UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PLIANT CORPORATION, *et al.*,[1]	)	Case No. 09-10443 (MFW)
Debtors.	)	Jointly Administration Requested
	)	Re Docket No. 13

AD HOC COMMITTEE OF CERTAIN HOLDERS OF 11 1/8% SENIOR SECURED NOTES DUE 2009: (A) PRELIMINARY OBJECTION TO MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND USE CASH COLLATERAL OF PREPETITION SECURED PARTIES, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF; AND (B) MOTION REQUESTING ADEQUATE PROTECTION

The ad hoc committee of certain holders (the "Second Lien Committee")[2] of 11 1/8% Senior Secured Notes (the "Second Lien Notes") due 2009, issued under that certain indenture dated as of May 30, 2003 (as it may be amended, the "Indenture"), among Pliant Corporation, as issuer ("Pliant" and with the above captioned debtors and debtors in possession, collectively, the "Debtors"), certain of the Debtors and non-Debtor affiliates, as guarantors,[3] and Wilmington Trust Company, as Trustee (the "Trustee"), by and through its undersigned co-counsel, hereby files this (a) Preliminary Objection (the "Objection") to the Debtors' Motion for Interim and Final Orders (i) Authorizing the Debtors to Obtain Post-Petition Financing, (ii) Granting

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[1] The Debtors are: Pliant Corporation (Tax ID XX-XXX7725); Pliant Corporation International (Tax ID No XX-XXX3075); Uniplast Holdings, Inc. (Tax ID No. XX-XXX9589); Pliant Film Products of Mexico, Inc. (Tax ID No. XX-XXX0805); Pliant Packaging of Canada, LLC (Tax ID No. XX-XXX0929); Alliant Company LLC (Tax ID. No. XX-XXX6811); Uniplast U.S., Inc. (Tax ID. No. XX-XXX9066); Uniplast Industries Co. (N/A); and Pliant Corporation of Canada Ltd. (N/A). The mailing address for Pliant Corporation is 1475 Woodfield Road, Suite 700, Schaumburg, IL 60173.

[2] As of the Petition Date, the Second Lien Committee held approximately 69% of the aggregate outstanding principal amount of the Second Lien Notes.

[3] The guarantors are Pliant Corporation International, Pliant Film Products of Mexico, Inc., Pliant Solutions Corporation, Pliant Packaging of Canada, LLC, Uniplast Holdings, Inc., Uniplast U.S., Inc., Pierson Industries, Inc., Turex, Inc. and Uniplast Midwest, Inc.

Adequate Protection to Prepetition Secured Lenders, (iii) Scheduling a Final Hearing, and (iv) Granting Related Relief (the "DIP Motion"); and (b) Motion Requesting Adequate Protection (the "AP Motion"). In support of its Objection and the AP Motion, the Second Lien Committee respectfully represents the following:

PRELIMINARY STATEMENT

1. The Debtors have returned to chapter 11 less than three years after their 2006 emergence.[4] Some things apparently have not changed in the interim. The Debtors are still beset by – and again cite as a reason for filing – unfortunate challenges with respect to resin pricing, trade terms, liquidity issues and impending debt maturities. The Debtors also have the same management team and professionals as in Pliant I. Indeed, this is the same management team and professionals that proposed and confirmed a plan of reorganization in Pliant I (the "Pliant I Plan") premised upon projections of unprecedented growth that were labeled as unrealistic by the Second Lien Committee. Pliant's testimony in Pliant I proved to be wrong, and the objections raised by the Second Lien Committee have been proven correct.

2. This time around, the Debtors will evidently try to convince the Court to ignore their past mistakes. Moreover, in order to show the Court that they have learned something from the failure of the Pliant I Plan, the Debtors have swung the pendulum in the extreme opposite direction. Instead of reiterating optimistic projections about their businesses, the Debtors instead take the position in their proposed joint plan of reorganization and accompanying disclosure statement[5] that the business prospects that shone so brightly in 2006 are now hopelessly dismal.

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[4] See In re Pliant Corporation, *et al.*, Case No. 06-10001 (MFW), (Bankr. D. Del. 2006) ("Pliant I").

[5] Debtors' Joint Plan of Reorganization (Docket No. 15) (as it may be amended or modified, the "Plan") and Disclosure Statement for the Plan (Docket No. 17) (as it may be amended or modified, the "Disclosure Statement").

