk of Diminution of this Estate to the Detriment of Creditors if the Debtor Maintains Plan Exclusivity.

Due to statements by the Debtor – both oral and written - the Committee is concerned that the Debtor will consume substantial estate assets through litigating objections to the claims of approximately twenty judgment creditors and similarly situated creditors who have filed proofs of claim. In its initial Status Report,³ the Debtor stated as follows:

“Debtor intends to object to the twenty proofs of claims (sic) of the independent contractor drivers and agency drivers, as detailed below.

Except for the ODAs⁴ and other claims asserted by drivers based upon misclassification of their employment status as independent contractors as opposed to hourly employees, Debtor is solvent. Debtor has investigated into the viability of its business operations under an employee model for employment of its independent contractor drivers and has determined that such model places economic burdens upon Debtor such that Debtor does not have the ability to continue in operations profitably except by continuing its contracting practice using independent contractor drivers to conduct drayage into and out of the combined ports of Long Beach and Los Angeles.⁵ Therefore, the success and viability of this bankruptcy case will depend upon a determination as to twenty disputed claims filed by independent contractor drivers based upon: (a) eleven already issued, but nonfinal and subject to de novo review, ODAs; (b) four non-adjudicated claims pending before the Labor Commissioner; and (c) five other

the Debtor’s transfers within that period of time were \$2,910,081. Reiss Decl., ¶ 8. Therefore, the Debtor will likely need to file amended disclosures.

³ Status Report, Declarations of Dan La Porte and Shawn Duke, filed June 29, 2017 (Dkt. No. 50).

⁴ An “ODA” is an “Order, Decision or Award of the Labor Commissioner”, which is issued by the California Labor Commissioner after notice and hearing.

⁵ By an e-mail dated December 5, 2017 from Kevin Clancy of CohnResnick (the Committee’s financial advisor) to Dan La Porte, the Debtor’s chief financial officer, the Committee requested that the Debtor share its analysis regarding the viability of the company using an employee model. The Committee has not received a response from the Debtor. Reiss Decl., ¶ 9 & Exhibit “B”.

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2 disputed proofs of claim filed by agency drivers in this bankruptcy case. . . . **If,**
3 **however, the Court finds that Debtor’s independent contractor model is a**
4 **misclassification of employees as independent contractors, Debtor will have**
5 **no choice but to cease its operations and seek liquidation of its assets through**
6 **conversion of this case to one under chapter 7.**⁶

7 The Committee takes seriously Debtor’s statement of intention to close its business unless
8 it has the specified litigation victory against all of its pre-petition drivers. In light of the fact that
9 the Debtor has already admittedly lost in all eleven pre-petition proceedings before the California
10 Labor Commission (thus, the ODAs), the Committee does not believe that the Debtor will succeed
11 in disallowing the drivers’ claims nor getting the legal victory upon which it bases its ability to
12 continue as a going concern. Rather than expend the finite resources of this estate on such
13 litigation tactics which are of dubious merit, the Committee seeks to have the Debtor’s assets
14 distributed to creditors as soon as possible.

15 In addition, the Committee does not believe that there is a need to launch twenty claim
16 objections in an effort that would likely only benefit the Debtor’s insiders and drain cash assets of
17 this bankruptcy estate. Consequently, the Committee believes that a liquidation of the Debtor’s
18 assets at this time will result in the most certain – and likely highest – return to all creditors.
19 However, the Committee is unable to propose a plan of liquidation while the Debtor enjoys plan
20 exclusivity under Section 1121.

21 **C. Status of Debtor’s Exclusivity – Three Extensions Have Been Requested.**

22 The Debtor’s initial plan exclusivity period under § 1121(a) was from the Petition Date
23 through August 10, 2017. After that, the Debtor has filed three requests for extension of
24 exclusivity. By way of a stipulation with the Committee, the Court entered an order extending
25 this initial exclusivity to September 25, 2017.⁷ The Debtor filed a second motion on September
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⁶ *Id.*, pg. 3, ln. 12 – pg. 4, ln. 3 (emphasis added).

