

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

In re:

WATER GREMLIN COMPANY, et al.,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11775 (LSS)
)
) (Joint Administration Requested)
)

**DECLARATION OF BRADLEY J. HARTSELL IN SUPPORT OF DEBTORS’
CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

I, Bradley J. Hartsell, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the President of Water Gremlin Company, a Minnesota corporation (“Water Gremlin”). I have been in this position since 2022. I am also an authorized representative of debtors WG Sub, LLC (“WG Sub”) and Water Gremlin Holdings, Inc. (“Holdings,” and together with Water Gremlin and WG Sub, the “Debtors”).

2. I submit this declaration (the “Declaration”) in support of the voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and the pleadings filed by counsel on the date hereof (the “Petition Date”) seeking various types of “first day” relief (collectively, the “First Day Motions”), and to provide an overview of the Debtors’ businesses and their need for restructuring under chapter 11 of the Bankruptcy Code.

3. I am familiar with the Debtors’ day-to-day operations, books and records, businesses, and financial affairs. Except as otherwise indicated, the facts set forth in this Declaration are based on my personal knowledge of the Debtors’ businesses, employees,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: WG Sub, LLC (“WG Sub”) (0781), Water Gremlin Holdings, Inc. (“Holdings”) (9250), and Water Gremlin Company (“Water Gremlin”) (6396).

operations and finances; information learned from my review of relevant documents; my discussions with other members of the Debtors' senior management and other professionals; information provided to me by employees working under my supervision; and advice from legal counsel for the Debtors. If called upon to testify, I can testify competently to the facts set forth in this Declaration. I have been authorized to submit this Declaration on the Debtors' behalf.

I. THE COMPANY'S BUSINESS

4. Water Gremlin was founded in White Bear Township, Minnesota in 1949 as a manufacturer of lead sinkers for the recreational fishing markets. The company started in the garage of its original founder and has grown through diversification over the years to become a leading manufacturer of battery component parts with approximately 178 full time employees. It was in the 1970s that Water Gremlin expanded its operations to manufacture the anode and cathode terminals for batteries. In 2005, Water Gremlin was acquired by Okabe Co., Ltd. ("Okabe"), a producer of industrial and construction products based in Tokyo, Japan. Okabe is not a debtor in these chapter 11 cases.

5. The battery terminals manufactured by Water Gremlin are found in millions of vehicles, e-vehicles, recreational vehicles, buses, trucks and throughout the commercial transportation, aviation, government and military communities. Today, Water Gremlin is the leading supplier of battery terminals serving a broad range of end markets. WG Sub continues to sell the company's hallmark fishing sinker products for the recreational fishing market.

6. Water Gremlin owns more than 160,000 square feet of combined manufacturing and warehousing space in White Bear Township, Minnesota and has been an important part of the local community that has developed over time. Water Gremlin has a diverse work force that make up the Water Gremlin community, which includes women in leadership roles, members of

immigrant communities of color, and a dedicated technical staff with expertise in mechanical systems and robotics.

7. Today, the Debtors' workforce consists of approximately 178 full time employees, including seasoned workers with specialized skillsets necessary for operating the Debtors' manufacturing facility, and approximately 14 temporary workers.

II. CORPORATE ORGANIZATION, CAPITAL AND DEBT STRUCTURE, AND RECENT FINANCIAL PERFORMANCE

A. Corporate Structure

8. The Debtors are headquartered in White Bear Township, Minnesota. Debtor Holdings is an Illinois corporation that is wholly owned by Okabe. Holdings serves as a holding company for Water Gremlin and Water Gremlin Aquila Company S.p.A. ("Aquila"). Water Gremlin, a Debtor herein, manufactures and sells battery terminals in North America. Aquila is a non-debtor that operates in Italy and supplies battery terminals in Europe, Asia, Africa, and the Middle East. WG Sub is a Delaware subsidiary of Water Gremlin that sells fishing sinkers.

9. An organizational chart illustrating the Debtors' structure is attached hereto as **Exhibit A** and is incorporated herein by reference.

