IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK et al.,[1] Debtors.	Chapter 11 Case No. 17–10506 (BLS) (Jointly Administered) **Re: Docket No. 14** **Hearing Date: March 29, 2017 at 10:30 a.m. (EDT)** **Obj. Deadline: March 24, 2017 at 4:00 p.m. (EDT)**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING USE OF CASH COLLATERAL AND AFFORDING ADEQUATE PROTECTION; (II) MODIFYING AUTOMATIC STAY; AND (III) SCHEDULING FINAL HEARING

The Official Committee of Unsecured Creditors (the "Committee") of General Wireless Operations Inc. dba RadioShack *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its proposed undersigned counsel, hereby objects (the "Objection") to the *Motion for Entry of Interim and Final Orders: (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Scheduling Final Hearing, Pursuant to Section 105, 362, 363 and 507 of Title 11 of the United States Code, Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedures and Rules 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware* (the "Motion").[2] In support of the Objection, the Committee respectfully states as follows:

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1 The Debtors in these cases are: General Wireless Operations Inc. dba RadioShack, General Wireless Holdings Inc., General Wireless Inc. and General Wireless Customer Service Inc.

2 Docket No. 14. Capitalized terms used but not defined in this Objection shall have the meanings ascribed to them in the Motion.

PRELIMINARY STATEMENT

1. At this early stage of these cases, the Committee's primary goal is to safeguard the rights of general unsecured creditors and ensure the Committee has sufficient time and resources to fulfill its statutory mandate through the expedited process proposed by the Debtors. The Debtors have already begun liquidating and closing over 1,300 retail locations, which they intend to conclude within the next two months. At the same time, the Debtors are seeking to establish a thirty-day auction process with respect to approximately 800 store leases and FF&E. The Debtors also intend to seek approval on April 24 of a proposed settlement with Sprint to unwind the Debtors' co-branding relationship. In addition to addressing these matters, the Debtors propose that the Committee have only sixty days to conduct three separate investigations with respect to the Senior Lenders and Junior Lenders, as well as the release of Sprint.

2. Since its formation on March 17, the Committee has diligently worked to begin addressing these issues. In connection therewith, the Committee has attempted to work with the Debtors, the Senior Lenders, and Junior Lenders to ensure the continued use of cash collateral on terms that are fair, will provide these estates the necessary flexibility to work through the chapter 11 process, and will safeguard the rights of unsecured creditors. As of the filing of this Objection, however, the parties have been unable to resolve critical issues that threaten these goals.

3. Most notably, the Debtors and the lenders have yet to even agree on what relief is going forward at the March 29 hearing and whether any relief will be granted with respect to the Junior Lenders. As a result, the Committee has had little success in negotiating fair and appropriate terms regarding the use of Cash Collateral.

4. Although the Committee is willing to support a process that is designed to maximize value for all stakeholders, there are numerous terms of the proposed cash collateral usage that are inappropriate and should be denied. In the first instance, the Committee objects to any form of final relief being granted to the Junior Lenders at the March 29 hearing. The Committee and other interested parties in these cases should be afforded sufficient time to address the Junior Lenders' requests and, therefore, to the extent the Court grants any relief to the Junior Lenders, it should solely be on an interim basis.

5. The proposed order also inappropriately authorizes the lenders to unilaterally terminate the Debtors' use of Cash Collateral, whether or not an event of default has occurred. The entire purpose of a negotiated cash collateral order is to authorize the use of cash in exchange for certain protections to the lender and on the condition that the debtor complies with the terms of the order. The right to terminate the use of cash at will renders the authority to use cash meaningless and should not be approved.

6. The lenders also inappropriately seek a conclusive finding that "diminution in value" will occur as a result of the Debtors' usage of cash to run these chapter 11 cases. Such a finding is improper. A debtor's use of cash collateral, particularly when cash is being used to liquidate collateral for the benefit of a lender, does not result in a diminution in value of the lender's prepetition collateral. Although the lenders may be entitled to adequate protection if there is a "diminution in value," the burden is ultimately on the lenders to prove a diminution in value has occurred. Such determination, therefore, should be left to another day with the rights of all parties fully reserved with respect thereto.

7. The current proposed budget also fails to ensure the administrative solvency of the Debtors' estates, including the unnecessary deferral of the payment of stub rent. Without a budget that ensures the administrative solvency of these cases, the advance waivers of section 506(c) and 552(b) are inappropriate.

8. The proposed relief further frustrates the rights of general unsecured creditors by, among other things: (i) unreasonably limiting the Committee's ability to investigate causes of action by imposing an unreasonably short challenge period and an insufficient investigation budget; (ii) provides the Committee with inadequate funding to fulfill their statutory obligations (less than 10% of the amount allocated for the Debtors' professionals); and (iii) grants liens on unencumbered assets, including leases and avoidance actions, which should be preserved for the benefit of unsecured creditors.

9. Taken together, the proposed relief fails to ensure these chapter 11 cases can be run appropriately, provides unnecessary protections to the lenders, and improperly limits the Committee's ability to function and maximize value for unsecured creditors. The Court, therefore, should deny the form of relief requested unless modified as set forth herein.

BACKGROUND

A. General Case Background

10. On March 8, 2017 (the "Petition Date"), each of the Debtors commenced their respective cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). Since the Petition Date, the Debtors have continued in possession of their properties and to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. On March 17, 2017, the Office of the United States Trustee for Region 3 appointed a seven-member Committee consisting of: (i) Brightstar US, Inc.; (ii) Brixmor Property Group, Inc.; (iii) Ideavillage Products Corp.; (iv) ION America, LLC; (v) Protop International, Inc.; (vi) Spectrum Brands, Inc.; and (vii) Weide Electronics Co., LTD.[3] The Committee selected Kelley Drye & Warren LLP to serve as its counsel and Klehr Harrison Harvey Branzburg LLP to serve as its Delaware counsel. The Committee also selected Berkeley Research Group, LLC to serve as its financial advisor.

