

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

In re:

OUTER HARBOR TERMINAL, LLC,¹

Debtor.

Chapter 11

Case No. 16-10283 (LSS)

Re Docket No.: 606

**HHH OAKLAND, INC.'S OBJECTION TO THE 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**

HHH Oakland, Inc. ("HHH Oakland"), by and through their attorneys, DLA Piper LLP (US), hereby files this objection (the "Objection") to the Official Committee of Unsecured Creditors' ("Committee") *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* [D.I. 607] ("Motion"). In support of this Objection, HHH Oakland respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Objection under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Objection is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ 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.

RELEVANT BACKGROUND

2. On February 1, 2016 (the “Petition Date”), Outer Harbor Terminal, LLC (“Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, commencing this case (the “Bankruptcy Case”).

3. The Debtor continues in possession of its assets and operation of its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Prior to the Petition Date, following years of the Debtor operating at a loss and sustaining material, negative cash flows, the Debtor’s members voted to terminate and wind down the Debtor’s business operations. The Debtor commenced the wind down on or about January 19, 2016 and ceased all marine and terminal operations as of April 29, 2016.

5. On February 9, 2016, the Debtor obtained entry of the *Interim Order (I) Authorizing Debtor to (A) Obtain Post-Petition Financing on a Super-Priority and Senior Secured Basis, (B) Permitting Use of Cash Collateral, (C) Providing Adequate Protection, and (D) Granting Related Relief; (II) Modifying the Automatic Stay; and (III) Scheduling a Final Hearing Pursuant to the Bankruptcy Rule 4001* (the “Interim DIP Order”).

6. The DIP provided Facility provided the Debtor with required liquidity, in particular with respect to the Debtor’s obligations to the Port of Oakland and its ongoing dispute with the Port.

7. On March 1, 2016, the Debtor obtained entry of the *Final Order (I) Authorizing Debtor to (A) Obtain Post-Petition Financing on a Super-Priority and Senior Secured Basis, (B) Permitting Use of Cash Collateral, (C) Providing Adequate Protection, and (D) Granting Related Relief; and (II) Modifying the Automatic Stay* [Docket 135] (the “Final DIP Order”).

8. The Final DIP Order was the product of intense negotiations among the Debtor, Office of the United States Trustee, Port and DIP Lenders and the DIP Facility approved on a final basis continued to provide the Debtors with liquidity to complete its wind down and disposition of assets.

9. In consideration of the commitments of the DIP Lenders and other terms and conditions of the DIP Facility, the Final DIP Order provided a release of all claims and causes of action against the DIP Lenders and other related parties in all capacities. Final DIP Order at ¶ 43. The releases became fully effective as to the estate and all creditors as of March 17, 2016 and the Investigation Period (as defined in the Final DIP Order) expired as to all parties as of such date.

10. On March 16, 2016, the Court approved a settlement (the “Port Settlement”) among the Debtor, its members, and the Port, which represented a comprehensive resolution of the various outstanding disputes among such parties [Docket No. 173]. Among other things, the Port Settlement allowed the Debtor to avoid burdensome and costly litigation with the Port, provided for an orderly surrender of the premises leased by the Debtor from the Port (the “Premises”), and resolved the Port’s asserted significant prepetition and postpetition claims by the Port against the Debtor’s estate. Consistent with the terms of the Port Settlement, on April 29, 2016, the Debtor timely surrendered the Premises to the Port. In reliance on the releases provided for under the DIP Facility and Final DIP Order, and such releases becoming effective at the same time as the Port Settlement was approved, the members of the Debtor agreed to fund the Port Settlement and did fund \$6,797,962.50 for the benefit of the Debtor and its estate.

11. On January 27, 2017, the United States Trustee appointed the Committee.

12. On February 13, 2017, the Debtor filed the *Debtor's Combined Chapter 11 Plan of Liquidation and Disclosure Statement* [Docket No. 532] (the "Plan"). On February 14, 2017, the Debtor filed the *Debtor's Motion for Entry of an Order (A) Conditionally Approving the Combined Plan and Disclosure Statement for Solicitation Purposes Only, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Combined Plan and Disclosure Statement, (C) Approving the Forms of Ballots and Solicitation Materials, (D) Establishing Voting Record Date, (E) Fixing the Date, Time and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto, and (F) Approving Related Notice Procedures* [Docket No. 537] (the "Solicitation Procedures Motion").

13. HHH Oakland was first contacted by counsel for the Committee on March 23, 2017, two months after the Committee's appointment, seeking a meet and confer respecting "required discovery" the Committee sought to undertake relative to potential claims of the estate against the parties released under the DIP Facility and Final DIP Order.

14. On March 24, 2017, Committee counsel and the Debtor's counsel met and conferred telephonically regarding the production of documents, appearances at depositions, and other discovery matters, but were unable to agree on any consensual discovery provisions in light of the fact that the Investigation Period had expired, and the Final DIP Order, which provided broad releases for the DIP Lenders, among others, was final and non-appealable.

15. On March 27, 2017, the Committee filed 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* [Docket No. 606] (the "2004 Motion").

OBJECTION

16. HHH Oakland objects to the Motion because the exigent circumstances cited by the Committee are of the result of the Committee's own making.

17. Upon information and belief, the creditors on the Committee solicited the US Trustee's office to form the Committee. It is unknown when such request was made, however, one would think that those creditors and their professionals would have had a strategy in mind at the time they solicited the appointment of a committee in this case and would have acted with due haste immediately upon appointment of the Committee.

18. The Committee is seeking to investigate transactions disclosed in the Debtor's schedules and statements that were filed in the case on March 4, 2016, over a year ago. The individual creditors on the Committee and their professionals had 75 days following the commencement of the case to inquire and investigate the transactions, and now as the Committee, even under the Committee's incorrect reading of Investigation Period, they had the last 60 days to investigate what has been of public record since March 4, 2016.

19. This Court should not countenance the Committee's lack of diligence and the Court should certainly not permit the Committee to waste the funds available for distribution to creditors by incurring expenses and incurring postpetition indemnification obligations of the estate to the targets of the Committee's investigation with respect to claims and causes of action that have been released.

CONCLUSION

20. For the reasons set forth above, HHH Oakland respectfully requests that the Court (i) sustain this Objection and deny the Motion to Shorten; and (ii) grant such other and further relief as this Court deems just and proper.

RESERVATION OF RIGHTS

21. HHH Oakland hereby reserves all of its rights to object to the 2004 Motion. Further, HHH Oakland reserves all of its rights to object to any fees incurred by the Committee during this case, and in particular, in connection with any discovery and motion practice or litigation in connection with the Investigation Period or the claims released under the Final DIP Order.

Dated: March 29, 2017
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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