

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

In re:

UNITED ROAD TOWING, INC., et al.

Debtors.¹

Chapter 11

Case No. 17-10249 (LSS)

Jointly Administered

Objection Deadline: March 23, 2017 at 4:00 p.m. (prevailing Eastern time)

Hearing Date: March 30, 2017 at 2:00 p.m. (prevailing Eastern time)

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
AN ORDER CLARIFYING THE REQUIREMENTS TO PROVIDE ACCESS TO
CONFIDENTIAL OR PRIVILEGED INFORMATION**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby moves this Court (the “Motion”) for entry of an order pursuant to sections 105(a), 107(b), and 1102(b)(3)(A) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), clarifying the requirement of the Committee to provide access to confidential or privileged information to creditors. In support of the Motion, the Committee respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: United Road Towing, Inc. (6962); URT Holdings, Inc. (8341); City Towing Inc. (2118); URS West, Inc. (3518); Bill & Wags, Inc. (3518); Export Enterprises of Massachusetts, Inc. (5689); Pat’s Towing, Inc. (6964); Keystone Towing, Inc. (6356); Ross Baker Towing, Inc. (9742); URT Texas, Inc. (3716); Mart-Caudle Corporation (1912); Signature Towing, Inc. (3054); WHW Transport, Inc. (3055); URS Southeast, Inc. (7289); URS Northeast, Inc. (7290); URS Southwest, Inc. (7284); Fast Towing, Inc. (5898); E&R Towing and Garage, Inc. (8500); Sunrise Towing, Inc. (7160); Ken Lehman Enterprises Inc. (1970); United Road Towing of South Florida, Inc. (9186); Rapid Recovery, Inc. (1659); United Road Towing Services, Inc. (2206); Arri Brothers, Inc. (7962); Rancho Del Oro Companies, Inc. (3924); CSCBD, Inc. (2448); URS Leasing, Inc. (9072); UR VMS LLC (4904); UR Vehicle Management Solutions, Inc. (0402). The Debtors’ mailing address is c/o United Road Towing, Inc., 9550 Bormet Drive, Suite 301, Mokena, Illinois 60448.

and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Local Rule 9013-1(f), the Committee consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 107(b) and 1102 of the Bankruptcy Code.

Background

4. On February 6, 2017 (the "Petition Date"), the Debtors filed voluntary petitions with this Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

5. On February 16, 2017, the United States Trustee for Region 3 appointed the Committee to represent the interests of all unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code. The members appointed to the Committee are: (i) Mission Wrecker, S.A., Inc.; (ii) First Service Credit Union fka Right Choice as Class Representative; (iii) M2 Development, LLC; (iv) Secure-24, LLC; and (v) FTM Corp, dba Fleet Technology & Maintenance Corp. The *Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 78] was filed on February 16, 2017.

Relief Requested

6. By this Motion, the Committee seeks entry of an order of the Court clarifying the requirement of the Committee to provide access to the Debtors' Confidential Information (as defined below) and/or Privileged Information (as defined below) to any creditor the Committee represents. The procedure proposed herein will help ensure that confidential, privileged, proprietary and/or material non-public information will not be disseminated to the detriment of the Debtors' estates and will aid the Committee in performing its statutory function.

Basis for Relief

7. Section 1102(b)(3) of the Bankruptcy Code states, in relevant part, that a creditors' committee appointed under section 1102(a) of the Bankruptcy Code shall "provide access to information for creditors who (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee." 11 U.S.C. § 1102(b)(3)(A). Section 1102(b)(3)(A) does not indicate how a creditors' committee should provide "access to information" to the creditors it represents nor does the associated legislative history provide any guidance.

8. The lack of specificity in section 1102(b)(3)(A) creates significant issues for debtors and creditors' committees. Typically, a debtor will share various confidential and other non-public proprietary information with a creditors' committee (the "Confidential Information").² Creditors' committees then use this Confidential Information to assess, among other things, a debtor's capital structure, opportunities for the restructuring of a debtor's business

² For purposes of this Motion, the term "Confidential Information" shall mean all non-public documents, agreements, records, reports, data, forecasts, appraisals, projections, business plans, interpretations, audit reports, and all other non-public information, written, visual or oral regardless of how transmitted, concerning the Debtors' financial condition or performance, the Debtors' business operations, including, without limitation, any and all information relating to the Debtors' suppliers and customers, the valuation of the Debtors and/or their assets, or the sale of the Debtors' assets provided to the Committee by the Debtors, and prepared by, or on behalf of, or furnished by, or on behalf of, the Debtors (whether or not marked confidential), or any other materials provided to the Committee by or on behalf of the Debtors, as well as derivations, summaries, and analyses of the same.

in chapter 11, the results of any revised operations of the debtor, and the debtor's overall prospects for reorganization under a chapter 11 plan. Section 1102(b)(3)(A) raises the issue of whether a creditors' committee could be required to share a debtor's Confidential Information with any creditor that the creditors' committee represents.

9. In these cases, absent appropriate protections, the Debtors might be unwilling to share Confidential Information with the Committee, impeding the Committee's ability to function effectively and impairing the Committee's working relationship with the Debtors. Given the importance of the issue, the Committee seeks an order of the Court clarifying the requirement of the Committee to provide access to the Debtors' Confidential Information to any creditor the Committee represents.

