



assertions, the Debtors and their management have been actively pursuing, in the appropriate discharge of their fiduciary obligations, a restructuring of the Debtors' businesses so that they can successfully emerge from chapter 11 as a going concern enterprise. As set forth in the Debtors' Objection, the Noteholders have utterly failed to establish that appointment of a chapter 11 trustee for the estates of the Non-Obligor Debtors is appropriate or warranted as either a matter of law or fact.

3. Moreover, if granted, the Trustee Appointment Motion would set off a chain of events that, paradoxically, could result in erosion of the very value the Noteholders purportedly desire to preserve. Specifically, as explained in the Debtors' Objection, appointment of a chapter 11 trustee would constitute an event of default for purposes of the DIP Facility,<sup>2</sup> not only immediately terminating the Debtors' ability to use cash collateral,<sup>3</sup> but also allowing the DIP Facility lenders to cease extending further credit to fund operation of the Debtors' businesses.<sup>4</sup> In addition, the DIP Facility lenders would also not be required to extend *any* financing or credit to the chapter 11 trustee.<sup>5</sup> Thus, at a very critical juncture in its cases, Patriot

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<sup>2</sup> In pertinent part, section 9.01 of the First Out DIP Credit Agreement, provides "Any of the following shall constitute an Event of Default . . . (n) . . . (ii) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, an examiner with enlarged power relating to the operation of the business (powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors and the order appointing such trustee or examiner shall not be reversed or vacated within 30 days after the entry thereof."

<sup>3</sup> See the Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 [ECF No. 275] (the "**Final DIP Order**"), ¶ 17(b) (" . . . it shall constitute an Event of Default and terminate the right of the Debtors to use Cash Collateral if any of the Debtors seeks, or if there is entered . . . an order appointing a chapter 11 trustee in any of the Cases").

<sup>4</sup> See Section 4.01 of the First Out DIP Credit Agreement (requiring that no default exist under same prior to advancement of credit).

<sup>5</sup> Final DIP Order, ¶ 27.

could suddenly find itself without financing and, likely, be forced to liquidate.

4. The First Out DIP Agent submits that the relief requested in the Trustee Appointment Motion is unnecessary to give the Noteholders a voice in these chapter 11 cases. As parties in interest, the Noteholders can continue to make their views known to other constituencies and to the Court. The draconian relief requested would lead to a host of consequences that would not be in the best interests of the estates and their stakeholders and could substantially, if not fatally, impair the Debtors' efforts to reorganize. Accordingly, the First Out DIP Agent respectfully requests that this Court deny the Trustee Appointment Motion and hereby reserves its right to supplement this joinder at the hearing on same.

Dated: St. Louis, Missouri  
April 16, 2013

Respectfully submitted,  
**HUSCH BLACKWELL LLP**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECF system on all parties receiving ECF notices in this case on this 16th day of April, 2013.

*/s/ Marshall C. Turner* \_\_\_\_\_