

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
OUTER HARBOR TERMINAL, LLC	:	Case No. 16-10283 (LSS)
Debtor. <sup>1</sup>	:	Re: D.I. 606

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
SHORTEN NOTICE FOR THE MOTION FOR AN ORDER DIRECTING DEBTOR  
AND ITS INSIDERS TO PRODUCE DOCUMENTS, APPEAR AT DEPOSITIONS, AND  
RESPOND TO OTHER DISCOVERY**

The Official Committee of Unsecured Creditors (the "Committee") of Outer Harbor Terminal, LLC, a debtor and debtor-in-possession ("Debtor"), by and through its counsel, Brinkman Portillo Ronk, APC and The Rosner Law Group LLC, hereby files this motion (the "Motion") pursuant to 11 U.S.C. § 105(a), Rule 9006(c) of the Federal Rules of Bankruptcy Procedure ("FRBP"), and Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for entry of an order scheduling an expedited hearing on the *Emergency Motion of the Official Committee of Unsecured Creditors for an Order Directing Debtor to Produce Documents Pursuant to Fed. R. Bankr. P. 2004 and Del. Bankr. L.R. 2004-1* (the "2004 Motion"). In support of this Motion, the Committee respectfully states as follows:

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 2070. The Debtor's principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") and FRBP 9006(c).

## **II. BACKGROUND**

3. The Committee references and fully incorporates the 2004 Motion and all exhibits thereto herein, including the relevant Background.

## **III. RELIEF REQUESTED**

4. The Committee is operating on a very limited timeframe imposed upon it unilaterally by Debtor before the Committee was even formed. The Committee has a duty to the unsecured creditors to investigate the Debtor's prepetition transfers to insiders, all claims made against the estate by insiders, and the validity and extent of the Kawasaki claim. The Committee intends to fulfill that duty, but needs to force cooperation from an obstructionist Debtor.

5. By this Motion, the Committee seeks the entry of an order setting the 2004 Motion for hearing on an expedited basis.

## **IV. BASIS FOR RELIEF**

6. The Court "for cause shown may in its discretion" shorten any period of time provided for in the FRBP or by order of the court. Fed. R. Bankr. P. 9006(c); see also Fed. R. Bankr. P. 2002(a)(2) (providing an example of when the court may shorten time). This includes the period of time generally proscribed for giving notice of motions.

7. Local Rule 9006-1(c) provides that unless the Bankruptcy Rules or the Local Rules state otherwise, “all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) at least eighteen (18) days (twenty-one (21) days if service is by first class mail; nineteen (19) days if service is by overnight delivery) prior to the hearing date.” Del. Bankr. L.R. 9006-1(c).

8. Local Rule 9006-1(e) provides in pertinent part that “[n]o motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except by Order of the Court, on written motion . . . specifying the exigencies justifying shortened notice.” Del. Bankr. L.R. 9006-1(e).

9. Exigent circumstances exist here to shorten the notice period for the 2004 Motion.

10. The Debtor is engaging in obstructionist behavior. First, the Debtor prepared and filed a motion near the beginning of its case that granted a release to insiders of any claim the Debtor may hold against them. This motion and the order entered thereon gave a Committee only sixty days from its formation to investigate, analyze, and commence insider avoidance actions, if any exist, or be forever barred from bringing those actions. This motion and order were prepared unilaterally by the Debtor over 11 months before the Committee was even formed.

11. Second, despite expressing that it would not file a plan of reorganization until June 2017, the Debtor suddenly prepared and filed a plan in February 2017 very shortly after the Committee was appointed. The Debtor then immediately moved for conditional approval of the plan so it could begin soliciting acceptances before Committee counsel was even confirmed. This demonstrates how the Debtor is trying to rush a plan through before the Committee could get its bearings and analyze the Debtor's past dealings.

12. Third, when the Committee was formed and began requesting documents from Debtor to investigate insider transactions, as is the Committee's duty under the Bankruptcy Code, the Debtor unreasonably insisted that the order giving the Committee sixty days to investigate and commence actions against insiders actually cut off all parties' rights 75 days after the order was entered – nine months before the Committee even existed.

13. Fourth, the Debtor's proposed plan – that it is trying to push through without any opportunity for the Committee to fully understand its implications – acts to reinforce or even expand the releases given to insiders.

