

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: SPEEDCAST INTERNATIONAL LIMITED, et al., Debtors.¹	§ § § § § § § § § §	Chapter 11 Case No. 20-32243 (MI) (Jointly Administered) Re: Docket Nos. 27, 200
---	--	---

**DECLARATION OF CHRISTOPHER J. KEARNS IN SUPPORT OF
OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
THE EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED
PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL
HEARING AND (VI) GRANTING RELATED RELIEF**

I, CHRISTOPHER J. KEARNS, HEREBY DECLARE AS FOLLOWS:

1. I am a Managing Director and co-head of the Corporate Finance practice of Berkeley Research Group, LLC (“BRG”), a professional services firm with offices located at 810 Seventh Avenue, Suite 4100, New York, New York 10019. BRG is the financial advisor to the Official Committee of Unsecured Creditors of SpeedCast International Limited, et al. (the “Committee”).

2. I submit this declaration in support of the objection (the “Objection”) of the Committee to *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II)*

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief [ECF No. 27] (the “DIP Motion”).²

BACKGROUND AND EXPERIENCE

3. I am a Certified Public Accountant, a Certified Insolvency and Restructuring Advisor, a Certified Turnaround Professional, and a Certified Fraud Examiner. I have over 40 years of financial experience as an auditor, corporate officer and, for approximately the past 29 years, as an advisor or crisis manager in bankruptcy and turnaround matters.

4. Prior to joining BRG in June 2015, I was one of the founding members of Capstone Advisory Group, LLC (“Capstone”), a financial services consulting firm, founded in January 2004, which provided a vast array of services to businesses. The services provided by Capstone included consultation in business turnaround and restructuring situations, workouts and reorganization, bankruptcy matters, crisis management, transaction advisory and due diligence services, forensic accounting, valuation and dispute resolution services. Prior to co-founding Capstone, from 1991 to 2004, I was a senior managing director of FTI Consulting, Inc. (“FTI”) (and predecessor firms) and the co-leader of FTI’s New York office. My experience and client assignments during that period were substantially similar to the assignments I have performed at Capstone.

5. Prior to 1991, I was employed by Bristol-Myers Squibb Company for approximately three years (including serving as Assistant Corporate Controller), and a major international public accounting firm for ten years in the mergers and acquisitions group, and in the audit practice. I have served as a principal financial advisor in numerous complex

² Capitalized terms used but not defined herein have the meaning ascribed in the Objection.

bankruptcies and restructurings. I have also served as a testifying expert witness in matters concerning solvency, valuation, contract breach, lost profits and various financial/business issues in bankruptcy and restructuring.

6. Additionally, I have gained extensive knowledge and experience through my consultancy and work experience including in the areas of business turnaround and restructuring situations, out-of-court workouts, bankruptcy matters, crisis management, transaction advisory and due diligence services and dispute resolution.

7. My current billing rate for this matter is \$1,095 per hour. I was assisted by others at BRG, who worked at my direction and under my supervision. My and BRG's compensation is not contingent upon the litigation outcome of this matter.

8. In support of the Objection, Hogan Lovells US LLP and Husch Blackwell LLP, proposed counsel to the Committee ("Counsel") has requested that I compare the Exit Fee component of the Proposed DIP Financing to DIP financings ("DIPs") in recent cases that I consider comparable.

THE DEBTORS' PROPOSED DIP FINANCING

9. The Proposed DIP Financing is \$180 million, comprising \$90 million in New Money Loans and \$90 million in Roll-Up Loans. The Roll-Up Loans are exchanged for pre-petition loans on a cashless, dollar-for-dollar basis.

10. \$35 million of the New Money Loans were funded after entry of the Interim Order on April 23, 2020 and the remaining \$55 million will be available upon the entry of the Final Order. The same timing applies to the Roll-Up Loans. The maturity date of the DIP Facility is nine months from the Petition Date.

11. The Roll-Up Loans accrue interest at LIBOR plus 1.75% per annum whereas the New Money Loans accrue interest at LIBOR plus 8.0% or ABR plus 7.0% per annum. The default rate premium is 2%.

12. The Proposed DIP Financing includes (i) a commitment fee of 2.0% on New Money Loans, (ii) a delayed draw commitment fee of 0.5% on undrawn New Money Loans and (iii) the DIP agent fees, which were filed under seal. I have been provided a confidential copy the Fee Letter.

13. The Proposed DIP Financing also includes an Exit Fee of 5.0% applicable to both the New Money Loans and the Roll-Up Loans. Therefore, as a percentage of the New Money Loans only, the Exit Fee is 10%.

REVIEW OF COMPARABLE DIPs

14. BRG maintains a database of DIPs going back a number of years. I reviewed the database for cases which filed for bankruptcy during the period January 1, 2019 through the Petition Date (April 23, 2020), which included nearly 200 DIPs in total. For completeness, I also contacted other senior members of the BRG Corporate Finance group to identify any additional recent DIPs which include exit fees. In addition, I requested the list of comparable DIPs considered by the Debtors' Investment Banker, Moelis & Company, in reviewing and negotiating the Proposed DIP Financing.

