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ATTORNEYS FOR
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.)

MOTION TO DISMISS CHAPTER 11 CASE

Wasatch Railroad Contractors (“Debtor”), debtor-in-possession herein, by and through its undersigned counsel, hereby files this *Motion to Dismiss Chapter 11 Case* (the “Motion”) pursuant to 11 U.S.C. §§ 1112(b), 349(b), 305(a)(1), and 105(a).

BACKGROUND

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 criminal forfeiture proceeding. And perhaps most disruptive to the business, the Debtor’s customers have ceased doing business with the Debtor.

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. 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. Debtor's efforts towards consummating a sale were unsuccessful.

13. To further frustrate matters, in light of the pending federal criminal indictment, all remaining customers of the Debtor have now ceased doing business with the Debtor and the Debtor no longer has any source of future revenue. The cessation of work required the Debtor to lay off its employees.

AUTHORITY

14. Section 1112(b) of the Bankruptcy Code provides for the dismissal of bankruptcy cases “for cause,” and subsection (4) describes a variety of factors which may constitute “cause” for the dismissal of a chapter 11 case. *See* 11 U.S.C. § 1112(b) and (b)(4).

15. In this instance, “cause” for dismissal exists under the following circumstances:

- a. 11 U.S.C. § 1112(b)(4)(A) – absence of a reasonable likelihood of rehabilitation
- b. 11 U.S.C. § 1112(b)(4)(A)(J) – failure to file or confirm a plan within the time fixed by the Bankruptcy Code

16. In addition, “[u]nder § 1112(b)(2), the bankruptcy court may dismiss or convert a Chapter 11 case if the debtor is unable to effectuate a plan, which means that the debtor lacks the ability to formulate a plan or to carry one out.” *Hall v. Vance*, 887 F.2d 1041, 1044 (10th Cir. 1989). “Dismissal under § 1112(b)(2) is appropriate where the debtor’s failure to file an acceptable plan after a reasonable time indicates its inability to do so whether the reason for the debtor’s inability to file is its poor financial condition, the structure of the claims against it, or some other reason.” *Id.*

CONCLUSION

17. 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.

Dated: January 3, 2022

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

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ORDER DISMISSING CASE

THIS MATTER came before the Court on the Debtor's Motion to Dismiss Chapter 11 Case. Upon a review of the Motion to Dismiss Chapter 11 Case and the pleadings on file, the Court finds that the Motion to Dismiss Chapter 11 Case should be granted. It is therefore:

ORDERED that the Motion to Dismiss Chapter 11 Case is **GRANTED**.

IT IS FURTHER ORDERED that this case is **DISMISSED**.

BY THE COURT:

Cathleen D. Parker
United States Bankruptcy Court Judge