28 ⁷ *See* Order entered September 25, 2017, Dkt. No. 80.

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2 25, 2017,⁸ requesting another extension to November 9, 2017 – which was granted by this Court
3 without opposition by the Committee.⁹ On November 9, 2017, the Debtor filed its third request
4 for an extension of plan exclusivity.¹⁰ The Committee filed a limited objection to the third
5 motion on November 28, 2017. However, the Debtor has not resolved the Committee’s limited
6 objection, nor has it set the third extension motion for a hearing pursuant to Local Bankruptcy
7 Rule 9013-1(o)(4). Further, there is no order of this Court extending plan exclusivity beyond
8 November 9, 2017. However, in an abundance of caution, the Committee is requesting that the
9 Court terminate exclusivity to resolve any doubt.

10 II.

11 ARGUMENT

12 A. This Court My Terminate Exclusivity.

13 This Court may terminate or shorten the Debtor’s plan exclusivity “for cause”. 11 U.S.C.
14 § 1121(d). Although the term “cause” is not defined in the Bankruptcy Code, it is well-
15 established that “cause” is a flexible standard designed to balance the competing interests of
16 debtors and their stakeholders. *United Savings Ass’n v. Timbers of Inwood Forest Assocs. Ltd. (In*
17 *re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F. 2d 363, 372 (5th Cir. 1987), *aff’d*, 484 U.S. 365
18 (1988)(the intent of section 1121 is to “limit the delay that make creditors the hostages of Chapter
19 11 debtors”).

20 The legislative history of § 1121(d) makes clear that exclusivity “should not be employed
21 as a tactical device to put pressure on parties in interest to yield to a plan they consider
22 unsatisfactory.” Senate Report No. 99-764 and House Report 99-958 (reprinted in 1986 U.S. Code
23 Cong. & Adm. News, at 5227). *See also In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1006
24 (Bankr. N.D. Ind. 1990)(denying extension of exclusivity when “such extension would have the

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27 ⁸ See Dkt. No. 85.

⁹ See Order entered November 3, 2017, Dkt. No. 99.

28 ¹⁰ See Dkt. No. 105.

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2 result of continuing to hold creditors hostage to the Chapter 11 process and pressuring them to
3 accept a plan they believe to be unsatisfactory”).

4 In this case, maintaining exclusivity deprives creditors of their freedom to choose.
5 “Shortening the debtor’s exclusive period for filing a plan will permit any party in interest,
6 including parties with perhaps a more objective view of the debtor’s circumstances, to file a plan.”
7 *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 160-61 (Bankr. D. Me. 1982). Opening the door to
8 competing plans will be beneficial, not harmful, to the reorganization effort. Increased
9 competition by other parties often facilitates negotiation of a consensual plan. *See, e.g., In re*
10 *Public Service of New Hampshire*, 99 B.R. 155 (Bankr. D.N.H. 1989) (termination of plan
11 exclusivity period broke stalemate between the debtor and creditor constituencies and fostered plan
12 negotiations).

13 **B. The Factors Set Forth By the Ninth Circuit Bankruptcy Appellate Panel in**
14 **Henry Mayo Newhall Memorial Hospital Demonstrate That Exclusivity Should be**
15 **Terminated.**

16 The Ninth Circuit Bankruptcy Appellate Panel *In re Henry Mayo Newhall Mem’l Hosp.*,
17 282 B.R. 444, 451 - 453 (9th Cir. BAP 2002) set forth a number of factors as to whether exclusivity
18 should be extended. The factors incited in the *Henry Mayo* decision demonstrate that exclusivity
19 should be terminated in this case.

20 **Factor 1: The Debtor has Already Requested Three Extensions of Exclusivity.**

21 The Debtor has filed three motions to extend its plan exclusivity. The Committee did not
22 object to the initial two extensions; further, the Committee only filed a limited opposition to the
23 Debtor’s third request regarding outdated operating projections which the Debtor has not sought to
24 resolve. Therefore, the Committee and this Court have given the Debtor ample opportunity to
25 demonstrate a good faith effort to reorganize in this case. It has not done so; therefore, the
26 Debtor’s plan exclusivity should be terminated.

