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DEBTOR-IN-POSSESSION

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re:)
) Case No. 21-20392
WASATCH RAILROAD)
CONTRACTORS,) Chapter 11
EIN: 20-2515732) Subchapter V
)
Debtor-in-Possession.)

NOTICE OF INTENT TO DISMISS OR CONVERT CHAPTER 11 CASE

Wasatch Railroad Contractors (“Debtor”), debtor-in-possession herein, by and through its undersigned counsel, hereby files this notice to inform the Court and parties in interest of Debtor’s intention to seek dismissal or conversion of this chapter 11 case, and states as follows:

EVENTS DURING THE CHAPTER 11 CASE

1. On September 14, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code and elected to proceed pursuant to Subchapter V of chapter 11 of the Bankruptcy Code.

2. On November 5, 2021, the Court entered its Agreed Order Authorizing Use of Cash Collateral [Doc. 100] (the “Cash Collateral Order”). The Cash Collateral Order

establishes the secured claim of Gulf Coast Bank and Trust Company, the Debtor's principal secured lender ("Gulf Coast"). As provided in the Cash Collateral Order, Gulf Coast is owed no less than \$1,328,973.75 and the indebtedness is secured by valid, perfected, first priority deeds or mortgages, liens and security interests. Cash Collateral Order at ¶F. In addition, Gulf Coast was granted a post-petition lien on all post-petition cash, accounts receivable, inventory and income derived from the Debtor's assets and operation of the Debtor's business (to the extent of diminution in value). Cash Collateral Order at ¶2.b.

3. During this chapter 11 case, the Debtor has faced significant obstacles to its continued operations, including, but not limited to, interruptions to the Debtor's operations caused by vendors, difficulties and delays in collection of receivables owed by customers of the Debtor as a result of the bankruptcy filing, and being a named defendant in a federal forfeiture proceeding. And perhaps most disruptive to the business, the Debtor's largest customer issued a stop work order.

4. Specifically, prior to the Petition Date, the Debtor entered into a Railcar Construction Agreement (the "Agreement") with Mendocino Railway ("Mendocino", or "Sierra"). The Agreement was a large undertaking by the Debtor and the Debtor was required to dedicate the majority of its resources located in Shoshoni, Wyoming (equipment and personnel) to perform under the Agreement. The undertakings required for the Mendocino project necessitated the Debtor decline to take on new projects from other customers. The substantial majority of the Debtor's pre-petition revenue was generated from the Agreement, and it was Debtor's intent, at the time it commenced this

bankruptcy case, to rely on the Agreement in order to facilitate a successful reorganization, keep its employees employed, and continue operating in the future.

5. Prior to the Petition Date, the Debtor and Hopper Metals, Inc. (“Hopper Metals”) reached an agreement whereby Hopper Metals agreed to accept and dispose of certain scrap metal from the Debtor related to Agreement. Hopper Metals was made aware of the Agreement between the Debtor and Mendocino. On Schedule E/F of its bankruptcy petition, the Debtor scheduled Hopper Metals as having a pre-petition general unsecured claim against the estate for \$13,000.00.

6. Under its agreement with the Debtor, Hopper Metals agreed to accept and dispose of the scrap metal at a price per carload of scrap aluminum, payable by Hopper Metals to the Debtor. Upon receipt of the payments from Hopper Metals, the Debtor intended to use the funds to purchase additional supplies and materials for the Mendocino project and/or reimburse Mendocino on account of its ownership interest in the scrap metal. Hopper Metals is currently in possession, custody, and control of that certain scrap metal from the Mendocino project.

7. After the Petition Date, Hopper Metals refused to dispose of that certain scrap metal accepted from the Debtor, refused and has been unwilling to pay the Debtor or Mendocino for the scrap metal it accepted from the Debtor, and refused and is unwilling to return that certain scrap metal to the Debtor or Mendocino. These facts and circumstances are under criminal investigation. Upon the best information and belief, Hopper Metals’ actions are based on the Debtor’s inability to pay Hopper Metals on its

pre-petition claim in light of the bankruptcy filing (without question, Hopper Metals has violated, and continues to violate, the automatic stay).

