

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AKRON DIVISION**

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>WALL STREET RECYCLING, LLC</b>	)	
	)	<b>Case No. 17-51701-AMK</b>
	)	
<b>Debtor.</b>	)	

**MOTION BY CAWLEY JV, LLC AND GLOBAL MILL SUPPLY, INC. FOR AN  
ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE  
PURSUANT TO 11 U.S.C. § 1104**

COMES NOW, Global Mill Supply, Inc. (“Global”) and Cawley JV, LLC (“Cawley JV”) (Global and Cawley JV are hereinafter collectively referred to as “Movants” or the “Cawley Parties”) and hereby move for the entry of an Order appointing a chapter 11 trustee to manage the assets and affairs of Debtor pursuant to 11 U.S.C. § 1104 and Rule 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and granting such other and further relief as the Court may deem just, proper and equitable (the “Motion”).

**SUMMARY OF RELIEF REQUESTED AND BASIS THEREFOR**

1. Movants, the creditors holding the largest unsecured claim in this case, move for an order of the Court directing the appointment of a chapter 11 trustee due to the gross mismanagement of the Estate by Debtor’s current management both pre and post petition.
2. The facts supporting the appointment of a trustee in this case include, in summary:
  - a. Excessive diversion of Debtor’s assets by its principals for personal use (including (i) diverting loan proceeds of the Debtor into another company (without the knowledge or permission of First Merit Bank (“First Merit”)) thereby increasing the debts of the company, (ii) spending hundreds of thousands of dollars on

- personal legal fees and personal expenses of Debtor's principals, and (iii) gross overpayment to Debtor's book keeper (the wife of Debtor's principal John Joseph);
- b. The unexplained failure of Debtor to document cash transactions and inventory;
  - c. Debtor's filing of misleading monthly operating reports ("MOR"), which fail to disclose payables or provide detailed documentation for its receivables;
  - d. Debtors failure to disclose assets on its schedules with a value of at least \$200,000.00;
  - e. Satisfaction of the majority of unsecured claims post-petition by the Debtor's principals leaving very few remaining creditors;
  - f. Allegations against Michael Ambrose, a 1/3 owner of the Debtor, regarding conversion and turnover and failure to investigate similar claims against Debtor's other two principals; and
  - g. Acrimony between Debtor and Movants which impedes the reorganization effort.
3. Based upon the foregoing, Debtor's management have demonstrated an inability to act in the best interests of the Estate and its creditors and there is cause to appoint a trustee.

#### **JURISDICTION AND STATUTORY BASIS FOR THE RELIEF**

4. Debtor filed its bankruptcy petition July 19, 2017 ("Petition Date").
5. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is Section 1104 of Title 11 of the United States Code (the "Bankruptcy Code"), and Bankruptcy Rule 9014.

## FACTUAL BACKGROUND

6. Wall Street Recycling, LLC (“Debtor”) is formed as a limited liability company under the laws of the state of Ohio. Debtor is a full service recycling company engaged in the sale and acquisition of scrap metal. The Debtor employs approximately 19 employees and currently operates facilities in Ravenna, Ohio and Cleveland, Ohio. *Adversary Case No. 17-05086, Complaint* [DN. 1].
7. The Debtor is owned by John Joseph, Michael Ambrose, and Robert Murphy. Each holds a 33.33% ownership interest. *List of Equity Security Holders* [DN. 4].

### The Cawley Litigation

8. Prior to the Petition Date, Movants and Debtor were parties to certain litigation styled *Cawley JV, LLC and Global Mill Supply, Inc., individually and derivatively on behalf of JV Iron & Metal, LLC, against Wall St. Recycling, LLC, WSR, LLC, John Joseph, Robert Murphy and JV Iron & Metal, LLC*, identified as case no. CV 14 829204, in the Court of Common Pleas, Cuyahoga County, Ohio (the “State Court Litigation”) (Wall St. Recycling, LLC, WSR, LLC, John Joseph, Robert Murphy are hereinafter collectively referred to as “Wall Street Defendants”). The State Court Litigation has been removed to this Court pursuant to the filing of Adversary Proceeding No. 17-05073 (the “Cawley Litigation”). The Cawley Litigation has been fully summarized for the Court pursuant to that certain *Statement Regarding Status of Adversary Proceeding, AP No. 17-05073*, [DN. 32] (“Statement”). Movants incorporate the Statement as if fully set forth herein but for the Court’s convenience, the Cawley Litigation is summarized below.
9. The Cawley Litigation centers on JV Iron & Metal, LLC (“JV”), a scrap metal business formed by the parties and organized as a limited liability company in September 2012. The