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Factor 2: Impact of Competing Plans.

Although the Debtor has not yet filed its own plan, commentators have noted that the likely consequence of the denial of an extension of exclusivity is “not that creditor plans will be proposed and approved, but that the threat of such plans will cause the debtor to come forward more quickly than he might otherwise.” Epstein, Nickles, and White, Bankruptcy § 11-15 (1992), (*cited by In re Henry Mayo Newhall Mem’l Hosp.*, 282 B.R. and 453); *see also Public Service of New Hampshire, supra*. Because allowing for competing plans can more likely facilitate a competitive process and increase the value of the estate for creditors, this factor favors terminating the Debtor’s plan exclusivity period.

Factor 3: Absence of Evidence that The Case Involves Large and Complex Business

Issues.

There are no complex business issues to resolve before a confirmable plan can be proposed by another party. Therefore, this factor weighs in favor of terminating the Debtor’s plan exclusivity period.

Factor 4: Negotiations with Key Creditors Is at a Standstill.

The Debtor has not negotiated the terms of the Plan with any creditors of which the Committee is aware. As stated above, the Debtor appears to be basing its delay in proposing a plan on the highly speculative premise that it will obtain the favorable rulings in its objection to approximately 20 creditor claims and has not engaged in settlement discussions with the creditors. This factor favors termination of plan exclusivity.

Factor 5: No Good Faith Progress Towards Reorganization.

There has been no progress towards a reorganization in this case. The Debtor has merely been operating without taking steps to move it closer to exiting this case by way of a plan.

Factor 6: No Viable Plan Has Been Filed.

No plan at all has been filed by the Debtor in this case, despite the Debtor’s three requested extensions of exclusivity.

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Factor 7: More Than Enough Time Has Elapsed in this Case.

Sufficient time has elapsed in this case to propose a confirmable plan. By the time this motion will be heard, this case will have been pending nearly nine months. This is an uncomplicated case; the Debtor is an operating drayage company with a number of litigation claimants. There is nothing unique about this case nor the issues presented.

Factor 8: The Debtor is Using its Plan Exclusivity to Pressure Creditors while it has Not Fulfilled its Fiduciary Duties.

As stated above, the Debtor is threatening to shut its company down if it doesn't obtain the legal victories it is seeking against approximately twenty former truck drivers. Under this threat, the Debtor has sought to retain exclusive control over the reorganization process without any attempt to maximize the value of the estate for the benefit of creditors. In doing so, creditors are hostage to a process that could be to their severe detriment, while, on the other hand, the case is being conducted solely for the benefit of insiders. In the meantime, there is no indication that these insiders are adequately fulfilling their fiduciary duties to this estate.

Debtors in possession have "a fiduciary duty to protect and maximize the estate's assets." *Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F. 3d 325, 339 (3d Cir. 2004).

In Chapter 11 cases where no trustee is appointed, § 1107(a) provides that the debtor in possession, *i.e.*, the debtor's management, enjoys the powers that would otherwise vest in the bankruptcy trustee. Along with those powers, of course, comes the trustee's fiduciary duty to maximize the value of the bankruptcy estate. *Official Committee ex rel. Cybergenics v. Chinery*, 330 F. 3d 548, 573 (3d Cir. 2003)(en banc).