B. <u>The Debtors' Prior Chapter 11 Cases</u>

12. On February 2, 2015, the company's predecessor, RadioShack, commenced chapter 11 bankruptcy proceedings before this Court.[4] While liquidating approximately 2,400 locations, RadioShack pursued a sale of its remaining operations.[5] General Wireless was formed by Standard General L.P. ("<u>Standard General</u>") in or around January 2015 to acquire the RadioShack operations.[6] As of the Petition Date, Standard General controlled a majority of the equity in General Wireless, Inc., the Debtors' ultimate parent.[7]

13. In connection with the closing of the sales in April and June 2015, the Debtors entered into a number of agreements with Sprint (the "<u>Sprint Agreements</u>") to, among other things: (i) establish cobranded stores for the sale of Sprint mobile devices; (ii) provide for Sprint to become the primary lessee on 530 locations, while the Debtors took over the remaining

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[3] Docket No. 170.

[4] *See Declaration of Dene Rogers in Support of First Day Pleadings* (the "<u>Rogers Declaration</u>"), ¶ 6. Docket No. 4

[5] *Id.* ¶ 8.

[6] *Id.* ¶ 6.

[7] *See Chapter 11 Voluntary Petition of General Wireless, Inc.* Case No. 17-10507 (BLS). Docket No. 1.

1,200 locations; and (iii) agree to sublease space within the stores to each other to allow for the sale of their respective products.[8]

14. Sprint agreed to operate Sprint stores within RadioShack stores known as "Sprint Team at RadioShack" or "STAR."[9] In exchange for the exclusive use of prime RadioShack space, Sprint agreed to pay approximately a third of the rent, to split profits with RadioShack from the sale of wireless accessories, and to pay RadioShack commissions on phones sold in RadioShack stores.[10] The Debtors were to receive commission payments from Sprint sales in their stores once Sprint met the $60 million commission threshold.[11]

D. The Debtors' Prepetition Indebtedness

15. In connection with the acquisition of business, Standard General provided an equity commitment letter to provide equity financing in the form of cash and/or debt in exchange for equity in the Debtors.[12] In connection therewith, the Debtors entered into a Revolving Credit Agreement, dated as of April 1, 2015, with Standard General.[13]

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8 *See Motion for Order (I) Approving Assumption of Sprint Settlement Agreement; (II) Approving Rejection of Sprint Alliance Agreement and Related Agreements; (III) Approving the Release of Claims Against Sprint; and (IV) Granting Related Relief* (the "Sprint Settlement Motion"), ¶¶ 9-10. Docket No. 62.

9 Rogers Declaration, ¶ 8.

10 *Id.*

11 *Id.* ¶ 9.

12 *See Amended and Restated Asset Purchase Agreement dated as of March 31, 2015,* §6.4(a) (Case No. 15-10197 (BLS)). Docket No. 1672.

13 Motion, ¶ 10. Also in connection with the acquisition, Standard General purchased the intellectual property of the Debtors and transferred such assets to a wholly-owned limited liability company, General Wireless IP Holdings LLC ("GW IP"), which is not currently a Debtor in these cases. Rogers Declaration, ¶ 33. GW IP is a party to a loan agreement with Kensington Technology Holdings, LLC, providing for a term loan of up to $23 million, with $11.6 million in principal due in June 2017 and the remaining balance due in June 2018. *Id.* The Debtors are secured guarantors of the obligations due under the loan agreement. *Id.* ¶ 34.

16. That agreement was refinanced and thereafter expanded pursuant to the Amended and Restated Junior Lien Security dated May 6, 2016 (the "Junior Agreement") to include Cortland Capital Market Services LLC and Prisma Capital Partners LP (the "Junior Lenders").[14] The Junior Lenders, including Standard General, provided revolving and term loans in an aggregate amount not to exceed $88.3 million.[15] The Debtors assert that as of the Petition Date, approximately $39.7 million in term loans and $55.4 million in revolving loans were outstanding.

17. Thereafter, the Debtors entered into a first lien Credit Agreement dated July 2, 2015, with RBC and Great American (collectively, the "Senior Lenders" and together with the Junior Lenders, the "Secured Parties") which provided revolving and term loans in an aggregate amount not to exceed $75 million (as amended, the "Senior Agreement").[16] The Debtors assert that as of the Petition Date, not less than $25.5 million in term loans and $2.8 million in collateralized letters of credit were outstanding.[17]

18. The obligations under the Senior Agreement are purportedly secured by substantially all of the Debtors' personal property and leasehold mortgages in only twelve of the Debtors' 1,500 real property leases (the "Prepetition Collateral"), with the obligations under the Junior Agreement secured by a subordinated lien on the same collateral.[18]

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[14] Motion, ¶ 10.

[15] *Id.*

[16] *Id*.

[17] *Id.*

[18] *Id.* ¶ 9, 13, 15.

19. The Senior Lenders and Junior Lenders are party to that certain Amended and Restated Intercreditor and Subordination Agreement, dated as of February 2, 2016,[19] pursuant to which, upon information and belief, the Junior Lenders' rights to seek relief in these cases are limited, including the right to seek adequate protection.

C. The Proposed Sprint Settlement

20. The Debtors expected considerable cash flow from the Sprint relationship.[20] According to the Debtors, although their operations showed improvements through the end of 2016, the Sprint relationship failed to yield the anticipated benefits.[21] In particular, the Debtors did not receive the commissions the Debtors anticipated during 2016, which were then not anticipated to ultimately come due until sometime during 2018, if ever.[22]

21. In late 2016, the Debtors entered into negotiations with Sprint.[23] On the eve of bankruptcy, the Debtors entered into a settlement (the "Sprint Settlement") whereby Sprint made a $12 million payment (the "Settlement Payment") purportedly in exchange for: (i) the assignment to Sprint of 115 store leases and the inventory located in those stores, as well as the inventory in 245 stores in which Sprint is the primary tenant; (ii) the return of Sprint inventory in the STAR assist program; and (iii) the termination of the relationship between the parties.[24] Based upon the Budget, the Settlement Payment was used during the first two weeks of these cases to pay down the obligations due under the Senior Agreement.[25]

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19 *Id.* ¶ 15.

20 Rogers Declaration, ¶ 21.

21 *Id.* ¶¶ 19, 20.

22 *Id.* ¶ 21.

23 *Id.* ¶ 22.

24 *Id.* ¶ 17.

25 *See* Budget.

