IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re:	§	**CHAPTER 11 CASE**
BULLION DIRECT, INC.	§	**CASE NO. 15-10940-TMD**
Debtor.	§	

LIMITED OBJECTION BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO INTERIM FEE APPLICATIONS OF DEBTORS' PROFESSIONALS AND REPLY TO DEBTOR'S MOTION TO CONVERT

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") of BullionDirect, Inc. (the "Debtor") in the above captioned case (the "Case"), hereby files this *Limited Objection* to the following interim fee applications:

a) *First Interim Fee Application Of Martinec, Winn & Vickers, P.C.*, filed November 19, 2015, Docket No. 124 (the "Martinec Fee Application"); and

b) *First Interim Fee Application Of Unique Strategies Group, Inc*., filed November 19, 2015, Docket No. 125 (the "Bensimon Fee Application").

The Committee presents the following *Limited Objections* to the Bensimon Fee Application and the Martinec Fee Application. The Committee also presents its the Reply to the Objection (the "Objection to Conversion") filed on December 4, 2015, Docket No. 128 by the Debtor to the Committee's *Motion for Conversion to Chapter 7* (Docket No. 123, the "Motion to Convert")

I. Factual Background

a. The Nature of the Debtor as a Criminal Enterprise and Resulting Implications for Its Chapter 11 Case

1. While largely irrelevant to the issue of conversion, the tone and content of the Debtor's Objection to Conversion help demonstrate why the Committee has lost confidence and

trust in the chapter 11 process in this Case. While the Objection begins by stating "[i]t is difficult to imagine that any *experienced* lawyer would attempt to compare this case with notorious Ponzi-scheme cases, like Madoff and Stanford," *Objection* at ¶ 1 (emphasis added), the Court itself observed this similarity on the record at the first-day hearings in the Case.

2. The comparison drawn by both the Committee and the Court is completely accurate—like Madoff and Stanford, the operation here was a criminal enterprise that bilked thousands of people out of millions of dollars. At earlier points in the Case, counsel for the Debtor even agreed that this was analogous to a slow-moving Ponzi scheme.

3. The Objection itself identifies the criminally fraudulent activity of the Debtor:

> BullionDirect did maintain customer service information pertaining to every customer on its website, which showed those customers (who had elected to have BDI keep their cash and coins in storage), the amount of those coins purchased and cash available, customer by customer. Customers believed that the customer records accurately indicated the precious metal stored in a vault, which was not the case.

Objection at ¶ 1. This information was false and designed to induce customers to leave their assets with the Debtor. Transmitting this false information constitutes wire fraud. 18 U.S.C. § 1343. Wire fraud and theft were also committed when the Debtor solicited and accepted payments for new orders knowing that such orders would not be fulfilled. If anything, this is worse than a Ponzi scheme—Ponzi scheme victims usually expect big profits, whereas the Debtor's victims just expected to get the assets they purchased.[1]

[1] The Debtor's now-strident assertion that this was not a Ponzi scheme could have negative tax implications for victims. *See* I.R.S. Rev. Proc. 2009-20, available at https://www.irs.gov/pub/irs-drop/rp-09-20.pdf. It has the following factors for a Ponzi scheme: "the criminal enterprise receives cash or property from investors; purports to earn income for the investors; reports income amounts to the investors that are partially or wholly fictitious; makes payments, if any, of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement; and appropriates some or all of the investors' cash or property." *Id.* at § 4.01. All of these factors are here except that the victims did not even expect or receive income—they just wanted their assets back. Counsel for the Committee hopes that the IRS, unlike Debtor's counsel and CRO, will not distinguish

4. Chapter 11 for criminal enterprises is somewhat unusual—after all, a bankruptcy court cannot discharge criminal liability or stay law enforcement actions. A bankruptcy filing also can hurt victim recoveries by delaying government enforcement actions and preventing an ensuing receivership, even though receivers have litigation advantages over bankruptcy trustees, and even though receiverships can extend to the personal assets of the insiders perpetrating the fraud, unlike a bankruptcy proceeding.[2] *See, e.g., Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 967 (5th Cir. 2012) (noting that a receiver is not subject to *in pari delicto* defense but that a bankruptcy trustee is). *See also* Order, *Commodities Future Trading Commission v. Daren Palmer & Trigon Group, Inc.*, No CV-09-76-S-EJL (D. Idaho Feb. 26, 2009) (appointing a receiver for a criminal enterprise *and* its CEO).

