

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

In re:)	Chapter 11
)	
Eclipse Aviation Corporation, <i>et al.</i> ,)	Case No. 08-13031 (MFW)
)	
Debtors.)	(Jointly Administered)
)	
)	Objection Deadline: TBD
)	Hearing Date: TBD
)	

**MOTION OF AD HOC COMMITTEE OF SECURED NOTEHOLDERS
FOR AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY
CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

Preliminary Statement

Kings Road Investments, Ltd., HBK Services LLC and Citadel Investment Group, L.L.C. (collectively, the "Ad Hoc Committee"), by their undersigned counsel, submit this motion (the "Motion") for entry of an order converting the chapter 11 cases of Eclipse Aviation Corporation and Eclipse IRB Sunport, LLC (the "Debtors") to cases under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

1. On January 23, 2009, the Court entered an order (the "Sale Order") [Docket No. 446] approving the sale of Debtors' assets to EclipseJet Aviation International, Inc. ("EclipseJet"), which was the only bidder for the assets. Because the Debtors were running out of cash to operate their business, a prompt closing was imperative, and the asset purchase agreement (the "APA") approved in the Sale Order required EclipseJet to close the transaction within 5 business days after satisfaction of all conditions to closing. The parties contemplated that the transaction would close within a week, on or before January 30, 2009, and EclipseJet had represented that it would obtain the financing it needed to close the sale by that date. Although

the Debtors had satisfied all conditions to closing by January 23, 2009, EclipseJet has not yet obtained the financing it needs to close, and is accordingly in breach of the APA.

2. EclipseJet, its parent, ETIRC Aviation, S.a.r.l. (“ETIRC”) and Mr. Roel Pieper have repeatedly assured the Debtor, the Ad Hoc Committee, the Official Creditors Committee and this Court that EclipseJet’s financing was “secured” and would be forthcoming in a matter of days. Now, three weeks later, that financing has still not materialized. The Ad Hoc Committee is convinced that ETIRC will not succeed in obtaining the financing in the near term and the Debtors can no longer wait: they are now literally out of cash, these cases are likely administratively insolvent, and as of February 18, 2009, the Debtors furloughed virtually all employees without pay. In order to conserve whatever value may still remain in the Debtors’ assets, these cases must promptly be converted to cases under chapter 7.

Jurisdiction and Venue

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. § 1112(b)(1).

Statement of Facts

4. On November 25, 2008 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Bankruptcy Cases”). On December 8, 2008, the Office of the United States Trustee (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”). Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant

to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Cases.

5. Before the Petition Date, the Debtors determined, in consultation with their counsel, financial advisors and the Ad Hoc Committee that the sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code would maximize the value of the Debtors' estates for their creditors. Following the Court's approval of bid procedures and compliance by EclipseJet, the successful and only bidder, with the bid process, on January 23, 2009, the Court entered the Sale Order approving the APA. Section 3.4 of the APA required the parties to close the transaction "as promptly as practicable, and at no time later than the fifth Business Day," following the date on which the closing conditions set forth in Article VIII of the APA were satisfied or waived.

6. The Debtors had complied with all of their closing obligations by January 23, 2009, and the Ad Hoc Committee accordingly expected that the closing of the sale would take place by January 30, 2009. Shortly prior to January 30, however, ETIRC informed the Debtors and the Ad Hoc Committee for the first time that the Russian State Bank, known by the acronym VEB ("VEB"), which was to be the source of EclipseJet's financing, was insolvent, that the Russian Government would be recapitalizing VEB, and that EclipseJet's funding would be procured immediately thereafter. Mr. Pieper assured the parties that this transaction was receiving attention at the highest levels of the Russian Government, including from Prime Minister Putin. On February 3, 2009, Mr. Pieper further assured the Debtors' Board of Directors that VEB would be recapitalized by February 5, 2009, and that funds for the Eclipse transaction should be available no later than a few business days thereafter. With no way to confirm this

information, the Debtors relied on Mr. Pieper's word and decided not to change operations despite a looming administrative insolvency.