15. For purposes of my analysis, I considered DIPs which included total financing of \$50 million or more. This group is comprised of 61 DIPs, 13 of which also included an exit fee.³ The 13 DIPs approved on a final basis during this period which included total financing of \$50

³ For the DIPs under \$50 million, only one DIP included an exit fee in excess of 5% (an exit fee of 7% in the *Astria Healthcare, et al.* chapter 11 cases). However, the DIP was refinanced and the exit fee was not triggered.

million or more and an exit fee are as follows (see detailed schedule attached hereto as Exhibit D):

SpeedCast International - DIP Exit Fees Comparison

\$ in Millions

Date	Debtor	District	Total DIP	New Money Loans	Roll-Up Loans	Exit Fee	Exit Fee as a % of New Money
5/7/2019	Southcross Energy Partners	District of Delaware	\$ 255.0	\$ 127.5	\$ 127.5	1.50%	1.50%
6/18/2019	EdgeMarc Energy Holdings, LLC	District of Delaware	107.8	30.0	77.8	2.50%	2.50%
7/18/2019	Cloud Peak Energy Inc.	District of Delaware	81.0	45.0	28.0	1.00%	1.00%
7/25/2019	Joerns WoundCo Holdings Inc.	District of Delaware	80.0	40.0	40.0	2.00%	4.00%
8/13/2019	Blackhawk Mining LLC	District of Delaware	275.0	175.0	100.0	2.50%	2.50%
9/3/2019	Barneys New York	Southern District of New York	217.0	14.9	202.1	8.00%	40.27%
9/16/2019	GCX Limited	District of Delaware	54.5	54.5	-	3.00%	3.00%
12/12/2019	Murray Energy	Southern District of Ohio	440.0	350.0	90.0	1.00%	1.26%
12/19/2019	Bumble Bee Parent, Inc.	District of Delaware	280.0	80.0	200.0	2.00%	2.00%
12/23/2019	Dean Foods Company	Southern District of Texas	425.0	236.2	188.8	1.25%	2.25%
1/22/2020	Sanchez Energy	Southern District of Texas	200.0	150.0	50.0	1.00%	1.00%
3/10/2020	RentPath Holdings, Inc.	District of Delaware	74.1	74.1	-	Various	Various
4/9/2020	Foresight Energy	Eastern District of Missouri	175.0	100.0	75.0	1.00%	1.00%

SpeedCast International Limited	\$ 180.0	\$ 90.0	\$ 90.0	5.00%	10.00%
--	-----------------	----------------	----------------	--------------	---------------

16. The total, DIP financing for these transactions ranged from \$54.5 million to \$440 million, and the amount of new money loans ranged from \$14.9 million to \$350 million.

17. The exit fees ranged from 1% to 3% of the loan amount subject to the exit fee for eleven of the cases (including the Foresight Energy, LLC, *et al.* chapter 11 cases where the exit fee was paid in equity of the restructured entity and the Joerns WoundCo Holdings, Inc., *et al.* chapter 11 cases where the exit fee was paid in new debt). The exit fee in the RentPath Holdings, Inc., *et al.* (“RentPath”) chapter 11 cases was a ticking fee based on the timing of closing a sale process and ranged from 3.5% to 19.6%. The exit fee in the Barneys New York, Inc., *et al.* (“Barneys”) chapter 11 cases was 8% (see discussion below).

18. For nine of the DIPs, the exit fee was applicable to the new money loans only. Four of the DIPs included an exit fee on both the new money loans and the roll-up loans.

19. The exit fee as a percentage of the new money loans only ranged from 1% to 4% for eleven of the DIPs considered.

20. The exit fee as a percentage of the new money loans in the Barneys cases was 40.3%, as the exit fee of 8% applied to both the new money loans and a portion of the roll-up

loans.⁴ The ratio of the rolled-up loans subject to the exit fee to the new money loans was approximately 4 to 1. The next highest roll-up loans to new money loans ratio subject to an exit fee in my list of comparable DIPs was 2.6 to 1 for the EdgeMarc Energy Holdings, LLC, *et al.* chapter 11 cases, and even in those cases, the exit fee as a percentage of new money was only 2.5%. Therefore, I would consider the exit fee as a percentage of the new money loans subject to an exit fee in the Barneys case to be an outlier.

21. As mentioned above, the exit fee in the RentPath cases was a ticking fee based on the timing of closing a sale process, so I also would consider the RentPath cases to be an outlier.

22. I analyzed these transactions on a holistic basis and, therefore, considered coupon rates and other fees, including but not limited to commitment, structuring, and other fees. Consideration of these factors did not change my conclusion.

CONCLUSION

23. Notwithstanding the circumstances of these cases as discussed in the *Declaration of Michael Healy in Support of Debtors' Chapter 11 Petitions and First Day Relief* [ECF No. 16] as well as in the Objection, in my opinion the Exit Fee included in the Proposed DIP Financing is substantially above market and not reasonable under the circumstances.