10. That section 1102(b)(3)(A) could be read to permit the disclosure of attorney-client privileged information (or information protected by any other applicable privilege for that matter) to the creditors the Committee represents also raises the issue of whether the Committee could be required to disclose the Debtors' or its own privileged information (collectively, the "Privileged Information").³ Given the importance of the issue, the Committee seeks an order of the Court clarifying the requirement of the Committee to provide access to the Debtors' Privileged Information to any creditor the Committee represents. Of course, the Committee should be permitted in its sole discretion, but not required, to provide access to Privileged Information to any party so long as (a) such Privileged Information was not Confidential Information, and (b) the relevant privilege was held and controlled solely by the Committee.

³ For the purposes of this Motion, the term "Privileged Information" shall mean any information subject to the attorney-client or some other state, federal, or other jurisdictional law privilege (including attorney work product), whether such privilege is solely controlled by the Committee or is a joint privilege with the Debtors or some other party.

11. In sum, the Committee respectfully submits that section 1102(b)(3)(A) of the Bankruptcy Code is unclear and ambiguous. The statute simply requires a committee “to provide access to information,” without offering any guidance as to the type, kind and extent of the information to be provided. In its extreme, section 1102(b)(3)(A) could be read as requiring a committee to provide access to all information provided to it by a debtor, or developed through exercise of its investigative function, regardless of whether the information is confidential, privileged, proprietary or material non-public information and regardless of whether disseminating such information implicates securities laws disclosure requirements. *See* 17 C.F.R. §§ 243.100 to 243.103 (2005). The Committee submits that this is not the proper reading.

12. Instead, given the ability to rapidly disseminate information online or otherwise, the drafters of section 1102(b)(3) likely intended this provision to mean that a creditors’ committee’s constituency should have easier access to relevant public information about a debtor without the burden of retaining counsel to monitor the numerous proceedings within a bankruptcy case. Congress could not have intended for a creditors’ committee to be required to provide unfettered access to every type and kind of information that a creditors’ committee receives from a debtor. If this had been the intention, section 1102(b)(3) would then frustrate numerous provisions of the Bankruptcy Code.

13. Section 107(b)(1) of the Bankruptcy Code suggests that the Committee’s interpretation is correct because section 107(b)(1) provides that “on request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to trade secret or confidential research, development, or commercial information.” *Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (providing that the protections of section 107(b)(1) are mandatory upon request). That any interpretation of section 1102(b)(3) must be in keeping

with the mandatory provisions of section 107(b)(1) is further supported by Bankruptcy Rule 9018, which states, in relevant part, that “on motion or on its own initiative, with or without notice, the court may make any order which justice requires to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. As a result, section 107(b)(1) and Bankruptcy Rule 9018 strongly suggest that this Court should protect the Debtors’ Confidential Information and all Privileged Information from disclosure to general creditors.

14. Accordingly, courts in this District confronting this issue have entered orders providing that creditors’ committees are not required to provide access to confidential or privileged information. *See, e.g., In re Roadhouse Holding, Inc.*, Case No. 16-11819 (BLS) (Bankr. D. Del. Oct. 11, 2016); *In re USA Discounters, Ltd.*, Case No. 15-11755 (CSS) (Bankr. D. Del. Aug. 24, 2015); *In re Namco, LLC*, Case No. 13-10610 (Bankr. D. Del. May 22, 2013); *In re Contract Research Solutions Inc.*, Case No. 12-11004 (KJC) (Bankr. D. Del. June 6, 2012); *In re SSI Group Holding Corp.*, Case No. 11-12917 (MFW) (Bankr. D. Del. Nov. 28, 2011); *In re Point Blank Solutions, Inc.*, Case No. 10-11255 (PJW) (Bankr. D. Del. May 12, 2010).

15. Accordingly, the Committee proposes the following protocol for providing access to information for creditors (“Creditor Information Protocol”) in accordance with section 1102(b)(3)(A) and (B) of the Bankruptcy Code. The Committee may, until the earliest to occur of dissolution of the Committee, dismissal, or conversion of these chapter 11 cases, and a further order of the Court, set up and maintain a website. For the sake of efficiency and economy and ease of access by creditors, the Committee proposes to keep creditors informed as required by the statute by directing them to the Committee’s own web page at www.pszjlaw.com/unitedroadtowing.html to make non-confidential and non-privileged

information available to unsecured creditors, which contains links to the Court's PACER website, posts relevant pleadings, and provides creditors with the information necessary to email or contact Committee counsel.

16. The Committee proposes that the Committee shall not be required to disseminate to any entity (all references to "entity" herein shall be as defined in section 101(15) of the Bankruptcy Code, "Entity"): (i) without further order of the Court, Confidential Information or (ii) Privileged Information. In addition, the Committee proposes that it not be required to provide access to information or solicit comments from any Entity that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in section 1102(b)(3) of the Bankruptcy Code.

17. The Committee also proposes that any information received (formally or informally) by the Committee from any Entity in connection with an examination pursuant to Bankruptcy Rule 2004 or in connection with any formal or informal discovery in any contested matter, adversary proceeding or other litigation shall not be governed by any order entered with respect to this Motion but, rather, by any order governing such discovery.

No Prior Request

18. No prior request for the relief sought in this Motion has been made to this or any other court.

Notice

19. Notice of this Motion has been given to the following parties, or their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors; (c) counsel to the Debtors; (d) counsel to the Debtors' prepetition lenders; (e) counsel to

the DIP financing agent; and (f) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Committee respectfully requests that this Court enter an order, substantially in the form attached hereto, granting the relief requested therein, and such other and further relief as this Court deems appropriate.

Dated: March 9, 2017

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Peter J. Keane

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