7. On February 5, 2009, Mr. Pieper informed the Debtors that the recapitalization of VEB would be completed by February 10, 2009. February 10th passed with no information forthcoming from Mr. Pieper and apparently the recapitalization did not in fact occur on that day. On February 11, 2009, Mr. Pieper informed the Debtors' Board that the Russian Prime Minister had appointed a deputy to work through "all of the issues on the Eclipse funding" pending the recapitalization of VEB. This was the first that the parties heard that there may have been "issues" with the Eclipse funding aside from the VEB recapitalization. Nevertheless, Mr. Pieper assured the Board that all such issues were resolved, that VEB would have the funds available on February 16th and that the closing could occur within days. Again without the ability to confirm these facts, the Debtors took Mr. Pieper at his word and did not change operations even though it was now two weeks later than the date the Debtors originally anticipated that they would be administratively insolvent.

8. On February 16, 2009, the parties learned that the VEB recapitalization had occurred, but the funds for the Eclipse transaction did not materialize. Nor did the parties receive any further information from ETIRC for several days as to when funds, assuming they would ever really be available, would be forthcoming to allow a closing. Out of money, and having no assurance that a closing will ever occur, on February 18th the Debtors essentially ceased operations, furloughed all employees without pay, except for a few key personnel, and awaited further word from ETIRC. As set forth on the latest budget provided by the Debtors, attached as Exhibit "A," in all likelihood these cases are now administratively insolvent.

9. On February 20, 2009, the Ad Hoc Committee held a conference call with Mr. Pieper to inform him that, because of his failure to procure financing, it seemed there was no alternative but to have these cases converted to Chapter 7. Mr. Pieper once again stated that important meetings were to be held in Russia “tomorrow” and scheduled a call for Saturday afternoon, February 21, 2009 to report to the Ad Hoc Committee on the results of that meeting. Mr. Pieper did not show up for the Saturday call, and on Sunday advised the Ad Hoc Committee that problems appeared to have arisen with the financing in Russia. On Monday, February 23, 2009, Mr. Pieper asked for one more day, but on Tuesday, the financing was still not in place. It seems to the Ad Hoc Committee that there is no longer any probability that the financing will occur.

ARGUMENT

10. The sale process has failed and the Debtors have exhausted their cash. The Ad Hoc Committee therefore requests the entry of an order immediately converting the Debtors’ chapter 11 cases to chapter 7 cases and directing the U.S. Trustee to appoint a chapter 7 Trustee for the Debtors.

11. Section 1112(b)(1) of the Bankruptcy Code provides:

Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that established that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court *shall* convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1) (emphasis supplied). Section 1112(b)(2) provides:

The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that

establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that --

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for granting such relief include an act or omission of the debtor *other than under paragraph (4)(A)*--

(i) for which there exists a reasonable period of time fixed by the court.¹

11 U.S.C. § 1112(b)(2) (emphasis supplied). Thus, where “cause” is shown, the Court shall covert a chapter 11 case to a chapter 7 case upon the request of a party in interest absent “unusual circumstances.”²

12. Section 1112(b)(4) sets out a number of non-exclusive grounds for conversion of a case to Chapter 7. The first and foremost ground for conversion arises when a debtor is “suffering substantial or continuing losses to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). This ground is explicitly excepted from the section 1112(b)(2) exceptions: if the debtor is suffering continuing

¹ Sections 1104(a)(3) and 1112(c) are not relevant in this case.

² Before to the 2005 amendments to the Bankruptcy Code, section 1112(b) provided that the court “may convert” as opposed to the current “shall convert” language. “This change diminishes the discretion the bankruptcy courts have in conversions to Chapter 7. If cause for dismissal or conversion to Chapter 7 exists discretion not to dismiss or convert is limited to those instances in which the court makes specific findings that unusual circumstances “establish that the requested conversion or dismissal is not in the best interests of the creditors and the estate.” In re Broad Creek Edgewater, LP, 371 B.R. 752, 759 (Bankr. D.S.C. 2007) (holding involuntary chapter 7 debtor could not convert its case to one under chapter 11 because cause existed for conversion or dismissal of the proposed chapter 11 proceedings); see also In re Gateway Access Solutions, Inc., 374 B.R. 556, 560 (Bankr. M.D. Pa. 2007) (noting the change in the statutory language from permissive to mandatory, and finding cause existed to convert the debtor’s cases where the estate was diminishing rapidly at the expense of creditors as extensive administrative costs from professional fees were accumulating while the case lingered in chapter 11). Therefore, upon a showing of cause, the Court must convert the Debtors’ chapter 11 cases to chapter 7 cases “absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1).

