

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

RADIOSHACK CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 15-10197 (BLS)
(Jointly Administered)

Re: Docket No. 2296

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO MOTION OF SALUS CAPITAL PARTNERS, LLC TO CONVERT
DEBTORS' CHAPTER 11 CASES TO CASES UNDER
CHAPTER 7 OF THE BANKRUPTCY CODE**

The Official Committee of Unsecured Creditors (the “*Committee*”) of RadioShack Corporation, *et al.* (collectively, the “*Debtors*”), submits this objection (the “*Objection*”) to the motion (the “*Motion*”) of Salus Capital Partners, LLC (“*Salus*”) to convert the Debtors’ Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code, and respectfully represents:

PRELIMINARY STATEMENT

1. The Motion is nothing more than a self-serving attempt by Salus to improve its under secured status at the expense of all other constituencies which have worked diligently to bring these complex chapter 11 cases towards a successful conclusion on July 22, 2015 pursuant to the Debtors’ plan of liquidation [Docket No. 2404 (the “*Plan*”)].

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: RadioShack Corporation (7710); Atlantic Retail Ventures, Inc. (6816); Ignition L.P. (3231); ITC Services, Inc. (1930); Merchandising Support Services, Inc. (4887); RadioShack Customer Service LLC (8866); RadioShack Global Sourcing Corporation (0233); RadioShack Global Sourcing Limited Partnership (8723); RadioShack Global Sourcing, Inc. (3960); RS Ig Holdings Incorporated (8924); RSignite, LLC (0543); SCK, Inc. (9220); Tandy Finance Corporation (5470); Tandy Holdings, Inc. (1789); Tandy International Corporation (9940); TE Electronics LP (9965); Trade and Save LLC (3850); and TRS Quality, Inc. (5417). The address of each of the Debtors is 300 RadioShack Circle, Fort Worth, Texas 76102.

2. Salus's primary argument is that conversion is warranted under Section 1112(b)(4)(A) of the Bankruptcy Code because there is allegedly: (i) a substantial or continuing loss to or diminution of the estate, and (ii) the absence of a reasonable likelihood of rehabilitation. The argument has no merit as the Debtors have proposed the feasible Plan which will be confirmed on July 22, 2015. Also, the record of these proceedings make clear that the Debtors' assets have been maximized not diminished, for the benefit of Salus.

3. All parties, including Salus, knew from the very outset of these proceedings that the best way to maximize value was by prompt sales of the Debtors' assets. Salus supported the sales processes in order to maximize the value of its collateral. Despite never providing any debtor-in-possession financing², Salus has benefitted from the successful disposition of estate assets, which is virtually complete.³ Furthermore, Salus (together with the SCP Agent and Cerberus) has received almost \$28 million as post-petition adequate protection (including principal, interest and legal fees) from the Debtors' estates.⁴ Now, when the time has come to pay its fair share of the costs and expenses of these proceedings (by 506(c) surcharge and application of the full \$39 million subordination), Salus seeks conversion. Accordingly, the Motion should be seen by the Court for what it really is – a last-minute ploy to obtain additional

² Salus did, however, agree to subordinate any and all of the SCP Agent's liens to \$39 million in estate professional fees and expenses and other administrative claims (Support Agreement (exhibit C, Docket No. 52-3)).

³ The asset sales/transactions that have or will directly benefit Salus are: \$28.5 million in proceeds from the sale of the Debtors' equity in their Mexican subsidiaries and intellectual property related thereto to Office Depot de Mexico pursuant to the Court's order entered on April 7, 2015 [Docket No. 1719]; \$25.8 million in proceeds from the sale of intellectual property by the Debtors to General Wireless Operations, Inc. pursuant to the Court's order entered on June 4, 2015 [Docket No. 2333]; and \$14.5 million in proceeds (plus the potential for another \$4.5 million) from the Court approved settlement between the Debtors and Sprint Solutions, Inc. ("**Sprint**") pursuant to which Sprint shall pay the Debtors \$20 million [Docket No. 2300].

⁴ Through May 30, 2015, professional fee and expense payments totaled approximately \$4,851,000, interest payment totaled approximately \$3,961,000 and principal payment totaled approximately \$18,868,000. The Committee has reserved all rights to challenge these payments under paragraph 5.1 of the final financing order.

leverage now that Salus has achieved the full benefit of maximizing the value of its collateral in chapter 11 without paying the attendant costs and expenses. The Motion should be denied.