Indeed, failure of this Debtor to take steps to maximize the value of this estate is striking. At the very beginning of this case, the Debtor disclosed that the Debtor's owner, RPM Transportation, Inc. ("RPMT"), owed the Debtor \$1,494,105.00 based on multiple pre-petition

1 notes receivable.¹¹ Yet, the Debtor represented under penalty of perjury that the notes receivable
2 from RPMT had no value.¹² In its Status Report filed on June 29, 2017, the Debtor stated:

3 “Debtor’s assets also include two notes receivable, one owed by RPM
4 Transportation, Inc. in the amount of \$1,494,105.00 and the other owed by RPT
5 Intermodal in the amount of \$30,000. Debtor believes that both of these notes are
6 uncollectible in their entirety.”¹³

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8 The Debtor did not provide any legal or factual basis for its alleged belief that the notes
9 receivable from RPMT had no value. This was particularly concerning because, based on the
10 record in this case, the Committee is informed that RPMT is an operating business that provides
11 administrative services to the Debtor, for which the Debtor pays substantial sums to RPMT each
12 month.¹⁴ Worse, the Debtor had indicated a threat that RPMT would take some retaliatory action
13 against the Debtor if it were to exercise its right to recoupment or set off with respect to the RPMT
14 notes receivable.

15 “Debtor cannot set off the amounts owed to it by RPM Transportation, Inc.,
16 because if RPM Transportation, Inc. is no longer paid for the allocations, it will
17 cut Debtor off from the services provided to Debtor and Debtor would be required
18 to seek such services/products elsewhere at a higher cost.”¹⁵

19 This was troubling to the Committee because the same individual – Shawn Duke - that
20 owns RPMT (through RPMT’s parent corporation, RPM Consolidated Services, Inc.),¹⁶ is also the
21 president and fiduciary of the Debtor. In other words, the Debtor implied that Mr. Duke would

22 ¹¹ Bankruptcy Schedules, Sch. A, pg. 8, item 71 [Dkt. No. 18].

23 ¹² *Id.*

24 ¹³ Status Report, filed June 29, 2017, Dkt. No 50, pg. 2, lns. 6 – 9.

25 ¹⁴ The Court is requested to take judicial notice of the Committee’s “Notice Of Motion And
26 Motion By Official Committee Of Unsecured Creditors For Order Pursuant to Federal Rule of
27 Bankruptcy Procedure 2004 Directing the Production of Documents By The RPM Transportation,
28 Inc. and for Oral Examination Of Person Most Knowledgeable; Declarations of Daniel H. Reiss
and Vincenzo Toppi”, filed on September 5, 2017 (Dkt. No. 72) with respect to additional detail of
the nature and size of the transactions between the Debtor and RPMT.

¹⁵ Status Report, filed August 24, 2017, Dkt. No. 68, pg. 2, n. 2, lns. 26 – 28.

¹⁶ Shawn Duke owns 100% of RPM Consolidated Services, Inc. Reiss Decl., ¶5.

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cut-off crucial services to the Debtor provided by RMPT, although Mr. Duke is a director and (indirect) owner of both companies, if the Debtor were to try to recoup the nearly \$1.5 million that was owed to it. The Committee submits that these statements of the Debtor indicate a conflict of interest that is detrimental to the interests of this estate and its unsecured creditors.

On the other hand, the Committee has taken significant steps to maximize the value of this estate. As this Court knows, the Committee was successful in negotiating a settlement with RPMT by which RPMT paid the Debtor \$1,150,000 on account of the purportedly uncollectible notes. There is little doubt that the Committee has the best interests of the estate and its creditors as a top priority.

Due to the foregoing, the Debtor has not demonstrated that it would file a chapter 11 plan in good faith and in the best interests of creditors if it were granted any period of time with the exclusive right to file a chapter 11 plan. For the foregoing reasons, exclusivity should be terminated.


III.

CONCLUSION.

For the foregoing reasons, the Committee respectfully requests that the Court enter an order terminating exclusivity and grant such further relief as appropriate in the Court's discretion.

Dated: December 28, 2017

LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.

