UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:	
Crucible Industries LLC,[1]	Chapter 11
Debtor.	Case No. 24-31059 (WAK)

DEBTOR'S OMNIBUS REPLY TO SALE OBJECTIONS FILED BY (I) THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CRUCIBLE INDUSTRIES LLC [DOCKET NO. 186]; (II) THE NORTH RIVER INSURANCE COMPANY [DOCKET NO. 187]; (III) THE OFFICE OF THE UNITED STATES TRUSTEE [DOCKET NO. 191]; (IV) UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION [DOCKET NO. 192]; (V) FRC GLOBAL, INC. [DOCKET NO. 195]; AND (VI) THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION [DOCKET NO. 196]

Crucible Industries LLC, the above-captioned debtor and debtor in possession ("Crucible" or, the "Debtor"), by and through its undersigned counsel, hereby submits this reply (this "Reply") to the (i) *Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtor's Sale Motion* [Docket No. 186] (the "Committee Objection") filed by The Official Committee of Unsecured Creditors of Crucible Industries LLC (the "Committee"); (ii) *Limited Objection to Debtor's Motion for Entry of an Order Authorizing the Sale of Purchased Assets* [Docket No. 187] (the "North River Objection") filed by The North River Insurance Company ("North River"); (iii) *The United States Trustee's Objection to Debtor's Motion for Authorization of the Sale of Substantially all of the Assets of Debtor* [Docket No. 191] (the "UST Objection") filed by William K. Harrington, United States Trustee for Region 2 (the "U.S. Trustee"); (iv) *Conditional Objection and Reservation of Rights of United Steel, Paper and*

[1] The last four digits of the Debtor's federal tax identification number are (9794).

Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to Debtor's Sale of the Purchased Assets [Docket No. 192] (the "Union Objection") filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "Union"); (v) *FRC Global, Inc.'s Limited Objection to Sale Motion* [Docket No. 195] (the "FRC Objection") filed by FRC Global, Inc. ("FRC"); and (vi) *New York State Department Of Environmental Conservation's Limited Opposition To Debtor's Sale Motion* [Docket No. 196] (the "DEC Objection") filed by The New York State Department of Environmental Conservation (the "DEC"). As and for its Reply, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT AND BACKGROUND

1. The Debtor has been clear about the purpose of its bankruptcy filing since the petition date, which is to pursue an expeditious sale pursuant to section 363 of the Bankruptcy Code. This goal is driven, in large part, by concerns regarding the Debtor's ability to operate beyond March 2025 due to certain liquidity constraints.

2. Accordingly, on December 12, 2024, the Debtor filed its *Motion for entry of orders (a)(i) approving bidding procedures in connection with the sale, in one or more lots, of substantially all of the Debtor's assets; (ii) scheduling an auction and a hearing to consider the sale; (iii) approving the form and manner of notice thereof; and (iv) approving the terms of the Stalking Horse Asset Purchase Agreement; (b)(i) authorizing and approving the sale of assets free and clear of liens, claims, encumbrances, and interests, and (ii) authorizing and approving the assumption and assignment of executory contracts and unexpired leases; and (c) granting related relief* [Docket No. 13] (the "Sale Motion").[2] On December 20, 2024, the Court entered an order

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

approving the Bidding Procedures requested in the Sale Motion, which was subsequently modified by a supplemental order entered on January 21, 2025 [Docket Nos. 56 and 144] (collectively, the "Bidding Procedures Order").

3. To allow for the Debtor to explore a sale of the Purchased Assets, the Debtor obtained postpetition financing from KeyBank National Association ("KeyBank") on a super priority basis which was approved by this Court's *Order (i) Authorizing the Debtor, on a Final Basis, to (a) Obtain Postpetition Financing and (b) Use Cash Collateral, (ii) Granting Liens and Providing Superpriority Administrative Expense Claims to Lender, (iii) Granting Adequate Protection to Lender, (iv) Modifying the Automatic Stay, (v) and Granting Related Relief, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507* [Docket No. 145] (the "Final DIP Order").

4. As set forth in greater detail below, the Debtor respectfully submits that none of the objections raised would prevent a sale of the Purchased Assets, and that many of the concerns raised by objecting parties can and will be addressed by including language in the sale order that protects or reserves rights, as necessary.

COMMITTEE OBJECTION

5. The Committee Objection primarily seeks to, among other things, ensure that there is an appropriate recovery for general unsecured creditors and that "[b]efore any distribution of sale proceeds is made to any pre-petition secured creditors, funds should be preserved to ensure that potential causes of action that may provide a recovery to unsecured creditors can be investigated and pursued." *See* Committee Objection, ¶ 14.