RELEVANT BACKGROUND

4. On or about the petition date, the Debtors entered into a Debtor-in-Possession Financing Support Agreement (the “**DIP Support Agreement**”) with their lenders, including Salus. The DIP Support Agreement provides for a \$39 million carve-out reserve for professional fees and expenses and administrative claims that are accrued and unpaid immediately following the completion of the contemplated “going concern” sale or sale of substantially all of the Debtors’ assets and states the following in Section 1(b) (the “**\$39 Million Carve-out**”):

(b) In addition to the agreed upon carve-out in the DIP Financing, the Salus Lenders hereby agree that effective upon receipt by the SCP Agent of the interest payment and fees described in Section 2(c) hereof, the Salus Lenders, solely on their own behalf, shall not contest the subordination of the SCP Agent’s liens to a separate carve-out reserve of up to **\$39 million**, permitting recoveries on collateral once the DIP Facility (and any outstanding obligations under the ABL Credit Agreement) is paid in full to be paid into this reserve account and used solely to pay for professional fees and expenses and administrative claims that are accrued and unpaid immediately following the completion of the contemplated “going concern” sale or if no such “going concern” sale, liquidation of substantially all of the assets, as set forth on Exhibit C. (Emphasis and underlining supplied)

5. The continuing vitality of the subordination of the \$39 Million Carve-out was ratified in a Court approved stipulation extending financing and continuing the use of cash collateral entered into by the Debtors and the SCP Secured Parties (Salus and Cerberus) on June 5, 2015 (the “**June 5 Stipulation**”, Docket Nos. 2339-1 & 2). Specifically, the June 5 Stipulation provides in Paragraph 4.1.11 that there is an Event of Default upon the occurrence of the filing of a plan of reorganization or liquidation by or on behalf of any debtor to which the SCP Secured Parties have not consented in writing that provides for the use of cash collateral with respect to

the payment of certain administrative expense and priority claims in a manner that is inconsistent with Section 1(b) of the DIP Support Agreement, subject in all respects to the Debtors' rights to surcharge collateral pursuant to Section 506(c) of the Bankruptcy Code.

6. Turning to asset sales, after a robust auction lasting several days and after extended hearings (during which Salus objected to the outcome of the auction), the Court entered an order on April 1, 2015 authorizing the sale of a substantial portion of the Debtors' assets (other than intellectual property and owned real estate) to General Wireless Inc. (the "***Sale Order***", Docket No. 1672).⁵ The Sale Order also granted the Committee standing to commence, prosecute, and compromise all of the Debtors' and their estates' claims and causes of action, including claims against Salus, as set forth in such order at paragraph 47.

7. In accordance with the Sale Order, on April 30, 2015, the Committee provided Salus (and other lenders and entities) with a Notice of Potential Challenges.⁶ The challenges and objections identified are, among others: (i) objections to the claims and liens of Salus, (ii) equitable subordination on any allowed claim or lien, (iii) imposition of a 506(c) surcharge, and (iv) challenges to the extent, validity, enforceability, perfection and priority of Salus's purported liens or other interests in property and avoidance of such liens and interests together with the recovery under Chapter 5 of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*) of any money or property transferred or the value thereof that Salus received (either directly or indirectly) on account of the purported liens or other interests.⁷

⁵ Salus (and Cerberus) received \$12,835,000 from the closing of that sale on or about April 1, 2015. As indicated in footnote 3, supra, Salus has or will benefit from the proceeds of multiple asset sales.

⁶ Notice of Potential Challenges was also sent to the "First Out" ABL Lenders and their agent, Standard General L.P. and its affiliates, Peter J. Solomon Company, and the Debtors' current and former directors and officers.

⁷ Salus seems to suggest that the Sale Order's release of post-petition "Credit Facility Claims" is an important fact for the conversion analysis. It is not. Under paragraph 44 of the Sale Order, many estate

8. The Notice of Potential Challenges also provides: “In the event that Salus asserts that an Objection must be filed during the Challenge Period by the Committee, on behalf of the RadioShack debtors and their estates, to preserve the right to dispute the allocation of unencumbered estate assets or proceeds thereof, this notice shall serve as an Objection, and the Committee, on behalf of the RadioShack debtors and their estates, hereby requests that the SCP Secured Parties commence negotiations in accordance with the Allocation Process set forth in paragraph 34 of the Sale Order.”

