

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	CHAPTER 11
	)	
UPG ENTERPRISES, LLC, et al., ¹	)	
	)	CASE NO. 26-15734
	)	(Jointly Administered)
	)	
DEBTOR.	)	HON. DANIEL R. FINE

**UNITED STATES TRUSTEE’S LIMITED OBJECTION TO DEBTORS’ MOTION
FOR ENTRY OF FINAL ORDER AUTHORIZING POSTPETITION FINANCING**

NOW COMES ADAM G. BRIEF, the Acting United States Trustee for the Northern District of Illinois (the “U.S. Trustee”), by his attorney, Joshua D. Greene and submits his Limited Objection to the Debtors’ Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. 105, 361, 362, 363, 364, 503, 506 and 507(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, (V) Modifying the Automatic Staty, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief (the “DIP Financing Motion”). In support of this Limited Objection, the U.S. Trustee states as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtors’ federal EIN are as follows: UPG Enterprises, LLC (4790); UP Investment Holdings LLC (8445); UPI LS LLC (6446); UPI MakUSA LLC (1401); UPG Metal Services LLC (8496); GenX Leasing Partners LLC (4464); UP Central Office LLC (0397); UP Equipment Holdings LLC (0431); Metalex LLC (6707); UPG Fabrication LLC (9021); National Metalwares Holdings LLC (2789); National Metalwares L.P. (9247); Sidecar NM LLC (4555); Chicago Steel Holdings LLC (0967); Douglass Logistics LLC (6025); Lexington Steel LLC (2209); Maksteel USA LLC (6796); Maksteel Transport LLC (9011); UPG Flat Roll Group LLC (7515); and Lamination Specialties LLC (5604). The Debtors’ mailing address is 1400 16th St., #250, Oak Brook, IL 60523.

PRELIMINARY STATEMENT

The U.S. Trustee does not object to the Debtors obtaining DIP financing and does not object to many of the protections the Debtors provide to the DIP Lender. There are, however, some provisions of the DIP financing and proposed DIP order to which the U.S. Trustee objects. First, the U.S. Trustee objects to the proposed roll-up of any portion of the Debtors' prepetition debt to Firehorse Capital, LLC's (the "DIP Lender"). Second, the U.S. Trustee objects to the DIP Lender obtaining a lien on Avoidance Actions and proceeds of Avoidance Actions, and on any claims against the DIP Lender or its principals, who are insiders of the Debtors. Third, the U.S. Trustee objects to the Debtors' estates' proposed waiver of surcharge rights under Section 506(c) of the Bankruptcy Code.

ARGUMENT

Bankruptcy courts recognize that "[d]ebtors in possession generally enjoy little negotiating power with a proposed lender, particularly when the lender has a prepetition lien on cash collateral." *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992). Debtors are not always the best party to ensure that the terms of a DIP loan are fair to, and in the best interests of, all parties in interest, particularly a debtor's unsecured creditors. *See Otte v. Mfs. Hanover Commercial Corp. (In re Texlon Corp.)*, 596 F.2d 1092, 1098 (2d Cir. 1979) ("The debtor in possession is hardly neutral. Its interest is in its own survival, even at the expense of equal treatment of creditors, and close relations with a lending institution tend to prevent the exploration of other available courses in which a more objective receiver or trustee would engage."). Courts are cautious not to approve financing terms that are considered harmful to the estate and its creditors. "The Court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so

much to benefit the estate as it is to benefit a party in interest.” *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). Such concerns are more acute in the present case where the DIP Lender is an “entity formed by the owners of UPG to provide the Debtors with funding.” *DIP Financing Motion*, ¶38.

The Proposed Roll-Up Should Be Rejected

The proposed final order authorizing DIP financing would automatically roll-up the DIP Lender’s prepetition debt by exchanging and converting its pre-petition lending into the “Roll-Up DIP Loan” in an amount equal to the outstanding principal amount and accrued and unpaid interest of the pre-petition loan calculated as of the date of the entry of a final DIP order. Unlike the loans provided to it by non-insider, independent lenders, the Debtors do not provide an estimate of the amount of the DIP Lender’s prepetition debt.² Instead, the Debtors describe the DIP Lender’s existing prepetition debt as “consisting of the original principal amounts of \$4,984,214.59 under the Promissory Note, plus accrued and unpaid interest thereon, premiums, reimbursement obligations (contingent or otherwise) . . . and any other amounts, liabilities, or obligations . . . that may be due or owing . . .” Interim DIP Order at ¶G.(ii).