22. Pursuant to the Sprint Settlement, the Committee has sixty days to investigate the Sprint Agreements and assess the releases in the Sprint Settlement.[26] In the event a challenge is not commenced, Sprint will pay an additional $5.0 million to the Debtors for a release, other than the Sprint Investor Reimbursement (as such term is defined in the Sprint Settlement) valued at approximately $18 million.[27]

23. On the Petition Date, the Debtors filed a motion to assume the Sprint Settlement, which is scheduled to be heard on April 24.[28]

D. The Bankruptcy Cases

24. On the Petition Date, the Debtors filed a motion to approve an internally administered liquidation of between 530 and approximately 1,300 of their store locations.[29] At the first-day hearing, the Debtors obtained authority on an interim basis to: (i) continue store closing sales at 187 locations that were commenced prior to the Petition Date and would be completed by March 13; (ii) and commence store closing sales at an additional 365 store locations that would be completed by March 31.[30]

25. Four days later, on March 12, the Debtors filed a supplement to add an additional 780 store locations, which was approved by the Court on an interim basis.[31] Those liquidations are underway and are expected to be completed by May. The Debtors have yet to make a decision or articulate an exit strategy with respect to the business, including the remaining 185 store locations.

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26 Sprint Settlement Motion, ¶ 21.

27 *Id.*

28 *See* Docket No. 62.

29 *See* Docket No. 21.

30 *See* Docket No. 135.

31 *See* Docket Nos. 107, 154.

26. On March 20, the Debtors filed a motion to establish a 30-day auction process for the sale of approximately 730 leases, as well as FF&E in those stores.[32] That motion is scheduled to be heard on April 10.

D. The Cash Collateral Motion

27. The Debtors filed the Motion asserting that approval of an order authorizing their immediate access to Cash Collateral "will assure continued functioning of the Debtors and preserve the going concern value of their estates."[33] The Debtors maintain their need to access Cash Collateral to "instill the Debtors' employees, customers, service providers, and potential bidders with confidence" and to "seamlessly transition" their business into chapter 11 in a "successful and expedient manner and pursue restructuring efforts."[34]

28. On March 10, 2016, the Court entered an interim order (the "Interim Order") approving the Motion.[35] The Interim Order authorizes the Debtors to use of Cash Collateral in accordance with an approved 13-week Budget for: (i) working capital requirements; (ii) general corporate purposes; and (iii) the costs and expenses of administering the Debtors' cases.[36]

29. The Interim Order also provides various forms of adequate protection to the Senior Lenders only, for any potential diminution in the Prepetition Collateral in the form of: (i) additional and replacement adequate protection liens and superpriority claims on all assets of

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[32] *See* Docket No. 205.

[33] Motion, ¶ 20.

[34] *Id.* ¶ 19.

[35] *See Interim Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Scheduling a Final Hearing.* Docket No. 64. The Interim Order was subsequently correct without substantive changes at Docket Nos. 80 and 138.

[36] Interim Order, ¶¶ 2-3.

the Debtors (subject to the entry of a final order as to liens on avoidance actions and proceeds of leases); and (ii) certain adequate protection payments.[37]

30. The Senior Lenders are projected be paid in full, including the $600,000 prepayment fee purportedly due under the Senior Agreement, by the first week of April.[38]

31. Notwithstanding the fact that the Interim Order included protections for the Senior Lenders only, the Committee only recently received a proposed Final Order from the Junior Lenders incorporating various protections for the Junior Lenders.

32. This proposed order seeks various forms of adequate protection, including: (i) the periodic paydown of the obligations due under Junior Agreement; and (ii) the payment of professional fees for each of the Junior Lenders. In exchange for the Debtors' use of Cash Collateral, the Senior Lenders and Junior Lenders seek:

- adequate protection liens and superpriority claims on all assets, including avoidance actions and the proceeds of real property leases;[39]
- a determination that a diminution in value of the Prepetition Collateral includes the Debtors' use of Cash Collateral to fund these cases and liquidate the Prepetition Collateral for the beneift of the Secured Parties;[40]
- the right to terminate the Debtors' use of Cash Collateral for any reason and without the occurrence of an event of default under the Final Order on five (5) days' notice;[41]
- a waiver of all rights under sections 506(c) and 552(b) of the Bankruptcy Code;[42]

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37 *Id.* ¶ 6.

38 *See* Budget.

39 Final Order, ¶ 6.

40 *Id.* ¶¶ 6(a), 6(c).

41 Final Order, ¶ 10(c).

42 *Id.* ¶ 21.

- barring a timely challenge by the Committee, broad releases of potentially valuable claims;[43]
- an insufficient amount of time (60 days) and budget ($15,000 for the Senior Lenders and $75,000 for the Junior Lenders) for the Committee to investigate the Secured Parties, any claims against them, and their prepetition liens and claims against the Debtors;[44]
- payment of postpetition fees and expenses, regardless of whether such parties are fully secured;[45] and
- the Committee's carve-out will be limited to $325,000 for the initial 13-week period, as compared to the $4.25 million allocated to the Debtors' professionals for the same period.[46]

OBJECTION

A. **The Junior Lenders Are Not Entitled To Final Relief**

33. As this Court is aware, the Interim Order provided relief and protections only with respect to the Senior Lenders, which the Committee is prepared to address. The Junior Lenders, however, now apparently seek entry of a final order granting them broad relief without sufficient notice to any parties-in-interest, including the Committee. Such request is inappropriate, fails to satisfy the notice requirements of Bankruptcy Rule 2002, and should be denied. The Committee received a proposed final order from the Junior Lenders on March 22, less than three days prior to the Committee's objection deadline. Among other forms of broad relief, the Junior Lenders seek unspecified adequate protection payments as well as the paydown of their prepetition obligations. It is unclear, however, whether the Senior Lenders have agreed to allow the Junior Lenders to proceed with such requests or even whether the Junior Lenders each agree with the order that has been provided to the Committee. As a result, the Committee

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[43] *Id.* ¶ 21.

[44] *Id.* ¶¶ 16, 18.

[45] *Id.* ¶ *27.*

[46] *See* Budget.

cannot begin, and has not had sufficient time, to evaluate the proposed relief sought by the Junior Lenders.

