Docket #0391 Date Filed: 04/29/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re:	)	Chapter 11
ENVIVA INC., *et al.*,	)	Case No. 24-10453 (BFK)
Debtors. [1]	)	(Jointly Administered)

DECLARATION OF MIKE GENEREUX IN SUPPORT OF THE SUPPLEMENTAL OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' DIP MOTION

I, Mike Genereux, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a partner of Ducera Partners LLC (along with its affiliates, collectively, "Ducera"), an independent investment bank that maintains an office at 11 Times Square, New York, NY 10036. Ducera has been retained by the Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors in possession (the "Debtors") as its proposed investment banker.

2. As an internationally recognized advisory firm, Ducera has an excellent reputation for advising both debtors and creditors in large and complex chapter 11 cases. Ducera professionals, with roots in complex corporate finance, offer impartial and independent strategic advice to stakeholders in a broad range of industries and situations, have extensive experience with investigating and analyzing claims of debtors and their estates, and specialize in, among other

[1] Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' proposed claims and noticing agent at https://kccllc.net/enviva. The location of the Debtors' service address is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

things, providing clients with leading-edge capital structure and restructuring advice and services in workout and bankruptcy situations. Ducera has experience in a variety of industries, providing specialized advice on matters including, but not limited to, restructurings, mergers, acquisitions, financings, capital structure advisory, and chapter 11 sales.

3. In my career, I have worked on a wide range of restructuring and special situation assignments, representing companies, ad hoc creditor groups, official creditor committees, corporate board committees, and acquirers and sellers of distressed assets. I have 29 years of investment banking experience. Before joining Ducera, I was a managing director at Piper Sandler & Co.; a partner at Perella Weinberg Partners; a partner at PJT Partners, where I also served on the firm's management committee; and a senior managing director at Blackstone in the firm's restructuring group. Earlier in my investment banking career, I worked for Credit Suisse First Boston and Merrill Lynch & Co. I received a Bachelor of Science degree from Wake Forest University and a Master of Business Administration degree from the Graduate School of Business at Columbia University.

4. Through my role as investment banker for the Committee, I am familiar with the DIP Motion and the terms of the proposed DIP Financing.[2] In connection with the DIP Motion, I have, among other things, reviewed materials posted to the Debtors' data room; participated in teleconferences with the Debtors' investment banker, Lazard Freres & Co. LLC ("Lazard"); participated in teleconferences with the Ad Hoc Group's investment banker, Evercore; reviewed documents produced by the Debtors in response to the Committee's discovery requests; and

[2] Any capitalized terms used but not defined in this Declaration have the meaning given to them in the *Preliminary Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [ECF No. 375] (the "Preliminary Objection").

reviewed transcripts of the depositions of Christian Tempke (Lazard); Glenn Nunziata (the Debtors' CEO), Ralph Alexander (acting chairman of the board of directors and one of two members of the Transaction Committee) taken by the Committee's counsel. Except as otherwise indicated, all statements set forth in this Declaration are based upon my personal knowledge of the facts set forth herein, my review of relevant documents, information provided to me by Ducera employees working under my supervision, and/or my views based upon my experience and knowledge as a restructuring professional.

5. I submit this declaration (the "Declaration") to respond to certain assertions made by Mr. Tempke in his deposition and declaration [ECF No. 29] (the "Tempke Declaration"), and in support of the Committee's supplemental objection (the "Supplemental Objection") to the DIP Motion.

6. I am not being compensated specifically for my testimony other than through payments received by Ducera as a professional proposed to be retained by the Committee as their investment banker in these chapter 11 cases.

7. I am authorized to submit this Declaration on behalf of the Committee. I am over the age of twenty-one years and, if called upon to testify, I would testify competently to the facts set forth in this Declaration.

I. The DIP Facility and RSA Were Entered Into Without Key Information Necessary to Determine Recoveries to Stakeholders Under a Plan of Reorganization

8. The DIP Facility and RSA are problematic in that some of the most critical information necessary to assess their impact on the Debtors' stakeholders is currently unknown.

9. The most significant driver of uncertainty is the Debtors' lack of a valuation and go-forward business plan, and that the Debtors are currently renegotiating their key contracts.[3]

[3] Declaration of Glenn Nunziata in Support of Chapter 11 Petitions [ECF No. 27] ¶¶ 112-16; 139.

Christian Tempke and Ralph Alexander testified [redacted]

10. These unknowns make it impossible to reasonably assess (i) what options in the bankruptcy the Debtors are foregoing by entering into the DIP and RSA; and (ii) what the Debtors are actually agreeing at this time to give away to the DIP Lenders and existing equity holders under the terms of the DIP and RSA. Without a comprehensive understanding of the go-forward business plan, valuation, and the outcome of the contract negotiations, one cannot make an informed decision on whether the proposed RSA represents the best path forward as compared to other potential alternatives.

