

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:

Cross-Dock Solutions, LLC,

Debtor.

Case No. 17-26993(KCF)

Hon. Kathryn C. Ferguson

Hearing Date:

Chapter: 11

**EMERGENCY MOTION OF BEDEMCO INC. FOR THE
APPOINTMENT OF A CHAPTER 11 TRUSTEE**

Bedemco Inc. ("Bedemco") by its counsel Herrick, Feinstein LLP, as and for its emergency motion (the "Motion") for the entry of an order appointing a chapter 11 trustee in the above-captioned case, respectfully represents as follows:

PRELIMINARY STATEMENT

1. Bedemco moves for the appointment of a chapter 11 trustee because the operations of Cross-Dock Solutions, LLC ("Cross-Dock" or the "Debtor") are in disarray, and the Debtor, its creditors and its customers face an imminent catastrophe because the Debtor must surrender its leased warehouse space in Edison and Raritan no later than February 28, 2018 -- and possibly as soon as January 31, 2018 -- and the Debtor has neither a firm commitment for replacement warehouse space nor any form of transition plan for its customers in the event that no such replacement space can be found.

2. The Debtor operates refrigerated warehouse space. The products stored by Bedemco -- and presumably the Debtor's other customers -- must be stored in a temperature-controlled environment or they will quickly spoil. But rather than notify its customer base of the risk that they may be forced to find new storage facilities in a market with little vacant refrigerated storage space available, the Debtor has unjustifiably taken the position that the customers are not entitled to notice. The Debtor apparently fears that when customers understand the magnitude of the risk, they will terminate their relationships with the Debtor just as soon as they can find replacement space. While that may be true, that potential conflict -- and the Debtor's inappropriate response to it -- demonstrates the Debtor's blithe disregard for its fiduciary obligations, not only to creditors, but also to parties-in-interest, which the Debtor's customers clearly are. *See* December 26, 2017 Declaration of Eli Demeshulam submitted herewith (the "Demeshulam Decl.") at ¶ 5.

3. The Debtor's operations are in disarray. The Debtor has incurred substantial post-petition losses, a trend that is likely to continue because the Debtor has apparently lost more than 50% of its customer base and 25% of its employees since it filed for chapter 11. It has not met and cannot meet its post-petition obligations, despite its false representations to the contrary to this Court, which inability led directly to the rejection of its leases for its Edison and Raritan warehouses.

4. The core of its business, storage of customer goods and managing outbound shipments for its customers has been chaotic and disastrous. The Debtor has admitted to a continuing problem with spoilage of goods stored in its warehouses. But beyond that serious issue, Bedemco has experienced substantial problems with contamination and damage to stored products, short shipments of products to Bedemco customers, mis-shipments of product to

Bedemco customers, and product shortages. Likely these problems also afflict other customers of the Debtor. As a warehouse operator, the Debtor has statutory and common law obligations to its customers; the Debtor's failures to properly operate its warehouses and ship customer orders are in breach of those duties and give rise to substantial claims against the Debtor. Demeshulam Decl. at ¶ 6.

5. Bedemco is involved in a substantial billing dispute with the Debtor, in which the Debtor is seeking to coerce Bedemco to pay inflated and disputed charges, including the Debtor's attempt to impose substantial and retroactive price increases. Bedemco has numerous issues with these charges, including offsets and counterclaims based on the Debtor's loss, destruction and spoilage of Bedemco's goods stored with the Debtor. Notwithstanding the existence of the pending dispute, by letter dated December 27, 2017, a copy of which is attached hereto as Exhibit A (the "Demand Letter"), the Debtor asserted a purported warehouseman's lien and threatened to sell Bedemco's goods in a public or private sale unless Bedemco paid approximately \$169,000 within 24 hours. Demeshulam Decl. at ¶ 7.

6. Bedemco has attempted to resolve the disputed invoices recently issued by the Debtor in good faith, but even before the Demand Letter was issued, the Debtor had demanded that unless Bedemco made substantial payments *prior to the resolution of this dispute*, it would not ship orders for goods stored at the Debtor's Edison warehouse to Bedemco customers. Since December 21, 2017, the Debtor has delayed shipments of the Debtor's goods and turned away trucks seeking to pick up goods on behalf of Bedemco. The Debtor's unauthorized self-help remedy of holding Bedemco's goods hostage for leverage in the billing dispute has caused and will cause Bedemco irreparable injury. Demeshulam Decl. at ¶ 8.