34. Given that the Committee has not had a sufficient opportunity to analyze the protections requested by the Junior Lenders, let alone any notice to other parties-in-interest, it is inappropriate for the Junior Lenders to request final relief at the March 29 hearing. Unlike the Committee, the Junior Lenders have been involved in these cases since the Petition Date and should have been in a position to request relief in accordance with the procedural requirements of the Bankruptcy Rules. Instead, the Junior Lenders should only receive interim relief at this time to allow all parties-in-interest a fair opportunity to review the relief requested and raise objections.

B. <u>The Lenders' Adequate Protection Request is Inappropriate</u>

35. The proposed Final Order inappropriately seeks to conclusively establish now that the Secured Parties' interest in the Prepetition Collateral is diminishing on a dollar-for-dollar basis with every dollar spent by the Debtors in administering these cases, without the need for any evidentiary proof or any opportunity for the Committee to object. Such relief is inappropriate and should be stricken from the order.

36. These cases are clearly being run to benefit the Secured Parties through a structured liquidation process that is preserving and enhancing value for the Secured Parties. To the extent the Secured Parties ultimately believe the value of their Prepetition Collateral has diminished, the Secured Parties have the right to assert such claim, on proper notice, and with an opportunity for the Committee and other parties to object. The Final Order, however, should not now dictate what constitutes "diminution in value." Instead, this issue should be reserved for further adjudication.

37. Section 363(e) of the Bankruptcy Code provides that on request of a party with an interest in property that is to be used by the debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest.[47] The concept of adequate protection serves the goal of "safeguard[ing] the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization."[48]

38. Adequate protection functions to preserve the secured creditor's position following the commencement of a case, not to enhance the secured creditor's position.[49] The focus of the requirement is to protect a lender from diminution in the value of its collateral while the lender's collateral is being used.[50] A secured creditor must "prove this decline in value – or the threat of a decline – in order to establish a prima facie case."[51]

39. It is well-established that a secured creditor does not suffer a diminution in value where it receives the liquidation value of its collateral.[52] There is no decline in value, or

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47 11 U.S.C. § 363(e).

48 *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

49 *See In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 824 (Bankr. S.D.N.Y. 1982) ("Neither the legislative history nor the [Bankruptcy] Code indicate that Congress intended the concept of adequate protection to go beyond the scope of protecting the secured claim holder from a diminution in the value of the collateral securing the debt.").

50 *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 368 (1988); *see also In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Association and Federal Land Bank (In re Delbridge)*, 104 B.R. 824 (E.D. Mich. 1989); *In re Beker Industries Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

51 *In re Gunnison Ctr. Apts.*, LP, 320 B.R. 391, 396 (Bankr. D. Colo. 2005); *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994).

52 *See In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1020 (11th Cir. 1984) (noting that for adequate protection purposes, the value of collateral is based upon what a creditor would have received if it were to sell the collateral at a wholesale price); *In re Case*, 115 B.R. 666, 670 (B.A.P. 9th Cir. 1990) (noting that for adequate protection purposes, "the possibility of forced liquidation would be assumed"); *In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding secured creditor adequately protected where debtor used cash collateral to preserve overall value of collateral by paying necessary operating expenses); *In re Modern Warehouse, Inc.*, 74 B.R. 173, 177 (Bankr. W.D. Mo. 1987) ("[I]n the context of § 507(b) . . . the value which is to be protected is 'liquidation' value. . . . This protection is accorded on the theory that the secured creditor should be granted the same value as if he had the collateral in his hands to liquidate as of the date of commencement of the proceeding."); *In re Pine Lake Village Apartment Co.*, 16 B.R. 750, 756 (Bankr. S.D.N.Y. 1982) (holding use of cash collateral to maintain and

the threat of a decline in value, warranting adequate protection of the Secured Parties' interest in these cases. If the Secured Parties foreclosed on their Prepetition Collateral in multiple jurisdictions outside of chapter 11, they would not receive the significant benefits of an orderly liquidation utilizing the Debtors' remaining stores, employees, infrastructure, and this Court's supervision.[53] Rather than impairing the value of the Prepetition Collateral, such collateral is being preserved and the value maximized through these chapter 11 cases.

40. The Final Order, therefore, must be modified to eliminate the provisions that attempt to conclusively determine what constitutes a diminution in value, including the Debtors' use of Cash Collateral. The issue of whether and to what extent the Secured Parties have suffered a diminution in value of the Prepetition Collateral should be fully reserved until the Secured Parties assert that they have suffered a diminution in value and the issue is decided by the Court.

41. The Debtors have also provided no evidence that the Secured Parties are oversecured and entitled to adequate protection in the form of postpetition interest and fees.[54] Unless the Debtors prove that the Secured Parties are each oversecured, any proposed adequate protection payments must be denied. To the extent any such payments are authorized, they must be subject to recharacterization or disgorgement if it is determined that the Secured Parties are undersecured.

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repair underlying collateral "clearly ensures that the [secured creditor's] investment is adequately protected"); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (permitting expenditure of secured creditor's cash collateral to enhance overall value of collateral).

[53] *See In re Am. Consol. Transp. Cos.*, No. 09-26062, 2010 WL 3655485, *4 (Bankr. N.D. Ill. Sept. 10, 2010) (holding secured creditor not entitled to any adequate protection where use of cash collateral will preserve the value of its collateral).

[54] *See* 11 U.S.C. § 506(b) (a secured creditor is only entitled to the payment of post-petition interest and fees to the extent the value of collateral exceeds the amount of the secured creditor's claim).

C. The Secured Parties Should Not Have The Unilateral Right To Terminate The Use of Cash Collateral

42. Paragraph 4 of the proposed Final Order sets forth fifteen separate events that would authorize the Secured Parties to terminate the Debtors' use of cash collateral. If paragraph 4(ii) of the Final Order is approved, the Secured Parties would have the unilateral right to terminate the use cash collateral without any default by the Debtors.[55] Such right flies in the face of the bargained for exchange between the Debtors and the Secured Parties and renders the authorization to use cash collateral illusory.

43. The bargained for exchange in every cash collateral order is that the debtor shall be authorized to use cash collateral provided they comply with the negotiated terms of the cash collateral order. Without this protection, a debtor cannot effectively manage its operations through the restructuring process. In exchange, the secured creditor is afforded broad protections in the form of replacement liens, superpriority claims, and adequate protection.