5. A chapter 11 can offers further advantages for the criminals. While a criminal enterprise typically cannot remain as a debtor-in-possession, *see* 11 U.S.C. § 1112(b)(4)(B) (providing gross mismanagement as cause for conversion), criminals can avoid this problem by convincing sympathetic, cooperative, or naïve managers into taking over the enterprise prior to the chapter 11 filing by promising new management illusory sale opportunities that can be used in part to pay lucrative fees to new management. This benefits the criminals—they get more time, avoid or delay an equity receivership over their personal assets, and likely obtain back-channel communications with the insiders they selected. The criminals may also obtain valuable insights into the evidence and litigation strategy either directly through new management or

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between this case and a classic Ponzi scheme based on the sole fact that victims here did not expect large profits. A Ponzi scheme is just one type of criminal enterprise, and victims of all criminal enterprises should receive equal treatment under law (including titles 11, 18, and 26 of the United States Code).

[2] An attorney for the Commodities Futures Trading Commission stated that receiverships are less likely when the bankruptcy process has been invoked.

through new management using the bankruptcy process to force premature public disclosure of the evidence and strategy of the adversaries of the criminal.

6. Criminal enterprises naturally tend to have lower chances for successful reorganization. Criminals enterprises make money through crime, not through legitimate business activities. Criminals are not legitimate businessmen; it is reasonable to question whether they have produced assets of value.

7. The bankruptcy case of the Tulving Company, another fraudulent enterprise that accepted payments for bullion while knowing that orders would not be fulfilled, is the more traditional approach—there, a chapter 7 panel trustee was appointed as chapter 11 trustee and the case subsequently converted to chapter 7. *See* Order Converting Case to Chapter 7, *In re The Tulving Company, Inc.* No. 14-bk-11492 (Bankr. C.D. Cal. May 29, 2014).[3] The time for treating this Case differently has passed.

b. The History of this Case

8. The value of this Case being in chapter 11 under control of current management has been properly examined by the Committee from the Committee's inception in late August 2015. The Debtor's new management has not followed standard norms for the wind-up of a long-going, deeply criminal enterprise.[4] The Debtor's new management made it clear to the

[3] The Tulving Company and its manager plead guilty to wire fraud. *See* http://www.justice.gov/usao-wdnc/victim-witness-assistance/united-states-v-hannes%20tulving.

[4] The Debtor's new defense for not taking meaningful steps to investigate the estate's causes of action is that the Committee should have done it. *See generally Objection to Conversion*. This of course conflicts with the Bankruptcy Code, which provides that the Debtor "shall perform" all of the duties of a trustee. 11 U.S.C. § 1107(a). The Debtor cites authority that does permit a Committee to pursue litigation. However, this authority should be the exception, not the norm in chapter 11—it is generally appropriate where the Debtor's management has a conflict of interest. *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233, 253 (5th Cir. 1988) ("Where the interests of an estate and its creditors are impaired by the refusal of a trustee . . . to initiate adversary proceedings to recover property of the estate, we must consider that refusal unjustified."). Further, the Debtor's budget left no room for the Committee, which was fine because the Case would need to convert to chapter 7 without success on the sale side by mid-

Committee that the Debtor would not investigate and litigate, as normal in a Case like this, and instead stated that this criminal enterprise apparently had some valuable assets that the Debtor would sell within the next few months.

