

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

In re

WALKER EDISON HOLDCO LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 25-11602 (TMH)

(Jointly Administered)

Re: D.I. 112

**DEBTORS' OBJECTION TO KENCO LOGISTIC SERVICES LLC'S
MOTION TO COMPEL ADEQUATE PROTECTION**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby object (the “Objection”) to the *Kenco Logistic Services LLC's Motion to Compel Adequate Protection* (the “Motion”).² In support of this Objection, the Debtors rely upon and incorporate by reference the *Debtors' Reply in Support of Debtors' Motion for an Order (I) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* (D.I. 194-2) (the “Reply”) and the *Declaration of Nate Brown in Support of Debtors' Reply in Support of Debtors' Motion for an Order (I) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal EIN, are as follows: Walker Edison Holdco LLC (8817); Walker Edison Intermediate, LLC (3363); Walker Edison Furniture Company LLC (6576); and EW Furniture, LLC (6288). The Debtors' mailing address is 1553 W 9000 S. West Jordan, UT 84088.

² After filing the Motion, Kenco filed a *Notice of Hearing Regarding Kenco Logistic Services, LLC's Motion to Compel Adequate Protection* (D.I. 182) setting the objection deadline for October 1, 2025, and scheduling the hearing on its Motion for October 8, 2025, at 11:00 a.m. (ET). While the Court at the hearing in these cases on September 29, 2025, indicated that it did not want to see further briefing, the Debtors respectfully believe that they needed to file this Objection by the objection deadline to preserve their rights as to Kenco's Motion.

(III) *Granting Related Relief* (D.I. 204) (the “Brown Declaration”). In further support of this Objection, the Debtors state as follows:

PRELIMINARY STATEMENT

In its Motion, Kenco claims that it possesses a valid statutory warehouse lien and supports this claim in just five paragraphs of its argument section. See Motion, ¶¶ 15-19. However, in a recent hearing in these cases, Kenco admitted that it has what is called a “specific” warehouse lien instead of a “general” warehouse lien under Article 7 of the Uniform Commercial Code (“U.C.C.”). This distinction was not raised or addressed in Kenco’s Motion.

Under Article 7 of the U.C.C., a “general” lien is a possessory lien covering all past and current warehouse charges, whether for services related to the goods currently in the warehouse’s possession or past services for goods no longer in the warehouse’s possession. Conversely, a “specific” lien is a possessory lien limited to those specific services related only to those specific goods still in the warehouse’s possession. Unlike a general lien, a specific lien *does not* secure costs related to goods that are no longer in the warehouse’s possession. To have a valid general warehouse lien, certain language must be present in the relevant storage agreement or warehouse receipt.

While it is not entirely clear from the filed papers, it appears that Kenco is asserting that “unapportioned” charges, which could be related to both goods still in the warehouse’s possession and to goods no longer in the warehouse’s possession, can be secured with only a specific lien under Article 7. The Debtors believe this novel theory is nothing more than an attempt to circumvent the statutory requirements of section 7-209 of the U.C.C. to obtain the privileges and benefits of a general lien.

In addition to this apparent attempt to gain a general lien without meeting the necessary statutory requirements, Kenco appears to have admitted that it cannot prove a more limited “specific” lien because, as noted in the *Declaration of Frank Loewen in Support of Kenco Logistic Services, LLC’s Sale Objection and Request for Adequate Protection* (D.I. 195) (the “Loewen Declaration” or “Loewen Dec.”),³ Kenco’s representative admits that “Kenco does not maintain records detailing how the individual charges are apportioned to specific goods. Such practice is impractical or impossible based on the services provided to WEF.” See *Loewen Dec.*, ¶ 13. This admission is fatal to Kenco’s request for a specific lien. Therefore, it appears that Kenco has neither a general lien, nor a specific lien that would be entitled to adequate protection.

Assuming *arguendo* that Kenco does have some sort of lien entitled to adequate protection, this Court has previously held that adequate protection may only be awarded from the date a party seeks relief. Since the Motion was filed on September 17, 2025, Kenco is only entitled to adequate protection as of that date. As stated previously in the Reply and the Brown Declaration, just prior to the Petition Date, Kenco required the Debtors to provide a prepayment of \$200,000 to be applied against future services. Since shortly after the Petition Date, Kenco has been drawing down weekly on this \$200,000 Retainer (as defined in the Brown Declaration) for the services it provided to the Debtors. In addition, the Debtors make weekly payments to Kenco ensuring that the Retainer remains at \$200,000. Accordingly, assuming Kenco has a lien (which