losses and there is no reasonable likelihood of rehabilitation, then even if a party objects to conversion, and even if there are “special circumstances,” the court must still convert the case. See In re AdBrite Corp., 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) (cause existed to convert the chapter 11 cases in part because of the debtor’s negative cash flow postpetition and inability to pay current expenses); In re 3868-70 White Plains Road, Inc., 28 B.R. 515, 519 (Bankr. S.D.N.Y. 1983) (cause existed to convert a chapter 11 case to a chapter 7 the debtor’s assets were fully collateralized and it had negative cash flow coupled with an inability to pay current expenses).

13. “Rehabilitation” as used in section 1112(b)(4)(A) is not synonymous with “reorganization.” Instead, “Rehabilitation signifies that the debtor will be reestablished on a sound financial basis, which implies establishing a cash flow from which current obligations can be met.” In re Rundlett, 136 B.R. 376, 380 (Bankr. S.D.N.Y. 1992) (granting creditors’ motion to convert chapter 11 case to chapter 7 where debtor’s use of estate property resulted in continuing loss or diminution of the estate, there was not a reasonable likelihood of rehabilitation and the debtor would be unable to effectuate a plan) (*citing In re Kanterman*, 88 B.R. 26, 29 (S.D.N.Y. 1988)) (affirming conversion of chapter 11 case to chapter 7 upon creditors’ showing continuing diminution to the estate and absence of reasonable likelihood of rehabilitation).

14. A debtor “should not continue in control of its business beyond a point at which reorganization no longer remains realistic,” if creditor recoveries are eroding. In re AdBrite Corp., 290 B.R. at 215; In re Johnston, 149 B.R. 158, 161 (B.A.P. 9th Cir. 1992) (granting motion to convert debtor’s chapter 11 case to chapter 7 where the debtor lacked the ability to effectuate plan of reorganization because it had no income and further delay would prejudice creditors by eroding their position).

15. These Debtors have no cash flow with which to fund current expenses, even after having discontinued substantially all operations as a result of the furlough of employees, and without the sale to EclipseJet no funds with which to pay administrative creditors. Given EclipseJet's failure to close the transaction, rehabilitation is impossible and reorganization (even in the sense of confirming a liquidating plan) is no longer realistic. The Debtors are administratively insolvent, and expenses continue to accrue, thus eroding the limited values that are available for distribution to creditors. See In re Clarkson, 767 F.2d 417, 420 (8th Cir. 1985) (dismissing chapter 11 case because the debtor lacked a certain source of income and "the positions of the creditors have continued to erode as the life of the debt has been lengthened without any appreciable increase in the likelihood of their satisfaction"). Liquidation of the Debtors' assets is the only possible course for this case to take, and it can be done far more cheaply and efficiently by a chapter 7 trustee than by chapter 11 professionals.

16. Conversion is thus mandated here because there is neither a business to reorganize nor an advantage to liquidating under chapter 11. The Debtors have shut down their operations and furloughed their employees. Continuation in chapter 11 would entail fees and expenses that will not be incurred in chapter 7, and a chapter 11 plan ultimately offers no benefits over those found in a chapter 7 liquidation. Accordingly, pursuit of a chapter 11 plan adds nothing of value to these cases.

17. For all these reasons, the Ad Hoc Committee requests that the Court convert these chapter 11 cases to chapter 7 cases.

Notice

18. Notice of this Motion has been provided to (a) counsel to the Debtors, (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to EclipseJet;

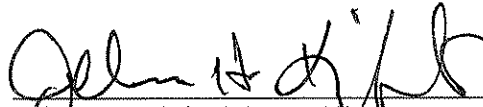
(d) counsel to the Committee and (e) all parties who have filed a request for notice under Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Ad Hoc Committee respectfully submits that no further notice of this Motion is required.