9. As part of the Allocation Process, the Committee has identified several valuable unencumbered assets of the estates which are available for distribution to creditors under the Plan. Those assets are comprised of leasehold interests, the Debtors’ foreign intellectual property and the Debtors’ equity in foreign subsidiaries, among others. The unencumbered value of such assets is estimated by the Committee at approximately \$65 million in total. The Committee will also have the opportunity to pursue preference actions on behalf of the estates as well as any other appropriate litigation against Salus and others as described above and in the Notice of Potential Challenges.

10. On June 5, 2015, the Debtors filed a motion for an order scheduling a combined hearing on approval of their proposed disclosure statement and liquidating plan and establishing solicitation procedures (the “**Scheduling Motion**”, Docket No. 2387). The Scheduling Motion states that based on current status of their efforts, the Debtors expect to largely complete the sale or liquidation of their non-litigation assets by the end of June, 2015.

11. The Scheduling Motion makes clear that the Debtors are currently formulating the terms of the Plan and intend to file it (in combination with a disclosure statement) by a date that

claims and causes of action based on pre-petition conduct remain unaffected by the release of post-petition “Credit Facility Claims”, giving rise to the potential for substantial damages that will redound to the benefit of the estates and all creditors.

would permit a hearing on confirmation of the Plan on or about July 22, 2015. The Plan was filed on June 12, 2015 (Docket No. 2404).

12. A recitation of relevant background events would not be complete without a brief discussion of the Amended Adversary Complaint (the “*Amended Complaint*”) filed by Salus, as agent for the “SCP Lenders”, against the ABL Lenders on May 22, 2015 (Adversary No. 15-50239, Docket No. 32).⁸ The Amended Complaint seeks disgorgement of \$232 million from the ABL Lenders under various legal theories. Notably, in Paragraphs 4 through 7 of the Amended Complaint Salus cites various allegations made by the Committee relative to the ABL Lenders. All of these allegations were developed in the Committee’s post-petition investigation of potential causes of action, as described in the request for the Committee’s application for examinations of the Debtors and certain third parties under Bankruptcy Rule 2004 (Docket No. 304). The Committee’s work product forms the basis for Salus’s contention that the October 2014 restructuring of the ABL Lenders’ loans was part of a scheme by the “Hedge Fund Lenders” to manipulate the market for credit default swaps maturing December 20, 2014, with RadioShack’s \$325 million of bonds as the referenced security.

13. It is apparent that in pursuing litigation against the ABL Lenders, Salus is relying heavily on the work done by the Committee as the primary basis for its claim against the ABL Lenders (while challenging the legal fees and expenses of Committee professionals that were incurred to develop those allegations as excessive at the same time).

⁸ Definitions of the SCP Lenders, ABL Lenders and the Hedge Fund Lenders are identical to those in the Amended Complaint.

ARGUMENT

14. Salus seeks conversion under Section 1112(b)(4)(A), upon the grounds that there is “substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation,” despite the fact that they have failed to cite one Delaware or Third Circuit case in support of conversion from chapter 11 to chapter 7 given the facts and circumstances presented here—an under secured creditor who supported the chapter 11 process by written subordination agreement, that has economically benefitted from the process with proceeds of asset sales and adequate protection payments but yet has not paid its fair share of costs and expenses of that process, and when that chapter 11 process is successfully concluding within 6 months of the bankruptcy filing by plan of liquidation that provides distributions to other creditors, including a potential distribution to general unsecured creditors, that disgruntled under secured creditor seeks to convert the case. Aside from this glaring legal deficiency, the Motion should be denied for the following reasons.

15. First, the timing of this Motion is extremely suspect. All parties knew that these proceedings were a liquidation from the outset, and Salus enjoyed the benefit of liquidating the Debtors’ assets in robust auction processes under chapter 11 (see footnotes 3 and 4 *supra*). As a result of the contribution of all the professionals and the Debtors’ management, the assets of the Debtors’ complex companies have been liquidated in approximately *four* months.

16. However, now that a successful confirmation is within reach in approximately one month, and there is a potential for a claim to be asserted against Salus under Section 506(c) for the cost of disposing of its collateral, Salus files the instant Motion in order to maximize its leverage. If Salus truly believed that these cases should have been liquidated under a trustee in chapter 7, it should have moved to convert at the outset of these proceedings. Of course, Salus never filed the Motion then because liquidation of complex assets under a trustee without

knowledge of the Debtors' operations would surely have taken substantially longer, cost the same, if not more, and would not have had the same economic success for Salus.