³ While the Debtors make reference to the Loewen Declaration in this Objection, the Debtors do not agree that the Declaration is admissible as the Declarant may not have personal knowledge of the relevant facts, as evidenced by paragraphs 1, 2, 3 & 6, for example. See *Loewen Dec.* ¶ 1 (“I have been employed by Kenco since April 2024”); ¶ 3 (the Services Agreement was executed on June 17, 2019 well before Mr. Loewen’s time); ¶ 2 (“I am generally familiar with Walker Edison Furniture Company, LLC’s bankruptcy case *through my counsel.*”) (emphasis added); ¶ 6 (“As *explained to me*, Kenco entered into the Services Agreement with the understanding and expectation that it was a ‘storage agreement’ as such term is used in Section 7-209 of the UCC.”) (emphasis added). The Debtors reserve the right to move this Court to strike the Loewen Declaration.

it does not), it is adequately protected by this prepayment. Therefore, and for the reasons set forth below, the Debtors respectfully request the Motion be denied.

BACKGROUND

1. For brevity's sake, the Debtors hereby incorporate by reference the "Background" section contained in their Reply and the facts set forth in the Brown Declaration.

ARGUMENT

I. Kenco Bears the Burden of Establishing the Priority, Validity, and Extent of Its Claimed Warehouse Liens.

2. As detailed previously in the Reply, it is Kenco's burden in any proceeding under section 363 of the Bankruptcy Code to establish the validity, priority, and extent of its liens. This is as true with the Motion as with Kenco's prior objections to the Debtors' sale. And as before, Kenco has failed to establish its burden of proof under the Bankruptcy Code.

3. Section 363(p)(2) of the Bankruptcy Code provides that, "[i]n any hearing under this section . . . the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest." 11 U.S.C. § 363(p)(2); *see also Kiser v. Russell Cty., Va (In re Kiser)*, 344 B.R. 432, 439 (Bankr. W.D. Va. 2004) ("Pursuant to Bankruptcy Code § 363(p)(2), the burden of proof falls on the party asserting an interest in property. Because [creditor] is asserting a lien on the [debtors'] property it has the burden of proving to what property its lien attaches."). In addition, Kenco must prove its entitlement to the lien by a preponderance of the evidence. *See, e.g., In re Elk Grove Village Petroleum, LLC*, 562 B.R. 708, 717 (Bankr. N.D. Ill. 2016) (party asserting an interest in property must prove the validity, extent and priority under section 363(p)(2) by a preponderance of the evidence), *aff'd sub nom. Ill. Dept. of Revenue v. Hanmi Bank*, 895 F.3d 465 (7th Cir. 2018).

4. While the burden is squarely on Kenco to prove up the validity, priority,

and/or extent of its liens, Kenco is unable to meet this burden because (a) it does not possess a general lien, and (b) it is apparently “impractical or impossible” for Kenco to quantify the specific charges against the specific goods in its possession for a specific lien. *See* Loewen Dec., ¶ 13. Accordingly, and as set forth more fully below, Kenco’s Motion must be denied as Kenco has not proven that there is anything to adequately protect.

II. Kenco Has Not Offered Any Proof that the Secured Lenders Consented to the Possessory Liens.

5. As discussed previously in the Reply, unless Kenco offers up evidence that the Debtors’ Secured Lenders (as defined in the Reply) consented to possessory warehouse liens, Kenco’s claimed warehouse possessory liens would be subordinated to the Secured Lenders’ security interests under the plain language of sections 7-209(c) and 9-333(b) of the U.C.C. (including Delaware’s enactment of those Articles). To date, Kenco has offered no evidence that the Secured Lenders consented to such possessory liens, which is its burden under the Bankruptcy Code.

III. Kenco Admits a “Specific” Lien but Seeks the Expansive Rights of a General Lien.

6. While not addressed in its Motion, at the sale hearing on September 29, 2025, Kenco admitted that it only has a specific warehouse lien and not a general lien. *See* Sale Hr’g. Tr. at 50:17-18. But, in its papers, Kenco appears to be asserting a general lien under the guise of a specific lien.

7. Under Article 7, a specific lien attaches automatically and is limited to those specific services related only to those specific goods still in the warehouse’s possession. 6 *Del. C.* § 7-209(a) (“A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, . . . in relation to the goods . . .”). Any lien for charges attributable to the goods

that have already been shipped out is lost. *Id.* § 7-209(e). Conversely, a general lien requires express statutory language and allows a lien for charges or expenses relating to goods that were previously held in the warehouse.⁴ 6 *Del. C.* § 7-209(a) (“If . . . it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse.”). Thus, a warehouse with a general lien can claim all past and current warehouse charges whether for services related to the goods currently in the warehouse’s possession or past services for goods no longer in the warehouse’s possession.