9. The Committee was willing to go along with this unusual approach for a few months. After all, the budgets prepared by the Debtor showed that professional fees (even without the Committee) would exceed available cash without sales by the middle of October. *See* DIP Budget, *Emergency Motion for Order Authorizing Payment of Expenses of Debtor In Possession*, filed July 27, 2015, Docket No. 13 (stating cash on hand of $162,000 and projecting expenses of $213,000 by the end of October). The Committee thought the Debtor's management agreed with the Committee's repeated statements of its view that mid-October would be the point when the Case should be converted unless progress was made toward some sort of sale. The Committee's counsel was willing to serve despite these problems.

10. The Committee was only willing to go along with this unusual, no-litigation approach for a criminal enterprise in chapter 11 as long as the Debtor's new management would also agree not to take the Debtor's $180,000 in cash in the meantime. This approach mirrors the mantra repeated by the Debtor's Chief Restructuring Officer at several early meetings in this Case, including at the public creditors' meeting—"do no harm." It would clearly be harmful for the Debtor's remaining $180,000 cash to be consumed without any sales: in that event, the Case would need to convert and the chapter 7 trustee would have even fewer resources to conduct the sort of investigation that is normal in the bankruptcy proceeding of a criminal enterprise.

11. The hostility of the Debtor's current management to the Committee first became obvious when the Committee asked the Debtor's management to back up their "do no harm"

October and the Committee's counsel was willing to begin a preliminary investigation in the meantime and see where the asset sales would lead.

representations by agreeing not to take the Debtor's cash in the early stages of the Case. Along with making it clear that in the Committee expected (a) an investigation process, (b) results, or (c) conversion within a few months, the Committee asked that the Debtor's management not take this cash.

12. The Debtor had sought to take this case. It filed a request to pay its counsel monthly. *Application for Employment of Attorneys Pursuant to Local Rule 2014 and 9013(c)3,* filed July 22, 2015, Docket No. 8. The Debtor also sought to retain a Chief Restructuring Officer (the "CRO"). *Application for Employment of Financial Advisor*, filed July 30, 2015, Docket No. 19. While the Debtor did not propose paying the CRO directly itself on a monthly basis, the CRO was also hired as CEO of the Debtor's wholly-owned non-debtor subsidiary, and the terms of that retention did not appear to preclude regular payments by the subsidiary without Court approval. *Id*. at ¶ 7 & Exhibit C.

13. The Committee's counsel asked the Debtor not to pay its counsel monthly and also asked about whether the CRO was being paid by the non-debtor subsidiary, and if so, how much. This question provoked the first of several angry phone calls from Debtor's counsel to Committee's counsel.[5] The Debtor's counsel nevertheless agreed to remove the regular monthly payment provisions from his retention.

[5] The Debtor's management repeatedly now complains, "the Committee, without explanation (to this day), accused the CRO and counsel of taking funds from Nucleo Development." *Objection to Conversion* at fn. 6 & ¶ 4. The Committee did not make this accusation. It merely asked whether those payments were being made. Taking this question as an accusation is odd—the Committee has the right to make such inquiries. 11 U.S.C. § 1104(c)(2). The Debtor had even filed retention papers potentially indicating that at least the CRO might be paid from this subsidiary on a regular basis, this question should not be taken as an insult. The eagerness of the Debtor's management to take personal offense to honest, well-intentioned questions and concerns from the Committee may be designed to deter the Committee from doing its duty. The eagerness of the Debtor's management to be less than forthright, as shown in this footnote, has caused the Committee to lose confidence in the chapter 11 process.

14. September began with the Debtor's management revealing that the CRO had not in fact been directly in touch with the alleged buyer for the assets in the quick-sale that was one of the most important premises of the chapter 11 case. All of this information about the sale had in fact come from the criminal who had appointed the CRO. It was not until the week of August 31, 2015—more than a month after the bankruptcy filing—that the CRO actually had some contact with the supposed buyer. Then, on September 1, 2015, the Debtor provided the Committee with a copy of an apparent agreement directly between the buyer and the ultimate licensor that did not have the Debtor or its subsidiary as a party and did not provide any payments to the estate or its subsidiary. This of course alarmed the Committee—there had been no prior disclosure that all of the information previously provided by the CRO about this potential transaction was second-hand hearsay from a criminal with motive and the ability to string along the Debtor and this Case. The information at hand made that offer seem illusory. And, it has not yet materialized.