17. Second, Salus well aware of the cost of liquidating in chapter 11 and the need for sophisticated professionals to be involved in the proceeding to have a successful outcome. For that reason, Salus agreed in the DIP Support Agreement to subordinate to the \$39 Million Carve-out for professional fees and administrative expenses. Now that the asset sales have been successfully completed, Salus is seeking to avoid paying its fair share of the costs and expenses of these chapter 11 proceedings. Paradoxically, Salus is now seeking conversion which would require the appointment of a trustee, which would add an additional layer of expense.

18. As a corollary, it is important to note that while the ABL Lenders contributed debtor-in-possession financing to allow the sales to proceed, Salus provided no funding whatsoever. Accordingly, Salus essentially has had a free ride in which the disposition of assets allowing for a maximum return on its collateral was carried out.

19. Third, the Plan is feasible. As noted above, the Committee estimates that there is approximately \$65 million in unencumbered assets for the benefit of the Debtors' estates consisting of leasehold interests, foreign intellectual property, and equity in the Debtors' foreign subsidiaries. These are hard assets as opposed to litigation claims. The Debtors also have litigation claims against Salus and others as indicated above. Further the \$39 Million Carve-out and the unencumbered asset values will ensure that administrative expenses can be paid in full. Accordingly, there are sufficient assets in the estates that the Committee anticipates will allow the Plan to be confirmed and potentially provide a distribution to unsecured creditors.

20. In the Motion, Salus cites the Third Circuit decision in *In re American Capital Equipment, LLC*, 688 F.3d 145, 156 (3rd Cir. 2012), for the proposition that a plan is not feasible

if its success hinges on future litigation and is uncertain and speculative, because success in such cases is only possible and not reasonably likely. However, Salus fails to explain that the *American Capital* case was not feasible because the debtors in that case had unsuccessfully proposed *five* Chapter 11 plans in a period of *more than five years*. In stark contrast, these Debtors have proposed the Plan which is likely to confirm next month, only *five months* after the petition date.

21. Given the complexity of these proceedings, these cases have moved at an extremely rapid pace, in no small measure due to the intense efforts put forth by the Debtors' management and the estates' professionals. It is primarily due to the efforts of these persons that the value of the assets was efficiently maximized. When Salus agreed to subordinate to the \$39 Million Carve-out for professional fees and administrative expenses, it was well aware of the cost of achieving a positive outcome. To the extent that professional fees may be over budget (as alleged by Salus)⁹, that must be balanced against the beneficial results achieved in these swiftly moving and efficiently tailored proceedings. As a result, the Committee submits that Salus' contention that the Debtors are suffering losses because of estate professional fees is simply the wrong way to view these proceedings.

22. Fourth, in the other major circuit court case relied upon by Salus, *Loop Corp. v. United States Trustee*, 379 F.3d 511 (8th Cir. 2004), the debtor and its creditors committee could not agree on a plan of liquidation which was confirmable. Three factors in support of conversion in *Loop* consisted of continual erosion of the estate, the debtors' failure to achieve a confirmable

⁹ Salus suggests that over budget estate professional fees is a basis for conversion. It is not. Higher than expected fees were (and still may be) required for the multiple complex sale transactions to be successfully implemented for the benefit of Salus. Moreover, the Salus lending group received \$4,851,000 for professional fees and expenses through May 30, 2015, and Salus caused the estates to incur significantly more professional fees than budgeted in March 2015 during its failed attempt to oppose the auction/sale to General Wireless, Inc.

plan and the preference of the creditors' committee for conversion. 379 F.3d at 519. None of those factors is present here. Just the opposite.

23. As noted by the Eighth Circuit in *Loop*, “[c]reditor committees have the responsibility to protect the interest of the creditors; in essence, the function of a creditor’s committee is to act as a watchdog on behalf of the larger body of creditors which it represents”, quoting from *Matter of Advisory Committee of Major Funding Corp.*, 109 F.3d 219, 224 (5th Cir. 1997). In accordance with its fiduciary obligation, this Committee has been an active watchdog on behalf of the creditors of these Debtors. The Committee has concluded that the best way to maximize value for unsecured creditors is for the Plan to be confirmed, and that a trust be established for the benefit of Class 6 general unsecured creditors to pursue litigation on their behalf. That judgment should be respected and should not be usurped by the self-serving request of a disgruntled under secured creditor to convert these cases on the eve of confirmation of the Plan.

