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5 IN THE UNITED STATES BANKRUPTCY COURT
6 FOR THE DISTRICT OF ARIZONA
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9 In Re

10 GTI CAPITAL HOLDINGS, LLC, an
11 Arizona limited liability company dba
12 ROCKLAND MATERIALS,

13
14 Debtor.

In Proceedings Under Chapter 7

Case Nos. 03-07923-SSC through 03-07924-SSC

Jointly Administered

(Not for Publication- Electronic Docketing ONLY)

MEMORANDUM DECISION

15 I. PRELIMINARY STATEMENT

16 On December 22, 2009, this Court conducted a hearing on the request of David
17 M. Reaves, the Chapter 7 Trustee, to confirm allowed Chapter 11 administrative claims and prior
18 payments made by the Chapter 11 Examiner, and Application for authority to make interim
19 distribution on allowed administrative claims to Chapter 11 administrative claimants. Limited
20 objections to the relief requested were filed by FTI Consulting and Bryan Cave LLP and Stirling
21 Bridge LLC, GHG, Inc., and New York-Newport Assurance Group, Inc. (“Goodman”). The
22 appearances at the hearing are noted in the record. At the hearing, the Trustee agreed to certain
23 changes in the distribution to claimants that resolved the Objection of FTI Consulting and Bryan
24 Cave LLP. Goodman also agreed that a distribution could be made to the claimants, as stated on
25 the record at the hearing, except for Bombardier Capital Inc., Citicapital Commercial Leasing
26 Corporation, and Empire Southwest, LLC (“Contested Claimants”). Goodman presented certain
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1 documents at the time of the hearing, and requested that additional documents be filed later in
2 the day. On December 22, 2009, Goodman filed additional documents with the Court.¹ Oral
3 argument was presented in support of, and against distributions, of the Contested Claimants.
4 The Court subsequently entered an order allowing a distribution to all of the proposed
5 administrative expense claimants except for the Contested Claimants.² The Court has reviewed
6 the documents filed by Goodman, and now sets forth its decision as to whether the Goodman
7 Limited Objection should be sustained or overruled, or whether a further hearing on the matter is
8 necessary. The Court has jurisdiction over this matter, and this is a core proceeding. 28 U.S.C.
9 §§1334 and 157. (West 2009). To the extent necessary, the Court has set forth its findings of
10 fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

11 II. DISCUSSION

12 The Court shall treat the arguments presented by Goodman *seriatim*.

13 A. The Claims are not *ab initio* improper.

14 At the December 22, 2009 hearing, Goodman focused on a notice to file claims in
15 a converted proceeding, sent out by the Court on May, 1, 2007.³ Goodman argued that the
16 Notice was a court order and that all administrative expense claimants were required to refile any
17 claim that they might have against the GTI Capital Holdings, LLC, and G.H. Goodman
18 Investments Companies, L.L.C., the Debtors herein, or be barred from participating in any
19 distribution of bankruptcy estate property. To be clear, the Notice is not a court order and is not
20 signed by the Court. The Notice states, in pertinent part,

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22 **1.** See Docket Entry No. 1586, which include all of the additional documents relied on by
23 Goodman in support of its Objection.

24 **2.** See Docket Entry No. 1590.

25 **3.** See Docket Entry No. 1463, in the administrative case. Goodman states that it was
26 sent out on September 19, 2007, at 2 of the Limited Objection; at another point, Goodman states
27 that it was sent out on May 1, 2007. See Limited Objection, at 5, note 4. The Court has
28 reviewed the administrative docket. The Notice was sent out on May 1, 2007.

1 . . . A bankruptcy case concerning the debtor Partnership listed below was
2 originally filed under chapter 11 on 5/8/03 and was converted to a case under
3 chapter 7 on 4/30/07. You may be a creditor of the debtor. This notice lists
4 important deadlines. You may want to consult an attorney to protect your rights.
5 All documents filed in the case may be inspected at the bankruptcy clerk's office
6 at the address listed below. NOTE: The staff of the bankruptcy clerk's office
7 cannot give legal advice. Consult a lawyer to determine your rights in this case.