parties formed JV as a 50/50 joint venture between, on the one hand, Dermot Cawley (who along with his wife, Patrizia Cawley, owned Global Mill Supply, Inc. (“Global”), a scrap metal brokerage company based in the Atlanta, Georgia area) and, on the other, John Joseph, Robert Murphy, and Michael Ambrose (who together owned and operated the Debtor). The business purpose of JV was to include the purchase, processing, and sale of certain grades of scrap iron. Because the Cawleys were based in Georgia while the JV was to be operated in and around Cleveland, the parties agreed that the Wall St. Defendants would run JV’s day-to-day operations and maintain its books and records. JV’s scrapyards was located within the Debtor’s existing scrapyards in Cleveland, and Mr. Murphy and Mr. Joseph were directly responsible for JV’s scrapyards operations. *Id.*

10. The Cawley Litigation was initiated in the state court on July 1, 2014. The complaint detailed a continuous pattern of misconduct and misinformation by the Wall St. Defendants in connection with JV. Specifically, the Cawley Parties have asserted that, among other things, the Wall St. Defendants grossly mismanaged the financial and accounting books and records for JV; concealed financial information from the Cawley Parties; misappropriated approximately \$1.6 million in funds that Global provided as a contribution to JV; misrepresented their own inventory contributions to JV; engaged in improper self-dealing transactions with JV without Mr. Cawley’s prior approval; overcharged JV for processing services; improperly retained the proceeds from selling JV’s inventory in the Debtor’s name; improperly competed with JV; misappropriated JV’s inventory; and engaged in manipulation to cover-up their misconduct. At the Plaintiffs’ request, the state court ordered JV to be dissolved and appointed Nick Gautam (the “Receiver”) as receiver and liquidating trustee for JV and its assets. (Mr. Gautam’s appointment as receiver was

upheld by a state appellate court after challenge by the defendants.) *Id.*

11. Pursuant to the Cawley Litigation which is now pending before this Court, the Cawley Parties seeks recovery of monetary damages in excess of \$7 Million and declaratory and equitable relief against the defendants on fourteen direct and derivative causes of action including breach of contract, breach of fiduciary duties, fraud, conversion, and unjust enrichment. *Id.*

#### **Debtor's Debts, Claims Filed and Value of Collateral**

12. Debtor's Schedules list assets with a total value of \$10,637,227.18. *Schedules of Assets and Liabilities ("Schedules"), P. 1 (DN 34)*
13. Debtor states on Schedule "A" that its real property has a value of \$796,995.44. *Id.*
14. Debtor states on Schedule "B" that its personal property has a value of \$9,840,231.74. *Id.*

This amount is inclusive of the following:

- a. Accounts Receivable: \$2,952,579.05, including receivables in the amounts of \$1,319,357.35 and \$21,813.80 Debtor which are insider accounts from JV and Global respectively;
  - b. Inventory: \$1,610,000.00;
  - c. Office Equipment: \$218,333.69;
  - d. Various Boats: Unknown;
  - e. Various Trucks: Unknown;
  - f. Equipment and Capital Lease Equipment: \$4,232,129.00.
15. On its schedules, Debtor lists total liabilities of \$4,098,795.75. *Id.* This amount includes the following:
    - a. Secured debt: \$1,035,410.17;
    - b. Unsecured debt: \$3,063,385.58, including:
      - i. Global's unsecured claim in the amount of \$800,000.00;
      - ii. JV's claim in the amount of \$1,517,486.15 (subject to offset); and
      - iii. Wickens, Herzer, Panza, Cook and Batista Co.'s claim in the amount of \$444,406.01.

16. Clearly on the face of the Schedules, the Debtor is solvent, suggesting a bad faith filing.
17. While Movants assert they hold claims against the Debtor in excess of \$7,000,000.00, Debtor lists a single debt owed to Global in the amount of \$800,000.00, *Schedules, P. 29*. Movants are by far Debtor's largest creditor, holding well over 50% in dollar amount, of the scheduled unsecured claims in this case<sup>1</sup>. Even if you take Debtor's Schedules at face value (which Movants vehemently oppose), Global is Debtor's largest non-insider unsecured creditor and controls the unsecured class making it next to impossible to confirm a Chapter 11 Plan of Reorganization without the support of Movants.
18. Moreover, the Mr. Joseph and Mr. Murphy, the active principals of the Debtor have satisfied the vast majority of the unsecured claims subsequent to the bankruptcy petition thereby leaving very few remaining creditors. Such behavior further evidences a bad faith filing. *See Md. Port Admin. v. Premier Auto. Servs. (In re Premier Auto. Servs.)*, 492 F.3d 274, 280 (4<sup>th</sup> Cir. 2007) (Debtor filed its petition in bad faith when debtor had no demonstrable need to reorganize when it filed the petition: Debtor was not, experiencing financial difficulties. Debtor's bankruptcy filings reveal a solvent business entity with no unsecured creditors and few, if any, secured creditors.)