14. The Debtor's actions make the Committee very suspicious that the Debtor is trying to hide something. The Debtor is clearly working to prevent the Committee from learning about something until it is too late for the Committee to act. Given the \$25 million in transfers to insiders in the year prior to bankruptcy alone, not including the transfers in the three years prior that are also potentially recoverable, whatever the Debtor is hiding could have enormous implications.

15. It is vital that the Debtor be compelled to turn over the documents and information that it is unreasonably withholding from the Committee so the Committee can do its duty to the creditors and ensure that any valid causes of action are uncovered and fully litigated.

16. Given the short time frames established by the Debtor, the documents must be turned over to the Committee as soon as possible so that it can fulfill its duties before the Debtor is able to impose additional deadlines or foreclose the Committee from taking action altogether, which it is clearly attempting to do.

**V. NOTICE**

17. In accordance with Local Rule 2004-1(c), notice of this Motion has been provided to (a) counsel to the Debtors, (b) the Debtor's insiders based on the addresses in Statement of Financial Affairs, (c) the US Trustee, and (d) those parties that have requested service pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1(b). The Committee submits that such notice is sufficient and that no other or further notice of the Motion is required.

**VI. NO PRIOR REQUEST**

18. No prior request for the relief requested herein has been presented to this or any other court.

WHEREFORE, the Committee respectfully requests this Court enter an order, in substantially the form attached hereto, setting an expedited hearing on the 2004 Motion and granting such other and further relief as this Court deems appropriate.

Dated: March 27, 2017  
Wilmington, Delaware

Respectfully submitted,

**THE ROSNER LAW GROUP LLC**

*/s/ Scott J. Leonhardt*  
Frederick B. Rosner (DE No. 3995)  
Scott J. Leonhardt (DE 4885)  
824 North Market Street, Suite 810  
Wilmington, Delaware 19801  
Telephone: (302) 777-1111  
leonhardt@teamrosner.com

-and-

**BRINKMAN PORTILLO RONK, APC**  
Daren R. Brinkman (admitted *pro hac vice*)  
4333 Park Terrace Drive, Suite 205  
Westlake Village, CA 91361  
Telephone: (818) 597-2992  
Email: firm@brinkmanlaw.com

*Counsel to the Committee*

## **Proposed Form of Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>OUTER HARBOR TERMINAL, LLC</p> <p style="text-align: right;">Debtor.<sup>1</sup></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Chapter 11</p> <p>Case No. 16-10283 (LSS)</p> <p><b>Re: D.I. 606</b></p>
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**ORDER GRANTING MOTION TO SHORTEN NOTICE OF THE  
MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN  
ORDER DIRECTING DEBTOR AND ITS INSIDERS TO PRODUCE DOCUMENTS,  
APPEAR AT DEPOSITIONS, AND RESPOND TO OTHER DISCOVERY**

Upon the Motion<sup>2</sup> of Official Committee of Unsecured Creditors, for an order shortening the notice period and setting an expedited hearing with respect to the *Motion of the Official Committee of Unsecured Creditors for an Order Directing the Debtor and Its Insiders to Produce Documents, Appear at Depositions, and Respond to Other Discovery* (the “2004 Motion”) [D.I. \_\_\_\_\_], and it appearing that the Court has jurisdiction over this matter, and it appearing that notice of the Motion as set forth therein is sufficient, and that no other or further notice need be provided, and it further appearing that cause exists to grant the relief requested in the Motion; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 2070. The Debtor’s principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.

<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings provided for in the Motion.

2. The hearing on the 2004 Motion shall take place on

\_\_\_\_\_, 2017 at \_\_\_\_\_ a.m./p.m., U.S. Bankruptcy  
Court, 824 N. Market Street, 6th Floor, Courtroom Number 2, Wilmington, Delaware 19801.

3. Any objection or response to the 2004 Motion shall be filed on or before

\_\_\_\_\_, 2017 at 4:00 p.m. EDT.

4. Any reply in support of the 2004 Motion shall be filed on or before

\_\_\_\_\_, 2017 at 4:00 p.m. EDT.

Dated: March \_\_\_\_, 2017  
Wilmington, Delaware

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Honorable Laurie Selber Silverstein  
United States Bankruptcy Judge