8. Due to the refusal and unwillingness of Hopper Metals to pay for and/or return the scrap metal to the Debtor or Mendocino and pending resolution of that issue, as well as other issues raised by Mendocino with respect to the Debtor's work on the project, Mendocino instructed the Debtor to cease work on the project.

9. Due to the cessation of work on the Mendocino project, the Debtor has been unable to generate the anticipated level of revenue necessary to its reorganization efforts. The cessation of work on the Mendocino project also required the Debtor to lay off a significant number of its employees and the Debtor is currently operating with a bare minimum of employees necessary for operations. At the same time, administrative claims continue to accrue.

10. Despite the impact of these issues, the Debtor believed, as it did at the commencement of the case, that the Debtor had greater value as a continuing business operation than if the Debtor were to be liquidated in a chapter 7 proceeding. To that end, the Debtor, through its counsel and management, explored the possibility of a sale of the Debtor as a going concern through the bankruptcy case and a sale through a chapter 11 plan.

11. In those efforts, the Debtor, its management, and its counsel spent significant time in the past two months preparing financial information, lists of assets, liabilities, post-petition liabilities, vendor and customer lists, and sales presentations to market the Debtor's assets to various third parties. These efforts included reaching out to

and discussing the possibility of a sale with industry brokers and customers of the Debtor, and primarily, Mendocino.

12. At the same time as Mendocino issued the stop work order, Mendocino expressed a high level of interest in purchasing the Debtor's assets. The Debtor and Mendocino entered into a non-disclosure agreement pursuant to which the Debtor, in good faith, provided Mendocino with considerable information on the Debtor's assets, liabilities, customers, vendors, and going concern value. In the week prior to filing this pleading, the Debtor proposed a sale process which the Debtor believed, at a minimum, would be sufficient to satisfy secured claims of Gulf Coast and chapter 11 administrative claims in this case. And at best, the proposed sale process would have resulted in a significant distribution to unsecured creditors. The Debtor intended to formulate a chapter 11 plan around the sale process with Mendocino.

13. For sake of clarity, Mendocino was fully aware that issuing a stop work order would derail the Debtor's operations. Additionally, Mendocino was fully aware that the Debtor was operating in good faith to come to agreed upon sale terms prior to December 13, 2021 – the Debtor's deadline to file a plan in this case.

14. However, citing dramatically different circumstances arising in the past few weeks, alleging instances of misappropriation of Mendocino assets, and asserting a believe the Debtor overvalued its assets, Mendocino declined to pursue a purchase of the Debtor's assets. Mendocino provided no response to the Debtor's request for clarification on the general allegations of misappropriation.

15. Given the aforementioned circumstances, especially the secured interests of Gulf Coast in substantially all of the Debtor's assets and the absence of a realistic interest in a sale of the Debtor's assets through bankruptcy, and the Debtor's inability to formulate and timely file a feasible chapter 11 plan in light of its decreased revenue, the Debtor's believes it is in the best interests of the estate and creditors for this chapter 11 case to be dismissed or converted. And given the secured interests of Gulf Coast, the Debtor believes input from Gulf Coast is important prior to moving towards the final disposition for the case. To that end, the Debtor has discussed the case with counsel for Gulf Coast and is hopeful that, after time to consider the matter, Gulf Coast will provide its preference for the final disposition of the case.

16. The circumstances addressed above have significantly changed the landscape of this chapter 11 case. While the Debtor believes it has future revenue opportunities and "right sizing" the Debtor's business assets and properties can ensure continued operations, continuation of the chapter 11 reorganization is no longer in the best interests of the Debtor or its creditors given the uncertainty and expense involved for all parties. That said, it is conceivable that if the Debtor is able to "right size" its business after dismissal, the Debtor will eventually be in a position to restructure its obligations. However, the current circumstances of the case make filing a plan at this junction a highly improbable endeavor.

17. The Debtor files this notice because it believes it is prudent to provide notice of the Debtor's intentions to creditors, parties in interest, and stakeholders to

solicit their input in determining whether dismissal or conversion is in the best interests of creditors and the estate, and to the explain the Debtor's current, unfortunate, position.

Dated: December 13, 2021

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

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Counsel for the Debtor and Debtor-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2021, I caused a true and correct copy of the foregoing to be served, electronically, upon those registered with the Court's CM/ECF system.

/s/ Bradley T. Hunsicker
Bradley T. Hunsicker