#### **ARGUMENT AND CITATION TO AUTHORITY**

19. A chapter 11 trustee should be appointed in this case for cause, including the incompetence or gross mismanagement exhibited by Debtor's current management. Debtor's management is unable to manage its affairs as a debtor in possession in accordance with its fiduciary duties to the estate and its creditors.
20. "When the Chapter 11 petition was filed, the debtor's principal assumed the same fiduciary

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<sup>1</sup> Taking into account that the Debtor's assert that the JV's unsecured claim of \$1,517,486.15 is subject to offset, which Movants dispute.

duties as would an appointed trustee. These obligations include open, honest and straightforward disclosure to the court and creditors. The principal's actions fell far short of this benchmark." *In Re Nartron Corp.*, 330 B.R. 573 (W. D. Mich. 2005).

21. Bankruptcy Code section 1104(a) provides that a bankruptcy court shall order the appointment of a trustee on the following conditions:

At any time after the commencement of the case but prior to confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, ...

(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...; 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).*

22. The Bankruptcy Code recognizes that what constitutes sufficient cause for the appointment of a chapter 11 trustee is a question of fact. *In re Sharon Steel Corp.*, 871 F.2d 1217, 1226 (3rd Cir. 1989), 7 *Collier on Bankruptcy* ¶ 1104.02[3][a] (15th Ed. Rev.). Once a bankruptcy court determines that the facts as presented establish cause, the court must appoint a trustee. *In re Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989) (citing numerous cases).

23. Furthermore, 11 U.S.C. § 1104(a)(2) provides bankruptcy courts with wide discretion to appoint a trustee even absent wrongdoing or mismanagement. See e.g., *In re Sharon Steel Corp.*, 871 F.2d 1217, 1226 (3d Cir. 1989); *Tradex v. Morse*, 339 B.R. 823, 829 (D. Mass. 2006); *In re Bellevue Place Assocs.*, 171 B.R. 615, 623 (N.D. Ill. 1994); see also *In re Ionosphere Clubs, Inc.*, 113 B.R. 164 (Bankr. S.D.N.Y. 1990). Factors that have been considered include: (i) the trustworthiness of the debtor; (ii) the debtor-in-possession's past

and present performance and prospects for the debtor's rehabilitation; (iii) the confidence – or lack thereof - of the business community and of creditors in present management; (iv) the benefits derived by the appointment of a trustee balanced against the costs of appointment. *See In re Colorado-Ute Elec. Assoc.*, 120 B.R. 164, 176 (Bankr. D.Col. 1990).

24. Where the court finds either that cause exists or that appointment is in the interest of the parties, an order for the appointment of a trustee is mandatory. *Official Comm. Of Asbestos Pers. Injury Claimants v. Sealed Air Corp. (In re W.R. Grace & Co.)*, 285 B.R. 148, 158 (Bankr. D.Del. 2002).

25. It is axiomatic that a debtor in possession is a fiduciary. As a fiduciary, the debtor in possession does not act in its own interest but, like a trustee, must act in the best interest of the creditors of the estate. *CFTC v. Weintraub*, 47 U.S. 343, 354-55 (1985). In making that determination, courts should be cognizant of the fact that “section 1104 represents a protection that the court should not lightly disregard or encumber with overly protective attitudes towards debtors-in-possession.” *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989).

**I. The Court Should Direct the Appointment of a Chapter 11 Trustee, for Cause, Pursuant to Bankruptcy Code § 1104(a).**

26. Movants have obtained discovery from Debtor and third parties which reveals extensive fraud, dishonesty, self-dealing and gross mismanagement on the part of the principals of the Debtor, both before and after the filing of the Petition.