If rolled up, all the Debtors’ prepetition obligations to the DIP Lender would enjoy the most favored treatment as post-petition secured debt entitled to administrative priority that must be repaid in full, in cash, absent the consent of the lender. That treatment is unavailable absent a roll-up. Indeed, roll-ups are generally not favored because they provide little or no economic benefit to the Debtor and solely benefit the pre-petition lender (here, Debtors’ insiders) by circumventing the Bankruptcy Code’s priorities and distribution framework. *See Official Comm. Of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co.*, 322 B.R. 560, 569, n.

² The Debtors assert the amount due under the White Oak Facility is \$50,424,614.73 (DIP Financing Motion at ¶12) and under the Wintrust Facility as \$7,520,357.86 (DIP Financing Motion at ¶ 15).

4 (M.D. Pa. 2005) (noting that roll-up provisions “have the effect of improving the priority of a prepetition creditor.”).

The U.S. Trustee objects to the DIP Lender’s demand for a roll-up of its pre-petition claim. The proposed roll-up upsets the chapter 11 process by allowing payment of the DIP Lender’s prepetition debt outside of a confirmed plan and re-orders the priorities set forth in the Bankruptcy Code. Absent a roll-up, the DIP Lender’s prepetition claim could be paid over time if the lender agrees to such treatment or through a cramdown if it does not agree. *See* 11 U.S.C. §1129(b)(2)(A). The proposed roll-up, however, transforms the potential unsecured prepetition claim into a superpriority administrative expense claim that would have to be paid at confirmation under 11 U.S.C. § 1129(a)(9)(A), which impermissibly turns the Congressionally mandated priority scheme upside-down.

It is true that courts sometimes approve roll-ups as part of debtor in possession financing packages, but such approvals are based on the unique facts and circumstances of each case. Here, the Debtors have not made a showing that the roll-up is necessary or why it would provide any material benefit to the estate and its creditors. At a minimum, the Debtors must carry their burden of proving that they attempted to secure financing from other lenders, or demonstrate that the requested roll-up is on terms more favorable than those offered by other lenders. Given that the proposed DIP Lender is an entity formed by the insiders of the Debtors and is coupled with a suite of other “bells and whistles” that strongly favor the insiders over the Debtors and their estates, such burden is unlikely to be met.

Moreover, the entirety of the DIP Lender’s prepetition loan appears to have been disbursed within the three months prior to the bankruptcy filing, and according to the DIP Financing Motion, “the entirety of the funding was used to cover professional fees of the Debtors’ and DIP Lender’s professionals in connection with the Debtors’ sale process and

restructuring efforts.” *DIP Financing Motion*, ¶38. The circumstances of the prepetition loan and use of the funds should be investigated by the Unsecured Creditors’ Committee prior to the loan being converted into a postpetition debt with administrative priority. Here, no record has been made of the use of the funds or how the prepetition loan proceeds benefited the estate and the Debtors have yet to file their bankruptcy schedules that would indicate how much their professionals were paid prepetition. Without the filing of the schedules and statements, and consideration of the necessary disclosures therein, it would be inappropriate based upon the facts available at this time to grant a roll-up of any amount, let alone in an amount that has not been fully disclosed.

Any Lien on Avoidance Actions or Claims Against Insiders is Inappropriate

Paragraph 7 of the Interim Order provides that upon entry of a Final Order, the DIP Lender will have a lien on “(i) Avoidance Actions, (ii) Avoidance Action Proceeds, (iii) Other Estate Actions, or (iv) the proceeds of any Other Estate Actions.” If approved in a final order, this provision would give the DIP Lender a lien on causes of action, and any proceeds of causes of action under Chapter 5 of the Bankruptcy Code, including actions to avoid preferential transfers under Section 547, actions to avoid fraudulent transfer under Sections 544 and 548, and actions to avoid postpetition transfers under Section 549. Because the DIP Lender will also have a lien on all other assets of the Debtors, the DIP Lender will have a lien on any cause of action that may exist against the Debtors’ insiders. Such provision is a significant overreach and should be rejected by the Court. Indeed, there is no set of circumstances under which this relief benefits the Debtors or their estates.