7. This toxic and dangerous combination of operational incompetence, continuing losses with no prospect of recovery, inability to meet post-petition obligations, misrepresentation of its financial condition, and disregard for the interests of the Debtor's customers proves cause by the clear and convincing standard. Once cause has been established, the appointment of a trustee is mandatory. The appointment of a chapter 11 trustee is further in the best interests of creditors; this case demands that a fair, responsible and transparent fiduciary be appointed immediately to bring order to the chaos.

BACKGROUND

8. On August 22, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate and manage its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed. See Declaration of Pedro Cardenas dated August 29, 2017 (the "Cardenas Declaration") at ¶ 4 [ECF #16].

9. The Debtor is a New Jersey limited liability company with an address of and headquarters at 180 Raritan Center Parkway, Edison, New Jersey, which was organized in 2011. The Debtor operates a refrigerated and frozen goods warehousing business out of a portion of the Edison, New Jersey location (the "Edison Warehouse") and a portion of a second location at 145 Talmadge Road, Edison New Jersey (the "Raritan Warehouse") and together with the Edison Warehouse, the "Warehouses"). Cardenas Decl. at ¶ 5.

10. Bedemco is the largest U.S. provider of dried fruit and nut products to importers, distributors and manufacturers, and has been in business since 1980. Bedemco has approximately 1,600 pallets, representing \$6,000,000 worth of inventory, stored at the Debtor's warehouse in Edison, New Jersey. The Debtor is the exclusive provider of warehousing and

fulfillment services for Bedemco. When Bedemco receives orders from its customers, the Debtor locates the relevant goods within its warehouse, packs the goods for shipment and arranges for their delivery to Bedemco customers, who are located in all regions of the country. Demeshulam Decl. at ¶ 9.

Debtor's Rejection of the Warehouse Leases

11. The Debtor's Chapter 11 case was prompted by its long-running dispute with its landlords. In pre-petition litigation, the Debtor's landlords had obtained a judgment against the Debtor for failure to pay rent, and had obtained a warrant of eviction. The Debtor has admitted it filed its Chapter 11 case to preserve its leases. See Declaration of Pedro Cardenas dated August 29, 2017 (the "Cardenas Decl.") at ¶¶ 12-13 [ECF #16]. Nevertheless, the Debtor was forced to reject the Warehouse leases.

12. Since the Petition Date, the Debtor has been unable to stay current on its post-petition obligations to its landlords, which prompted them to file a motion (the "Rent Motion") to compel the payment of post-petition rent [ECF #76]. As of the time the landlords filed the Rent Motion, the Debtor was in arrears in the approximate amount of \$363,000 -- *an amount greater than the Debtor's reported monthly revenues.*

13. On November 20, 2017, the Debtor moved under section 365(d)(4) of the Bankruptcy Code (the "365(d)(4) Motion") for an additional 90 days in which to determine whether to assume or reject the leases for its Warehouses. Its 365(d)(4) Motion failed to disclose that it was substantially in arrears in post-petition rent. According to the Debtor's landlords, it then failed to pay December base rent, increasing the arrearage to approximately \$550,000 [ECF #97 at ¶9].

14. At the hearing on the 365(d)(4) Motion held on December 19, 2017, the Debtor acknowledged that it was still in default under its rent obligations, and based on this admitted default, this Court denied the 365(d)(4) Motion at the hearing held on December 19, 2017. Demeshulam Decl. at ¶ 10.

15. After the 365(d)(4) Motion was denied, the Debtor and the landlords agreed to a sliver of respite for the Debtor. Under this agreement, if it could come current on the amounts in arrears and pay January rent, the Debtor would be permitted to continue to use and occupy the Warehouses through January 31, 2018. If the Debtor were then able to sign a lease or leases for a new location by January 31, 2018, it would then be entitled to use and occupy the Warehouses through February 28, 2018, provided that it paid February rent. If the Debtor should fail to pay any of its obligations under this new agreement, it is required to immediately surrender the Warehouses. Thus, the Debtor's customers have no assurance of the availability of their warehouse space even as to occupancy through January 2018. Demeshulam Decl. at ¶ 11.