44. Here, the Secured Parties want these substantial benefits, while at the same time retaining absolute authority to terminate Cash Collateral usage at any time and for any reason. Such request must be denied. If the Secured Parties want to retain this authority, then they should not receive any protections under the Final Order.

D. Neither The Debtors Nor The Estates Should Be Forced To Waive Rights Under Sections 506(c) or 552 of The Bankruptcy Code

45. Absent a consensual budget that ensures the payment of all administrative claims to ensure the administrative solvency of these estates, including the timely payment of stub rent, the advance waivers under sections 506(c) and 552(b) of the Bankruptcy Code are inappropriate and must be denied.[56]

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[55] *See* Final Order ¶ 4(ii).

[56] *See* Interim Order, ¶¶ 14, 21.

46. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself.[57] This provision ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured creditor recoveries.[58] Courts have widely recognized that section 506(c) waivers are not to be granted lightly.[59] Similarly, the "equities of the case" exception in section 552(b) of the Bankruptcy Code allows a debtor, committee or other party-in-interest to exclude postpetition proceeds from prepetition collateral on equitable grounds, including to avoid having unencumbered assets fund the cost of a secured lender's foreclosure.[60]

47. The use and occupancy of the Debtors' retail locations to liquidate collateral is being done for the benefit of the Secured Parties. The Budget, however, does not provide for the payment of stub rent associated with such stores until the week of June 3. Given the uncertainty surrounding any chapter 11 case, let alone one where the Debtors' primary focus is the substantial liquidation of assets, the Debtors' creditors should not bear the risk of administrative insolvency, including the unnecessary delay in the payment of stub rent. Such payments are directly associated with the liquidation of the Prepetition Collateral for the benefit of the Secured Parties, and are required to be paid under the Bankruptcy Code.[61] The Debtors

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[57] *See* 11 U.S.C. § 506(c).

[58] *See, e.g., Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.),* 57 F.3d 321, 325 (3d Cir. 1995) ("section 506(c) is designed to prevent a windfall to the secured creditor"); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) ("the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs").

[59] *See, e.g., Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 12 (2000) (finding that section 506(c) is a rule of fundamental fairness for all parties in interest and authorizing the surcharge of a secured lender's collateral where reasonable and appropriate).

[60] *See* 11 U.S.C. § 552(b).

[61] *See* 11 U.S.C. § 503(b)(1); *In re Goody's Family Clothing, Inc.*, 610 F.3d 812, 818-19 (3d Cir. 2010) (finding that retaining possession of the premises, thereby inducing post-petition services from the landlords, is sufficient to be a transaction justifying administrative priority); *In re ZB Co.*, 302 B.R. 316, 319 (Bankr. D. Del. 2003) ("It is beyond dispute that all of the Debtors' landlords whose properties are occupied and used post-petition have valid administrative claims").

know their monthly rent obligations and can quickly assess the stub rent due for each of their leased locations. The amount allocated for stub rent, therefore, should either be paid promptly or carved-out of the Prepetition Collateral.

48. Further, the advance 506(c) and 552(b) waivers are improper given the limited proposed budget for the Committee's professionals.[62] The Debtors' professionals are allocated $4.25 million, or more than 10 times the amount budgeted for the Committee, during the current budget period. The allocation is not only inequitable, but prevents the Committee from fulfilling its fidudicary duty to unsecured creditors.[63] Court's have declined to approve provisions that would inappropriately circumscribe a committee's ability to fulfill its fiduciary obligations through limitations placed on the payment of professional fees and expenses.[64] The Committee budget must be increased to allow the Committee to undertake its fiduciary duty in these cases, or all of the professionals should be required to share *pro rata*.[65]

49. Finally, the Debtors have not yet filed their schedules of assets and liabilities or statement of financial affairs, and such documents are unlikely to be filed until the end of April.[66] The Debtors have also not yet sought to set a proof of claim bar date. Thus, there

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[62] *See* Interim Order, Exhibit B.

[63] *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC),* 478 F.3d 452, 466 (2d Cir. 2007) (unsecured creditors' committees have a fiduciary duty to maximize unsecured creditor recoveries for the debtor's estate); *Value Prop. Trust v. Zim Co. (In re Mortg. & Realty Trust),* 212 B.R. 649, 653 (Bankr. C.D. Cal. 1997) (noting that the committee's has many functions … "it investigates, it appears, it negotiates, it may litigate, and it is at all times intimately involved in the reorganized").

[64] *See In re Channel Master Holdings, Inc.*, No. 13-13004, 2004 Bankr. LEXIS 576, *8-9 (Bankr. D. Del. Apr. 26, 2004) (refusing to enforce a $75,000 cap on committee's professional fees under a postpetition financing facility, finding such cap unreasonable in light of the much larger caps on the other professionals in the case).

[65] *See In re Evergreen Solar, Inc.*, Case No. 11-12590 (MFW), Hr'g Tr. (Docket No. 189) at 42-51 (Bankr. D. Del. Sept. 6, 2011) (declining to apply the debtor's proposed caps and instead, substituted a general pool for all professionals from which debtor and committee professionals could recover fees on a *pro rata* basis). Excerpts from the transcript are attached hereto as Exhibit A.

[66] The Debtors filed a *Motion for an Order Pursuant to Bankruptcy Code Sections 105 and 521, Bankruptcy Rule 1007(c) and Local Bankruptcy Rule 1007-1(b) Extending Time to File Schedules and Statements,*

is currently no information regarding the extent of the Debtors' administrative and priority claims, and whether the Budget will be sufficient to cover such claims. To the extent the Secured Parties wish to receive the benefits of a chapter 11 process undertaken exclusively for their benefit, they must pay the associated costs. The Debtors should not be allowed to waive their statutory ability to compel the Secured Parties to pay their own way.[67]

E. The Secured Parties Are Not Entitled To Liens On Avoidance Actions

50. Upon entry of the Final Order, the Secured Parties will receive a lien on, and a superpriority claim against, avoidance actions.[68] Both are inappropriate and contrary to the interests of the Debtors' estates and unsecured creditors.

51. Avoidance powers are intended to allow a debtor-in-possession or a trustee to recover certain payments for the benefit of unsecured creditors.[69] Avoidance actions should not be pursued for the exclusive benefit of a secured creditor.[70] Moreover, avoidance actions belong to the Debtors' creditors, not the Debtors.[71] Thus, the Debtors should not be authorized to grant a lien on avoidance actions or their proceeds. The Final Order must be modified to preserve avoidance actions and their proceeds for unsecured creditors.