6. As an initial matter, the Debtor notes that the Committee supports the sale of the Purchased Assets as provided in the Sale Motion. *See* Committee Objection, ¶ 14. The Debtor and its professionals have worked tirelessly to market for sale the Purchased Assets since the

petition date in order to maximize recovery for creditors and with a goal of preserving jobs for Crucible employees.

7. Throughout this process, the Debtor and its professionals have been open and transparent with all of the primary parties in interest in this case, sharing important information and regularly communicating with the Committee, the Union, KeyBank and others. The Debtor has involved all such parties in evaluating offers to purchase the Debtor's assets, and in discussions with such potential purchasers.[3]

8. For this reason, the Committee is well aware that it appears that the total sale price for the Purchased Assets will likely exceed the balance owing to KeyBank, making proceeds available for distribution to unsecured creditors.

9. In the Committee Objection, the Committee appears to seek to preserve the benefit of its challenge period under the Final DIP Order. However, the Committee's challenge period will expire on or about March 8, 2025, less than two weeks after the date of the Sale Hearing. It is unlikely that any sale(s) of the Purchased Assets approved by the Court will close before the expiration of the challenge period.

10. Moreover, as the Committee is aware, consummating a sale of the Purchased Assets without payment in full of KeyBank is an event of default under the Final DIP Order. *See* Final DIP Order, ¶ 17(c). Therefore, the Committee's suggestion that the sale proceeds should be held "to ensure that potential causes of action that may provide a recovery to unsecured creditors can be investigated and pursued" represents a belated and impermissible collateral attach on the Final DIP Order.

[3] The Committee, the Union and KeyBank were present for, and actively participated in, the Auction for the Purchased Assets which took place on February 21 and 24, 2025.

11. Accordingly, the Debtor respectfully submits that the Committee Objection should be overruled, in its entirety.

NORTH RIVER OBJECTION

12. Prior to the Petition Date, the Debtor obtained a Worker's Compensation insurance policy with North River [Policy No. 4067402202] that commenced on October 23, 2024 and expires on October 23, 2025 (the "Worker's Compensation Policy").

13. Pursuant to a Paid Loss Deductible Agreement effective October 23, 2024, between the Debtor and North River, the Debtor's obligations to North River are secured by (i) a letter of credit in the amount of $950,000.00 issued in North River's favor; and (ii) $50,000.00 in cash collateral paid by the Debtor (collectively, the "Collateral").

14. North River objects to any sale of the Worker's Compensation Policy without the consent of North River, or any attempt to "sell any claims against North River without [such sale] being subject to recoupment and/or setoff rights and to the extent the sale would impair North River's rights in the Collateral." *See* North River Objection ¶ 14. North River also argues that the Worker's Compensation Policy cannot be assigned.

15. As a practical matter, the Debtor is not proposing to sell or assign the Worker's Compensation Policy and none of the parties who submitted bids with respect to the Purchased Assets are seeking to take an assignment of the Debtor's insurance policies, including the Worker's Compensation Policy, nor has the Debtor proposed to sell any claims against North River.

16. Further, the Debtor respectfully submits that North River's rights to assert recoupment and/or setoff rights are already reserved. The Final DIP Order provides that:

> Notwithstanding any other provisions of this Final Order, including but not limited to paragraph 9(b)(iv) of this Final Order, or any other order, nothing herein or in any prior orders (or any financing documents) shall prime any setoff and/or recoupment rights of The

> North River Insurance Company or any interest of the North River Insurance Company in collateral pursuant to that certain Paid Loss Deductible Agreement dated October 23, 2024 between the North River Insurance Company and the Debtor or any other prior similar agreement between The North River Insurance Company and the Debtor.

See Final DIP Order ¶ 34.

17. Accordingly, the Debtor respectfully submits that the North River Objection should be overruled, in its entirety.

18. North River has proposed requested language for inclusion in any order approving the Sale Motion that further protects its rights with respect to the Worker's Compensation Policy. The Debtor is generally open to including language that protects North River and will include North River in discussions regarding settling a proposed order with respect to the Sale Motion.

U.S. TRUSTEE OBJECTION

19. The U.S. Trustee argues that the Debtor's proposed sale should be denied because (i) it violates applicable law, (ii) the Debtor has failed to demonstrate good business judgment, and (iii) the proposed sale is solely for the benefit of secured creditors.