The current prospects are allegedly so dismal that, putting aside the efficiencies created by the numerous plant closures, headcount reductions and myriad cost savings mechanisms put into place after Pliant I, the Debtors' growth rate will experience unprecedented stagnation over the next five years and the valuation of their businesses is purportedly not high enough to even cover the First Lien Notes,[6] let alone reach the Second Lien Notes, each of which, as the Court will recall, were unimpaired under the Pliant I Plan confirmed less than three years ago. The Debtors will apparently be relying on a "forget last time, trust us this time" construct during these proceedings. The Court will have to excuse the skepticism of the Second Lien Committee, because they have seen this show before and have no reason to believe that a radical shift in philosophy by the Debtors will produce projections or results that are any more reliable than those produced in connection with Pliant I.

3. The proposed DIP Facility is indicative of the Debtors' paradigm shift (particularly, vis-a-vis the Second Lien Notes) and should not be approved because it is inappropriate, overreaching, violates the Intercreditor Agreement, is not representative of the best financing available to the Debtors and is not in the best interests of the Debtors' estates. To the contrary, it is in the best interest of just one creditor constituency – the First Lien Noteholders – from whom, not surprisingly, the DIP Lenders are drawn. The Debtors and First Lien Noteholders have done their best to hold back information from other parties-in-interest, which crystallizes the foregoing proposition. For example, the Debtors have failed to disclose the Lock-Up Agreement with certain of the First Lien Noteholders (including, upon information and belief, the DIP Lenders) and any restructuring "milestones" and other control provisions contained therein. Instead, the Debtors are seeking to have the DIP Facility approved,

[6] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Motion and, as applicable, the accompanying DIP Agreement and Proposed Interim DIP Order.

notwithstanding the fact that the DIP Credit Agreement expressly provides for an event of default if the Lock-Up Agreement is terminated or the Debtors default on any of their as of yet unrevealed obligations thereunder. Likewise, the Debtors have been recalcitrant in providing access to basic business and financial information needed to assess the reality of what appears to be a contrived "low-ball" valuation of the company that purportedly justifies depriving the Second Lien Notes of both adequate protection (as well as anything but a de minimus recovery under the Plan).

4. The DIP Facility suffers from a number of additional infirmities that, in the aggregate, should result in the Court finding that the Debtors have not satisfied their burden of proof under Bankruptcy Code sections 363 and 364. In particular, the Debtors have failed to meet their burden in light of the following:

- the Debtors would have less restrictive financing available to them from the Second Lien Committee if they had provided the financial information the committee has repeatedly requested, but they have refused to seek or consider such financing and cannot, therefore, claim that they are unable to obtain sufficient financing from sources other than the DIP Lenders;

- the DIP Facility is not fair, reasonable and adequate because it is simply a mechanism to ensure that the First Lien Noteholders/DIP Lenders, not the Debtors or this Court, are in control of this restructuring, and will be the primary beneficiaries of these chapter 11 Cases, not the Debtors' broader creditor constituency;

- the Debtors have failed to provide a complete adequate protection package for the Second Lien Committee and other holders of Second Lien Notes, thereby violating these constituencies' constitutional right to adequate protection. The Debtors' unsupported conjecture about the value of the Second Lien Notes' security does not excuse their failure, in the first instance, to treat the Second Lien Committee and other holders of Second Lien Notes as anything but secured creditors entitled to adequate protection consistent with the protection granted to other secured creditors in these cases, i.e., replacement liens, superpriority administrative claims, reimbursement for professionals and the Indenture Trustee's fees and expenses; and

- the relief the Debtors and DIP Lenders seek in the proposed Interim DIP Order constitutes a unilateral modification of the DIP financing subordination provisions of the Intercreditor Agreement in violation of Bankruptcy Code section 510 that is

extremely prejudicial to the Second Lien Notes as it deprives them of protections for which they bargained pre-petition.

5. For these reasons (as more fully described below), the Second Lien Committee respectfully requests that the Court (i) deny approval of the DIP Facility on an interim basis and entry of the Interim DIP Order or, alternatively, condition the interim approval of the DIP Facility and entry of the Interim DIP Order as suggested herein, and (ii) direct the Debtors to provide a complete adequate protection package to the Second Lien Committee and other holders of Second Lien Notes.

BACKGROUND

6. On February 11, 2009 (the "Petition Date"), each of the above-captioned Debtors filed with this Court voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq..

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

I. Prepetition Capital Structure.

8. The Debtors' prepetition secured debt structure is largely comprised of three components: (i) the Working Capital Facility; (ii) the First Lien Notes; and (iii) the Second Lien Notes. The Debtors assert that, as of the Petition Date, their secured debt totaled approximately $821.1 million in principal amount. In connection with Pliant I, the Debtors also issued the Senior Subordinated Notes, which are unsecured notes that, as of the Petition Date, were outstanding in the aggregate principal amount of approximately $26.3 million.