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seeking to extend the deadline to file their schedules of assets and liabilities and statements of financial affairs to April 22, 2017. Docket No. 53.

67 *See, e.g., In re The Colad Group, Inc.*, 324 B.R. 208, 224 (Bankr. W.D.N.Y. 2005) (refusing to approve DIP financing to the extent that the agreement purported to modify statutory rights and obligations created by the Bankruptcy Code by prohibiting any surcharge of collateral under section 506(c)).

68 Final Order ¶ 6.

69 *See Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. Partnership IV,* 229 F.3d 245, 250 (3d Cir. 2000) (stating, "when recovery is sought under section 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors"); *Mellon Bank, N.A. v. Glick (In re Integrated Testing Prods. Corp.),* 69 B.R. 901, 904 (D.N.J. 1987) (finding that only the trustee, acting on behalf of all creditors, has a right to recover payments made as preferences);

70 *See Id.* (recognizing that avoidance actions should be pursued for the benefit of all unsecured creditors).

71 *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.),* 226 F.3d 237, 243-47 (3d Cir. 2000) (holding that a fraudulent transfer claim belongs to creditors and not to a chapter 11 debtor-in-possession); *Official Comm. of Unsecured Creditors v. Goold Electronics Corp. (In re*

F. <u>The Final Order Should Not Approve Liens On The Settlement Payment</u>

52. At the outset of these cases, the Settlement Payment was used to pay down a portion of the obligations purportedly due to the Senior Lenders. The Committee, however, has not yet had an opportunity to commence its investigation into the prepetition liens and claims of the Secured Parties, let alone analyze the historic relationship with Sprint or the terms of the Sprint Settlement. To the extent the Secured Parties do not have a lien on the proceeds of the Sprint Settlement, the Secured Parties should not be authorized to enhance the value of their Prepetition Collateral by virtue of the Final Order. If the Secured Parties do not have valid and properly perfected prepetition liens on the proceeds of the Sprint Settlement, the Final Order should not in any way preordain the Secured Parties' right to such payment or otherwise grant new liens in the Settlement Payment.

53. In order to ensure the Final Order does not prejudice the Committee's rights with respect to the Sprint Settlement proceeds, the Final Order should expressly provide that the Committee's challenge rights extend to the Secured Parties' purported interest, if any, in the Sprint Settlement and the Settlement Payment.

G. <u>The Interim Order Provides Inadequate Investigation And Challenge Rights</u>

54. The Secured Parties seek to limit the Committee's challenge rights to sixty-days from the Committee's formation to investigate and commence a challenge.[72] The sixty-day period within which the Committee must commence a challenge is too short under the circumstances of these chapter 11 cases. Since its formation just one week ago, the Committee has been focused on getting up-to-speed on these cases and the numerous issues raised by the

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Goold Electronics Corp.), 1993 WL 408366, *3-4 (N.D. Ill. Sept. 22, 1993) (vacating lien on preference actions granted under financing order).

[72] Interim Order ¶ 4(b).

Motion, the store closing sales, the proposed lease auction procedures, and the Sprint Settlement. In addition to an investigation into the prepetition liens and claims of the Senior Lenders and the Junior Lenders, the Debtors similarly seek to limit the Committee's investigation into the Sprint Agreement and Sprint Settlement to the same sixty days.

55. In order to address this substantial burden, the Final Order, if approved, should: (i) give the Committee automatic standing to commence a challenge against the Secured Parties; and (ii) authorize a challenge period of no less than sixty days from entry of the Final Order (subject to extension either with the written consent of the Senior Lenders or Junior Lenders, as applicable, or by order of the Court) to investigate and commence a challenge.

56. The Senior Lenders and Junior Lenders further seek to limit the Committee's investigation budget to only $15,000 and $75,000, respectively.[73] The proposed investigation budget is insufficient in these cases and serves as a deterrent, preventing the Committee from pursuing any potential claims against the Secured Parties.[74] In order to satisfy its fiduciary duty and fully and properly investigate the prepetition liens and claims of the Secured Parties, the Committee must have a sufficient budget. The Final Order, if approved, should provide the Committee with a minimum of $75,000 to investigate a challenge against the Senior Lenders and $100,000 to investigate a challenge against the Junior Lenders.

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[73] Interim Order, ¶ 3(d).

[74] *See In re Tenney Village Co., Inc.*, 104 B.R. 562, 568-69 (Bankr. D. N.H. 1989) (refusing to approve post-petition financing because a fee cap unacceptably limited the right of debtor's counsel to payment for bringing actions against the prepetition lenders, creating an economic incentive for the debtor to avoid brining such actions in disregard of its fiduciary duties to the estate).

57. Finally, the Final Order should be modified to confirm that the Committee's right to challenge a claim of diminution in value or to seek to recharacterize or disgorge adequate protections payments are not subject to the challenge period.

H. <u>Other Objectionable Provisions</u>

58. In addition to all of the foregoing issues, the following provisions are objectionable for the reasons stated below:

Issue	Location	Committee's Objection
Liens on Proceeds of Leases	Final Order ¶ 6	The Final Order authorizes adequate protection liens and superpriority claims against the proceeds of leases. The proceeds of leases are unencumbered assets and should inure to the benefit of unsecured creditors.
Budget Variances	Final Order ¶ 3	Budget variances should be measured on a cumulative basis in order to avoid hair trigger defaults resulting from temporary variances that are rectified on a cumulative basis.
Overbroad, Vague and Ambiguous Releases	Final Order, ¶ 4	Releases of the Secured Parties are overbroad, vague and ambiguous. Any releases set forth in the Final Order, if approved, should be clearly stated and narrowly tailored to apply to their prepetition lending activities.
Payments from Sale Collateral	Final Order, ¶ 6(f)	Absent a showing of diminution in value, the Secured Parties should only receive payments from the sale of Prepetition Collateral.
Proof of Claim	Final Order, ¶ 9	The waiver of the requirement of filing a proof of claim should be limited to claims arising in connection with the prepetition loans or the Final Order.
Relief from the Automatic Stay	Final Order, ¶ 10	To the extent the Senior Lenders or Junior Lenders, as applicable, seek to exercise their rights against the Prepetition Collateral upon the occurrence of a Termination Event, the Debtors and the Committee must have an opportunity to request an emergency hearing during the notice period to contest such default.