Debtor's Post-Petition Losses and Losses of Customers

16. On December 20, 2017, the Debtor belatedly filed its operating reports for September and October [ECF #99 and ECF #100]. The reported results were dismal enough: a net cash flow loss of approximately \$20,000 for September and a positive cash flow of approximately \$39,000 in October. But as weak as these results are, they are also materially false and misleading. In both operating reports the Debtor certified that it had timely paid all post-petition operating expenses, *despite the fact that it admitted in Court at the December 19 hearing that it owed the landlords approximately \$363,000 for September and October rent, and similar amounts for November and December.* Demeshulam Decl. at ¶ 12.

17. The Debtor has also admitted that it lacked the funds to make these payments, and indeed its October operating report shows a cash balance of only \$100,000. At a minimum, the Debtor should have disclosed its failure to pay the amounts owed to the landlords, and should have disclosed on an accrual basis that it was continuing to accrue substantial operating losses. Demeshulam Decl. at ¶ 18.

18. In addition, at the December 19 hearing, Debtor's counsel represented to the Court that the Debtor currently had approximately 90 customers. Just four short months ago, the Debtor's chief executive officer, Mr. Cardenas represented in his declaration that the Debtor had approximately 200 customers. Cardenas Decl. at ¶ 7. Assuming that Mr. Cardenas's original declaration was accurate, it means that in less than four months, 55% of the Debtor's customer base has ceased to do business with the Debtor. That deep erosion of the Debtor's customer base makes it highly unlikely that the Debtor will be able to achieve a break-even cash flow or be in a position to propose a confirmable chapter 11 plan. .

Debtor Fails to Protect Interests of Customers

19. Prior to the hearing on the 365(d)(4) Motion, counsel for Bedemco contacted counsel for the Debtor to ask if the Debtor had formulated a transition plan in the event that the Debtor were required to surrender the Warehouses. As was apparent from the colloquy at the December 19 hearing, no such plan was ever developed, despite the fact that the Debtor is a bailee with statutory and common law obligations to its customers. Demeshulam Decl. at ¶ 13. See N.J.S.A. 12A:7-204; *Lembago Enters., Inc. v. Cace Trucking & Warehouse, Inc.*, 320 N.J. Super. 501, 508 (App. Div. 1999).

20. More shockingly, the Debtor denied that it had any obligation to warn its customers of the potential catastrophe that may occur if the Debtor is forced to surrender the

Warehouses early next year. The Debtor argued at the December 19 hearing that Toys ‘R’ Us was not required to notify customers when it filed its chapter 11 case, and thus that it had no obligation to notify its customers of the status of its continuing occupancy of the Warehouses, its imminent need to relocate, and the fact that it had no commitment for new warehouse space.

21. But the Toys ‘R’ Us comparison is inapposite; a Toys ‘R’ Us customer buys a toy, completes his or her purchase, and its relationship with Toys ‘R’ Us is ended unless and until the customer buys another toy. The Debtor is a bailee, whose entrustment with customer goods imposes clear duties under New Jersey law.

22. The most likely explanation for the Debtor’s refusal to notify its customers of the status of its occupancy of the Warehouses is the fear that when customers learn of the mismanagement of the warehouses, and the likelihood that they may be required to find replacement storage space on very short notice, they will immediately terminate their relationship with the Debtor. The Debtor is a bailee; if customer goods spoil, are damaged, or go missing during the Warehouse transition, the Debtor’s failure to give notice substantially increases the likelihood of additional claims for negligence, conversion, tortious interference, or other theories being asserted against the Debtor.

Debtor Fails to Properly Operate the Edison Warehouse

23. For more than four years, Bedemco has stored its inventory at the Edison Warehouse. Commencing in the second half of 2017, Bedemco became aware that there were mounting problems in the Debtor’s operation of the Edison Warehouse, which included, *inter alia*: (1) spoilage of Bedemco’s products while held in storage; (2) damage and destruction to Bedemco’s products while held in storage, (3) short shipments of goods to Bedemco’s customers, (4) other errors in shipping, such as shipping products to Bedemco customers who

had not ordered such products, (5) shipment of damaged and/or spoiled goods to Bedemco customers; (6) unexplained shortages in Bedemco products delivered to the Edison Warehouse and supposedly held by the Debtor pending orders; (7) general delays in shipping orders to Bedemco customers; and (8) a billing dispute of recent and suspicious origin between the Debtor and Bedemco about amounts claimed as due by the Debtor, but which are contested in good faith by Bedemco. Demeshulam Decl. at ¶ 14.