11. This uncertainty also affects the ability to value the economics provided to the DIP Lenders under the DIP Facility. [redacted]

[4] Alexander Tr. 60:19-25 & 63:19-22.

[5] Tempke Tr. 141:3–17.

[6] *Id.*

[redacted] It is, therefore, impossible to determine how much value the Ad Hoc Group and existing equity holders stand to receive in connection with any equity conversion or equity rights offering and any harm to unsecured creditors due to their inability to participate in the DIP Facility and any impairment of their claims.[8]

12. That said, if one wanted to understand how the market generally is valuing the equity conversion rights provided to the Tranche A DIP loans, one would look to the market trading price for the Tranche A Facility, quoted at a mid-point price of approximately 119% of par value as of April 22, 2024. In other words, every $1 of Tranche A DIP Facility is being valued at approximately $1.19. This premium above 100% of the loan amount is the value buyers and sellers in the market are ascribing to the equity conversion option. On the other hand, the Tranche B Facility—which does ***not*** have an equity conversion right—is being quoted around 100% of par value.

13. Finally, Mr. Tempke states in his declaration that "the terms and conditions of the proposed DIP Facility on the whole . . . are comparable to other postpetition financing facilities approved recently by bankruptcy courts in chapter 11 cases with analogous issues and comparable complexity.[9] I disagree with Mr. Tempke's opinion, and in my view the DIP Facility proposed by the DIP Motion is far from commonplace when compared against comparable chapter 11 cases,

[7] Tempke Tr. 142:8–143:13.

[8] [redacted]. *See* Tempke Tr. 157:7–23.

[9] Tempke Declaration ¶ 31.

namely due to the equity conversion feature which is being provided (i) at the holders' option, (ii) at an undefined plan value, and (iii) at an undefined discount to the plan equity value.

II. The DIP Facility and RSA Cede Excessive Control to the Ad Hoc Group

14. Not only is critical information missing for the Debtors to make a reasoned decision, but the DIP Facility and the RSA are "linked" through numerous cross-default provisions in the DIP Facility Agreement and numerous termination events in the RSA. The DIP Facility and RSA therefore become doubly problematic—the Debtors have handed over significant control to the chapter 11 cases to the Ad Hoc Group without critical information needed to determine whether the DIP Facility and RSA are a good deal.

15. Specifically, the RSA provides the Ad Hoc Group with various termination rights, including if any Debtors pursue an Alternative Transaction, which is defined to include (i) alternative debt financings, (ii) alternative equity financings, and (iii) alternative restructurings including pursuant to section 363 of the bankruptcy code. The termination of the RSA for any reason is an Event of Default under the DIP Facility, giving the Ad Hoc Group significant leverage over the Debtors. Instead of the Debtors having the ability to pursue any value-maximizing transaction, the RSA and DIP "pre-wire" these cases to the terms contained in the RSA, which was developed prior to the Debtors or any of their stakeholders having sufficient information to evaluate the recoveries thereunder.

16. While the RSA does permit the Debtors to "consider, respond to and discuss unsolicited Alternative Transaction Proposals", the prohibition on the Debtors' ability to actively pursue alternative transactions materially impedes the process to seek value-maximizing alternatives under what is a compressed timetable.

17. In my experience, other than prepackaged chapter 11 cases, a particular lender group or equity holder typically does not secure this much control (and anticipated economic

benefits) this early in the chapter 11 process. "Prepacks," are not a meaningful comparison however, as all key information affecting the debtor's capital structure and its creditors' recoveries typically is known (or, at least, determinable)—and all key stakeholders have agreed to the material terms of the debtor's reorganization—before the commencement of the chapter 11 case. That is not the case here.

III. The DIP Facility Agreement and the RSA Unreasonably Limit the Debtors' Flexibility in Exploring and Pursuing Other Value Maximizing Options.

18. As noted above, the Ad Hoc Group's control over the Debtors' bankruptcy cases significantly hinders the Debtors' ability to maximize recoveries. In the case of potential sale transactions, restructuring transactions or financings, the RSA only permits the Debtors to consider and engage with unsolicited offers received from third parties. *See* RSA, Section 6(d). This one-sided process fails to ensure the Debtors' ability to market and solicit the transactions or financings and thus obtain offers from all potential bidders. Third parties may be unwilling to expend the time and resources necessary to submit proposals, on their own and without Lazard's solicitation, to the extent they perceive the chapter 11 cases are on track to a predetermined outcome based on linkage of the DIP Facility and the RSA.