Issue	Location	Committee's Objection
Reporting	Final Order ¶¶ 3, 9	Copies of all reports that are being provided to the Secured Parties, including any modifications to the Budget, should also be provided to the Committee.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny approval of the Motion until modifications as described herein are included in the Final Order; and (ii) grant such other and further relief as the Court deems just and proper.

Dated: March 24, 2017
Wilmington, Delaware

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Proposed Counsel for the Official Committee of Unsecured Creditors of General Wireless Operations Inc. dba RadioShack et al.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 11-12590 (MFW)
- -x
In the Matter of:

EVERGREEN SOLAR, INC.

Debtors.

- -x
United States Bankruptcy Court
824 N. Market Street
5th Floor
Wilmington, Delaware

September 6, 2011
11:30 a.m.

B E F O R E:
HON. MARY F. WALRATH
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: MICHAEL MILLER

be automatic, with respect to an avoidance action against the Secured Creditors themselves. I don't know if there is one, Your Honor, we're -- we just got here. But do think it is inappropriate for the Secured Creditors to say if the Committee finds an avoidance action and succeeds, and is able to obtain money from the secureds because of the avoidance action, we get it back anyway. I just don't think that's right and I don't think it's appropriate for them to ask for, and we would ask that you not approve it.

I realize that in order for this Debtor to access cash collateral, it needs either the consent of the Secured Creditors or it needs Your Honor's determination that the rest of the Cash collateral order provides them with adequate protection. If the Secured Creditors will not consent, we would ask that you enter such a modified order and find that where money is being spent on liquidation that has been structured by and with the Secured Creditors to enhance their own value, that that in and of itself is adequate protection and they don't deserve these other bells and whistles that they are asking for which are in the nature of making sure that the Committee has no ability to do its job.

I understand the Secured Creditors are not eager to agree to a budget over and above what they have already put on the table for the Committee. But Your Honor, this case is being run for them, and when a case is being run for Secured

Creditors, I think they should pay the piper, and that is not enough for the Committee to do its job. There is a major asset of this estate which needs to be sold which the Debtors have repeatedly denigrated in their filings with this Court and which the Secured Creditors don't have a lien on, and we need to be able to function to make sure that it is in fact sold in a way that provides value to unsecured creditors.

I'm happy to answer questions.

THE COURT: Well, let me hear from the Lenders.

MR. STAMER: Thank you again, Your Honor. Your Honor we heard the commentary and the questions that the Court posed to the parties in connection with the original proposed cash collateral order, and we believe we made -- in the first -- in the first instance, we believe that the diminution of the value of our collateral over the next 13 weeks will be far in excess of the actual cash spent. Nevertheless, we – again, we understand the concerns that have been articulated by the Court, by the Creditors Committee, and in order to move the process along, we have agreed to push that issue off. So when I say that, our proposed cash collateral order, and what the Debtor is requesting, is that we be given valid liens and superpriority claims to the extent of diminution in value, and we reserve the right -- and you don't – the Court does not make a determination as to what diminution in value is today, but we reserve the right in the future potentially before the bid deadline to get an adjudication by the Court. In addition, Your Honor, we are sympathetic to the issue associated with the need for the Committee to do its work and over -- or with great reluctance, the members of the Supporting Noteholders agreed to increase the amount of money that is set aside for the Committee to do their work.

Your Honor, the Committee can't have it both ways. Either there are huge unencumbered assets that we are looking to deprive them of, or there are none and we need to pay them in order to find some value. They can't have it both ways. Your Honor, this is - this is a liquidation. It's a liquidation that hopefully will be successful, will be orderly, will preserve jobs, and will -- and there will be a successful conclusion here. But Your Honor, what we want is, we want -- we want appropriate protections for the use of our cash collateral and we do not want in advance of agreeing to fund tens of millions of dollars to allow this to move towards an orderly process, to be exposed whether it is under 506(c), 552, or for that matter, under 363(k). Your Honor, either we have valid liens or we don't. If we don't have valid liens, we can't credit bid. If we don't have valid liens, then we don't have diminution in value claims that will soak up these alleged valuable unencumbered assets.

This is a simple company. It's one Debtor that burns cash that is trying to develop a product, and we have negotiated what we think is an appropriate arrangement balancing the company's fiduciary duties to move this forward. And Your Honor, that is what is embodied in the cash collateral order with the modifications that we have put on the record. We would support the Debtor's motion for approval of the cash collateral order as proposed, as modified by our comments here today.

And Your Honor, I'm happy to answer any other questions the Court has if it would be helpful.

THE COURT: Well, let me ask the question to the extent that my general thought is on Committee professionals to agree to the amounts that the parties may agree among themselves. But to the extent that I find that the Committee is entitled to more than their bucket, I have often found it appropriate to take from the bucket designated for the Debtors professionals so that administrative professionals all receive the same percentage of their fees.

MR. STAMER: Your Honor, and I'm not coming down either way on this. From our perspective, we have agreed to fund a certain budget, both with respect to the prosecution of the case, and with respect to if the Debtor decides to propose a plan, we have set aside a certain amount of money, and again, if they propose a plan, they need to pay administrative claims in full. But Your Honor, from our perspective, we have not agreed and will not support a plan that takes more money out of the Lender's pocket, whether it comes - wherever it comes from otherwise, whether it's from unencumbered assets if there really are really are unencumbered assets, or if there's carryover from other budgeted items that are not used, but from our perspective, we cut our deal, and the deal provides for funding at a set amount over a period of time, and we will live by that deal.

THE COURT: All right. Well, I think you're saying the same thing I am. You don't care whether it goes to the Committee or the Debtors as long as it's not over that "X" dollars.

Does the Committee want to be heard on that?

MR. MAYER: Yes, Your Honor. I should have submitted this in my - clearer in my statement. We would be fine being included in the general pot, and that was something we were actually prepared to suggest, that it's all one pot for all the professionals and we will all take our chances.

THE COURT: Okay. All right. With respect to the credit bidding, to the extent that Lenders have a legitimate secure claim, I am going to allow them to credit bid under 363(k). I think that it is not unusual to give the permission right up front, notwithstanding the equities of the case that is in 363(k), and I would approve that.