24. As a consequence of the spoilage of its products, a problem that the Debtor admits has occurred during the pendency of the Debtor's Chapter 11 case, coupled with the numerous shipping errors committed by the Debtor, Bedemco has come to believe that the Debtor's computerized records of inventory held at the Edison Warehouse are materially inaccurate. Last week, Bedemco requested immediate access to the Edison Warehouse for the purpose of verifying the levels of physical inventory on hand, but the Debtor objected, claiming that at least three of the Debtor's employees would be required to accompany Bedemco employees during such an inventory, and that no such inventory could be taken until at least the first week of January. Demeshulam Decl. at ¶ 15.

25. These operational problems have caused, and continue to cause, damage to Bedemco. To protect its interest in its goods, Bedemco has stationed one of its employees at the Edison Warehouse in an attempt to oversee the shipping process, and to prevent further shipment errors, even though Bedemco already pays the Debtor to provide these services. Because Bedemco has had to have one of its own employees oversee these services, it is essentially paying twice. In addition, the numerous shipping errors, the spoiled and damaged goods, and the late deliveries have damaged and continue to damage Bedemco's business. It has

experienced customers reducing their orders from Bedemco, or in some cases, ceasing to do business with Bedemco. Demeshulam Decl. at ¶ 16.

26. Given the substantial operational problems that Bedemco has experienced over the past six months, it is unlikely that it alone has had a bad experience with the Debtor, which is the most probable explanation for the Debtor's post-petition loss of customers. What is more likely is that Bedemco's problems are simply the first to come to the Court's attention.

Billing Dispute With Bedemco

27. The contractual terms between Bedemco and Cross-Dock provide that amounts stated to be due are payable 30 days following the date of invoice. Notwithstanding such terms, Cross-Dock has recently issued to Bedemco new and patently inflated invoices, including retroactive price increases that had not been agreed to by Bedemco. Last week Cross-Dock advised Bedemco that unless a substantial amount of the disputed amounts are paid, (1) it will not allow Bedemco personnel access to its Edison Warehouse, and (2) it will not ship orders in fulfillment of Bedemco customer orders. This unauthorized self-help remedy threatens Bedemco with immediate and irreparable injury. Demeshulam Decl. at ¶ 17.

28. On December 19, 2017, Eli Demeshulam, president of Bedemco, visited the Edison Warehouse for the purposes of, *inter alia*, physically inspecting Bedemco's goods stored there. But an Edison Warehouse employee physically barred Mr. Demeshulam from access to Bedemco's goods, explaining that he had been directed not to allow Mr. Demeshulam to have access. Demeshulam Decl. at ¶ 18.

29. Later that day, counsel for the Debtor incorrectly advised the Court that at no time had Cross-Dock impeded Bedemco's access to the Edison Warehouse. Counsel for Bedemco advised this Court that, contrary to counsel's representation, that Mr. Demeshulam

had been barred from access to the Edison Warehouse that very morning. Following that exchange, Mr. Honig of the Hellring firm represented to the Court that he would see to it that Bedemco had access, and that there would be no repetition of the bar to entry. Demeshulam Decl. at ¶ 19.

30. Notwithstanding that representation, on December 21, 2017, Cross-Dock refused to permit a Bedemco employee to enter the Edison Warehouse premises for the purpose of overseeing Bedemco shipments, as described above. More critically, Bedemco's employee was told that no Bedemco orders would be fulfilled absent payment in full of the disputed invoices. Demeshulam Decl. at ¶ 20.

31. As a consequence of Cross-Dock's unilateral exercise of an unjustified self-help remedy, Bedemco customer orders scheduled to be fulfilled on December 21, 2017 were not shipped until Bedemco made a forced payment of approximately \$22,000. In addition, Bedemco had inbound orders on trucks that were scheduled to be delivered for storage to Cross-Dock on December 21, 2017. Given the extant controversy, Bedemco determined that it was unwise to direct those shipments to be unloaded at the Edison Warehouse. Instead, it was forced to scramble to find alternative storage locations for those goods. Demeshulam Decl. at ¶ 21.

32. Bedemco has many objections to the purported invoices that Cross-Dock has issued. Among other things, they purport to impose retroactive price increases for services previously rendered, they purport to demand immediate payment, despite the fact that the pricing sheet between the parties clearly states normal commercial terms, i.e., payment being due 30 days following the date of invoice. Demeshulam Decl. at ¶ 22.