[Signature Page Follows]

⁴ The exit fee was applicable to the total Tranche A loans of \$75 million. Tranche A included \$14.9 million of new money loans and \$60.1 million of rolled-up loans.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 18, 2020
New York, New York

/s/ Christopher J. Kearns

Christopher J. Kearns

Exhibit I

Exhibit I
SpeedCast International - DIP Exit Fees Comparison

\$ in Millions

Date	Debtor	Total DIP	New Money Loans	Roll-Up Loans	Exit Fee as a %		Coupon	Commitment		Notes
					Exit Fee	of New Money		Fee	Other Fees	
5/7/2019	Southcross Energy Partners	\$ 255.0	\$ 127.5	\$ 127.5	1.50%	1.50%	New Money:L+10.00% / ABR+9.00% / Roll-Up: L+5.25%	1.00%		1, 4
6/18/2019	EdgeMarc Energy Holdings, LLC	107.8	30.0	77.8	2.50%	2.50%	ABR+5.25% (minimum of 10.50%)	3.00%	Undrawn commitment fee of 2.50%	1, 5
7/18/2019	Cloud Peak Energy Inc.	81.0	45.0	28.0	1.00%	1.00%	Adj. L+9.00% / ABR+8.00%	N/A	PIK upfront fees of \$350,000 / PIK Backstop fee	1
7/25/2019	Joerns WoundCo Holdings Inc.	80.0	40.0	40.0	2.00%	4.00%	L+6.00% / Base Rate+5.00%	3.00%	Backstop fee payable in stock or cash	Exit fee PIK, applies to new money and roll up
8/13/2019	Blackhawk Mining LLC	275.0	175.0	100.0	2.50%	2.50%	Revolver: L+6.00% / Term Loan: L+9.50%	1.00%	Unused commitment fee 50 bps to 100 bps	1, 6, 7, 8
9/3/2019	Barneys New York	217.0	14.9	202.1	8.00%	40.27%	L+2.25% to L+12.00%	5.00%	Weekly fee of \$100,000; Enhancement fee of 25.00%	9
9/16/2019	GCX Limited	54.5	54.5	-	3.00%	3.00%	8.50%	3.25%		1
12/12/2019	Murray Energy	440.0	350.0	90.0	1.00%	1.26%	New Money: L+11.00% / Base Rate+10.00% / Roll Up: L+9.5% to 9.75%	3.00%	Backstop fee 5%	New Money and Roll-up subject to Exit Fee
12/19/2019	Bumble Bee Parent, Inc.	280.0	80.0	200.0	2.00%	2.00%	ABL: L+4.50%, Base Rate+3.50% / Term Loan: L+10.50%, Base Rate+9.50%	N/A	Undrawn commitment fee of 25 bps	1
12/23/2019	Dean Foods Company	425.0	236.2	188.8	1.25%	2.25%	L+7.00% / ABR+6.00%	N/A	Undrawn commitment fee of 50 bps	New Money and Roll-up subject to Exit Fee, 3
1/22/2020	Sanchez Energy	200.0	150.0	50.0	1.00%	1.00%	New Money: L+8.00% / Roll-up: 7.25%	0.50%	Backstop fee 5%	1
3/10/2020	RentPath Holdings, Inc.	74.1	74.1	-	Various	Various	L+7.00%	2.00%	Backstop Premium of 3.5%	1, 10
4/9/2020	Foresight Energy	175.0	100.0	75.0	1.00%	1.00%	L+11.00% / Base Rate+10.00%	3.00%	1% Delayed Draw Fee (\$55mm drawn at close)	1, 2, exit fee is payable in equity
SpeedCast International Limited		\$ 180.0	\$ 90.0	\$ 90.0	5.00%	10.0%	New Money: L+8.00%, ABR+7.00% / Roll-up: L+1.75%	2.00%	Unused commitment fee of 50 bps	Exit fee includes the roll-up

- 1) Exit fee on New Money only
- 2) Put Option Premium of 5% of the New Money DIP to be paid in equity upon a successful reorganization.
- 3) Excludes prepetition AR Securitization facility
- 4) New money comprised of \$72.5 million + \$55 million letter of credit facility. 1% Commitment fee described as a Structuring fee.
- 5) Fees were higher prior to the Availability period, which began with the Final DIP Order, order approving the stalking horse bidder, and no event of default.
- 6) New Money comprised of \$90 million Revolver Loan and \$50 million Term Loan.
- 7) DIP Order indicates that the exit fee is charged in lieu of 3.00% Origination Fee
- 8) Initial DIP funding of \$240 million included an Exit fee of 1.50% of the Revolving Loans, 1.00% of the Term Loans; DIP Amendment funding of \$35 million included Exit Fee of 2.5%
- 9) The exit fee was applicable to the total Tranche A loans of \$75 million. Tranche A included \$14.9 million of new money loans and \$60.1 million of rolled-up loans.
- 10) Exit Fee was a ticking fee based on the timing of closing a sale process and ranged from 3.5% to 19.6%