By: 

DANIEL H. REISS
Counsel for the Official
Committee of Unsecured Creditors

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DECLARATION OF DANIEL H. REISS

I, Daniel H. Reiss, declare as follows:

1. I am a partner at the firm of Levene, Neale, Bender, Yoo & Brill, LLP (“LNBYB”), counsel for the Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned chapter 11 bankruptcy case filed by RPM Harbor Services, Inc. (the “Debtor”). Unless indicated otherwise, the statements made herein are of my own personal knowledge and knowledge of the record in this case, and if called upon, I would and could testify to their truth.
2. The Debtor commenced its chapter 11 bankruptcy case by filing a voluntary bankruptcy petition on April 12, 2017.
3. The Committee was formed by the Office of the United States Trustee (“OUST”) on or about May 8, 2017. LNBYB has been retained by the Committee effective May 9, 2017.
4. I attended the Section 341(a) meeting of creditors convened by the OUST on May 12, 2017 (the “341(a) Meeting”). After the 341(a) meeting, I ordered from the OUST and received a CD recording of the questions asked by the OUST and me and answers given by the Debtor’s representatives. I have listened to the CD recording to refresh my recollection of statements made at the 341(a) Meeting. Messrs. Shawn Duke and Dan La Porte appeared on behalf of the Debtor at the 341(a) meeting.
5. Mr. Duke testified (and filings in this case indicate), that he is the President of the Debtor. Mr. Duke testified (and filings in this case further indicate) that RPM Transportation, Inc. (“RPMT”) owns 100% of the stock of the Debtor. Mr. Duke also testified that RPM Consolidated Services, Inc. owns 100% of the stock of RPMT and that he personally owns 100% of the stock of Consolidated.
6. Based on Schedule A/B to the Debtor’s bankruptcy schedules filed on April 26, 2017 [Dkt. No. 18], the balance owed to the Debtor by RPMT on the Notes was \$1,494,105.00 as of the Petition Date.
7. After extensive negotiations, the parties entered into the Settlement Agreement to settle the dispute with respect to the obligation of RPMT with respect to the Notes, which was

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approved by the Court pursuant to FBRP Rule 9019. Pursuant to the Settlement Agreement, RPMT paid the Debtor \$1,150,000, which was received by the Debtor on or about December 13, 2017. Annexed hereto as Exhibit "A" is a copy of the electronic bank statement of the Debtor showing the settlement payment and a cash balance in the Debtor's bank account in the amount of \$2,013,470.62 as of December 14, 2017.

8. Through its continuing investigations, the Committee has determined that the Debtor has substantially understated the transfers during the 90-day period prior to the Petition Date. Based on the Committee's investigation and information provided by the Debtor, the Committee is informed that the Debtor's transfers within that period of time were \$2,910,081, which is more than \$1.5 million greater than that disclosed by the Debtor in its Statement of Financial Affairs.

9. By an e-mail dated December 5, 2017 from Kevin Clancy of CohnResnick (the Committee's financial advisor) to Dan La Porte, the Debtor's chief financial officer, the Committee requested that the Debtor share its analysis regarding the viability of the company using an employee model. *See* Exhibit "B". The Committee has not received a response from the Debtor.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of December, 2017 at Los Angeles, California.



DANIEL H. REISS

EXHIBIT “A”

View All Activity

Success

Enter your inquiry criteria in the form fields below, then choose 'View Results'.

Criteria

Account Number * [Advanced Search](#)

Inquiry Type *

Posting Date All available dates

Range: From To

Account Details

Account Number: 210399364-RPM HARBOR General
 Balances as of 11:02:45 AM PT on 12/14/2017

Ledger Balance:	\$2,039,470.62	Current Balance:	\$2,013,016.10
Related Available Balance:	\$0.00	Total Accessible Balance:	\$2,013,016.10
Net Activity Today:	(\$26,454.52)	Available Balance:	\$2,013,016.10