24. Fifth, conversion interferes with the Committee’s pursuit of the challenges and/or claims against Salus and others. As indicated above, the Committee has standing to prosecute estate causes of action and has performed substantial work investigating and identifying those estate claims. If the cases are converted now, the Committee is dissolved and the chapter 7 trustee takes control of property of the Debtors’ estates, including any potential litigation.¹⁰

¹⁰ Causes of action belonging to a chapter 7 debtor at commencement of the bankruptcy case are property of estate under 11 U.S.C. § 541; any of these actions that are unresolved at filing then pass to trustee who, as representative of estate has responsibility under 11 U.S.C. § 704 of asserting them whenever necessary for collection or preservation of estate. See *In re Ozark Restaurant Equipment Co., Inc.*, 816 F.2d 1222, 16 Bankr. Ct. Dec. (CRR) 134, 16 Collier Bankr. Cas. 2d (MB) 1148, Bankr. L. Rep. (CCH) ¶71780 (8th Cir. 1987); *In re Lansberry*, 177 B.R. 49, 55 (Bankr. W.D. Pa. 1995) (“With his appointment, the chapter 7 trustee in the above cases became the sole representative of debtors’ estates”.... As trustee, he became the successor-in-interest to all pre-petition causes of action belonging to debtors.”)

Further, conversion adds another layer of fees and expense as any chapter 7 trustee would be without the requisite knowledge to pursue the challenges and/or litigation against Salus and others. Any chapter 7 trustee would effectively be starting at square one --squandering the benefit of the Committee's substantial work on the investigation and development of these claims and causes of action.¹¹

25. Finally, there is great irony in Salus' concern for professional fees that are over budget. The Committee mounted an extensive investigation and may pursue potential causes of action against insiders and/or lenders as appropriate. Salus has been closely monitoring the work product of the Committee, and essentially copied the Committee's preliminary analysis when Salus stated the following in Paragraph 7 of the Amended Complaint against the ABL Lenders:

7. The reasonable inference from the facts alleged by the Committee and in other public reports regarding RadioShack and the related CDS market is that the October 2014 restructuring transactions were intended to, and did, enable the Hedge Fund Lenders with CDS exposure to manipulate the CDS market for their own benefit and to the detriment of RadioShack's other creditors, including the SCP Lenders, and, therefore, were grossly negligent, reckless or willful misconduct by the Hedge Fund Lenders, the ABL Agent and those who aided and abetted them. Those same transactions also breached the ABL Agent's and the Hedge Fund Lenders' duty of good faith and fair dealing under the Intercreditor Agreement to the extent they were structured or intended to deprive the SCP Lenders of their lawful right to proceeds of the Liquid Collateral. (Underlying supplied)

26. Again, Salus has enjoyed a free ride in pursuing litigation against the ABL Lenders. Relieved of the need to make its own independent investigation into the facts based upon the due diligence of the Committee, Salus has simultaneously relied on the Committee's

¹¹ In the event of conversion, third parties may later argue that the chapter 7 trustee does not have standing to pursue claims and causes of action that are now within the Committee's authorization to pursue, and that the Committee no longer exists, even for the purpose of asserting such claims and causes of action. While such assertions would be without merit, exposing the estates to an argument that these valuable litigation claims have been extinguished is an unnecessary risk.

work product to produce the Amended Adversary Complaint, but objects to the payment of the concomitant fees and expenses. It is therefore difficult to take seriously Salus' allegations that the professional fees in these proceedings are too high when it appears that the efforts of the Committee played a key role in the litigation Salus is prosecuting.

CONCLUSION

27. The Committee submits that this Motion is the desperate attempt of an under secured creditor to scuttle what would otherwise be a successful proceeding for its own purpose at the expense of all other constituencies. Salus supported the sale process in chapter 11 when that was to its benefit. As soon as the sales were effectively completed, Salus shifted its position by 180 degrees and now seeks immediate conversion of these cases to chapter 7. However, the Committee respectfully submits that Salus cannot have it both ways-- by enjoying the benefits of chapter 11 to maximize value, and then immediately seeking to convert these cases when it sees a tactical advantage for doing so. Given the fact that these cases are on the verge of confirmation, the self-serving nature of the Motion could not be more obvious. The short four-month Chapter 11 process has been a success thus far, and confirmation of the Plan is feasible and well within reach. Accordingly, the Committee submits that the substantial progress made toward that Plan should not be squandered at this late date. In order to protect all constituencies including unsecured creditors, the Court should deny the Motion.

WHEREFORE, the Committee respectfully requests that the Court enter an order denying the Motion of Salus Capital Partners, LLC to convert the Debtors' Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code, and providing for such other and further relief as this Court deems just and proper.

Dated: June 18, 2015
Wilmington, Delaware

Respectfully submitted,

/s/ Katherine Good

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