With respect to the issue of the Lenders getting any proceeds of an avoidance action against themselves, I think in one respect the Committee is correct. To the extent the avoidance action is successful, I would be finding that there is no appropriate lien, I assume, and that the lien is being avoided, or at least to that extent, and I don't think they would be entitled to adequate protection for that. So it's somewhat circular, but I don't know that we need to change the language because I think that if they win the avoidance action against the Lenders, there's nothing to fight over.

UNIDENTIFIED SPEAKER: Your Honor, may we just have a moment?

MR. STAMER: Your Honor, can I speak to that just briefly?

THE COURT: Yeah.

MR. STAMER: I'm not sure it's necessarily binary, so you have an -- first of all, I don't think there's any avoidance actions against the Lenders, this may be academic. However, from the Lenders' perspective, to the extent that there is a valid lien and there is a diminution in value as it relates to -- and Your Honor would find that we have a replacement lien -- it would -- the replacement lien and the superpriority claim would relate to all unencumbered assets whatever they were. This provision would not be designed to insulate the Secured Lenders from anything. It would -- regardless of the source of the money, whether it's the Secured Lenders, whether it's a trade creditor, or whatever it is, if at the end of the case, we have a valid lien that has deteriorated in value and we are entitled to a superpriority claim or a lien, it attaches to unencumbered assets without limitations.

So our concern is, by somehow carving this out of our adequate protection package, you put a bullseye on the Secured Creditors because --

THE COURT: Well, what do you mean a bullseye?

MR. STAMER: Well, if the -- if there is a claim to be asserted that is not subject as carved out of our adequate protection lien, even if it's a valid adequate protection lien related to something else, that this would be a pocket of value for unsecured creditors just by virtue of the fact that it's assertable against certain of the secured parties.

THE COURT: But if it is asserted against certain of the secured parties, it reduces your secured position.

MR. STAMER: Your Honor, if that's the claim, you're exactly right. So we can -- you know, hypothetically --

THE COURT: And thereby would reduce your diminution claim, your adequate protection claim.

MR. STAMER: It would, Your Honor. The point is to the extent there is a remaining diminution claim and adequate protection claim -- Let's say there was a million dollars that went to the Secured Creditors that they wanted to take back, and we had a $10 million court-authorized adequate protection lien and claim. The fact that there is a million dollars that came back should not exempt our adequate protection claim from glomming on to that because it's unencumbered value that we have clearly -- that we clearly need to compensated for the diminution.

THE COURT: Positing that the avoidance action is not for all of your liens.

MR. STAMER: That's exactly right. Your Honor, if we have no liens, this is a long-winded conversation about nothing.

THE COURT: Right. Yeah. I think they're right. To the extent that it's a partial avoidance and there's still some adequate protection due them, I see no reason why they can't get it from an avoidance action against themselves or against anybody else, if that's the only value. But I think in prior orders I have held that the avoidance -- the adequate protection would be paid from other assets first rather than from the avoidance actions, which lenders are usually not opposed to since avoidance actions usually are the last things collected.

MR. STAMER: Generally averse to marshaling in general, but if you're talking about last as opposed to not -- not at all --

THE COURT: Let's make it last.

MR. STAMER: Okay. Thank you, Judge.

MR. MAYER: Thank you, Your Honor. Actually, I'm -- perhaps having worked on this case fewer months than Mr. Stamer -- not as articulate. My only concern is that this provision does not end up eliminating the meaningfulness of relief that we find and it may very well be as Your Honor points out, that if the relief is partial, then it is what it is and they are entitled to get paid their diminution. My concern is that I've missed something and I win, and then it turns out that I didn't win because there's something in this order that says, ha ha, it doesn't make any difference that you won, you have to give it back anyway. I think the colloquy here establishes that's not the intent of the provision, and so long as that's not the intent of the provision, I don't think we will have a problem.

THE COURT: Well, I think it's clear if you win everything, they don't get paid even if it says they have an adequate protection lien, it's only if they have a valid lien.

MR. MAYER: We will abide what we find and it may end up being that this is not a material element of the case in any event.

THE COURT: All right. I think that resolves, then, the cash collateral.

MR. SILVERMAN: One last point, Your Honor --

THE COURT: Yes.

MR. SILVERMAN: -- on a subject that is important and -- With respect to the carve out, it is important to make clear to the Court that the budget for the professional fees, for the Debtors' fees here is not a generous one, it encompasses investment bankers, lawyers, all kinds of professionals. As is typically the case, the work done by the Debtors is the lion's share of the case as opposed to the Committee, and to the extent that there is an unfettered amount of litigation that is brought by a committee using up that budget, that would be an inequity --

THE COURT: Well, you can oppose their standing, you can object to their fees.

MR. SILVERMAN: Okay. Your Honor, I wanted to make this clear on the record, that we cannot just accede to whatever fees and whatever claims that they bring and we have to be quite vigilant about that. And we also would ask that the Court have -- keep in mind equitable allocations to the extent there is any inroads into the Debtors fee cap for the Committee.

THE COURT: Well, I won't allow any fees that are not appropriate, so --

MR. SILVERMAN: Thank you, Your Honor.

THE COURT: But I do stand on my pro rata for all administrative professionals.

MR. SILVERMAN: Thank you.

THE COURT: All right. I assume the parties will mark up a cash collateral order then and get it to me under

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK et al.,[1] Debtors.	Chapter 11 Case No. 17–10506 (BLS) (Jointly Administered)

CERTIFICATE OF SERVICE

I, Richard M. Beck, Esq. of Klehr Harrison Harvey Branzburg LLP, hereby certify that on this 24th day of March 2017, I served a copy of the foregoing *OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING USE OF CASH COLLATERAL AND AFFORDING ADEQUATE PROTECTION; (II) MODIFYING AUTOMATIC STAY; AND (III) SCHEDULING FINAL HEARING* on the parties listed on the attached service list via First Class Mail.

/s/ Richard M. Beck
Richard M. Beck (Del. Bar No. 3370)

[1] The Debtors in these cases are: General Wireless Operations Inc. dba RadioShack, General Wireless Holdings Inc., General Wireless Inc. and General Wireless Customer Service Inc.

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