27. As set forth above, grounds exist for the Court to appoint a trustee pursuant to § 1104(a) of the Bankruptcy Code, including but not limited to: a) Pre-petition diversion of Debtor's Assets; b) Debtor's failure to provide explanation or back up for its cash transactions or its

inventory; c) Debtor's omission from its schedules of assets valued at over \$200,000.00; d) Debtor's filing of misleading monthly operating reports (repeatedly omitting any information regarding payables or receivables); e) Satisfaction of the majority of the unsecured claims post petition by the Debtor's principals leaving very few remaining creditors; (f) Allegations against Michael Ambrose, a 1/3 owner of the Debtor, regarding conversion and turnover and failure to investigate similar claims against Debtor's other two principals; and (g) Acrimony between Debtor and Movants which impedes the reorganization effort.

28. All of the foregoing has resulted in justified lack of confidence in management by Movants, the largest unsecured creditors in the case and is cause for the appointment of a trustee.

**A. The Pre-petition Diversion of Debtor's Assets Constitutes Gross Mismanagement and Cause for Appointment.**

29. The bank records subpoenaed by Movants reveal that in the four years prior to the filing of the Petition, the principals of the Debtor diverted the Debtor's assets to personal use including but not limited to (a) paying personal American Express expenses; (b) paying hundreds of thousands of dollars in legal fees on behalf of the individuals; (c) investment of monies from a First Merit Bank line of credit in Debtor's name into the JV; and (d) millions of dollars written out of the Debtor's checking accounts in cash without any supporting documentation.

30. The Debtor provided Movants with American Express statements for John Joseph, Robert Murphy, and Mike Ambrose for the period of 2014 through December 2016. Each of the principals (or Barbara Joseph, Mr. Joseph's wife and the bookkeeper for the Debtor), were responsible for designating which expenses were personal and which expenses were

business. Left to their own devices, the principals ran the vast majority of the American Express bills through the Debtor as company expenses. From 2014 through the Petition Date, the principals of the Debtor spent tens of thousands of dollars on personal expenses.<sup>2</sup>All of the foregoing were paid by the Debtor and marked by the principals as business expenses under the guise of “client entertainment”. While Movants acknowledge that businesses often have the need to expend sums to either entertain referral sources or provide food to employees for certain occasions, due to the volume and frequency of expenses incurred, Movants believe that the majority of disbursements paying the American Express cards of the principals were not used for such purposes but were instead personal meals and entertainment expenses for the principals and insider family members.

31. The Debtor paid legal fees in the amount of \$413,654.00 in 2014, \$790,009.00 in 2015 and \$709,712.92 in 2016. These fees were in large part in connection with the Cawley Litigation which names the Debtor’s principals in their individual capacity yet payment of such fees were never divided or considered a distribution to the members. Debtor’s long term accountant<sup>3</sup>, Leonard Greenberg, testified as follows:

Q. Have you ever attributed any of the professional fees paid by the company as a distribution or loan or payment on behalf of a member individually?

A. I’ve never separated any.

*Deposition of Leonard Greenberg (“Depo. L. Greenberg”. P. 60)*

32. Barbara Joseph, the wife of John Joseph, an individual who has no formal education or

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<sup>2</sup> Specific details in support of these allegations have been designated by the Debtor as “Confidential” or “Confidential Restricted”. Movants are prepared to cite specific evidence in support of such allegations including deposition transcripts and documents produced. However, out of an abundance of caution and in order to avoid any public filing of such alleged confidential information, Movants have not included such in this Motion. However, Movants are prepared to supplement this Motion by filing documents under seal or presenting such evidence at a hearing on this Motion.

<sup>3</sup> See *Verified Statement of Leonard Greenberg Proposed Accountant to the Debtor* [DN. 74-1].

course training in accounting or bookkeeping is the bookkeeper for the Debtor and has been since its inception. Ms. Joseph is responsible for entering (i) payables, (ii) receivables, (iii) sales, and (iv) purchases into Quickbooks for the Debtor. Mrs. Joseph testified that this is her only responsibility and she only utilizes Quickbooks for this purpose. The tax returns provided by Mrs. Joseph show that her Mrs. Joseph is grossly overpaid for her duties for the Debtor<sup>4</sup>.

33. Additionally, the Debtor diverted loan proceeds from a line of credit in the name of the Debtor for investment into the JV. Up until February of 2016, the Debtor had a line of credit with First Merit Bank. In 2013, First Merit acknowledged that the Debtor breached its covenants by the investment of funds from the line of credit into the JV. First Merit's internal Amendment/Modification Approval Memo dated July 19, 2013 states as follows:

Wall Street Recycling missed its FCC and Working Capital covenant as a result of funding the initial investment in JV Iron & Metal. Cash was distributed to owners, who then funded their individual investments in JV Iron.