20. The U.S. Trustee also adds that any order approving a sale "should provide a sufficient carve-out for payment for administrative expenses and professional fees through closure of the case and for general pre-petition unsecured creditors." *See* U.S. Trustee Objection, ¶ 15.

21. First, the Debtor respectfully submits that it will demonstrate at the Sale Hearing that it has satisfied section 363(b) of the Bankruptcy Code and that the proposed sale of the Purchased Assets to the Successful Bidders are a sound exercise of business judgment.

22. Second, there is already a carve out for administrative expenses and professional fees in this case. *See* Final DIP Order, ¶ 13(a). Accordingly, any suggestion by the U.S. Trustee that this case is at risk of becoming administratively insolvent is misplaced.

23. Third, there is no Bankruptcy Code requirement that a section 363 sale provide a carve-out for general unsecured creditors. KeyBank has valid, binding, and perfected non-avoidable security interests in and first priority liens on substantially all of the Debtor's assets. Moreover, as set forth above, failure to pay KeyBank in full is an event of default under the Final DIP Order. *See* Final DIP Order, ¶ 17(c).

24. Finally, the U.S. Trustee's assertion that the proposed sale is solely for the benefit of secured creditors is misguided. The Debtor's financial projections indicate that the proceeds expected from the sale will be sufficient to satisfy the Debtor's secured obligations to KeyBank in full, while also providing additional funds to cover administrative expenses and a modest dividend to unsecured creditors. Additionally, as the Committee has observed, there may be avoidance actions to be pursued on behalf of the estate which will supplement any distributions made to unsecured creditors from the sale proceeds in accordance with a chapter 11 plan.

25. Accordingly, the Debtor respectfully submits that the U.S. Trustee Objection should be overruled, in its entirety.

UNION OBJECTION

26. The Union asserts that the Debtor is bound by a collective bargaining agreement (the "CBA") that includes a "Successorship Clause" which prohibits a sale of the Debtor's "business or a significant part thereof to a buyer unless the buyer assumes the CBA." *See* Union Objection, ¶ 2. This is incorrect for multiple reasons. Specifically, and assuming, *arguendo*, that the Debtor is bound by the terms of the CBA, upon information and belief, the Successorship Clause upon which the Union purports to rely provides as follows:

> The Company agrees that it will not sell, convey, assign, or otherwise transfer, using any form of transaction, any plant or significant part thereof covered by this Agreement (any of the foregoing, a Sale) to any other party (Buyer), unless the Buyer shall have assumed the [CBA] with the Union.

See Union Objection, ¶ 8.

27. The term "plant" is not defined in the CBA and is at best ambiguous. In commonly understood parlance, however, the term "plant" is often used to refer to the entirety of a companies operations, including equipment, fixtures, machinery, tools, etc., and often the building(s) necessary to carry on any industrial business. *See* Dictionary.com, "Plant" # 4. The Debtor submits that as used in the CBA, the term "plant" must refer to the whole of the Debtor's operations including the Debtor's interest in the real property on which it operated as a going concern. "[T]he Second Circuit has held that '[t]he term "operations" within the successorship clause of [the parties' CBA] does not apply to the sale of [an asset] that has been permanently closed in good faith by a seller that retains no financial interest in any potential future [business] activity at the site." *SEIU Healthcare 1199NW v. Cascade Behavioral Health, LLC*, 2023 U.S. Dist. LEXIS 175835, at *10 (W.D. Wash. Sep. 29, 2023) (citing *In re Chateaugay Corp.*, 891 F.2d 1034, 1039 (2nd Cir. 1989) ("[A]n employer's sale of its assets—particularly in the context of the closure and liquidation of the employer's business—is distinct from a sale or transfer of its operations.")).

28. Here, the Debtor proposes to sell certain machinery, equipment, and other assets, but is not conveying any interest in the underlying real property used in the Debtor's manufacturing operation. Accordingly, the Debtor respectfully submits that the proposed sale of the Purchased Assets to multiple purchasers is not the type of "plant" sale that the Successorship Clause is meant to address. Accordingly, the Debtor's proposed sale of the Purchased Assets is not prohibited by the CBA.

29. In the absence of an enforceable successorship clause, applicable law would not require a purchaser of the Purchased Assets to adopt or assume the CBA as it is a well settled principle of labor law that a purchaser of assets is generally not required to assume the collective bargaining agreements of the seller. *NLRB v. Burns Int'l Sec. Servs.*, 406 U.S. 272 (1972) (holding

that "[s]addling such an employer with the terms and conditions of employment contained in the old collective-bargaining contract may make these changes impossible and may discourage and inhibit the transfer of capital.").