15. Despite sinking feelings, the Committee members continued to be patient. October passed without meaningful progress by the Debtor towards a sale or transaction. The Committee's counsel conducted a useful and efficient preliminary investigation in the months of September and October that indicates that the criminal nature of the Debtor's enterprise was known to many insiders and other persons who could have stopped the crime from continuing, but did not.[6]

[6] The Debtor seems intent on drawing out this evidence at this early stage. The Committee is concerned about publically revealing preliminary theories and evidence, especially given evidence of spoliation of evidence and destruction of documents. There are very good reasons that law enforcement does not publically comment on ongoing investigations. However, to the extent that the Court requires such evidence to be revealed at this stage in the context of moving for conversion or opposing fee applications, the Committee will produce the evidence it has.

16. Towards the end of October, the Debtor's management produced a letter-of-intent from Cheryl Huseman, who was the Debtor's lawyer and shareholder and the mother of the Debtor's CEO, and her husband Jack Murph. More important than the source of the offer, however, was the offer's lack of actual material terms. The Committee expressed concerns that this an attempt to string along the chapter 11 case and asked the Debtor to obtain a meaningful offer to discuss and scheduled a call for the evening of November 10 with the hopes that this would be sufficient time for a material offer to appear. The Committee followed up with the Debtor about this offer in the week prior to this November 10 call but received no response.

17. At this call on the evening of November 10 the Committee was surprised and frustrated to learn that there *still* was no material offer. The call was therefore meaningless—the insiders here want a release of claims against them, and the Committee believes those claims are in the millions of dollars because those insiders aided and abetted this criminal enterprise instead of stopping it. The Committee was reasonable to expect those insiders to make the first offer; the victims should not bargain against themselves. The Committee's opening offer would likely have been $25 million and an apology.[7]

18. After this no-offer surprise, the November 10 phone call turned to the Committee's unhappiness with the refusal of the Debtor's CRO to conduct or fund an investigation. The Debtor's management did not agree to make accommodations; instead they accused the Committee's counsel of sabotaging deals.[8] The Debtor's counsel also now switched

[7] The Committee of course would not stick with such an offer. The Committee ultimately did indicate that it would provide an appropriately limited release in exchange for merely a loan for the chapter 11 costs of confirmation to be repaid from promised profits of the Debtor's business. *See Objection to Conversion*, Exhibit C at pg. 1.

[8] The Debtor has now repeated this accusation many times in public. *Objection to Conversion*, ¶ 25 & 32; Any such accusation is based on hearsay: the Committee's counsel has never been on any calls with both the Debtor's professionals and any potential investors or buyers. Further, the Committee counsel has only ever talked with one potential buyer, who called on November 4, 2015. This buyer began the

positions and vehemently denied that the Debtor could be aptly compared with a slow-moving Ponzi scheme, despite having previously agreed with that very apt comparison himself (which the Court itself made at the first-day hearings).

19. After Debtor's management left the November 10 call, the Committee decided to make an offer to avoid moving conversion. This decision wasprimarily motivated by the lack of progress in the chapter 11 case coupled with the ever-increasing administrative expenses, which now threatened to exceed available cash (as predicted by the Debtor from the inception of the Case.) *See Monthly Operating Report*, filed November 23, 2015, Docket No. 126 (confirming that, as of the end of October, there were in fact net losses of $203,282 with cash of $). The tone and attitude of the Debtor's professionals may have also caused the Committee to lose confidence in the process—hearing the Committee's counsel blindsided with false personal attacks, when that counsel had been urging the Committee to have faith in the chapter 11 process for months, did not help.

