UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE: AMERICAN CONTAINER, INC. CASE NO. 16-26399

RENASANT BANK'S OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT

Renasant Bank, successor by merger to Merchants & Farmers Bank ("Renasant" or "Bank"), files this objection ("Objection") to the Disclosure Statement ("Disclosure Statement") [Dkt. #105] filed by the debtor -in-possession, American Container, Inc. ("Debtor" or "ACI"), and in support thereof would show as follows, to-wit:

1. This court has jurisdiction over the subject matter herein and the parties hereto pursuant to 28 U.S.C. §1334, 11 U.S.C. §1121, along with other related statutes and rules. This is a core proceeding as defined by 28 U.S.C. §157(b)(2)(A).

2. On or about December 12, 2012, the Debtor, by and through its President, Steve M. Harris ("Steve Harris") and Secretary, Mary B. Harris ("Mary Harris"), executed a Commercial Promissory Note ("Note") in the amount of $2,231,600.00, for the ultimate benefit of Renasant. A copy of the Note and Business Loan Agreement, which supplements same, are attached and incorporated by reference as Exhibit "1" to RENASANT BANK'S MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR ABANDONMENT OF REAL PROPERTY FROM DEBTOR'S ESTATE, OR, IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION ("Original Motion for Relief")[Dkt. #5]. To secure the indebtedness due under the Note, Renasant obtained a first valid and perfected lien encumbering certain real property located at 8530 W. Sandidge Road, Olive Branch, Desoto County, Mississippi, 38654, as well as improvements thereon which include the 144,000 sq. ft. manufacturing facility of ACI ("Real Property"), as more fully described in the Commercial Real Estate Deed of Trust, as well as a separate Assignment of Leases and Rents, attached and incorporated by reference as Collective Exhibit "2" to Renasant's Original Motion for Relief.

The Note is also secured by an Assignment of Life Insurance Policy insuring the life of Mary Harris, a copy of which is attached and incorporated by reference as Exhibit "3" to Renasant's Original Motion for Relief. To further secure the indebtedness due under the Note, Steve Harris and Mary Harris, along with David M. Harris, Yolanda G. Harris and Randy H. McCormick, individually executed five (5) separate Unlimited Continuing Payment Guaranties ("Guaranties") wherein they guaranteed the Debtor's repayment of the Note to Renasant, as well as any future advances, debts, or other obligations arising out of or related to same. Copies of the Guaranties are attached and incorporated by reference as Collective Exhibit "4" to Renasant's Original Motion for Relief.

3. Pursuant to the terms and conditions of the Note, the Debtor was to have commenced monthly payments of $19,304.49 ("$16,095.35 principal/interest; $3,209.14/escrow) on January 15, 2013 and thereafter on like day of the following 239 months with a maturity date of December 15, 2032.

4. On July 15, 2016 ("Petition Date"), ACI filed its voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code. It is charged with the duty to operate and manage its business affairs as a debtor-in-possession. No committee nor Chapter 11 trustee has been appointed. As of the Petition Date, the Debtor was indebted to Renasant pursuant to the Note in the amount of $2,111,008.36.

5. On August 9, 2016, the Debtor's first meeting of creditors, as contemplated by 11 U.S.C. § 341(a), was held. Steve Harris, who owns twenty-eight percent (28%) of the Debtor and serves as its President, served as ACI's representative. Steve Harris testified that he and his wife, Mary Harris, are effectively no longer involved in the Debtor's day-to-day operations, which has been relinquished to Mark Harris, Steve Harris's brother. Mark Harris and an entity to which his family owns a controlling interest, owns twenty percent (20%) of the Debtor. With the

exception of one shareholder, the balance of the Debtor's shares are owned by family members of Steve Harris.[1] Given Mark Harris's relationship to his brother, Steve Harris, is an "insider" as contemplated by 11 U.S.C. § 101(31). Further, Mark Harris is the primary principal to D&D Packaging, Inc. ("D&D") which is purportedly owed $404,961.55 by the Debtor and allegedly holds a secondary lien position encumbering the Real Property pursuant to the Debtor's own schedules. Further, D&D "repossessed" a major piece of the Debtor's equipment valued at $500,000.00 within one (1) year of the Petition Date per the Debtor's Statement of Financial Affairs.[2] Moreover, Mark Harris, not his brother Steve, is now effectively running the Debtor's operations despite the requirements of 11 U.S.C. § 1106 which mandates that the Debtor fulfill its role as a trustee by protecting and maximizing the Debtor's assets as a debtor-in-possession.

6. Both the Disclosure Statement and Debtor's Chapter 11 Plan of Reorganization ("Plan") filed simultaneously appear to force a contractual relationship between Renasant and D&D, which is principally owned by an insider to the Debtor. Reserving that and other "confirmation issues" for an ultimate hearing regarding the Plan, the Disclosure Statement is nevertheless deficient in several other respects and should not be approved as drawn. It provides, in pertinent part as follows:

> The Debtor shall cure the arrearages on the SBA Guaranteed Loan on or before the Effective Date of the Plan by means of direct cash payment from D&D Packaging, Inc., in consideration of and pursuant to a Lease Purchase Agreement between the Debtor and D&D for the subject real estate.

Foremost, the Disclosure Statement fails to attach the "Lease Purchase Agreement" between the Debtor and D&D or otherwise provide the critical terms and conditions of same.

[1] Beyond Mark Harris's 10% equity position, the balance of the shares are owned by "My Holdings, LLC": 10% which is an entity comprised of Mark Harris' immediate family members, Mary Harris: 27%, Randy McCormick: 25% and Steve Harris: 28%.