9. The Credit Agent for the Prepetition Credit Facility, the Trustee for the First Lien Notes and Second Lien Notes, and Pliant are signatories to that certain Amended and Restated Intercreditor Agreement dated as of February 17, 2004 (the "Intercreditor Agreement").

II. The Proposed DIP Facility.

10. The Debtors seek to enter into a debtor in possession financing facility (the "DIP Facility") provided by certain DDJ Capital Management, LLC affiliated entities and certain Wayzata Investment Partners affiliated entities (collectively, the "DIP Lenders"). Upon information and belief, the DIP Lenders represent a subset of First Lien Noteholders. The proceeds of the DIP Facility will be used for, among other things, working capital purposes, payment of DIP Fees and payment of various prepetition claims that are the subject of other "first day" motions filed by the Debtors.

11. The DIP Facility includes "extraordinary" provisions within the meaning of Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). These provisions include, without limitation: (i) liens on avoidance actions; (ii) a Bankruptcy Code section 506(c) waiver; (iii) expansive findings regarding the good faith of the DIP Lenders and their professionals and advisors; (iv) waiver or modification of the automatic stay; and (v) priming of secured liens. The Local Rules provide that with respect to the foregoing, "interim relief shall be only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Id.

III. The Prepetition Diligence Process.

12. The Second Lien Committee first attempted to commence a restructuring dialogue with Pliant on or around December 4, 2008. Several weeks later, on December 22, 2008, the Second Lien Committee was invited to meet with the restructuring committee of Pliant's Board of Directors. Further meetings with certain members of Pliant's management team were held on

January 14, 2009 and February 4, 2009. From the beginning, and at each subsequent meeting, the Second Lien Committee was told that Pliant was committed to providing diligence materials sufficient to, among other things, permit the committee to properly evaluate and test the restructuring positions taken by Pliant with respect to the Second Lien Notes held by the Second Lien Committee. As evidenced by the Plan, the Debtors' restructuring position is that the Second Lien Notes are "out-of-the-money." In anticipation of receiving the diligence materials, each of the members of the Second Lien Committee executed a confidentiality agreement.

13. Regrettably, Pliant did not follow through on its diligence commitment. Pliant failed to satisfy the written requests provided to Pliant's professionals in mid-January and information requests made to (and in certain cases promised by) management during the meetings referenced above. To be sure, the Second Lien Committee received some responsive materials in draft form, but never received critical backup detail (e.g., formulas, models, budgets, calculations and reconciliations) to actually test or confirm Pliant's positions prior to the commencement of these chapter 11 cases. As explained in further detail below, the lack of sufficient diligence has also (by design or not) acted as a roadblock with respect to the Second Lien Committee's ability to propose alternative financing with better terms than the DIP Facility proposed by the Debtors.

OBJECTION/ REQUEST FOR ADEQUATE PROTECTION

I. The DIP Facility Should Not Be Approved Because Alternative Financing with Better Terms Is Available.

14. The Debtors do not satisfy their burden under Bankruptcy Code section 364 of demonstrating that less expensive and less restrictive financing is unavailable to them. Bankruptcy Code section 364(d) "requires the Debtor to demonstrate that less onerous postpetition financing was unavailable." In re Reading Tube Indus., 72 B.R. 329, 332 (Bankr.

E.D. Pa. 1987). On this issue, "it is important for a bankruptcy court to make a qualitative assessment of the credit transaction in light of readily available alternatives before granting any [Bankruptcy Code section] 364 motion. Since such a qualitative analysis is necessary in considering every [Bankruptcy Code section] 364 motion, it should not be neglected in deciding whether to grant a [Bankruptcy Code section] 364(d) motion." In re Aqua Assocs., 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

15. It is clear that the Debtors have not obtained financing on the most advantageous terms available. Certain of the members of the Second Lien Committee have on many occasions over the last several months offered to provide the Debtors with an alternative (and superior) financing option, subject to being provided with the modicum of diligence necessary to make a formal proposal, only to be repeatedly rebuffed by the Debtors. As noted above, the Debtors and their Board of Directors committed to providing the Second Lien Committee with prepetition diligence, but in practice failed to deliver the information as promised.

16. For approximately two months, the Debtors ignored the Second Lien Committee's financing offer. More recently, the Debtors responded that the DIP Lenders would not permit the terms of the DIP Facility to be released prior to filing and that, furthermore, they did not see a way to prime the First Lien Noteholders without their consent. This excuse is repeated by the DIP Motion wherein the Debtors excuse their failure to follow up on the Second Lien Committee's financing offer, in a footnote, as resulting from "both the First Lien Noteholders and the Prepetition Credit Lenders insist[ance] that they would not tolerate the imposition of a priming DIP facility sponsored by the Second Lien Noteholders." DIP Motion at fn. 6.