Results 1-43

Date	Status	Description	Serial Number	Withdrawal Amount	Deposit Amount	Balance	Image
12/14/2017		PREAUTHORIZED DEBIT 99364 RPM TRANSP PAYMENTS BATCH OFFSET OFFST 99364 RPM TR		\$26,454.52			
12/13/2017		CHECK	121546	\$40.00		\$2,039,470.62	
12/13/2017		CHECK	121545	\$4,688.75		\$2,039,510.62	
12/13/2017		PREAUTHORIZED CREDIT GEA PRODUCTS LP PAYMENT RP062 E7030457 RPM HARBOR SERVICE CCD			\$8,550.00	\$2,044,199.37	
12/13/2017		PREAUTHORIZED CREDIT GE APPLIANCES PAYMENT RP062 E7030423 RPM HARBOR SERVICE CCD			\$7,695.00	\$2,035,649.37	
12/13/2017		PREAUTHORIZED CREDIT XPO LOGISTICS, I PAYMENTS 30644608 RPM HARBOR SERVICE CCD			\$604.00	\$2,027,954.37	
12/13/2017		ACCOUNT TRANSFER CR. FR ACC 00016371750			\$1,150,000.00	\$2,027,350.37	
12/12/2017		CHECK	121594	\$131.30		\$877,350.37	
12/12/2017		CHECK	121574	\$3,424.79		\$877,481.67	
12/12/2017		CHECK	121563	\$2,913.10		\$880,906.46	
12/12/2017		CHECK	121539	\$20.00		\$883,819.56	
12/12/2017		CHECK	121537	\$5,898.21		\$883,839.56	
12/12/2017		CHECK	121535	\$262.46		\$889,737.77	
12/12/2017				\$2,324.56		\$890,000.23	


























Date	Status	Description	Serial Number	Withdrawal Amount	Deposit Amount	Balance	Image
12/12/2017		PREAUTHORIZED DEBIT COMDATA PAYMENTS CCD WEB RPM HARBOR SER RM092					
12/12/2017		PREAUTHORIZED CREDIT PASHA HAWAII HOL APSC-00044 PHH 0083056566 RPM HARBOR SERVICE CCD			\$605.00	\$892,324.79	
12/12/2017		DEPOSIT			\$9,193.13	\$891,719.79	
12/11/2017		CHECK	121592	\$2,382.87		\$882,526.66	
12/11/2017		CHECK	121590	\$1,573.74		\$884,909.53	
12/11/2017		CHECK	121582	\$1,347.14		\$886,483.27	
12/11/2017		CHECK	121581	\$1,452.63		\$887,830.41	
12/11/2017		CHECK	121579	\$999.61		\$889,283.04	
12/11/2017		CHECK	121578	\$2,578.18		\$890,282.65	
12/11/2017		CHECK	121577	\$1,716.38		\$892,860.83	
12/11/2017		CHECK	121573	\$1,473.18		\$894,577.21	
12/11/2017		CHECK	121572	\$1,364.03		\$896,050.39	
12/11/2017		CHECK	121571	\$993.53		\$897,414.42	
12/11/2017		CHECK	121569	\$2,098.11		\$898,407.95	
12/11/2017		CHECK	121568	\$1,967.43		\$900,506.06	
12/11/2017		CHECK	121567	\$1,897.54		\$902,473.49	
12/11/2017		CHECK	121566	\$975.00		\$904,371.03	
12/11/2017		CHECK	121543	\$1,610.40		\$905,346.03	
12/11/2017		CHECK	121542	\$22,101.12		\$906,956.43	
12/11/2017		CHECK	121541	\$80.00		\$929,057.55	
12/11/2017		CHECK	121540	\$35,035.00		\$929,137.55	
12/11/2017		CHECK	121538	\$1,805.00		\$964,172.55	
12/11/2017		CHECK	121536	\$4,990.00		\$965,977.55	
12/11/2017		CHECK	121529	\$900.00		\$970,967.55	
12/11/2017		CHECK	121527	\$131.30		\$971,867.55	
12/11/2017		CHECK	121504	\$1,076.84		\$971,998.85	
12/11/2017		CHECK	121500	\$650.00		\$973,075.69	
12/11/2017		CHECK	121432	\$1,875.10		\$973,725.69	
12/11/2017		PREAUTHORIZED CREDIT DANZAS CORPORATI 1716709562 1716709562 RPM HARBOR SERVI CTX			\$1,012.50	\$975,600.79	
12/11/2017		DEPOSIT			\$9,995.35	\$974,588.29	

EXHIBIT “B”

From: Kevin Clancy [<mailto:Kevin.Clancy@CohnReznick.com>]

Sent: Tuesday, December 05, 2017 3:39 PM

To: Dan La Porte (CORP-01); Vincenzo Toppi

Subject: RE: RPM Harbor Services - intercompany transactions

Dan,

Thanks for pulling the attached schedules together. It would be helpful if we could jump on a call to walk through them. I just want to understand what is reflected.