The Debtor was comingling loan proceeds from First Merit in a new investment into the JV without approval from First Merit which eventually caused First Merit to call a default on the Debtor's line of credit.

34. Taking the Debtor's assets and diverting them for personal use is gross mismanagement and cause for the appointment of a trustee.

**B. Debtor's Issuance of False Financial Statements Pre-Petition is Fraud.**

35. In its Bankruptcy Schedules, the Debtor lists Global Mill Supply as having an \$800,000.00

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<sup>4</sup> Specific details in support of these allegations have been designated by the Debtor as "Confidential" or "Confidential Restricted". Movants are prepared to cite specific evidence in support of such allegations including deposition transcripts and documents produced. However, out of an abundance of caution and in order to avoid any public filing of such alleged confidential information, Movants have not included such in this Motion. However, Movants are prepared to supplement this Motion by filing documents under seal or presenting such evidence at a hearing on this Motion.

claim against the Debtor. *Schedules, P. 29*. Despite acknowledging this debt in its Bankruptcy Schedules, the Debtor has never included this debt in its financials. Debtor's longtime accountant Mr. Greenberg (who is responsible for preparing the Debtor's monthly financials) testified that he does not have an understanding of what that \$800,000.00 number relates from, he doesn't have it in his records, and it has never been included in his balance sheet. *Depo. L. Greenberg, P. 169*. To the extent that the Debtor has provided its financials to any third party (including but not limited to First Merit, Westfield Bank, Wexford Investments, LLC, or any taxing authority) such financials are false and misleading and fail to account for an admitted liability of \$800,000.00. This is at a minimum gross mismanagement if not blatant fraud and is cause for the appointment of a trustee.

**C. Debtor's Schedules Fail to Disclose Significant Assets.**

36. The Debtor's schedules contain inaccurate and missing information. Specifically, the Debtor owns approximately 25 rail cars with an approximate scrap value of between \$7,000.00 - \$9,000.00 per rail car. Debtor failed to list such on its schedules. Thus, Debtor failed to disclose assets with a value of approximately \$200,000.00.

37. The Debtor's failure to include substantial assets on its Schedules is tantamount to fraud and cause to appoint a trustee.

**D. Debtor's Misleading Monthly Operating Reports Demonstrate Gross Mismanagement, Incompetence or Dishonesty, and Are Cause for Appointment of a Trustee.**

38. A review of Debtor's monthly operating reports reveals that they are replete with omissions:

- a. August 2017 MOR [DN 105] is missing the following information:

- i. Detailed information regarding the receivables or payables;
  - ii. Details regarding the cash activity on the Ravenna yard;
  - iii. Details regarding entertainment and travel expenses for the principals; and
  - iv. Check registers for any account;
- b. September 2017 MOR [DN 158] is missing the following information:
  - i. Detailed information regarding the receivables or payables;
  - ii. Details regarding the cash activity on the Ravenna yard;
  - iii. Details regarding entertainment and travel expenses for the principals; and
  - iv. Check registers for any account;
- c. October 2017 MOR [DN 228] is missing the following information:
  - i. Detailed information regarding the receivables or payables;
  - ii. Details regarding the cash activity on the Ravenna yard;
  - iii. Details regarding entertainment and travel expenses for the principals; and
  - iv. While check registers were filed (but only after complaints were made to Debtor's counsel), the check registers were redacted and provided zero information.
- d. November 2017 MOR [DN 256] is missing the following information:
  - i. Detailed information regarding the receivables or payables;
  - ii. Details regarding the cash activity on the Ravenna yard;
  - iii. Details regarding entertainment and travel expenses for the principals; and
  - iv. While check registers were filed (but only after complaints were made to Debtor's counsel), the check registers were redacted and provided zero information.

39. Debtor's monthly operating reports provide no explanation as to what any receipt, transfer or payment is for making it literally impossible to allow the reader to determine the source of any receipt or the propriety of any post-petition transfers out of the estate. This is in violation of the spirit and purpose of the Bankruptcy Code.

40. "Subdivision (a)(2) of Rule 2015 requires a trustee or debtor in possession in any chapter 7 or chapter 11 case to maintain a record of receipts and disposition of money or property received". 9-2015 Collier on Bankruptcy P 2015.05 (16th 2017). "Subdivision (a)(3) of Rule 2015 implements section 704 of the Code by requiring the trustee or debtor in possession to file the reports required by section 704(a)(8). Section 704(a)(8) requires that, if the business is authorized to be operated, periodic reports and summaries of operation be filed with the court ...The report of operations should include a statement of receipts and disbursements.