33. In an attempt to resolve these matters on a consensual basis, Bedemco has reviewed all of the open invoices Cross-Dock has issued to it, even the ones issued as recently

as December 14, 2017. It has sent to Cross-Dock a detailed spreadsheet, identifying each dispute it has with the terms and substance of the Cross-Dock invoices. Cross-Dock's response was to ignore these facts and again demand payment. In the past week, Cross-Dock has issued many new invoices -- which are again in substantial dispute -- and demanded immediate payment. Demeshulam Decl. at ¶ 23.

34. But beyond the issues with the invoices, Bedemco has other claims and defenses arising out of the events of the second half of 2017. It has suffered spoiled product, contaminated product, and numerous shipping errors, which have led to it being required to make refunds to customers, and grant discounts and allowances against current orders. Worse yet, some customers have pared back the business they do with Bedemco, and others have simply dropped Bedemco as a supplier. Demeshulam Decl. at ¶ 24.

35. Despite Bedemco's efforts to resolve the billing disputes consensually, negotiations appear to have broken. On December 27, 2017, Cross-Dock issued the Demand Letter, demanding payments of disputed amounts and amounts not due in accordance with the terms between the parties. Unless Bedemco yielded to its demands, the Debtor has advised that it would refuse to give Bedemco access to the Edison Warehouse to inspect its stored goods, and the Debtor would refuse to ship orders to Bedemco customers. Most critically, Cross-Dock has threatened to sell Bedemco's goods. This unauthorized self-help remedy threatens Bedemco with immediate and irreparable injury. Demeshulam Decl. at ¶ 25.

36. Bedemco faces the risk that so long as Cross-Dock mismanages its operations, it will continue to have the same problems, which is why it seeks the appointment of an independent chapter 11 trustee to operate the Debtor's business.

ARGUMENT

37. The Debtor's gross mismanagement of its business, its breaches of its fiduciary duties and its blatant lack of transparency in this proceeding justify the appointment of a Trustee in this case. Section 1104(a) of the Bankruptcy Code governs the appointment of Chapter 11 trustees and provides that:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a).

38. The decision to appoint a trustee pursuant to Section 1104(a) must be made by the court on a “case-by-case basis,” considering the totality of the circumstances. *In re Sharon Steel Corp.*, 871 F.2d 1217, 1226 (3d Cir. 1989). The party moving for the appointment of a Chapter 11 trustee must prove the need for such appointment under either subsection by clear and convincing evidence. *In re G-I Holdings, Inc.*, 385 F.3d 313, 317–18 (3d Cir. 2004). The appointment of a trustee is mandated upon a finding of “cause” under subsection (1) or upon a finding that a trustee would best serve the interests discussed in subsection (2). The determination of cause or best interest is within the Bankruptcy Court's discretion. *See Sharon*

Steel, 871 F.2d at 1226. In this case, the Court could appropriately find that a Trustee should be appointed under either Section 1104(a)(1) or (2).

39. “In the usual chapter 11 proceeding, the debtor remains in possession throughout reorganization because ‘current management is generally best suited to orchestrate the process of rehabilitation for the benefit of creditors and other interests of the estate.’” *In re Marvel Entm’t Group, Inc.*, 140 F.3d 463, 471 (3d Cir. 1998) (quoting *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989)). Here, the results of the management by the Debtor have shown it is not suited to orchestrate the process of rehabilitation. To the contrary, the continued management by the Debtor has led to the ever-increasing failure of the Debtor’s business. As the facts above show, the cash flow of the business was down to only \$19,000 for September and October despite failing to pay full rent; the business has lost over half of its customers; the Debtor is on the brink of losing its leases; and the Debtor is no longer adequately running its day to day operation, allowing stored goods to spoil, disappear, be improperly shipped, or not be shipped at all. Rather than using the calm of Chapter 11 proceedings and protections to turn its business around, the Debtor here has continued to spiral down, at the expense of, among others, Bedemco. Thus, the basic reasoning for allowing a debtor to stay in possession while in Chapter 11 does not exist in this case.

40. The purpose of a trustee is to “aid or augment the success of a debtor’s reorganization.” *In re Biolitec, Inc.*, No. 13-11157(DHS), 2013 WL 1352302, *12 (Bankr. D.N.J. April 3, 2013). A trustee can manage the Debtor’s business, properly report to the Court, and instill confidence in the ability to turn the business around, or truthfully admit that it cannot continue. *Id.* That is precisely what is needed here. The Debtor has had a chance to turn the business around and instead has made things worse.