17. In the first instance, we note that there is no small amount of irony inherent in the fact that the most "advantageous" financing the Debtors could come up with apparently seeks to partially prime the Working Capital Facility without those lenders' consent. More importantly,

for the Debtors to fail to even consider such proposals, and to stonewall members of the Second Lien Committee with respect to access to requested basic diligence where all members of the Second Lien Committee executed confidentiality agreements, was inappropriate under the circumstances. Despite the prospects of a more advantageous proposal, the Debtors have improperly denied the Second Lien Committee the opportunity to provide postpetition financing, clearly anticipating that the momentum caused by the commencement of these chapter 11 cases will cause this Court to overlook their failure to explore alternative financing options.

18. Now that many of the terms of the DIP Facility have been finally revealed (save those contained in the Lock-Up Agreement and Fee Letter), and notwithstanding the Debtors' intransigence, certain members of the Second Lien Committee remain willing to provide financing on terms more favorable than those contemplated by the DIP Facility. In particular, they are willing to provide the Company with a significantly longer maturity (15 months versus 9 months) so that the Debtors have sufficient runway to reorganize in a manner that maximizes value for all creditor constituencies. Moreover, a Second Lien Committee financing would not be tied to the as yet undisclosed Lock-Up Agreement and, as a result, is likely to have fewer potential landmines for the Debtors.

19. The Second Lien Committee requests that the Court direct the Debtors to provide the financial data necessary to complete their diligence. Provided they are able to complete their diligence, members of the Second Lien Committee intend to shortly deliver a commitment letter to the Debtors that provides for a facility with the same economic terms as the DIP Facility, but with the additional benefit of a 15 month maturity and the removal of provisions that will otherwise permit the First Lien Noteholders/DIP Lenders to control this restructuring to the detriment of the Debtors' other creditors. The facility will additionally provide that the proceeds

of the proposed financing may be used to repay any of the DIP Facility proceeds utilized on an interim basis and return the DIP Lenders to their prepetition status as First Lien Noteholders.

20. By refusing to seek or consider available financing options, the Debtors cannot carry their burden under Bankruptcy Code section 364 and, therefore, the interim relief requested in the DIP Motion must be denied. Alternatively, the Interim DIP Order should expressly contemplate that the Court may eventually approve a Second Lien Noteholder proposed financing that would repay the DIP Facility and provide for minimal draws from the DIP Facility to the extent working capital needs cannot be met for the use of cash collateral.

II. The Proposed DIP Facility Is Not "Fair, Reasonable and Adequate."

21. In order to obtain postpetition secured financing under section 364(d) of the Bankruptcy Code, a debtor bears the burden of demonstrating, among other things, that: (i) it is unable to obtain unsecured credit; (ii) the credit transaction is necessary to and in fact does preserve the assets of the estate; and (iii) the terms of the proposed financing are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender. See In re Aqua Assocs., 123 B.R. at 196 ("credit should not be approved when it is sought for the primary benefit of a party other than the debtor. . ."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990) ("[A] proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.").

22. On this point, the case In re Tenney Village Co., Inc., 104 B.R. 562 (Bankr. D.N.H. 1989), is particularly instructive. There, the debtor sought approval of postpetition financing that provided the lender with undue control over the debtor's business operations and rendered it an event of default if the court confirmed a plan of reorganization over the lender's objection. See id. at 568. The court denied the debtor's motion, characterizing the proposed financing facility as one that "would pervert the reorganizational process from one designed to

accommodate all classes of creditors and equity interests to one specifically crafted for the benefit of the Bank and the Debtor's principals who guaranteed its debt." Id. Stated differently by another court, postpetition financing is not consistent with the requirements of Bankruptcy Code section 364 where it would "skew the conduct of the bankruptcy case" and "destroy the adversary process." In re Ames Dep't Stores, Inc., 115 B.R. at 38.

23. The Debtors cannot carry their burden under section 364 of the Bankruptcy Code because the DIP Facility is not "fair, reasonable and adequate." The DIP Facility is simply a mechanism to ensure that the First Lien Noteholders/DIP Lenders, not the Debtors or this Court, are in control, and will be the primary beneficiaries of these chapter 11 Cases. The relatively short maturity of the DIP Facility and the cross-default of the DIP Facility with the Lock-Up Agreement will force the Debtors to quickly conclude their second foray into chapter 11 in a manner that fails to ensure that the proposed restructuring will maximize value for all creditors. The Plan already filed by the Debtors only amplifies this point as it provides no recovery for Second Lien Notes, the Debtors' remaining unsecured creditors or equityholders. The DIP Facility will leave the Debtors unable to exercise their fiduciary duty to restructure in a manner that maximizes value for all creditors and leaves no room for the Debtors to explore any value-maximizing restructuring alternative.