Conclusion

For the reasons set forth above, the Ad Hoc Committee respectfully requests that the Court enter an order in the form attached as Exhibit "B" converting these chapter 11 cases to chapter 7 cases and granting such other relief as is just and proper.

Dated: February 24, 2009
Wilmington, Delaware

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Counsel for the Ad Hoc Committee of Secured Noteholders

EXHIBIT A

Weekly Cash Forecast

(\$ in 000's)
11/24/08 10:56 PM

Beginning Balance	11/28		12/5		12/12		12/19		12/26		1/2		1/9		1/16	
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Detail of Non-payroll disbursements:																
Parts	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Fragile suppliers	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Employee expenses	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
Benefits:																
Medical	840								840							840
Dental	22	88									22					
Vision (pd thru Aug)	24	22									24					
Life, disability (pd thru Aug)	24	24									24					
LTD/AD&A (pd thru Sep)	75	24									75					
Relocation	75	75							100		100				100	
Aircraft insurance							333									523
Willis/Actis fees (\$417k due 11/17 - 4/6)							306		100				131		100	
Workers comp	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Other insurance	425	425									300					
Rent	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
2 mo's rent owed city (est)			60	60	60	60	60	60	60	60						
Equipment rent			275	275	275	275	275	275	275	275						
NM Property tax			75	75	75	75	75	75	75	75	75	75	75	75	75	75
IT outsourcing/consulting- assume negotiate down			25	25	25	25	25	25	25	25	25	25	25	25	25	25
Legal																
Accounting																
Independent Contractors/DERs																
Advisors																
Cleaning service																
Security service																
Utilities/phones																
Freight																
Software fees																
Southwest Research-fatigue testing																
Other (supplies,fuel,consult,mrkt,EASA,etc)																
Total budget	1,421	2,103	1,555	2,439	1,670	2,300	2,081	2,888	1,421	2,103	1,555	2,439	1,670	2,300	2,081	3,288

EXHIBIT B

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

In re:)	Chapter 11
)	
Eclipse Aviation Corporation, <i>et al.</i> ,)	Case No. 08-13031 (MFW)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos.
)	

**ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY CASES
TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

Upon consideration of the *Motion of Ad Hoc Committee of Secured Noteholders for an Order Converting the Debtors' Chapter 11 Bankruptcy Cases to Cases Under Chapter 7 of the Bankruptcy Code* (the "Motion"); and finding that due and sufficient notice of the Motion has been given under the circumstances; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding under 28 U.S.C. §157(b)(2); and it appearing that cause exists to convert the above-caption chapter 11 to chapter 7 cases pursuant to section 1112 of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED.
2. The above-captioned chapter 11 cases are hereby converted, pursuant to section 1112(b) of the Bankruptcy Code, to cases under chapter 7 of the Bankruptcy Code, effective as of the date of entry of this Order by the Court (the "Conversion Date").
3. The Debtors shall:
 - (a) Forthwith turn over to the interim chapter 7 trustee, once one is appointed, all records and property of the estate under its custody and control as required by Rule 1019(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules");

- (b) Within 15 days of the date of this order file a schedule of unpaid debts incurred after commencement of the superseded cases including the name and address of each creditor, as required by Bankruptcy Rule 1019(5);
- (c) Within 15 days of the date of this order, file the statements and schedules required by Bankruptcy Rules 1019(1)(A) and 1007(b), if such documents have not already been filed; and
- (d) Within 30 days from the date of this order, file and transmit to the United States Trustee a final report and account as required by Bankruptcy Rule 1019(5)(A).

4. All professionals employed by Debtors in these chapter 11 cases shall file, within 30 days of the date of entry of this Order, a final fee application for approval of all fees and expenses incurred through the Conversion Date (the "Final Fee Applications"); but nothing in this paragraph 4 shall authorize the payment of allowed final fee awards.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: _____, 2009
Wilmington, Delaware

THE HONORABLE MARY J. WALRATH
UNITED STATES BANKRUPTCY JUDGE