B. Capital Structure

10. The Debtors' have no major prepetition secured creditors. Prior to the Petition Date, Water Gremlin had an unsecured line of credit with Mizuho Bank, Ltd. ("Mizuho"), which provided for an aggregate principal amount of up to \$25 million. The Company's debt is comprised of general unsecured claims, including the Mizuho Debt, as set forth in the filings.

11. The Mizuho Debt functioned as a series of weekly term loans. Each week, Water Gremlin drew down an amount sufficient to pay the full amount of the outstanding Mizuho Debt from the prior week's draw, plus an additional amount, if any, needed to operate its business.

Water Gremlin's obligations related to the Mizuho Debt are guaranteed by Okabe. As of the Petition Date, the aggregate outstanding Mizuho Debt totaled approximately \$21.6 million, plus interest and fees (the "Mizuho Debt"). The Mizuho line of credit is no longer available to Water Gremlin, thereby the Debtors have identified and obtained a commitment for debtor-in-possession financing as set forth in the filings.

C. Recent Financial Performance

12. The Debtors' consolidated balance sheet is set forth in the filings and includes as of October 26, 2023 (i) assets of \$65,737,323, including \$3,848,837 in cash and \$5,805,054 in receivables, (ii) liabilities of \$27,792,622, including \$3,604,480 in payables and \$708,571 in long-term liabilities, and (iii) total capital, including stockholder equity, of \$37,944,701.

13. The Debtors have experienced an overall decline in annual net sales since 2018, with net sales of approximately \$57.8 million in 2018, \$53.2 million in 2019, \$43.4 million in 2020, \$50.8 million in 2021, and \$46.8 million in 2022.

D. Management of the Debtors

14. The Debtors have benefitted from an experienced and dedicated management team supported by long-tenured staff. I commenced my service as President of Water Gremlin in February 2022. I previously held roles with multiple foreign manufacturing companies and served in the U.S. Armed Forces.

15. During my tenure as President, the Debtors have developed Gremlin Green™ ("Gremlin Green"), a proprietary process that dramatically decreases use of solvents in the manufacture of battery terminal products. The Debtors have also worked proactively to improve and enhance the company's quality control and health and safety programs. The Debtors have received International Organization for Standardization or ISO certifications both for their manufacturing programs and their environmental programs. These initiatives and the ramp-up of

operations following shutdowns (discussed below) have been facilitated by the Debtors' leadership and operational managers, several of whom have 30 to 40 years of experience in the industry.

16. On May 16, 2023, Water Gremlin engaged and appointed Edward T. Gavin, CTP, NCPM of Gavin/Solmonese LLC to serve as an independent member of the Board of Directors of Water Gremlin (the "Board"). The other members of the Board were either employees of Water Gremlin or Okabe.

17. In addition, the Board formed a restructuring committee (the "Restructuring Committee") and appointed Mr. Gavin to serve on the Restructuring Committee as its sole member.

18. The Restructuring Committee originally was charged, *inter alia*, to review, analyze, advise, and make recommendations to the full board on matters related to the Tort Claims (as defined below), exploration of a potential sale, and the consideration of strategic alternatives, including a possible restructuring. Subsequently, in the resolutions approving the filing of these bankruptcy cases, the Board amended the charter of the Restructuring Committee and delegated the Board's power and authority to the Restructuring Committee to manage and implement the proposed sale, plan negotiations, and any other matters related to these bankruptcy cases. Likewise, the Board of Directors of Holdings passed a similar resolution forming a restructuring committee and appointing Mr. Gavin to such restructuring committee and to the Board of Directors of Holdings.²

² My understanding is that WG Sub is a member-managed LLC and since Water Gremlin is the sole member, there was no need to form a similar restructuring committee for WG Sub.

III. ENVIRONMENTAL CONCERNS AND BUSINESS INTERRUPTIONS PRECEDING BANKRUPTCY CASES

A. TCE Release and Self-Disclosure

19. Through 2018, Water Gremlin used a chemical compound called trichloroethylene (“TCE”) as a solvent to degrease metal parts as part of its battery terminal coating process. This process of cleaning has been used in manufacturing industries throughout the United States for decades. In 2018, Water Gremlin determined that certain pollution control equipment it had purchased may not have been operating in conformance with its permit and the company subsequently submitted a voluntary self report to the state regulator and took corrective actions. In August 2018, Water Gremlin subsequently made a voluntarily self-disclosure on the TCE emissions to the Minnesota Pollution Control Agency (the “MPCA”) and took corrective action.