The proposed lien on Avoidance Actions and the proceeds of Avoidance Actions poses significant problems. First, much like the proposed roll-up, the lien on Avoidance Actions changes the priority scheme of the Bankruptcy Code by giving the DIP Lender a lien on assets

that it would not have otherwise had absent the bankruptcy filing and takes away a potential means for recovery for the unsecured creditors. Avoidance actions are powers that arise under the Bankruptcy Code and only exist once the debtor files for bankruptcy protection. Pre-petition liens do not attach to rights or causes of action that did not exist prior to the bankruptcy filing. *See In re Tek-Aids Indus., Inc.*, 145 B.R. 253, 256 (Bankr. N.D. Ill. 1992) (finding that a bank's prepetition lien did not attach to proceeds of a preference action under section 547); *In re Pierport Development & Realty, Inc.*, 491 B.R. 544, 549 (Bankr. N.D. Ill. 2013) (finding that prepetition citation lien did not extend to fraudulent transfer claim). Since the DIP Lender's lien does not attach to avoidance actions, authorizing a lien on avoidance actions puts the lender in a higher priority over the unsecured creditors by giving it the proceeds of any recoveries under such avoidance actions as opposed to the unsecured creditors. Moreover, to the extent that the estates may have claims to avoid preferential or fraudulent transfer claims against the insiders, giving the DIP Lender a lien on those actions would vest in the insiders unwarranted leverage since they would effectively be paying themselves in any settlement, while unsecured creditors would get nothing from such actions. That result would be inequitable.

Similarly, as previously noted, the DIP Lender is an entity formed by the Debtors' owners. At the first day hearing, one of the Debtors' creditors indicated that it had numerous causes of actions that it had filed against the Debtors' insiders. Those causes of action may belong to the bankruptcy estate. Moreover, the Debtors admitted that UPG "received a Civil Investigative Demand notice from the United States Department of Justice related to eighteen (nine for each round) Payroll Protection Program loans (the 'PPP Loans') taken out by various Debtors, non-debtor affiliates, and former affiliates . . ." DIP Financing Motion at ¶ 19. If the Debtors' insiders, who are also principals of the DIP Lender, have any culpability with respect to the PPP Loans, the Debtors and their estates may have claims against those insiders. To the extent that claims exist

that might permit recovery against the DIP Lender or its principals, they should not be entitled to bury those claims by obtaining a lien on the claims and the proceeds.

The Section 506(c) Waiver is Inappropriate

Paragraph 9 of the Interim Order, which would become final upon entry of a Final Order, contains a waiver of rights under Section 506(c) of the Bankruptcy Code. Section 506(c) ensures that a debtor in possession can recover expenses from its secured lender for preserving or disposing of a secured lender's collateral. *In re Visual Indus., Inc.*, 57 F.3d 321, 325-326 (3rd Cir. 1995). A blanket prohibition of section 506(c) surcharges advances only the interests of the DIP Lender to the detriment of the Debtors' estates and permits the DIP Lender to enjoy a significant windfall if estate funds are used to preserve, maintain, or dispose of its collateral. While the Interim Order contains a carveout in paragraph 5 allowing for certain expenses, such carveout attempts to significantly limit the dollar amount of expenses that can be paid. The DIP Lender's insistence on the waiver or limitation of 506(c) surcharges overreaches by abrogating the Debtors' fiduciary duty to preserve and maximize the value of the assets of the estate. *See Matter of Taxman Clothing Co.*, 49 F.3d 310, 315 (7th Cir. 1995) (the trustee has a duty to maximize value of the estate); *In re Chicago Art Glass, Inc.*, 155 B.R. 180, 187 (Bankr. N.D. Ill. 1993) (same). And when coupled with the roll-up and liens on avoidance actions and proceeds that the DIP Lender demands, it highlights the DIP Lender's self-interest at the expense of the Debtors and their estates.

WHEREFORE, the Acting U.S. Trustee respectfully asks the Court to enter an order denying the DIP Financing Motions, or modifying its terms as is necessary to resolve the U.S. Trustee's objections, and for such other relief as this Court deems just.

RESPECTFULLY SUBMITTED:

ADAM G. BRIEF
ACTING UNITED STATES TRUSTEE

Dated: October 13, 2026

By: /s/ Joshua D. Greene
Joshua D. Greene, Trial Attorney
Office of the United States Trustee
219 South Dearborn, Room 873
Chicago, Illinois 60604
202-538-4834

CERTIFICATE OF SERVICE

I, Joshua D. Greene,

☒ an attorney, certify

- or -

☐ a non-attorney, declare under penalty of perjury under the laws of the United States of America

that I served a copy of this *Limited Objection* on each entity shown on the attached list at the address shown and by the method shown on October 13, 2026, at 5:00 p.m.

By: /s/ Joshua D. Greene

SERVICE LIST

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