8. Since a general lien can significantly expand lien rights, courts apply a strict interpretation of section 7-209 of the U.C.C. to ensure that parties understand and agree to such

⁴ Delaware’s enactment of section 7-209(a) of Article 7 reads:

A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

6 *Del. C.* § 7-209(a). Also, while the Debtors reference Delaware’s enactment of Article 7 of the U.C.C., because the goods are located in a warehouse in California, it may be that California’s enactment of Article 7 applies here. Because the statutes are substantially similar, the Debtors are not contesting the applicability of Delaware’s statute at this time.

expansion. *See In re Julien Co.*, 136 B.R. 765, 775 (Bankr. W.D. Tenn. 1992) (“[Section] 7-209 provides for the creation of a statutory general lien, a legal creation in derogation of common law which, consequently, requires strict compliance with the elements necessary for its creation.”); *In re Welded Constr., L.P.*, 618 B.R. 710, 728 (Bankr. D. Del. 2020) (“[S]trict compliance with statutory lien requirements is required . . .”).

9. As previously stated, Kenco now admits it is asserting a specific lien and not a general lien. Despite this admission, Kenco is apparently attempting to claim that all “unapportioned” charges can be asserted, in total, against all of the goods still in Kenco’s possession. *See* Loewen Dec., ¶¶ 7–8.⁵ Kenco maintains this allegation even though it is uncontroverted that, during the same period of time these alleged charges were incurred, tens of thousands of units of the Debtors’ goods left Kenco’s warehouse. *See* Brown Dec., ¶ 5 (noting that, at the beginning of the period, over 180,000 units were in Kenco’s warehouse while as of the Petition Date, only about 100,000 units were remaining). Thus, it is axiomatic that these “unapportioned” charges *also relate to goods that have left Kenco’s warehouse*. But such charges would only be available under section 7-209 if “it is *stated in the* warehouse receipt or *storage agreement that a lien is claimed* for charges and expenses in relation to other goods.” 6 Del. C. § 7-209(a). As noted in the case *Matter of Celotex Corp.*, 134 B.R. 993, 997 (Bankr. M.D. Fla. 1991):

The identification of the goods is important because under the Uniform Commercial Code a lien only covers the property described in the warehouse receipt as distinguished from the former Uniform

⁵ The Debtors also do not necessarily agree that all amounts claimed in the Motion or the Loewen Declaration are liabilities of the Debtors, including, for example, the claimed “project costs” set forth in paragraph 8 of the Loewen Declaration. Additionally, the Debtors paid Kenco over \$1.4 million during the 90-day period prior to the Petition Date—some of which should have been applied to the outstanding invoices cited in the Loewen Declaration. Without proof of how those payments were applied to the outstanding invoices, it is impossible to know whether the costs Kenco claims are still outstanding actually “relate to” the goods currently in Kenco’s possession.

Warehouse Receipts Act (Ind. Code § 67–401 *et seq.* (Burns 1961)) which provided that the lien attached to all goods deposited with the warehouseman. The probable reason for the distinction is the existence in commercial law of two types of liens: a specific lien arising for the storage charges of the specified goods and a general lien arising for the storage charges of goods not on a warehouse receipt.

*Id.*⁶ Similarly, in the case of *In re Siena Publishers Assocs.*, 149 B.R. 359, 363 (Bankr. S.D.N.Y. 1993), the court found no proper lien because:

the documents claimed collectively to constitute the warehouse receipts do not show, as required by statute, the location of the warehouse where the goods are stored, they do not show a statement of the amount of advances made and liabilities incurred for which [the warehouseman] claims a lien and they do not bear any receipt numbers or other consecutive numbers. A warehouse receipt is a condition precedent to establishing a lien on the goods in the possession of the warehouseman.

*Id.*⁷

10. If Kenco was correct that “unapportioned” charges—which can be related

⁶ While this citation refers to warehouse receipts and not storage agreements, the official comments to Article 7 indicate that a storage agreement must meet the same specificity as a warehouse receipt with respect to quantifying specific costs with respect to specific goods as required for a specific warehouse lien. *See* 1D SECURED TRANSACTIONS UNDER THE UCC § 29A.05 (Previously, Article 7 only extended specific liens to goods covered by a warehouse receipt, but was subsequently revised to include goods covered by a storage agreement. “The revision does not define ‘storage agreement.’ However, Comment 6 to current UCC § 7-209 states: In the modern warehouse, the bailer and bailee may enter into a master contract governing the bailment with the bailee and bailer *keeping track of the goods stored pursuant to the master contract by notation on their respective books and records* and parties send notification via electronic communication as to what goods are covered by the master contract.”) (emphasis added).