Cause Exists for the Appointment of a Trustee Under Section 1104(a)(1)

41. Section 1104 (a)(1) does not set forth an exclusive or exhaustive list of causes for which a trustee must be appointed. Rather, the language of 1104 (a)(1) shows that it covers “a wide range of conduct.” *Marvel*, 140 F.3d at 472 (quoting *Comm. of Dalkon Shield Claimants v. A.H. Robins Co.*, 828 F.2d 239, 242 (4th Cir. 1987)). The Third Circuit has noted that it is appropriate to consider the policies behind the appointment of a trustee. *Marvel*, 140 F.3d at 474. Specifically, “[t]he appointment of a trustee is the installation of a court officer charged with fiduciary duties.” *Id.* A debtor in possession has these same fiduciary duties, and where it does not properly assume these duties, appointment of a trustee is necessary. *Id.* For example, the Debtor must (i) provide honest and straightforward disclosure to the Court and creditors; (ii) protect and conserve property in its possession; and (iii) instill confidence that reorganization will occur effectively. *Id.* That has not been the case here.

42. As the Court already knows, the Debtor has not given transparent or truthful information to the Court. For example, the when it filed its 365(d)(4) Motion, the Debtor failed to disclose that it was in substantial arrears in post-petition rent. In its operating reports for September and October the Debtor falsely certified that it had timely paid all post-petition operating expenses when, in fact, it owed its landlord’s approximately \$363,000 for past due rent. This alone justifies the appointment of a Trustee. *See In re Grasso*, 490 B.R. 500, 517 (Bankr. E.D. Pa. 2013) (citing *In re Oklahoma Refining Co.*, 838 F.2d 1133, 1136 (10th Cir. 1988) (“failure to keep adequate records and make prompt and complete reports justifies the appointment of a trustee”); *Tradex Corp. v. Morse*, 339 B.R. 823, 833 (D. Mass. 2006) (recognizing that debtor’s failure to provide creditors information about business operations justified appointment of trustee); *In re Philadelphia Athletic Club, Inc.*, 15 B.R. 60, 62–63

(Bankr. E.D. Pa. 1981) (finding that appointment was in best interests of creditors where debtor had failed to keep adequate business records)).

43. Furthermore, the Debtor falsely asserted to the Court on December 19 that Bedemco's access to the Warehouses had not been impeded, when in fact Bedemco's president was refused entry just that morning. Cross-Dock's representation to the Court that Bedemco would not be blocked again was short-lived as Bedemco was blocked again on December 21. Lying to the Court is certainly grounds for the appointment of a trustee. *Grasso*, 490 B.R. at 506 (providing court with inaccurate and incomplete information, hiding assets, causing dissipation, breaching fiduciary obligations and disregard for requirements imposed upon Debtors all cause for appointing a trustee).

44. Rather than protecting and preserving property in its possession, since the Chapter 11 filing, the Debtor has allowed Bedemco's property to spoil, be mis-delivered, or simply disappear. Moreover, there can be no confidence that reorganization can or will occur under the Debtor's leadership. The Debtor has already lost over half its customers and is on the brink of losing its leases.

45. The Debtor also has specific fiduciary duties that it owes to its clients, such as Bedemco, which it has breached. The Debtor's breaches of its obligations to Bedemco are the direct result of its day-to-day gross mismanagement of its business. Such mismanagement is an enumerated cause for the appointment of a trustee under Section 1104(a)(1). Such mismanagement was evidenced in *Sharon Steel*, where the debtor was "hemorrhaging money," was not properly keeping its books and, failed to renegotiate the terms of a high interest loan. *Id.*, 871 F.2d at 1221. Here, the indicia of gross mismanagement are many, beginning with the failure to insure the ongoing rental of the warehouses where Bedemco's property is stored. Not

only is Cross-Dock in imminent danger of losing its leases, and therefore losing the space to store some \$6 million of Bedemco's property, but it has taken the position that customers such as Bedemco are not entitled to notice of this imminent eviction, and has no transition plan to provide for its customers if, and when, eviction occurs.