*9-2015 Collier on Bankruptcy P 2015.06 (16th 2017).*

41. "Filing comprehensive, accurate, and detailed monthly reports, including all relevant bookkeeping records would reveal the entire picture of [the Debtor's] financial status, [and] is but one small price [the Debtor] should be willing to pay for the safeguard and shelter offered by bankruptcy and the automatic stay." *In re Nartron Corp.*, 330 B.R. 573 (W. D. Mich. 2005). If there is nothing to hide, the Debtor should want to make the examination of monthly records easy for all involved. This deceptive reporting is grounds for the appointment of a trustee as it is the antithesis of the spirit of the bankruptcy code. Debtor has failed to fulfill its fiduciary duties to creditors of the estate which constitutes incompetence and gross mismanagement sufficient to justify the appointment of a chapter 11 trustee. *See 11 U.S.C. §§ 1107(a); & 1106(a)(1).*

42. Debtor's reporting misleads the Court, the U.S. Trustee and the creditors of the estate. The Debtor has availed itself of the protections of the Bankruptcy Code but have failed to fulfill the requirements of the Bankruptcy Code which include the filing of comprehensive, accurate and detailed monthly reports. The Debtor has repeatedly and blatantly failed to comply. The Court should order the appointment of a trustee due to Debtor's repeated and extensive reporting "failures."

**E. Inability to Explain Cash Transactions is Cause for Appointment of a Trustee.**

43. The Debtor's bank records show millions of dollars written out of the Debtor's checking accounts to cash since 2014.<sup>5</sup> Debtor's principals have failed to provide the backup for the cash transactions. The Debtor purports that for each cash transaction there is a scale ticket printed out through ROM that includes the seller's name, drivers license, picture, vehicle, license plate number, signature and weight. Despite this assertion and despite the fact that the Debtor provided over 15,000 pages of written discovery, these tickets were not provided. At best, Debtor provided a ROM report with cash transactions for the Ravenna Yard but the Debtor's principals could not confirm what was included in the report or its accuracy. Moreover, the Debtor is required to maintain extensive records regarding scrap transactions pursuant to Ohio Revised Code, Section 4737.04 . The Debtor's records do not comply with the reporting requirements under Ohio Law.

44. Since the Petition Date, the Debtor's Monthly Operating Reports, which Mr. Greenberg prepares, show cash transactions of between \$50,000.00 and \$115,000.00 per month for

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<sup>5</sup> Specific details in support of these allegations have been designated by the Debtor as "Confidential" or "Confidential Restricted". Movants are prepared to cite specific evidence in support of such allegations including deposition transcripts and documents produced. However, out of an abundance of caution and in order to avoid any public filing of such alleged confidential information, Movants have not included such in this Motion. However, Movants are prepared to supplement this Motion by filing documents under seal or presenting such evidence at a hearing on this Motion.

the months of August 2017 through November 2017. *See Monthly Cash Statements (DN. 277 – 280)*. Mr. Greenberg is not provided with any back up documentation regarding the cash transactions. *Depo. L. Greenberg, P. 94*.

45. As stated above, Debtor has repeatedly failed to include information regarding the cash transactions (or any other identifying information) in its Monthly Operating Reports. Finally, the Debtor was a party to the case styled *Wall St. Recycling and Michael Ambrose v. Robert Murphy, Et Al.*, Case No. 16-CV-864048 in the *Cuyahoga County, Court of Common Pleas* (the “Ambrose Litigation”). The Ambrose Litigation was removed to this Court pursuant to *Adversary No. 17-05074*. The Debtor asserts a counter claim against Mr. Ambrose for (i) conversion of funds by directing customers of the Debtor to send payments for Debtor’s invoices to a personal P.O. Box. and (ii) alleging that Ambrose wrote checks to persons and companies that do not exist. *Adversary No. 17-05074, Answer, Crossclaim and Counterclaim, P. 11-15 [DN 5]*. If such allegations of conversion are true, combined with the fact that the Debtor cannot, has not and will not provide back up for its cash transactions, there is a complete and total justified lack of competence in management and there is cause for the appointment of a trustee. Finally, upon information and belief, similar claims of conversion and turnover could exist against Mr. Joseph and Mr. Murphy. The Debtor as a debtor-in-possession has a duty to investigate the same.