I've also attached a comparative schedule that shows payments made to related entities during the 90 days leading up to bankruptcy and also post-filing (through September, we are updating for October). You can see there is quite a dramatic difference. I would like to see the same info for the nine months prior to the ninety days so we have a complete 12-month period. Why was there such a jump in the monthly payments after the bankruptcy filing? I was under the impression that the allocation of shared costs was a structure that had been in place for quite some time.

The last attachment is the August status report that was filed with the court. I highlighted some language on page 4 that discusses the viability of the Debtor's business to the extent the truck drivers were W-2 employees versus 1099 contractors. Can you share what analyses you have pulled together to reflect the two different economic structures, i.e., a forecast using 1099 drivers and then adjusted for treating them as W-2 employees?

Please take a look at the two PDF documents at your convenience and let me know when you have some time to catch up. Thanks for your help.

Best regards,

Kevin Clancy, CPA, JD, CIRA, CFF

Partner - Restructuring, Litigation & Transactional Services

CohnReznick Advisory

Tel: [732-635-3108](tel:732-635-3108)

Mobile: [732-672-0874](tel:732-672-0874)

Fax: [732-590-3940](tel:732-590-3940)

Kevin.Clancy@CohnReznick.com

[vCard](#) | [Bio](#)

 CohnReznick.com

PLEASE NOTE OUR NEW ADDRESS, EFFECTIVE 5/1/17

4 Becker Farm Road 4th Floor

Roseland, NJ 07068

Main telephone # 973-228-3500

Our email addresses and direct dial numbers will remain unchanged. Thank you!

CohnReznick LLP

The information contained herein (or in any attachment) is not intended to be used by any taxpayer for the purpose of avoiding any penalties that a taxing authority might impose on the taxpayer or for the promoting, marketing or recommending to another party any tax related matters.

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the **NOTICE OF MOTION AND MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO TERMINATE PLAN EXCLUSIVITY.; DECLARATION OF DANIEL H. REISS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **December 28, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lane K Bogard on behalf of Debtor RPM Harbor Services, Inc.
lbogard@lbinsolvency.com,
dhaberbush@lbinsolvency.com,ahaberbush@lbinsolvency.com,abostic@lbinsolvency.com,haberbush.assistant@gmail.com,vhaberbush@lbinsolvency.com,jscarborough@lbinsolvency.com,jborin@lbinsolvency.com

David R Haberbush on behalf of Debtor RPM Harbor Services, Inc.
dhaberbush@lbinsolvency.com,
ahaberbush@lbinsolvency.com,abostic@lbinsolvency.com,vhaberbush@lbinsolvency.com,haberbush.assistant@gmail.com,jborin@lbinsolvency.com

Vanessa M Haberbush on behalf of Debtor RPM Harbor Services, Inc.
vhaberbush@lbinsolvency.com,
dhaberbush@lbinsolvency.com,ahaberbush@lbinsolvency.com,abostic@lbinsolvency.com,haberbush.assistant@gmail.com,jborin@lbinsolvency.com

Alvin Mar on behalf of U.S. Trustee United States Trustee (LA)
alvin.mar@usdoj.gov

Daniel H Reiss on behalf of Attorney Levene, Neale Bender Yoo & Brill
dhr@lnbyb.com, dhr@ecf.inforuptcy.com

Daniel H Reiss on behalf of Creditor Committee Official Committee Of Unsecured Creditors
dhr@lnbyb.com, dhr@ecf.inforuptcy.com

Daniel H Reiss on behalf of Interested Party Courtesy NEF
dhr@lnbyb.com, dhr@ecf.inforuptcy.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **December 28, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