30. Additionally, the Union argues that the proposed sale of the Purchased Assets violates Bankruptcy Code section 1113 and that a sale cannot be approved until after the CBA is rejected or assumed under section 1113. *See* Union Objection, ¶ 3 ("a sale cannot be approved absent compliance with such a successorship clause or bankruptcy court approval of a motion to reject a collective bargaining agreement pursuant to the exacting standards of § 1113").

31. However, the Bankruptcy Code does not require that a collective bargaining agreement be rejected or assumed before approving an asset sale pursuant to section 363. *See UFCW, Local 211 v. Family Snacks, Inc. (In re Family Snacks, Inc.)*, 257 B.R. 884, 898 (B.A.P. 8th Cir. 2001) (holding that "[t]he Debtor was not required to reject the CBA prior to or in conjunction with the asset sale under § 1113. . . . Because the Debtor can make that showing before, at, or after the asset sale, and thereby satisfy the requirements for rejection of the CBA, § 1113 should not be read to preclude the Debtor from doing so after the § 363 asset sale in this case"); *United Steel, Paper & Forestry, Rubber, Mfg., Energy Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Braeburn Alloy Steel LLC (In re CCX, Inc.)*, 654 B.R. 680, 688 (D. Del. 2023) (involving a motion to reject a collective bargaining agreement pursuant to section 1113 that was filed a month after a section 363 closed.).

32. Finally, the Union's demand that a buyer agree to be bound by, and accept an assignment of, the CBA is untenable. The CBA is due to expire on March 31, 2025. As a practical matter, there is a high likelihood that the CBA will expire by its terms prior to or immediately following the closing for any sale of the Purchased Assets. Accordingly, there will be no contract

for the Successorship Clause to apply to. *See In re Journal Register Co.*, 488 B.R. 835, 840 (Bankr. S.D.N.Y. 2013) ("Bankruptcy Code § 1113 does not apply after a collective bargaining agreement terminates; *San Rafael Baking Co. v. N. Cal. Bakery Drivers Sec. Fund (In re San Rafael Baking Co.)*, 219 B.R. 860, 866 (B.A.P. 9th Cir. 1998); *In re Hostess Brands, Inc.*, 477 B. R. 378, 382 (Bankr. S.D.N.Y. 2012).

33. Accordingly, the Debtor respectfully submits that the Union Objection should be overruled, in its entirety.

FRC OBJECTION

34. FRC contends that certain of its property is being stored at the Debtor's facility (the "Storage Property"), and that once the Debtor submits a purchase order for such property, FRC sends an invoice, and such property becomes property of the Debtor.

35. FRC does not allege, and the Debtor is not aware of, any bailment or possession agreement between the parties nor any UCC-1 indicating that FRC maintains an interest in the Storage Property. However, the Debtor can and does confirm that the Storage Property is not among the property proposed to be sold in connection with the Sale Motion.

36. Accordingly, the Debtor respectfully submits that the FRC Objection should be overruled, in its entirety.

DEC OBJECTION

37. The DEC does not take a position on the sale of the Purchased Assets but merely reserves the DEC's rights to ensure that the terms of any sale "do not impinge upon DEC's duty and right to enforce applicable environmental laws and regulations." *See* DEC Objection, ¶ 1.

38. The DEC also asserts certain obligations of the Debtor pursuant to an administrative consent order (the "Consent Order") are, in the DEC's view, non-dischargeable.

39. The Debtor respectfully submits that to the extent such obligations under the Consent Order are valid, enforceable obligations of the Debtor, nothing contained in any sale order will relive the Debtor from such obligations and such claims will be treated in accordance with a chapter 11 plan in this case.

40. Further, the Debtor agrees that the DEC's regulatory power over the Debtor, or any purchaser's future operations, is not diminished by the entry of an order approving a sale under section 363.

41. Accordingly, the Debtor respectfully submits that the DEC Objection should be overruled, as set forth herein.

WHEREFORE, based upon the foregoing, the Debtor respectfully requests that the Court enter an Order (i) overruling the (a) Committee Objection, (b) North River Objection, (c) U.S. Trustee Objection, (d) Union Objection, (e) FRC Objection, and (f) DEC Objection; (ii) granting the Sale Motion in its entirety; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: February 24, 2025
Syracuse, New York

BOND, SCHOENECK & KING, PLLC

By: */s/ Charles J. Sullivan*

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