24. The DIP Facility is not "fair, reasonable and adequate," as mandated by Bankruptcy Code section 364, and the interim relief requested in the DIP Motion should be denied.

III. Holders of the Second Lien Notes Are Not Adequately Protected in Contravention of Bankruptcy Code Sections 363 and 364.

25. The Debtors' proposed entry into the DIP Facility without providing a complete adequate protection package for Second Lien Notes violates sections 363 and 364 of the

Bankruptcy Code. Bankruptcy Code section 363(c) provides that a debtor may only use cash collateral if consent is obtained from the secured creditor or "the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2)(B). Further, Bankruptcy Code section 363(e) provides that "the court, with or without a hearing, shall prohibit or condition [the] use, sale, or lease [of cash collateral] as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Bankruptcy Code section 364(d) provides that the Court "may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if . . . there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. §364(d)(1).

26. Adequate protection is not defined in the Bankruptcy Code. Pursuant to section 361 of the Bankruptcy Code, adequate protection may include: (i) periodic cash payments; (ii) additional or replacement liens; or (iii) the "indubitable equivalent" of the secured creditor's interest in such property. 11 U.S.C. § 361. Adequate protection ensures that the prepetition lender receives the benefit of its prepetition value proposition. "In other words, the proposal should provide the prepetition secured creditor with the same level of protection it would have had if there had not been postpetition superpriority financing." In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994). Moreover, as the DIP Motion concedes, this proposition is true even if the prepetition lender is undersecured. See Bay Bank-Middlesex v. Ralar Distribs., Inc., 69 F.3d 1200, 1204 (1st Cir. 1995).

1. The Debtors' Conjecture about the Value of the Second Lien Notes' Collateral Does Not Excuse Their Failure to Provide a Complete Adequate Protection Package.

27. The Debtors offer a single explanation for the absence of a complete adequate protection package for the Second Lien Notes: that the Second Lien Notes are "out-of the money" and, therefore, do not have secured interests to protect. DIP Motion at ¶¶ 56-58. The Debtors' unsupported "first day" statements about the value of the Second Lien Notes' collateral do not excuse, in the first instance, their failure to provide the Second Lien Committee with a complete adequate protection package. A finding that a lender is adequately protected requires that the secured lender receives the benefit of its prepetition liens. The Debtor bears the burden of proof to establish the existence of adequate protection, which should be premised on facts or projections with a firm evidentiary basis. In re Mosello, 195 B.R. 277, 287, 292 (Bankr. S.D.N.Y. 1996); Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.), 193 B.R. 713, 716-18 (Bankr. D. Del. 1996).

28. Until otherwise proven on a full evidentiary record, the Second Lien Committee and other holders of Second Lien Notes are secured creditors that should be treated in a manner consistent with the adequate protection the Debtors propose to grant other secured creditors in these cases, i.e., replacement liens, superpriority administrative claims and reimbursement for professionals' fees. See, e.g., In re Bennett Funding Group, Inc., 255 B.R. 616, 643 (N.D.N.Y. 2000) (citing In re Keystone Camera Prods. Corp., 126 B.R. 177, 183-84 (Bankr. D.N.J. 1991)) (finding that a secured creditor has a constitutional right to have the value of its petition date claim preserved). The Second Lien Committee has not been given the opportunity, either prepetition or in the day since these chapter 11 cases were commenced, to obtain key business and financial information needed to assess valuation, let alone to propound discovery, depose the Debtors' financial advisors or properly analyze the Debtors' valuation assertions in the

Disclosure Statement. Save a valuation trial, the substance of which cannot be accomplished during the "first day" hearing on the interim relief sought in the DIP Motion, the Debtors' statements about the value of the Second Lien Notes are purely conjecture and lack any evidentiary basis that can be satisfied at this juncture.

29. The Second Lien Notes have a constitutional right to adequate protection and the Debtors have the burden to prove otherwise, which they have not satisfied. The Debtors should not be permitted to abrogate their obligations to provide the Second Lien Notes their fundamental entitlement to adequate protection.

2. The Structure of the DIP Facility Unilaterally Alters the Subordination Provisions of the Intercreditor Agreement without Providing Adequate Protection for the Second Lien Notes.