**F. Inability to Provide Accurate Reporting of Inventory is Cause for Appointment of a trustee.**

46. Debtor has never completed an actual inventory of the scrap material on its yard. Debtor’s Schedule B lists inventory at \$1,610,000.00. *Schedules, P. 6*. There is no way to confirm whether this number accurately reflects the value of one of the Debtor’s largest assets.

47. While Debtor’s principals, John Joseph and Robert Murphy, testified that their business is

run through ROM (Recycling Operations Manager) software<sup>6</sup> and that purchase orders, sales and inventory are kept on the ROM software, the testimony shows that Mr. Joseph and Mr. Murphy have very little familiarity with the software. Mr. Joseph admits that he has only looked at a couple of reports on ROM and that he believes the software was made for ships and containers. Mr. Murphy admitted that he has had very little training on ROM and could not confirm the accuracy of any reports presented to him.

48. While Debtor originally alleged that the inventory report is prepared in ROM (a software system that the Debtor's principals know little about), it is a more accurate statement that Mr. Joseph and Mr. Murphy go out and look and see what they have on the yard and estimate the inventory. The "final inventory" number is calculated by Mr. Joseph and Mr. Murphy and communicated verbally or by a handwritten number to Leonard Greenberg. Mr. Greenberg then includes the number provided in the Debtor's financials.
49. Movants have little faith that these numbers are accurate. Mr. Greenberg testified that (i) ROM tracks inventory, (ii) he very seldom receives inventory reports from ROM, (iii) that despite pursuing inventory reports from the Debtor on a monthly basis, he very seldom receives a ROM report and he may be provided a number verbally over the phone. *Depo L. Greenberg, P. 69 – 70*. Mr. Greenberg further testified that if the gross profit appeared too high or too low, he would bring that number to the Debtor's attention to potentially adjust the inventory number *Id. P. 72-74*. The inventory numbers have never been verified and are too easy to manipulate. Debtor has complete and independent control over its largest tangible asset with zero checks and balances. Leaving this asset unmonitored and

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<sup>6</sup> ROM Recycler is designed as a mid-level software *system* for the handling of public sellers. Features available with ROM Recycler include advanced metal theft compliance, online reporting, scale integration, and advanced weigh and pay functions for COD and check-paying transactions occurring at a small to medium-sized recycling yards. <http://www.21stcenturyprogramming.com/software/rom-recycler>

at the whim of the Debtor's management could significantly affect the Debtor's estate. Debtor's lack of ability to honestly and accurately report their inventory levels is cause for the appointment of a trustee.

**II. Based upon the Acrimony between Movants and Debtor it is In the Best Interest of Creditors to Appoint a Trustee**

50. Acrimony between debtor and creditor which impedes the reorganization effort is cause to appoint a Chapter 11 trustee. *See In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 472–74 (3d Cir. 1998); *In re Celeritas Techs., LLC*, 446 B.R. 514 (D. Kan. 2011) (where the debtor used bankruptcy as litigation tactic and there was intense acrimony between the parties, it was in the best interest of creditors to appoint a trustee). Here, there is longstanding acrimony between Movants and the Debtor. Movants have no confidence in the ability of Debtor's management to appropriately fulfill Debtor's fiduciary duties to the estate and its creditors in this case. The Court should order the appointment of a trustee on this basis.

51. In the case of *In re Celeritas Techs.*, the debtor met and formed a joint venture with a third party, Paradigm, to develop and sell software to pipeline companies. *Id* at 517. The relationship deteriorated and eventually gave rise to litigation. After two years of "bitter and costly litigation", Paradigm received a multi million dollar judgment necessitating the filing of the chapter 11 bankruptcy. *Id*. Just as in the case at hand, the debtor's on going conflict with Paradigm was the crux of the bankruptcy case and the basis for the motion to appoint the trustee.

52. "One of the most fundamental and crucial duties of a debtor-in-possession upon the filing of a Chapter 11 petition is to keep the Court and creditors informed about the nature, status and condition of the business undergoing reorganization ... What Debtors describe as "run-

of-the-mill" discovery disputes, Paradigm has proven are dereliction of fiduciary duties. For example, producing illegible ledgers, failing to disclose material information regarding improved finances, and failing to provide candid and accurate information about debtors' profitability are breaches of duty... To this point, Paradigm has acted as the overseer of debtors' fiduciary responsibilities at considerable expense. The status quo is not working for either party or other creditors. The appointment of a disinterested trustee is in the best interest of the estate and its creditors." *Id.*