20. Since the Committee had expected conversion in mid-October based on discussions with the Debtor, it was reluctant to further delay conversion the November 10 call. Nevertheless, counsel for the Committee persuaded the Committee to agree to further delay

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conversation with the obvious question of whether conversion was possible, and the counsel for the Committee gave the obvious, honest answer, which is that conversion was possible. Counsel for the Committee then urged the buyer to contact the Debtor's professionals, who had never approached this buyer even though it is based in Texas and in the industry, and make an offer. This should not be a surprise—despite the Debtor's counsel accusing the Committee's counsel of being a "Calvinist," the Committee's counsel would like to see the law firm that employs him get paid at some point.

After these accusations were made in the *Objection to Conversion*, Committee's counsel called the potential buyer on December 7, 2015 to ensure that his recollection of events was correct. The potential buyer's employees said yes, and that the candor of the Committee's counsel was encouraging. The potential buyer's employees also expressed concerns about the quality of the Debtor's software, which is not surprising because the Debtor was run by criminals, not software developers. The potential buyers said that they would not match the offer proposed by the Debtor and that the projections of quick profits under that offer were not realistic. The potential buyer also confirmed that it had never heard from the Debtor about a potential sale even though it is in the bullion industry in Texas.

conversion if the Debtor would agree not to try to file a chapter 11 plan without the Committee's participation and consent. In a now-typical tirade, the Debtor's counsel refused to make any meaningful accommodation. The Debtor ultimately said it would agree to voluntary conversion on December 15 unless a chapter 11 plan was filed first, and refused to give the Committee the chance to approve the plan before filing it.

21. The Committee went ahead and filed for conversion as stated because did not want be unpleasantly surprised yet again by the Debtor in this Case. This is understandable given the numerous negative surprises so far about the sales process, and the loss of confidence in the chapter 11 process. The Debtor's counteroffer on conversion would have permitted the Debtor's management to avoid voluntary conversion by unilaterally filing a meaningless plan on December 14. That would delay conversion until February at the earliest, buying the criminals another few months, and perhaps giving them the chance to further string along creditors with a meaningless, illusory transaction under a chapter 11 plan. As explained above, this chapter 11 process is effectively playing into the hands of the criminals and needs to stop.

22. Since the Debtor refused to put the Committee on equal footing, the Committee filed the *Motion for Conversion to Chapter 7* on November 16, 2015 (Docket No. 123, the "Motion to Convert"). The Motion to Convert cites the loss to the estate and lack of reasonable chances of rehabilitation as cause to convert. As obvious based on the history described herein, the Motion to Convert preferred to avoid the ugly background that preceded it, although it does point out that the Debtor had made a business decision not to litigate and that the Debtor began by endorsing unconscionable contract-based justification used by the criminals' for their crimes.[9]

[9] The CRO's opening declaration cited the plainly unconscionable "use clause" in the 2012 Customer Agreement, which may have been some sort of self-serving justification for the criminals here. *Declaration of Dan Bensimon in Support of Debtor's Petition and First Day Motions* at ¶ 3, filed July 28, 2015, Docket No. 16. Further, if counsel for the Committee correctly recalls, the Debtor's counsel cited

c. Problems with the Huseman/Murph Offer

23. The Debtor only points to the Huseman/Murph offer as hope for reorganization. Committee's skepticism about the Huseman/Murph offer is very well-placed. First, the timing of the offer is problematic. Huseman and Murph have had years of involvement with the Debtor. The Case was filed in July. Yet the Debtor's new management first mentioned the offer in the middle of October. Finally, the offer was not produced until the day before Thanksgiving, more than a week after the Motion to Convert was filed. This is of course the optimal timing for continuing to string along the chapter 11 case—as the Objection notes, if the Case does not convert now, another three or four months will pass in chapter 11. *Objection*, ¶ 24. For anyone trying to avoid or delay a lawsuit against them, this additional delay is preferable.