20. After additional testing and communication with the MPCA, in early 2019, Water Gremlin notified the MPCA of its voluntary decision and commitment to permanently discontinue the use of TCE, and that it had removed all TCE solvent from its facility. Water Gremlin replaced TCE with another material recommended as a safer alternative for its operations.

21. In March 2019, Water Gremlin and the MPCA entered into a stipulation agreement to resolve the MPCA’s allegations that Water Gremlin had violated its air emissions permit. Under the stipulation, Water Gremlin agreed to pay a \$4.5 million civil penalty to the MPCA, perform \$1.5 million in supplemental environmental projects, and undertake certain remedial measures before resuming coating operations.

22. After Water Gremlin undertook the prescribed remedial measures and resumed coating operations the MPCA required the company to complete a remedial investigation for its property and operations. Beginning in August 2019, the MPCA and other state and local agencies required Water Gremlin to implement corrective actions and improve and enhance its operations

for compliance with applicable laws and regulations. Water Gremlin has taken all of the actions and corrective measures required by the agencies. Water Gremlin estimates that the total cost of those actions today exceeds \$33 million.

23. Water Gremlin's operations require an air emissions permit issued by the MPCA. From 2019 forward, Water Gremlin operated under Stipulation Agreements and an Administrative Order issued by state agencies, and applied for an amended air emissions permit from the MPCA. In June 2023, the MPCA issued an amended air permit with stringent controls and requirements for Water Gremlin's operations. While Water Gremlin has challenged certain aspects of the permit (for example, the permit sets standards that have not been promulgated under proper state rulemaking procedures) via appeal to the Minnesota Court of Appeals, it has not asked for stay of the permit and is committed to operating in compliance with the permit.

B. MPCA's Public Health Assessment

24. The Minnesota Department of Health ("MDH") prepared a public health assessment for Water Gremlin's operations. The agency's conclusions are in stark contrast to the Tort Claims (defined below) asserted against the company. The MDH stated, among other things, that although "[i]t is possible that past exposures to TCE in air near the facility may have been sufficient to increase the risk of health effects in a small number of the most exposed individuals . . . TCE exposures may be too low to cause any observable health effects for most if not all people who lived or were regularly near the Water Gremlin facility." *See* Minnesota Department of Health, *Water Gremlin Public Health Assessment*, August 23, 2022, p. 52.

25. MDH further concluded in relevant part that TCE "[g]roundwater contamination is not expected to harm people's health", "[s]oil vapor contamination is not a risk at properties near Water Gremlin", and "[s]oil, sediment, and surface water contamination from Water Gremlin does

not pose a health risk in the community.” *Id.* at p. 53. MDH’s report advised that “there is no need for people to go to the doctor solely because they live near Water Gremlin or did so in the past.” *Id.* at 15.

26. Additionally, MDH analyzed cancer rates in the area surrounding the Debtors’ facility for the relevant years and found that (i) “[o]verall cancer rates in the study area were found to be virtually identical to cancer rates in the seven-county Twin Cities Metro area”, and (ii) none of the cancers specifically analyzed . . . showed significantly greater cancer rates in the 10-year assessment period compared to expected rates . . . include[ing] the three types of cancers (kidney, liver, and non-Hodgkin lymphoma) most believed to be associated with TCE exposures.” *Id.* at 45.

27. Consistent with these findings by the MDH, in September 2020, an individual plaintiff seeking to bring a class action claim sued Water Gremlin in Minnesota state court alleging that the value of his real property had been damaged from Water Gremlin’s airborne emissions of TCE. Water Gremlin successfully defended the suit and won a summary judgment in its favor in November 2021, which was affirmed by the Minnesota Court of Appeals in September 2022.