30. The Intercreditor Agreement at issue in these chapter 11 cases is atypical in that the "Credit Agent" for the Working Capital Facility is the lynchpin for the imposition of DIP financing that potentially primes the Second Lien Notes. The First Lien Notes do not have such authority. Section 6.1 of the Intercreditor Agreement only contemplates DIP Financing under the following circumstances: "[i]f ... the Credit Agent shall desire to permit the Company or any other Grantor to obtain financing under Section 363 or Section 364 of the Title 11 of the United States Code or any similar Bankruptcy Law..." Intercreditor Agreement at § 6.1 (emphasis added). Upon information and belief, the Debtors have not obtained such Credit Agent consent. Moreover, even if the Credit Agent had consented to the DIP Facility, Section 6.1 requires the liens of the Second Lien Notes to be subordinated to "DIP Financing" only "to the extent the Liens securing the Senior Lender Claims under the Senior Credit Agreement ... are subordinated or pari passu with such DIP Financing ...." Id. The liens securing the Working Capital First Priority Collateral are not being subordinated to the DIP Facility – it appears they will remain

senior to the liens securing the DIP Facility – resulting in the failure of the predicate for further subordination of the Second Lien Notes.

31. To add insult to injury, the Debtors are also attempting to obtain the DIP Facility on terms that, if permitted by the Court, would violate the Intercreditor Agreement. The DIP Motion states that the Second Lien Notes Replacement Liens shall be "junior in priority to the DIP Facility Liens, Prepetition Working Capital Replacement Liens and First Lien Notes Replacement Liens ...." DIP Motion at ¶¶ 2, 37. The priority scheme in the Intercreditor Agreement renders a different result as the Second Lien Notes Replacement Liens (x) with respect to the Working Capital First Priority Collateral, would only be junior in priority to the Prepetition Working Capital Replacement Liens and the DIP Facility Liens, and (y) with respect to the First Lien Notes First Priority Collateral, would only be junior in priority to the First Lien Notes Replacement Liens and the DIP Facility Liens. See Intercreditor Agreement at § 2.1.

32. The holders of Second Lien Notes only agreed to further DIP subordination under the specific circumstances laid out in the Intercreditor Agreement. The Debtors cannot unilaterally alter the subordination provisions of the Intercreditor Agreement, while at the same time claim that the Second Lien Notes do not require adequate protection for the non-consensual priming contemplated by the DIP Facility.[7]

3. Adequate Protection for Second Lien Noteholders Is Customary in This District.

33. Recent interim DIP orders approved by bankruptcy courts in this District have provided adequate protection for second lien noteholders that included, at a minimum, replacement liens and the current payment of the fees of a second lien agent, as well as

[7] The Second Lien Committee is not aware of any consent by the Indenture Trustee to the alteration of the Intercreditor Agreement or the priming and use of cash collateral proposed in connection with the DIP Facility.

disbursements for counsel and financial advisors to the second lien noteholders. See, e.g., Landsource Communities Development, LLC, *et al.*, Case No. 08-11111 (KJC) (Bankr. D. Del. June 10, 2008) (Docket No. 30) (interim DIP order provided adequate protection to the second lien noteholders through current payment of fees and expenses of professionals and junior replacement liens); Dura Automotive Systems, Inc., *et al.*, Case No. 06-11202 (KJC) (Bankr. D. Del. October 31, 2006) (Docket No. 88) (interim DIP order provided for current payment of reasonable fees and expenses of (i) lead counsel and reasonably necessary local counsel to the second lien noteholders, (ii) the prepetition second priority administrative agent, (iii) the prepetition second priority collateral agent and its counsel, and (iv) financial advisors to the second lien noteholders at a monthly rate of $150,000 plus expenses); Meridian Automotive Systems – Composites Operations, Inc. *et al.*, Case No. 05-11168 (MFW) (Bankr. D. Del. May 27, 2005) (Docket No. 177) (interim DIP order provided for current payment of second lien agent's (i) fees, (ii) disbursements of counsel, and (iii) fees of financial advisor (not to exceed $150,000 per month). Accordingly, the Second Lien Notes should receive a customary and complete adequate protection package.

4. The Second Lien Committee Is Only Requesting a Limited Adequate Protection Package.

34. The Second Lien Committee requests only a limited adequate protection package, which does not contain the interest component present in the adequate protection packages proposed for the lenders under the Working Capital Facility and the First Lien Noteholders. See DIP Motion at ¶¶ 35-36. Moreover, the fact that the First Lien Noteholders are to receive any post-petition interest as adequate protection for their First Lien Note claims belies the Debtors' contention that the First Lien Notes are the fulcrum security in these proceedings.