46. Additionally, as detailed above, Cross-Dock has permitted spoilage of Bedemco's products as well as other damage and destruction to occur. There has also been a spate of short-shipments, mis-deliveries, delays and shortages when the Debtor fills the orders that are presented to it, causing Bedemco to question the Debtor's records. This lack of confidence in the Debtor's record keeping is compounded by the Debtor's recent insistence that Bedemco pay false and inflated bills that on their face run contrary to Bedemco's contractual payment terms. A lack of trustworthy records is also cause for the appointment of a Trustee. *C.f., In re PRS Ins. Group, Inc.*, 274 B.R. 381, 387 (Bankr. D. Del. 2001)(citing *In re Colby Constr. Corp.*, 51 B.R. 113, 117 (Bankr. S.D.N.Y. 1985)(gross mismanagement under section 1104 existed where the debtor's accounting system failed to reflect its financial condition and the books and records were in a shambles)).

Appointment of a Trustee Is in the Interest of the Estate Under Section 1104(a)(2)

47. A court may find on separate grounds that the appointment of a trustee is warranted because it is in the best interests of the creditors and other interests of the estate. Subsection (2) is a "flexible standard" that also calls for discretion and allows for the appointment of a trustee even when no "cause" exists. *See Sharon Steel*, 871 F.2d at 1226. In many cases, the bankruptcy court's findings with regard to cause under § 1104(a)(1) and the best interests of the debtor's creditors under § 1104(a)(2) are "intertwined and dependent upon

the same facts.” *Martinelli v. Colts Neck Golf & Country Club*, No. 14-8102 (FLW), 2015 WL 5032621, *10 (D.N.J. Aug. 25, 2015)(quoting *Grasso*, 490 B.R. at 506)).

48. Thus, even if the Debtor’s mismanagement of its business as set forth above did not rise to the level of cause under 1104(a)(1), it is sufficient to show that a trustee would be in the best interest of creditors and other interests of the estate. *See In re North Am. Commc’ns, Inc.*, 138 B.R. 175, 179 (Bankr. W.D. Pa. 1992). Where there is a failure of day-to-day management and the necessity of new management, appointment of a trustee is in the interest of creditors and others interested in the estate. *See Sharon Steel*, 871 F.2d at 1221. The specter of losing its leases and the poor service that the Debtor is providing to Bedemco is a hallmark of poor management and not in these best interests of the creditors or the customers of the Debtor. Rather, it will lead to the complete loss of Cross-Dock’s clients -- and therefore its business -- and the Debtor’s certain bankruptcy. The loss of over half its customers is plainly indicative of the loss of confidence in the Debtor’s ability to reorganize. Management by a trustee would instill confidence in Cross-Dock’s clients, increasing the chances of reorganization, rather than certain bankruptcy.

CONCLUSION

49. For all of the foregoing reasons, Bedemco respectfully requests that the Court grant its Emergency Motion for Appointment of a Chapter 11 Trustee, enter an order substantially in the form attached hereto as Exhibit A, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 27, 2017

HERRICK, FEINSTEIN LLP
Attorneys Bedemco, Inc.

By: /s/ Jason D'Angelo
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EXHIBIT A



ELI DEMESHULAM
BEDEMCO INC
3 BARKER AVE.
SUITE #325
WHITE PLAINS, NY 10601

Re: Possession of Inventory

Dear Mr. Demeshulam:

Our records indicate that you have not responded to our previous requests for payment. Your account is seriously past due and as a result your credit privileges have been Revoked. A statement of your account is attached. Please contact us immediately to make payment arrangements. Since a response has not been received within the last 15 days, you now have, 24 hours from receipt of this letter to contact us.

To settle your account, a Wire Transfer in the Amount of \$169,284.35 will need to be sent **Immediately** to our Bank. If no contact is made within 24 hours, we will consider your goods held in storage and your account abandoned.

Due to the seriousness of this matter we will begin to take appropriate action to enforce our warehouse lien by public or private sale of any or all of the goods we are presently storing for your company's account in order to satisfy all amounts owed to us for storage and warehouse services as well as all expenses associated with the enforcement of our warehouse lien.

If you have any questions pertaining to this matter, please feel free to contact the following :

Mayra Mercado	732-860-4492 x126
Barbara Knoblock	732-860-4492 x142
Steve Albrechcinski	732-860-4492 x116

Sincerely,

Pedro J. Cardenas | *Ceo & Founder*
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Cross-Dock Solutions, LLC.