C. Gremlin Green

28. After voluntarily discontinuing the use of TCE in 2019, Water Gremlin developed the Gremlin Green environmental sustainability program to eliminate the use of EPA listed hazardous air pollutants and reduce chemical usage in its manufacturing process. In pursuit of that goal, Water Gremlin developed and patented an award-winning ultraviolet-cure method of coating its battery terminals that eliminates volatile organic compounds and significantly reduces manufacturing costs. Water Gremlin anticipates reducing its solvent usage by 80% in the next two years. This will significantly reduce the company’s environmental footprint (the Company already has an environmental sustainable program which uses 99% recycled lead materials that would

otherwise go to a landfill) and reduce the costs and expenses associated with the company's air permit.

29. In addition to the Gremlin Green program, my management team has led the Debtors to embark on a reemphasis and reformation of the safety processes and procedures at the Debtors' facility. The Debtors' now proudly operate one of the cleanest and best-kept facilities of its type, with an emphasis on safety and environmental sustainability.

D. Loss of Market Share

30. Despite Water Gremlin's quick and aggressive response following the self-disclosure, the sensationalized headlines and media reports that followed led to a significant drop in the market share that the Debtors' products previously enjoyed.

31. Water Gremlin also experienced the perfect storm of decreased demand related to the COVID-19 pandemic. The lockdowns and travel restrictions that ensued caused an extreme (albeit temporary) drop in demand for car batteries. Although travel by car rebounded much more quickly than other aspects of the travel industry, and with it the car battery market, the initial drop in demand for Water Gremlin's battery terminals disrupted the regional and global battery supply chains. As discussed below, Water Gremlin did not recapture 100% of the market share for its product once demand resumed.

32. In 2018, Water Gremlin's battery terminal products accounted for roughly 80% of the United States battery terminal market. Water Gremlin's manufacturing shut downs therefore put downward pressure on the companies that it supplied. In 2019 and 2020, many of the companies that purchased battery terminals from Water Gremlin recognized the extent to which their supply chains were dependent on a single supplier and began to find secondary sources of

battery terminals. As a result, even after Water Gremlin's manufacturing operations fully resumed, Water Gremlin received lower overall orders.

33. These market changes have made it difficult for Water Gremlin to regain market share because certain of Water Gremlin's customers have moved at least a portion of their business to other suppliers and no longer wish to utilize any single supplier for a high percentage of their needs. The drop in demand for car batteries that resulted from COVID-19 gave Water Gremlin's customers a further opportunity to seek out other suppliers while their need for product was relatively low.

34. The Debtors' sinker business has also declined. Revenues associated with the sinker business decreased dramatically from 2019 through 2020 and have not recovered.

35. The Debtors are confident that Gremlin Green and rising demand for vehicles and battery components will increase customer demand for the Debtors' products. However, in the aftermath of the Debtors' shutdowns, environmental and regulatory issues, and loss of market share, the Debtors were in need of restructuring.

E. Lawsuits Commenced by Tort Claimants

36. In January 2023, following a years-long claimant-seeking campaign by one law firm, over 90 plaintiffs served separate complaints against the Debtors asserting various tort causes of action based on their alleged exposure to TCE released by Water Gremlin (the "Tort Claims"). Those cases have not as of this date been filed in court based on unique Minnesota civil practice called a pocket filing. The Debtors strenuously dispute the validity of these tort claims and maintain that there are numerous facts that will prove that there is no causal connection between the debtors' TCE emissions and the alleged damages by plaintiffs.

37. I am advised and it is my belief that the Debtors likely could have accomplished a restructuring outside of bankruptcy if not for the Tort Claims. I am advised that the enormous cost of defending the Tort Claims, coupled with the risk of adverse outcomes in the litigation necessitated filing these chapter 11 cases.

38. Prior to the Petition Date, the Debtors attempted to engage in mediation with the tort claimants. A scheduled mediation was canceled at the request of the tort claimants' counsel and has not been rescheduled. The Debtors contemplate that they will now engage in mediation with the tort claimants in the context of these bankruptcy cases as the Debtors seek to achieve a fair and efficient resolution of the litigation and reduce costs and uncertainty related to the litigation that imperiled the Debtors' going concern businesses. The Debtors will pursue an asset sale and confirmation of a plan that provides optimal compensation for all creditors who are determined to be entitled to compensation.