19. Having the ability to proactively reach out to a broad universe of parties under a marketing process maximizes optionality and competitive tension compared to being limited to passively fielding inbounds. Without a thorough marketing process controlled actively by Lazard, the Debtors are undermining their own ability and effort to obtain the very best sale or financing offers available in the market.

IV. The Board Approved the DIP Based on the Faulty Premise That Absent Agreeing to the Terms Being Offered by the Ad Hoc Group, the Most Likely Scenario was a Free Fall Bankruptcy

20. Based on my understanding of the negotiations and surrounding facts, I do not believe that the Debtors were left with little negotiating leverage over the Ad Hoc Group.

21. The Ad Hoc Group would have undermined its own economic interest if it withdrew its DIP proposal and ceased negotiations with the Debtors, even if the Ad Hoc Group could not obtain all of its desired terms. As of March 14, 2024, the Ad Hoc Group held more than $1.4 billion of the Debtors' long-term debt (which represented nearly 80% of the Debtors' total debt).[10] Given this exposure, a freefall bankruptcy would have in all likelihood been detrimental to the Ad Hoc Group's financial recoveries.

22. Based on this, I believe it is possible (if not likely) that the Ad Hoc Group, acting in its own best economic interest, would not have walked away from DIP negotiations even if the Debtors had refused to agree to certain provisions sought by the Ad Hoc Group. Instead, even without these terms, the Ad Hoc Group likely would seek to avoid a value-destructive bankruptcy, and I expect the Ad Hoc Group would have been willing to continue negotiations with the Debtors to ensure that the Debtors obtained sufficient DIP financing and executed an orderly bankruptcy filing.

23. Decisions based on the economically irrational assumption that if the Debtors did not accept the terms being offered, the Ad Hoc Group would allow a free fall bankruptcy without any financing to follow, are not reasonable.

[10] *Verified Statement Regarding Ad Hoc Group of Creditors Pursuant to Bankruptcy Rule 9019* [ECF No. 50].

V. The Debtors' Failure to Focus on Recoveries for Unsecured Creditors in Favor of Ensuring Participation and Recoveries for Existing Equity Is Not Reasonable

24. During depositions, the Debtors' witnesses generally testified that they were focused on recoveries for equity holders and did not consider or focus on recoveries for general unsecured creditors. For example, Mr. Nunziata testified [redacted][11] Mr. Tempke testified that [redacted][12] Mr. Tempke further testified that [redacted][13]

25. There is no reason of which I am aware that the syndication of the portion of the DIP loans allocated to the company could not have included general unsecured creditors. Further, I am not aware of any reason that those creditors should not have been afforded the opportunity to participate in the allocation while existing equity (i) was provided that opportunity and (ii) received as a direct result material economic value which otherwise would have inured to the benefit of unsecured creditors.

VI. Fees Relating to the Tranche A DIP Cannot Be Assumed to Be Reasonable

26. The DIP Facility provides significant cash fees to the Ad Hoc Group and existing equity holders allocated participation in the DIP including (i) a 3.00% Backstop Premium paid to the Ad Hoc Group, (ii) a 5.00% Break Premium, (iii) a 3.00% Exit Premium on Tranche B and

[11] Nunziata Tr. 194:6-10.

[12] Tempke Tr. 165:5-22; 166:14-168:25.

[13] Tempke Tr. 192:13-193:13.

any portion of Tranche A repaid in cash at emergence, (iv) a 4.00% annual Undrawn Commitment Fee payable monthly, and (v) a 4.00% Upfront Premium paid to the Lenders as original issue discount, or "OID". In addition, the DIP Tranche A Lenders receive a significant and currently unknowable amount of value in the form of the equity conversion right. As both the plan value and the discount at which the proposed equity conversion will occur are unknown, it is impossible to calculate the total amount of value that the DIP Tranche A Lenders will receive as compensation for providing DIP financing to the Debtors, and thus impossible to assess the reasonableness of these fees in consideration for the value provided to the Debtors from the DIP financing.

27. The combination of the significant cash interest and fee payments and equity-linked consideration provided to DIP lenders through the equity conversion right, which provides significant and potentially unlimited upside, the DIP Facilities in aggregate represent a mismatched risk-adjusted return profile, with a defined downside floor, which ensures the DIP Lenders can opt to simply take a non-discounted cash payment (with a 3.00% Exit Premium) if the equity does not offer them additional upside. In my experience, in an arms-length negotiation, the economics related to upside participation rights should be considered in the context of overall fees provided to financing parties.

[*Remainder of page intentionally left blank*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: April 29, 2024 */s/ Mike Genereux*
Mike Genereux