35. The Second Lien Committee requests the following:

- Replacement liens on collateral currently included in the Indenture and other applicable financing documents and in the priority provided for therein, with such liens subject to the Carve-Out;

- Superpriority administrative expense claims pursuant to Bankruptcy Code section 507(b) to the extent of diminution in collateral value during these chapter 11 proceedings, junior to the superpriority claims of the DIP Lenders, Working Capital Facility lenders and First Lien Noteholders and subject to the Carve-Out;

- Execution by the Debtors of customary engagement letters with counsel and financial advisors to the Second Lien Committee and, in the case of Akin Gump Strauss Hauer & Feld, LLP, modification of the prepetition engagement letter executed by Pliant;

- Current payment of the reasonable fees and expenses of legal counsel and financial advisors to the Second Lien Committee (primary, local Delaware and Canadian counsel) pursuant to the terms of their respective engagement letters; and

- Current payment of the reasonable fees and expenses of the Indenture Trustee.

36. The payment of professionals' fees is particularly critical here, where the Debtors are taking the position in the Plan that the Second Lien Committee and other holders of Second Lien Notes are without entitlement to any recovery in these chapter 11 cases, save a de minimus number of warrants, the value of which, if any, is impossible to decipher at this juncture. The Debtors volunteered to re-enter the chapter 11 process and they should not be spared the burdens of the process, including funding an inclusive reorganization process for the benefit of all creditors, not one that only benefits a single subset of secured creditors. The potential harm to the Second Lien Committee is amplified when compared to the proposed adequate protection afforded the lenders under the Working Capital Facility and the First Lien Noteholders. The Second Lien Committee requires funding to pay their professionals – including financial advisors – so as to be able to properly preserve their rights as secured (or unsecured) creditors and prevent the Debtors and First Lien Noteholders from treating these cases as a bilateral restructuring.

37. Accordingly, as the Second Lien Committee is not being provided with a complete package of adequate protection, the Debtors have failed to satisfy their burden under

Bankruptcy Code sections 363 and 364. The Second Lien Committee objects to the use of any of the Second Lien Notes' cash collateral and/or the granting of priming liens under the DIP Facility.

IV. The DIP Facility Violates Section 510(a) of the Bankruptcy Code and the Express Terms of the Intercreditor Agreement.

38. It is well settled that agreements between creditors providing for subordination of their claims have been recognized and enforced in bankruptcy courts. Indeed, pursuant to section 510(a) of the Bankruptcy Code, courts routinely enforce subordination agreements pursuant to their terms to the extent that they are enforceable under "applicable nonbankruptcy law." 11 U.S.C. § 510(a); see also In re Amret, Inc., 174 B.R. 315, 319 (M.D. Ala. 1994) (holding that "unless specifically waived by the Bank of New York when Enstar entered into the postpetition loan agreement, the subordination agreement between Amret and the Bank of New York is enforceable after Amret's voluntary petition for reorganization under chapter 11, unless a [sic] invalid under nonbankruptcy contract law."); In re Lantana Motel, 124 B.R. 252, 255 (Bankr. S.D. Ohio 1990) (holding that subordination agreements which are enforceable under nonbankruptcy law are also enforceable in chapter 11 cases).

39. Here, the Intercreditor Agreement controls the rights of the lenders under the Working Capital Facility and holders of the First Lien Notes and the Second Lien Notes, vis-a-vis each other, with respect to the Debtors' assets. As noted in paragraphs 30-32 above, pursuant to section 6.1 of the Intercreditor Agreement, the Second Lien Notes agreed to subordinate their rights with respect to the Debtors' assets in a situation where the Credit Agent consented and agreed to be primed or be pari passu with "DIP Financing."

40. First, the Credit Agent has apparently not consented to the DIP Facility and, even if it had, the DIP Facility proposes only a partial priming of the Working Capital Facility with the

Working Capital Facility liens securing the Working Capital First Priority Collateral remaining senior to the liens securing the DIP Facility. Notwithstanding the consent of certain First Lien Noteholders to the priming, the Intercreditor Agreement does not obligate the Second Lien Notes to subordinate their liens to the DIP Facility, particularly with respect to the Working Capital First Priority Collateral in which the Credit Agent maintains lien priority over the proposed DIP Facility. See also Intercreditor Agreement at § 2.1.

41. Second, if the DIP Facility is approved and the Second Lien Notes are granted replacement liens, the priority of such liens must be in accord with the Intercreditor Agreement, i.e., Second Lien Notes Replacement Liens (x) with respect to the Working Capital First Priority Collateral, would only be junior in priority to the Prepetition Working Capital Replacement Liens and the DIP Facility Liens, and (y) with respect to the First Lien Notes First Priority Collateral, would only be junior in priority to the First Lien Notes Replacement Liens and the DIP Facility Liens.