IV. PREPETITION MARKETING AND STALKING HORSES

39. In evaluating their restructuring needs, the Debtors thoroughly considered several available options and decided that it was in the best interests of their creditors to consider strategic alternatives, including consummating some form of sale, merger, acquisition and/or related transaction (a "Transaction"). In April 2023, the Debtors retained Intrepid Investment Bankers LLC ("Intrepid") as investment banker to conduct a comprehensive marketing process for substantially all of the Debtors' assets.

40. From my communications with Intrepid, I understand Intrepid contacted approximately 140 potential interested parties comprised of both strategic and financial buyers in the United States, Europe, Africa, Asia, and South America. After initial discussions, 42 entities expressed continued interest and executed non-disclosure agreements. Prior to the start of site visits in mid-August, Intrepid hosted a virtual management "town hall" for interested parties to

receive additional information about Water Gremlin and Aquila. Following the town hall, interested parties were asked to submit indications of interest and Intrepid reported that five parties provided indicative valuation ranges. The parties who provided indicative valuation ranges were subsequently invited to visit Water Gremlin's facility in Minnesota. Two interested parties also toured Aquila's facilities in-person, while other interested parties did virtual site visits through photos, videos, and online meetings with Aquila management.

41. As of the Petition Date, the Restructuring Committee of Water Gremlin's Board of Directors, in consultation with Debtors' counsel and Intrepid, has reviewed potential purchasers' proposals, and continues to oversee discussions and ongoing diligence with interested parties. In connection with its discussions with potential purchasers, it is my understanding that Intrepid has been providing regular updates with the latest financial information and supplementing an online data room to satisfy interested parties' diligence requests.

42. I believe that Water Gremlin, having already invested in its future, is well positioned to continue its role as the leading manufacturer of battery terminals that meets our customer needs and provides crucial components to all market segments. I expect that the marketing process will continue through an auction.

V. THE FIRST DAY MOTIONS

43. On and since the Petition Date, the Debtors filed the following First Day Motions:

- **Cash Management Motion.** *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Perform Intercompany Transactions, and (E) Waiving the Requirements of Section 345(b) on an Interim Basis, and (II) Granting Related Relief*
- **Utilities Motion.** *Debtor's Motion for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors'*

Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief

- **Wages Motion.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*
- **Insurance Motion.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance Coverage and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (II) Granting Related Relief*
- **Tax Motion.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief*
- **Joint Administration Motion.** *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief*
- **DIP Motion.** *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Liens, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (VI) Granting Related Relief*

44. I have reviewed and am familiar with the content of each of the First Day Motions. To the best of my knowledge and belief, and after consultation with certain members of the management team and the Debtors' counsel and other advisors, the factual statements contained in each of the First Day Motions are true and accurate to the best of my knowledge. The facts set forth in each of the First Day Motions are incorporated herein in their entirety.

45. Based on my knowledge, and after reasonable inquiry, I believe that the approval of the relief requested in the First Day Motions is: (a) necessary to enable the Debtors to transition into, and operate efficiently and successfully in, chapter 11 with minimal disruption or loss of productivity and value; (b) critical to the Debtors' conducting successful chapter 11 cases; and (c) in the best interest of the Debtors' estates and their stakeholders. I believe that if the Court does not grant the relief requested by the Debtors in the First Day Motions, the Debtors' businesses and their estates will suffer immediate and irreparable harm. Accordingly, for the reasons set forth

herein and in the First Day Motions, the Court should grant the relief requested in each of the First Day Motions.

VI. CONCLUSION

46. This Declaration describes the factors that have precipitated the commencement of these chapter 11 cases and demonstrates the need for the Debtors to obtain the relief requested in the First Day Motions.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: October 29, 2023
White Bear Township, Minnesota

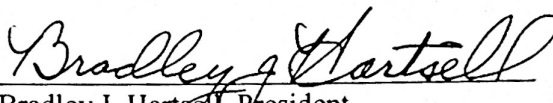

Bradley J. Hartsell, President

Exhibit A

Organizational Chart

Organizational Chart Of U.S. Subsidiaries

