

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

CAPSULE INTERNATIONAL HOLDINGS,
LLC, *et al.*¹

Debtors

The Official Committee of Unsecured Creditors
of Capsule International Holdings, LLC,
Plaintiff,

vs.

Ameren Corporation dba Ameren Marketing,
Defendant.

Chapter 11

Case No. 13-13281 (CSS)

(Jointly Administered)

Adv. No. **Refer to Summons**

**COMPLAINT TO AVOID AND RECOVER TRANSFERS
PURSUANT TO 11 U.S.C. §§ 547, 548, 549 AND 550 AND TO
DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

The Official Committee of Unsecured Creditors of Capsule International Holdings, LLC (the “Committee” or “Plaintiff”), by and through its undersigned counsel, files this complaint (the “Complaint”) to avoid and recover transfers against Ameren Corporation dba Ameren Marketing (the “Defendant”), and in support thereof alleges upon information and belief that:

NATURE OF THE CASE

1. Plaintiff seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the bankruptcy proceedings of Capsule International Holdings, LLC and its affiliated debtors and debtors in

¹ The Debtors and the last four digits of their respective tax identification numbers are: Capsule International Holdings, Inc. (1880); Capsule Group Holdings, Inc. (3047); Capsule Intermediate Holdings, Inc. (4242); Capsule Group, Inc. (4281); Capsule International LLC (9304); Capsule DE I, Inc. (1229); Capsule DE II, Inc. (7693); Capsule PA, Inc. (0950); Capsule Foreign Holdings, Inc. (8591); and Capsule International U.K. Limited (Foreign). The Debtors’ corporate headquarters are located at, and the mailing address for each Debtor is, Forman Holt Eliades & Youngman LLC, 80 Route 4 East, Suite 290, Paramus, NJ 07652, Attn: Charles M. Forman, Esq.

possession (collectively, the “Debtors”)² pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to proof, Plaintiff also seeks to avoid and recover from Defendant or any other person or entity for whose benefit transfers were made pursuant to sections 548 and 550 of the Bankruptcy Code any transfers that may have been fraudulent conveyances. Plaintiff also seeks to avoid and recover from Defendant or any other person or entity for whose benefit transfers were made pursuant to sections 549 and 550 of the Bankruptcy Code any transfers that were made after the Debtors commenced their bankruptcy cases and which transfers were not authorized by the Bankruptcy Code or this Court.

2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but hereby reserves all of its rights and the rights of the Debtors to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this adversary proceeding, which arises under title 11, arises in, and relates to cases under title 11, in the United States Bankruptcy Court for the District of Delaware (the “Court”), captioned *In re Capsule International Holdings, LLC, et al.*, Case No. 13-13281 (CSS), pursuant to 28 U.S.C. §§ 157 and 1334(b).

² The “Debtors” are all entities listed in footnote 1.

4. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548, 549 and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

5. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter final orders for matters contained herein.

6. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

7. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff states that it does consent to the entry of final orders or judgments by the Court 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.

PROCEDURAL BACKGROUND

8. On December 19, 2013 (the “Petition Date”) the Debtors each commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code.

9. On December 20, 2013, the Court entered an order authorizing the joint administration of the chapter 11 cases for procedural purposes [D.I. 50].³

10. On January 6, 2014, the Office of the United States Trustee for the District of Delaware appointed the Committee.

11. On January 16, 2014, the Court entered the *Final Order (A) Authorizing the Debtors to Obtain Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105, 364(c) and 364(d) (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; and (C) Authorizing the Debtors to Enter into*

³ All docket items referenced are from Case No. 13-13281, under which the bankruptcy cases are jointly administered.

Agreements with Each of Wells Fargo Capital Finance, LLC, as Revolving Agent, and Black Diamond Commercial Finance, L.L.C., as DIP Note Agent [D.I. 212] (the “Final DIP Order”).

The Final DIP Order granted the Committee the authority and standing to commence and prosecute the claims asserted herein, on behalf of the Debtors’ estates. See Final DIP Order § 2.5.4(b).