42. The Debtors appear to agree in principal with the Second Lien Committee's positions with respect to the Intercreditor Agreement, given paragraph 15 of the proposed Interim DIP Order which states that with respect to determining the relative priorities and rights of the Prepetition Secured Entities and Second Lien Notes (including with respect to any replacement lien) "pursuant to section 510 of the Bankruptcy Code, such priorities and rights shall continue to be governed by [the Intercreditor Agreement] … and nothing in this Interim Order or the DIP Facility Documents shall impair, diminish or otherwise affect the [Intercreditor Agreement]." Interim DIP Order at ¶ 15.

43. In sum, the relief the Debtors and DIP Lenders seek in the Proposed Interim Order is not available under the law, constitutes an impermissible and unilateral modification of the Intercreditor Agreement and is extremely prejudicial to the Second Lien Committee as it

deprives them of protections for which they bargained pre-petition. Moreover, absent a properly commenced and prosecuted proceeding, it is inappropriate for the Debtors or the DIP Lenders to seek a judicial interpretation of the Intercreditor Agreement and the parties' rights thereunder. The Intercreditor Agreement should be fully enforced according to its terms.

V. Additional Modifications Should Be Made to the DIP Facility, if Approved on an Interim Basis.

44. Certain other provisions of the DIP Facility are inappropriate and inequitable and, as a condition to the interim approval thereof, should be modified as follows:

- Lock-Up Agreement. Approval of the DIP Credit Agreement provisions that provide for an event of default under the DIP Facility if the Lock-Up Agreement is terminated or the Debtors are in default thereunder should be deferred until the final hearing on the DIP Facility. The Lock-Up Agreement has not yet been filed with the Court and parties-in-interest should have sufficient notice and opportunity to object.

- DIP Fees. Approval of the payment of the DIP Fees contemplated by the Fee Letter should be deferred until the final hearing on the DIP Facility. The Fee Letter has not been filed with the Court and parties-in-interest should have sufficient notice and opportunity to object.

- Prepayment Premium. Approval of the 5% Prepayment Premium (seemingly on the entire Commitment, not just borrowed amounts) should be deferred until the final hearing on the DIP Facility.

- Stipulations Regarding Indebtedness and Collateral. Paragraph D of the proposed Interim DIP Order should include stipulations with respect to the Second Lien Note indebtedness and collateral that are reciprocal with the existing language with respect to the Working Capital Facility and First Lien Notes.

- Good Faith. Paragraph H of the proposed Interim Order should include a qualification that any findings with respect to the good faith of the Debtors and DIP Lenders are on an interim basis, pending the final hearing on the DIP Facility.

- Prepetition Intercreditor Agreement. Paragraph 15 of the proposed Interim DIP Order should include a reservation with respect to the ability of the parties to preserve and enforce their federal and state law rights under the Intercreditor Agreement in the forums provided for therein.

- Investigation Rights. Paragraph 17 of the proposed Interim DIP Order should include the Second Lien Notes and Second Lien Notes Obligations within "notes" and

"obligations" to be examined by the Committee or other non-Debtor parties-in-interest prior to the Investigation Termination Date.

RESERVATION OF RIGHTS

45. The Second Lien Committee did not receive copies of the DIP Motion or the DIP Agreement prior to the Petition Date. Accordingly, the Second Lien Committee expressly reserves the right to amend or supplement this Objection and AP Motion, to introduce evidence at any hearing with respect thereto, and to file additional and supplemental objections and pleadings.

NOTICE

46. Notice of this Objection and AP Motion has been provided to (i) counsel for the Debtors, (ii) the Office of the United States Trustee, (iii) counsel to the DIP Lenders, (iv) counsel to the Working Capital Facility lenders, and (v) counsel to the ad hoc committee of First Lien Noteholders.

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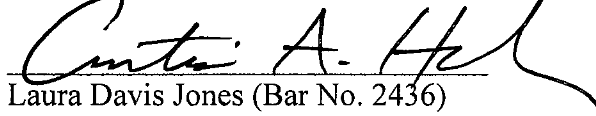
CONCLUSION

For all of the foregoing reasons, the Second Lien Committee respectfully request that the Court: (i) deny interim approval of the Proposed DIP Facility and entry of the Interim DIP Order or, alternatively, condition such approval an entry as set forth herein, (ii) grant the Second Lien Committee the adequate protection requested by the AP Motion, and (iii) grant such other relief as the Court deems just, proper and equitable.

Dated: February 11, 2009

PACHULSKI STANG ZIEHL & JONES LLP



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Counsel to Ad Hoc Committee of Certain Holders
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