[2] Per question #5 to the Debtor's Statement of Financial Affairs, D&D Packaging repossessed a "2003 EMBA 244 folder gluer machine with three print stations and one die cut station" worth $500,000.00.

Without its attachment and/or inclusion of salient portions thereof, it's impossible for the Court, Renasant or any other hypothetical creditor to have sufficient information to determine what effect it will have on the Plan which mirrors the same terms of the Disclosure Statement. Further, it is unclear whether the Debtor is to remain an obligor under the Note, be released from its liability under the pre-petition loan documents referenced in Paragraph 2 herein, be substituted in that regard by D&D or whether both entities will effectively by "joint obligors" of the pre-petition indebtedness due Renasant. Notwithstanding the clear statutory prohibition from forcing a creditor to assume a new obligor, the language of the Disclosure Statement is simply not clear what the Debtor's and D&D's liability to the Bank shall be post-confirmation. Further, if there is a post-confirmation default, the Disclosure Statement is similarly silent about what effects the Plan may have on Renasant's recourse against the Debtor, D&D and/or the guarantors who executed the Guaranties.

7. The Disclosure Statement also fails to attach any documents or otherwise provide Renasant with any information necessary to determine D&D's financial wherewithal to cure the arrearage under the Note and otherwise maintain payments thereafter, which the Disclosure Statement suggests. As supported by Steve Harris' testimony at the Debtor's §341(a) first meeting of creditors, the Debtor's approach and exit strategy to this case has consistently been to sell substantially all of its assets to a third-party since the Debtor is no longer operating and thus, has no hope to fund ongoing operations or otherwise reorganize. To that end, D&D was the presumptive "stalking horse" for a prospective §363 sale. Nevertheless, given the Disclosure Statement's and Plan's contents that contemplate a "Lease Purchase Agreement" between the Debtor and D&D, it is apparent that the latter could or would not obtain sufficient financing to serve as a realistic and presumptive purchaser of the Debtor's assets. In either event, the need for D&D, by historical financial information and prospective pro formas that it has the ability to fund

the terms and conditions of a yet disclosed "Lease Purchase Agreement," has only heightened. The undisclosed "Lease Purchase Agreement" presumptively contains some component that it fund the Debtor's monetary obligations under the Note or otherwise assume same. Without this information, it is impossible for the Court, Renasant or any other hypothetical creditor to determine whether the Debtor's Plan, as described by the Disclosure Statement, has any possibility of being adequately funded and, moreover, is sufficient to yet avoid another reorganization as contemplated by 11 U.S.C. § 1129.

8. The Disclosure Statement further provides in pertinent part as follows:

> Upon the cure of such arrearages, the original maturity date of the Renasant Loan[3] shall be reinstated. Thereafter, the Renasant Loan will be paid in accordance with its existing contractual terms until paid in full.

Unlike the prior provision which makes it clear that D&D will cure the arrearage due Renasant under the Note, it is equally unclear whether the Debtor or D&D will continue to make ongoing payments in "accordance with the existing contractual terms [of the Note]." Thus, it's impossible for the Court, Renasant or any other creditor or party-in-interest to determine who will pay the ongoing obligations due Renasant under the Note.

9. Although there is arrearage due under the Note, pre-petition ad valorem taxes were paid post-petition as allowed by this Court's order and the Debtor's escrow account has not been funded post-petition, the Disclosure Statement asserts that Renasant's "Class 7" is "unimpaired." Since the Debtor's Plan makes the same assertion, the Disclosure Statement should be amended to provide the Court, Renasant and any hypothetical creditor information or

[3] Although it is not clear, it is assumed that the reference to "Renasant Loan" and "SBA Guaranteed Loan" are interchangeable and, moreover both reference the obligations due Renasant under the Note.

documents supporting the Debtor's position that "Class 7," or that holding the claims of Renasant, are unimpaired.

10. For these reasons and those others to be assigned at a hearing regarding the Disclosure Statement, the Debtor's original offering fails to provide Renasant, the Court, as well as other creditors sufficient information to determine whether to vote to accept or reject the Plan of Reorganization. Renasant expressly reserves the right to amend this objection, either by amended written objection or orally, up to and during the referenced hearing.

WHEREFORE, Renasant respectfully requests the entry of an order denying approval of the Debtor's Disclosure Statement as drawn or alternatively that any order approving same require the Debtor to supplement the Disclosure Statement to provide the omitted information and document(s) outlined herein. Renasant prays for such other general and specific relief as this Court may deem just.

THIS, the 22nd day of May, 2017.

Respectfully submitted,

RENASANT BANK

BY: /s/ D. Andrew Phillips

D. ANDREW PHILLIPS (MSB #8509)
JAMES P. WILSON, JR. (TNB #018959)
ROSAMOND H. POSEY (MSB #101247)
MITCHELL, McNUTT & SAMS, P.A.
POST OFFICE BOX 947
OXFORD, MS 38655-0947
(662) 234-4845

CERTIFICATE OF SERVICE

I, D. Andrew Phillips, one of the attorneys for Renasant, do hereby certify that the following Objection has been served electronically via ECF with a copy of the above Objection, as follows:

Russ Savory, Esquire
Russ@bsavory.com

Thomas E. Coughlin, Esquire
Jaffe, Raitt, Heuer & Weiss
27777 Franklin Road, Suite 2500
Southfield, MI 48034

Carrie Ann Rohrscheib
carrie.a.rohrscheib@usdoj.gov

R. Lee Webber, Esquire
Lee@mortongermany.com

U.S. Trustee
USTPRegion08.me.ecf@usdoj.gov

THIS, the 22nd day of May, 2017.

/s/ D. Andrew Phillips
D. ANDREW PHILLIPS