THE PARTIES

12. As more fully discussed in the *Declaration of J. Mark Borseth In Support of Chapter 11 Petitions and First Day Pleadings*,⁴ as of the Petition Date the Debtors were comprised of 10 separate entities. Constar Group Holdings, Inc., a Delaware corporation (“Holdings”), is a wholly-owned subsidiary of International Holdings. Constar Intermediate Holdings, Inc., a Delaware corporation (“Midco”) is a wholly-owned subsidiary of Holdings. Constar Group, Inc., a Delaware corporation (“Constar Group”) is a wholly-owned subsidiary of Midco. Constar International LLC, a Delaware limited liability company (“International”), is a wholly-owned subsidiary of Constar Group. International is the parent of four wholly-owned subsidiaries: BFF Inc., a Delaware corporation (“BFF”), DT, Inc., a Delaware corporation (“DT”), Constar, Inc., a Pennsylvania corporation (“Constar”), and Constar Foreign Holdings, Inc., a Delaware corporation (“Foreign Holdings”). Foreign Holdings directly owns 79.28% and Constar directly owns 20.72% of Constar International U.K. Limited, a United Kingdom limited company (“Constar U.K.”). Constar International Holland (Plastics) B.V., a Dutch *besloten vennootschap* (“Constar Holland”) is a wholly-owned subsidiary of Foreign Holdings, but is not a debtor in these Chapter 11 cases.

⁴ D.I. 17.

13. As of the Petition Date Constar International Holdings, primarily headquartered in Philadelphia, PA, and its subsidiaries were producers of polyethylene terephthalate (“PET”) in the U.S. and U.K., producing containers for food and beverages with 604 employees and operations in the United States and Europe. The Debtors operated seven plants in the United States and two plants in Europe. The Debtors primarily manufactured and sold bottles in the United States and preforms, which are test-tube shaped intermediate products used in certain blow-molding applications, in Europe.

14. Upon information and belief, Defendant was, at all relevant times, a vendor to or creditor of the Debtors that provides electrical and natural gas services. Upon further information and belief, at all relevant times, Defendant’s principal place of business is located at One Ameren Plaza, 1901 Chouteau Avenue, Saint Louis, MO 63166. Plaintiff is informed and believes and on that basis alleges that Defendant is a corporation residing in and subject to the laws of the State of Missouri.

FACTUAL BACKGROUND

15. Prior to the Petition Date, the Debtors, as producers of PET, maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services.

16. As producers of PET, the Debtors regularly purchased goods from various entities including vendors, creditors, suppliers and distributors. The Debtors also regularly paid for services used to facilitate their business.

17. As of the Petition Date, the Debtors utilized an integrated cash management system (the “Cash Management System”) for the collection, concentration, management, and disbursement of funds in the Debtors’ business.

18. Constar, as the sole operating company for the Debtors' U.S. operations maintained the Debtors' U.S. Bank Accounts. Constar primarily operated the Cash Management System through accounts maintained with Wells Fargo Bank, N.A. ("Wells Fargo") but also maintained miscellaneous bank accounts with other financial institutions as more fully discussed in the *Motion of the Debtors for Entry of an Order Approving (I) the Debtors' Continued Use of their Existing Bank Accounts and Cash Management System, (II) The Payment of Certain Obligations Related Thereto, (III) The Continuation of the Intercompany Transactions, (IV) Administrative Expense Status for Postpetition Intercompany Claims, (V) The Debtors' Continued Use of Existing Checks and Business Forms, and (VI) Granting the Debtors a Waiver of the Bond Requirement Contained in Section 345(b) of the Bankruptcy Code* [D.I. 8] (the "Cash Management Motion").

19. Constar maintained a master operating account at Wells Fargo with the account number ending with 6766 (the "Master Operating Account"), an A/P disbursements account at Wells Fargo with the account number ending in 2715 (the "A/P Disbursements Account") as well as several other accounts as more fully described in the Cash Management Motion.

20. Constar U.K. maintained several bank accounts at National Westminster Bank Plc ("NatWest") for collections and disbursements according to the type of currency used with account numbers ending in the numbers 1102, 0077, 0069, 7278, 1277 and 1269 (collectively the "NatWest Accounts" and collectively with the Master Operating Account and the A/P Disbursements Account the "Bank Accounts") as more fully described in the Cash Management Motion.

21. The Debtors drew upon the Master Operating Account, A/P Disbursement Account and NatWest Accounts to pay their vendors and other third parties, including Defendant.

22. During the ninety (90) days before the Petition Date, that is between September 20, 2013, and December 19, 2013 (the "Preference Period"), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits or otherwise to various entities.

23. During the course of their relationship, the Debtors and Defendant entered into agreements, which are evidenced by invoices, communications and other documents (collectively, the "Agreements"). The details of each of the Agreements paid for during the Preference Period are set forth on the Statement of Account, which is attached hereto and incorporated by reference as Exhibit A. Such details include "Invoice Number," "Invoice Date," "Invoice Amount," and "Debtor(s) Incurring Antecedent Debt."