53. Acrimony between debtor and creditors which impedes the reorganization effort is cause to appoint a Chapter 11 trustee. Where a bankruptcy is filed not because of insolvency or financial difficulty but as a litigation tactic it is in the best interests of creditors to appoint a trustee. Where the principals of the debtor are so blinded by years of underlying lawsuits, that they could not comply with their fiduciary duties in bankruptcy, the court found any costs associated with appointing a trustee would be offset by the litigation costs continuing to accrue post-petition. *Id at 519 – 520 citing In Re Nartron.*

54. Here, just as in *Celeritas* and *Nartron*, the principals of the Debtor are blinded by the litigation. The Cawley litigation and the Ambrose litigation has consumed the attention and resources of the principals of the Debtor. In producing written discovery to Movants, the Debtor produced over 15,000 pages of information but waited until the weekend prior to the depositions to produce the most relevant information. The Debtor produced 4 boxes of hand written scale tickets from its Ravenna yard which included little to no identifying information but failed to produce any scale tickets post 2013 which could assist in understanding the millions of dollars of checks written to cash. It should not be lost on the Court that the Debtor has alleged claims of conversion and fraud against its own member

for writing checks to fictitious persons or companies and otherwise diverting funds from the Debtor. The Debtor has repeatedly refused to provide candid and accurate information to this Court, Movants or the U.S. Trustee regarding the state of its finances. It is not feasible for the Debtor to develop a plan to exit bankruptcy without the resolution of the litigation. Just as in *Celeritas*, the status quo is no longer working and the appointment of a disinterested trustee is in the best interest of the Creditors.

**NOTICE**

55. Movants shall serve a copy of this Motion upon (a) Debtor and its counsel; (b) the Office of the United States Trustee; and (c) all parties who have filed and served a Notice of Appearance in Debtor's Chapter 11 case. Movants respectfully submit that such notice is sufficient and proper.

**CONCLUSION**

56. For all of the foregoing reasons, it is respectfully submitted that sufficient facts have been established as grounds for appointment of a trustee pursuant to Bankruptcy Code § 1104(a).

57. No prior application for the relief requested herein has previously been made.

WHEREFORE, Movants requests the Court enter an order appointing a trustee as requested herein and grant such other and further relief as this Court deems just, equitable and proper.

This 16<sup>th</sup> day of January, 2017.

JONES & WALDEN, LLC

/s/ Cameron M. McCord

Cameron M. McCord

Georgia Bar No. 143065

Attorney for Cawley JV, LLC and Global Mill Supply, Inc.

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>WALL ST. RECYCLING LLC,</b>	)	
	)	<b>Case No. 17-51701</b>
<b>Debtor.</b>	)	
<hr/>	)	<b>Judge Alan Koschik</b>

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this day I caused a true and correct copy of the foregoing “Motion By Cawley JV, LLC and Global Mill Supply, Inc. for an Order Directing the Appointment of a Chapter 11 Trustee Pursuant To 11 U.S.C. § 1104 ” to be served to the following:

**Via the Court’s Electronic Case Filing System on these entities and individuals who are listed on the Court’s Electronic Mail Notice List:**

Robert D. Barr, Esq., on behalf of Cawley JV, LLC and Global Mill Supply, Inc., at [rbarr@koehler.law](mailto:rbarr@koehler.law)

Richard A. Baumgart, Esq., on behalf of Richard Baumgart, at [rbaumgart@dsb-law.com](mailto:rbaumgart@dsb-law.com)

Kate M. Bradley, Esq., on behalf of Wall St. Recycling L.L.C., at [kbradley@brouse.com](mailto:kbradley@brouse.com)

James W. Ehrman, Esq., on behalf of Michael Ambrose, at [jwe@weadvocate.net](mailto:jwe@weadvocate.net)

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Mary K. Whitmer, Esq., on behalf of Michael Ambrose, at [mkw@weadvocate.net](mailto:mkw@weadvocate.net)

Christopher B. Wick, Esq., on behalf of Independence Excavating, Inc., at [ewick@hahnlaw.com](mailto:ewick@hahnlaw.com)

Maria D. Giannirakis, Esq., on behalf of the United States Trustee, at [maria.d.giannirakis@usdoj.gov](mailto:maria.d.giannirakis@usdoj.gov)

**And by regular U.S. mail, postage prepaid, to each of the following:**

Robert Murphy  
7185 Dunham Road  
Walton Hills, Ohio 44146

Wall St. Recycling L.L.C.  
P.O. Box 526  
Medina, Ohio 44258

This 16<sup>th</sup> day of January, 2018.

**JONES & WALDEN, LLC**

*/s/ Cameron McCord*

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