24. The terms of the Huseman/Murph offer are also problematic. The initial "consideration" offered by the investors was a loan that would be repaid ahead of creditors. The proceeds of this loan would only be sufficient to fund chapter 11 exit costs, leaving Newco with no cash to operate. Newco's pro formas, however, show $87,000 in net losses its first year. *See Objection to Conversion*, Exhibit B at pgs. 7-9. This means either that further capital would be needed for Newco or that Huseman/Murph would just foreclose when the loan becomes due in four months, sell the software platform (which the Committee does believe has some value), take those proceeds for themselves, and enjoy the benefits of a cheap (or free) release of their liability

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this "use clause" to the Court at the first-day hearings in this case in reply to the Court noting the similarities between this Case and the Stanford fraud. This "use clause" appears to have been drafted with the knowledge or participation of Cheryl Huseman, Chad's mother and a lawyer to the Debtor, and the very person making the offer that serves as an excuse for further delay.

to the Debtor and its victims.[10] The fact that the CRO characterized this offer as "good" does not help restore the Committee's confidence. *See Objection to Conversion*, Exhibit C at pg. 2.

25. While the Huseman/Murph offer was revised on December 7, 2015 to be a $200,000 loan, it still has the same problem—it is not clear what cash, if any, will be left in the Newco upon plan confirmation. Further, the revised Huseman/Murph offer still has Huseman and Murph retaining a veto power over the trustee that will be responsible for litigation against criminals, including the relatives and former colleagues of Huseman. It also still offers full, unconditional releases of Huseman and Murph. The Committee had previously communicated its problems with all of these aspects, and these communications have been ignored.

26. The promises made to creditors in both versions of the Huseman/Murph offer may not be realistic. It is not clear what data supports the pro formas submitted along with the offer. The pro formas lack any stated assumptions and the other indicia of reasonably reliable projections. The Debtor has no history of making profits. Instead, it appears that the Debtor historically charged insufficient 2% commissions; it is not clear whether customers will use a trading platform if commissions are raised to 3%, as proposed. The potential negative reputation of the trading platform due to its association with the Debtor is yet one more problem with this offer. The Committee's proposal to repay Huseman and Murph for funding of chapter 11 exit costs from these promised profits was rejected by Huseman and Murph, which casts even more doubt on the reliability of those projections. *See Objection to Conversion*, Exhibit C at pg. 2.

27. The Committee is also not sure why this would act as a stalking horse bid to prompt more offers to come out of the woodwork—the Debtor had been trying for years to find

[10] In addition to Huseman's involvement as legal advisor to the Debtor and knowledge of the Debtor's insolvency, Jack Murph apparently sold $14,000 he had stored with the Debtor in September 2012, right around the time the Debtor first hired its bankruptcy counsel, and a few months after his wife was clearly told that the Debtor had substantial losses.

investors without success, no other offers have been proposed in the Case, and there is plenty of other evidence showing that the Debtor might not have been an accomplished software developer.[11]

28. The Committee also does not believe that the offer would go away in chapter 7 if it was a bona fide offer instead of an attempt to maintain the status quo and delay conversion. The chapter 7 estate will be open for a number of years and the estate could do a profit-sharing transaction and retain those rights while the case progresses. As the end of the chapter 7 case draws near, the stock or interests of the new company, if worth anything, could be distributed to creditors through some sort of appropriate mechanism or auction for cash or for creditors foregoing cash distributions to some extent.

29. The Committee is considering a reply proposal. The Committee has been informed that a hearing on the Motion to Convert cannot be set until January 2016 without a request for expedited relief. The Committee is deciding whether to make such a request for expedited relief. The Committee members understandably seem to be sick of this Case and the open contempt displayed by the Debtor's CRO and counsel towards the Committee.

II. ARGUMENT

a. No fees should be paid or finally awarded at this time.

30. The Bensimon Fee Application seeks immediate payment of $81,241.90. *See* Proposed Order, *Bensimon Fee Application* at pg. 15. The Martinec Fee Application seeks immediate payment of $124,183.26. *See* Proposed Order, *Martinec Fee Application* at pg. 9-10. Paying a combined amount of $205,425.16 to professionals at this stage in the Case would leave $26,998.84 in the Debtor's bank account (based on the cash position as of the end of October).