24. The Debtors and Defendant conducted business with one another through and including the Petition Date pursuant to the Agreements.

25. As identified in the Agreements identified on Exhibit A, the Debtors purchased goods and/or services from Defendant.

26. Plaintiff has completed an analysis of all readily available information of the Debtors and is seeking to avoid all of the transfers of an interest of the Debtors' property made by the Debtors to Defendant within the Preference Period.

27. Plaintiff has determined that the Debtors made transfer(s) of an interest of the Debtors' property to or for the benefit of Defendant during the Preference Period through payments aggregating to an amount not less than \$104,856.34 (the "Transfer" or "Transfers").

The details of each Transfer are set forth on Exhibit A attached hereto and incorporated by reference. Such details include “Check Number,” “Check Amount,” “Check Clear Date,” and “Debtor Transferor(s).” Where a Transfer was made in a currency other than U.S. Dollars, the amount stated has been converted to U.S. Dollars based on the conversion rate as of the date of the Transfer.

28. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendant during the Preference Period of after. It is Plaintiff’s intention to avoid and recover all transfers made by the Debtors of an interest of the Debtors in property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Transfer(s), (ii) additional transfers, (iii) modifications of and/or revision to Defendant’s name, (iv) additional defendants, and/or (v) additional causes of action (*e.g.*, but not exclusively, 11 U.S.C. §§ 542, 544, 545, and/or 549) (collectively, the “Amendments”), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

29. Plaintiff acknowledges that some of the Transfers might be subject to defenses under Bankruptcy Code section 547(c), for which Defendant bears the burden of proof under Section 547(g).

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

30. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

31. Each Transfer was made to Defendant by the Debtor identified on Exhibit A under the column heading “Debtor Transferor.”

32. Each Transfer was paid from the Bank Accounts described *supra*, and constituted transfers of an interest in property of the Debtors.

33. Each Transfer constituted a transfer of an interest in property of the Debtors as identified on Exhibit A.

34. Defendant was a creditor at the time of each Transfer by virtue of supplying goods and/or services identified in the Agreements to the Debtor(s) identified on Exhibit A under the column heading “Debtor(s) Incurring Antecedent Debt” for which the identified Debtors were obligated to pay following delivery in accordance with the Agreements. See Exhibit A.

35. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1) because each Transfer either reduced or fully satisfied a debt or debts then owed by the Debtor identified on Exhibit A under the column heading “Debtor(s) Incurring Antecedent Debt” to Defendant. See Exhibit A.

36. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtor identified on Exhibit A under the column heading “Debtor(s) Incurring Antecedent Debt” to Defendant before such Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by the Debtor(s) identified on Exhibit “A” under column heading “Debtors Transferor(s).” See Exhibit A.

37. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

38. Each Transfer was made during the Preference Period. See Exhibit A.

39. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors' case were under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors' schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, the Debtors' liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors' bankruptcy estates.

40. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

COUNT II
(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

41. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

42. To the extent one or more of the Transfers identified on Exhibit A was not made on account of an antecedent debt or was a prepayment for goods and/or services subsequently received, Plaintiff pleads in the alternative that the Debtors did not receive reasonably equivalent value in exchange for such transfer(s) (the "Potentially Fraudulent Transfers"); and

- A. The Debtors were insolvent as of the date of the Transfer(s), or became insolvent as a result of the Transfer(s); or
- B. The Debtors were engaged, or about to engage, in business or a transaction for which any property remaining with the Debtors or for whose benefit the Transfer(s) was made was an unreasonably small capital; or
- C. The Debtors intended to incur, or believed they would incur, debts beyond their ability to pay upon maturity.

43. Based upon the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III
(Avoidance of Unauthorized Post-Petition Transfers – 11 U.S.C. § 549)

44. Plaintiff repeats the allegations above as if fully set forth herein.

45. To the extent any of the Transfer(s) made by Debtor(s) to Defendant cleared the Bank Account(s) after the Petition Date (the “Post-Petition Transfers”) and were not authorized by the Court or under the Bankruptcy Code, Plaintiff pleads in the alternative such Post-Petition Transfers are avoidable pursuant to 11 U.S.C. § 549.

COUNT IV
(Recovery of Avoided Transfers – 11 U.S.C. § 550)

46. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein, to the extent they are not inconsistent with allegations contained in this Count.

47. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b) and/or any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548 and/or any Post-Petition Transfers pursuant to 11 U.S.C. § 549 (collectively, the “Avoidable Transfers”).

48. Defendant was the initial transferee of the Avoidable Transfer(s) or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfer(s) were made.

49. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant the Avoidable Transfer(s), plus interest thereon to the date of payment and the costs of this action.

COUNT V
(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

50. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein, to the extent they are not inconsistent with allegations contained in this Count.

51. Defendant is a transferee of transfers avoidable under section 547, 548 and/or 549 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

52. Defendant has not paid the amount of the Avoidable Transfer(s), or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

53. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee, against the Debtors' chapter 11 estates or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s), plus interest thereon and costs.

54. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant, and/or its assignee, against the Debtors' chapter 11 estates or Plaintiff previously allowed by the Debtors or by Plaintiff, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment as follows:

- A. On the First Cause of Action, that the Court find all of the Transfers made during the Preference Period, as set forth in Exhibit A, to be avoidable under 11 U.S.C. § 547;
- B. On the Second Cause of Action, that the Court find all of the Potentially Fraudulent Transfers, as set forth in Exhibit A, to be avoidable under 11 U.S.C. § 548;
- C. On the Third Cause of Action, that the Court find all of the Post-Petition Transfers, as set forth in Exhibit A, to be avoidable under 11 U.S.C. § 549;

- D. On the Fourth Cause of Action, that the Court find Defendant liable under 11 U.S.C. § 550 to Plaintiff for not less than \$104,856.34, the aggregate amount of the Avoidable Transfers;
- E. On the Fifth Cause of Action, that the Court disallow any Claims held by Defendant or its assignee(s) until its liability to Plaintiff for the Avoidable Transfers has been satisfied, in accordance with 11 U.S.C. § 502(d) and (j);
- F. On all Causes of Action, an award for pre-judgment interest at the maximum legal rate running from the date of the Complaint to the date of judgment herein;
- G. On all Causes of Action, an award for post-judgment interest at the maximum legal rate running from the date of judgment herein until the date the judgment is paid in full;
- H. On all Causes of Action, an award for costs and expenses; and
- I. For such other and further relief as the Court may deem just and proper.

Dated: December 16, 2015

Delaware Counsel

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Defendant: **Ameren Corporation dba Ameren Marketing**
 Bankruptcy Case: **Capsule International Holdings LLC (fka Constar)**
 Preference Period: **Sep 20, 2013 - Dec 19, 2013**

Transfers During Preference Period

Debtor Transferor(s)	Debtor(s) Incurring Antecedent Debt	Check Number	Check Amt	Clear Date	Invoice Number	Invoice Date	Invoice Amt
Constar, Inc.	Constar, Inc.	700001433	\$42,955.51	11/15/2013	48001313101	10/16/2013	\$664.57
Constar, Inc.	Constar, Inc.	700001433	\$42,955.51	11/15/2013	1744713101	10/15/2013	\$42,290.94
Constar, Inc.	Constar, Inc.	700001354	\$733.41	10/10/2013	48001313091	9/16/2013	\$733.41
Constar, Inc.	Constar, Inc.	700001336	\$61,167.42	10/7/2013	1744713091	9/18/2013	\$61,167.42

Totals: 3 transfer(s), \$104,856.34

In re CAPSULE INTERNATIONAL HOLDINGS, LLC, et al. ¹ , <p style="text-align: right;">Debtors</p>	Case No.: 12-11661 (KJC) (Jointly Administered) Chapter 11
The Official Committee of Unsecured Creditors of Capsule International Holdings, LLC, <p style="text-align: right;">Plaintiff,</p> vs. Ameren Corporation dba Ameren Marketing, <p style="text-align: right;">Defendant.</p>	Adv. No. Refer to Summons

NOTICE OF DISPUTE RESOLUTION ALTERNATIVES

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. The purpose of this Notice is to furnish general information about ADR.

The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the *A*neutral.@

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.

Dated: December 16, 2015

/s/ David D. Bird
 Clerk of Court

¹ The Debtors and the last four digits of their respective tax identification numbers are: Capsule International Holdings, Inc. (1880); Capsule Group Holdings, Inc. (3047); Capsule Intermediate Holdings, Inc. (4242); Capsule Group, Inc. (4281); Capsule International LLC (9304); Capsule DE I, Inc. (1229); Capsule DE II, Inc. (7693); Capsule PA, Inc. (0950); Capsule Foreign Holdings, Inc. (8591); and Capsule International U.K. Limited (Foreign). The Debtors' corporate headquarters are located at, and the mailing address for each Debtor is, Forman Holt Eliades & Youngman LLC, 80 Route 4 East, Suite 290, Paramus, NJ 07652, Attn: Charles M. Forman, Esq.