Finally, the section cited to by Kenco in its Motion, at paragraph 16, referring to Kenco not having “any liability” for not issuing warehouse receipts is only a reference to section 7-203 of Article 7 entitled “Liability for Nonreceipt or Misdescription,” which refers to liability of the *warehouse to the owner* of the goods, and has nothing to do with the requirements for creating a lien under section 7-209. *Compare* 6 *Del. C.* § 7-203, *with* § 7-209(a). Disclaiming Kenco from *liability* in one section of Article 7 does not grant Kenco additional *rights* under another section of Article 7 or otherwise.

⁷ In its own Motion, Kenco acknowledges this specificity requirement and cites the following case: *In re Aerospace Techs., Inc.*, 199 B.R. 331, 337 (Bankr. M.D.N.C. 1996) (holding that invoices lacking key statutory elements, such as description of goods or delivery terms, fell short of qualifying as receipts).

to both goods still in Kenco's possession as well as goods no longer in Kenco's possession—can be covered by a specific lien, then Kenco has successfully eliminated the necessity to comply with the strict statutory requirements of section 7-209 of the U.C.C. to create a general lien by alleging that it is “impractical or impossible” to apportion individual charges to specific goods. See Loewen Dec., ¶ 13.

11. The expansive rights Kenco asserts, without being compliant with section 7-209 of the U.C.C., goes directly against the case law which holds that section 7-209 should be strictly interpreted. Unsurprisingly, Kenco provides no case law for the proposition that inefficient business practices can supersede statutory requirements by merely asserting the inability or unwillingness to comply.

12. Because Kenco asserts a specific lien for warehousing charges but is, by its own admission, unable to identify any specific charges to specific goods of the Debtors, it cannot establish the extent of its specific warehouse lien. Accordingly, Kenco's Motion should be denied.

IV. To the Extent this Court Holds Adequate Protection is Warranted, Kenco is Adequately Protected.⁸

13. While the Debtors do not believe that adequate protection is warranted as Kenco is unable to properly establish its possessory warehouse lien, to the extent this Court requires adequate protection, the Debtors submit that Kenco is already adequately protected.

14. This Court has previously ruled that adequate protection “may only be awarded from the date movants seek relief.” *Matter of Continental Airlines, Inc.*, 146 B.R. 536, 539 (Bankr. D. Del. 1992). Accordingly, at most Kenco would be entitled to adequate protection

⁸ As of the hearing on Kenco's Motion, this Motion may be moot by the closing of the Debtors' sale of substantially all of their operating assets to Twin-Star International, Inc. To the extent, the closing occurs before the hearing date on Kenco's Motion, the Debtors reserve the right to supplement the record.

from the date the Motion was filed, September 17, 2025.

15. As detailed further in the Reply and the Brown Declaration filed in connection therewith, the Debtors have provided Kenco with a \$200,000 Retainer to pay for future expenses. As Kenco draws upon the Retainer, the Debtors send weekly payments to Kenco to maintain the Retainer at \$200,000. In light of the fact that Kenco is unable to establish the amount of its lien, the Debtors submit adequate protection is not required. However, to the extent this Court requires adequate protection, the Debtors submit that the \$200,000 Retainer is sufficient.

RESERVATION OF RIGHTS

16. For the avoidance of doubt, the Debtors reserve their right to supplement this Objection to the extent that any party raises additional issues or arguments with respect to the Motion.

CONCLUSION

WHEREFORE, for reasons set forth herein, the Debtors respectfully request that the Court deny the Motion and grant such other and further relief as is just and proper.

Dated: October 1, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Daniel B. Butz

Robert J. Dehney, Sr. (No. 3578)

Donna L. Culver (No. 2983)

Daniel B. Butz (No. 4227)

Scott D. Jones (No. 6672)

Jonathan M. Weyand (No. 6959)

1201 N. Market Street, 16th Floor

Wilmington, Delaware 19801

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: rdehney@morrisnichols.com

dculver@morrisnichols.com

dbutz@morrisnichols.com

sjones@morrisnichols.com

jweyand@morrisnichols.com

Counsel to the Debtors and Debtors in Possession