[11] On a call with the Debtor's counsel, the Debtor's CRO, and a potential witness on December 7, 2015, the witness, a software programmer, also noted issues with the Debtor's software.

31. The Committee does not believe that these payments should be made at this time because these payments are not required by the Bankruptcy Code prior to plan confirmation and because these payments would clearly harm the estate. To explain to other creditors, the allowed claims of professionals will be entitled to chapter 11 administrative priority. 11 U.S.C. § 503(b)(2). Those claims will be subordinate to chapter 7 administrative expense claims if the Case converts to chapter 7. *Id*. §§ 507(a)(1)(C) & 507(a)(2) (providing first priority to chapter 7 administrative expense claims and second priority to chapter 11 administrative expense claims).

32. If the Case converts, the chapter 7 trustee will decide if and when to pay the fees. This decision should be left to the trustee here, with conversion pending. Nothing in chapter 11 requires interim fees to be paid prior to plan confirmation; while the Committee would have agreed to interim fee arrangements in a normal case, it did not want to do so here for the reasons stated above. These reasons were communicated several times to the Debtor's management and the Debtor's management agreed. The Bensimon Fee Application and the Martinec Fee Application appear to revoke that agreement. Payment of these fees now would harm creditors and the estate and should not be permitted.

33. The Committee also objects to the Bensimon Fee Application and the Martinec Fee Application insofar as they seek final allowance of any fees. The Committee does not need to spend time and money reviewing the fee applications at this juncture. The Committee actually has not spent any time considering whether a substantive objection should be filed to the Bensimon Fee Application and the Martinec Fee Application. Any interim approval should be without prejudice to further consideration.

b. Conversion is appropriate at this point.

34. Given the continuing problems with the Huseman/Murph offers discussed above, the Committee does not believe that the conversion should be further delayed based on this last-minute, inadequate offer. There are no ongoing business operations to be interrupted by conversion. Conversion paves the way for a permanent trustee with access to resources to develop a comprehensive litigation strategy based on a full investigation.

35. The Debtor's *Objection to Conversion* does not address "the substantial loss" alleged by the Motion to Convert, although it does summarily dismiss the allegation of administrative insolvency as "frivolous." *Objection*, at ¶ 32. The evidence of substantial loss is clear—the Debtor's management in fact wants to inflict that substantial loss on the estate by taking around 90 percent of the estate's cash, as demonstrated by their fee applications.

36. The Debtor's *Objection to Conversion* mischaracterizes the Committee's argument about the chances of rehabilitation as the following: "a Chapter 7 trustee will be able to increase the distribution to creditors." *Objection*, ¶ 32. This is plainly not true—the Motion to Convert doesn't say that at all. Instead, the Committee stated in the Motion to Convert, "[i]t is unclear what, if any, material opportunities for asset sales will be lost through conversion to chapter 7." *Motion to Convert*, at ¶ 32. Conversion should not hurt any legitimate sale opportunities. If Huseman and Murph really want the assets, instead of a cheap release following insufficient investigation or further delay, then they can bargain with the chapter 7 trustee.

37. Certainly, the Committee does not believe that chapter 7 will be a great result. However, while conversion here is bad for the chapter 11 professionals, and bad for the people who need to be held accountable for knowingly participating in a criminal enterprise, the

Committee does not believe that conversion will materially hurt creditors or any real chances for asset sales or other deals. There are no business operations to be interrupted by conversion. Chapter 7 trustees routinely market and sell property. Mechanisms for sharing future profits with creditors can be found if a serious offer appears.

WHEREFORE, the Committee respectfully request that the Court enter an order converting the Case to chapter 7, denying the Bensimon Fee Application and the Martinec Fee Application without prejudice, or granting them without immediate payment or prejudice and subject to a final fee application, and granting such other relief as is just and proper.

Respectfully submitted,

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Counsel to the Official Committee of Unsecured Creditors

Certificate of Service

I hereby certify that on December 8, 2015 I caused this Motion to be served to the attached Master Service List by U.S. mail first class, postage pre-paid.

/s/ Jesse T. Moore
Jesse T. Moore