8 . . . A secured creditor retains rights in its collateral regardless of whether that
9 creditor files a Proof of Claim. If you do not file a Proof of Claim by the
10 "Deadline to file a Proof of Claim" listed on the front side, you might not be paid
11 any money on your claim from other assets in the bankruptcy case.

12 . . . If this case converted [sic] to a Chapter 7, a request for payment of an
13 administrative expense, incurred before conversion, under 11 U.S.C. §503(a)
14 must be filed within 90 days after the date set for the meeting of creditors. A
15 governmental unit must file such a request within 180 days after the date of the
16 conversion.

17 As to whether the bar date is effective, as set forth on the Notice, the Court must review statutory
18 and case law authority. Section 502 of the Bankruptcy Code provides that “[a] claim or interest,
19 proof of which is filed under section 501 of this title, is deemed allowed, unless a party in
20 interest . . . objects.” 11 U.S.C. §502(a)(West 2009). However, Section 502(b) makes it clear
21 that the proof of claim that is contemplated generally pertains to prepetition activity only. 11
22 U.S.C. §502(b)(West 2009) states, in pertinent part, that if an objection is filed to a proof of
23 claim, the court “shall determine the amount of such claim . . . as of the date of the filing of the
24 petition (emphasis added).” Thus, a different type of procedure must be contemplated if a
25 creditor incurs a postpetition claim known as an administrative expense. Section 503 is that
26 provision. It states, in pertinent part, “An entity may timely file a request for payment of an
27 administrative expense, or may tardily file such request if permitted by the court for cause.” 11
28 U.S.C. §503(a)(West 2009).

The Debtors filed their voluntary Chapter 11 proceedings on May 8, 2003.⁴ The

4. An order directing joint administration of the Chapter 11 proceedings and permitting a joint caption was signed by the Court on June 18, 2003.

1 assets of the Debtors were sold pursuant to an order of this Court, dated February 19, 2004.⁵
2 Prior to that sale, the Debtors operated their businesses, first as Chapter 11 Debtors, then with
3 the supervision of Edward M. McDonough, the Examiner.⁶ Because there were limited assets to
4 pay the creditors of these estates, the Examiner established a protocol to pay the administrative
5 expense claimants. The claimants submitted applications to the Examiner according to the bar
6 date procedures established by the Court.⁷ The Examiner provided notice and an opportunity to
7 object to the allowance of the administrative expense claims to all creditors and interested parties
8 of the estates. The only party that objected was Comerica Bank. The Examiner also entered into
9 settlement agreements with many of the claimants. Ultimately, the Examiner presented the
10 allowed administrative claims, including any settlements thereof, to all creditors and interested
11 parties.⁸ The Court conducted hearings on the Comerica Objection on July 28 and September 7,
12 2004. Ultimately the Court approved the relief as requested by the Examiner.

13 If one reviews the Order entered concerning the allowance of administrative
14 expenses, including approval of the settlements entered into between the Examiner and the

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16 **5.** See Docket Entry No. 587.

17 **6.** The Examiner was appointed after motion, notice, and hearing. See Docket Entry No.
18 113.

19 **7.** The Examiner filed numerous pleadings, notifying all creditors and interested parties
20 of his review of the proposed administrative expenses. *See*, e.g., Examiner Motion to Set Last
21 Day to File Administrative Claims, Docket Entry No. 582; Order Granting Day to File
22 Administrative Claims: 3/26/04, Docket Entry No. 593; Notice of Administrative Claim Bar
23 Date, Docket Entry No. 605; Notice Regarding Final Bar Date for Filing Objections to All
24 Administrative Claims Asserted in Debtor's Chapter 11 Cases, Docket Entry No. 705; Examiner
25 Memorandum Regarding: Settlements with Respect to Certain Administrative Claims;
26 Recommended Preliminary Rulings of the Court with Respect to Unresolved Administrative
27 Claims; and Other Related Matters, Docket Entry No. 744; Examiner Supplement to
28 Memorandum, Docket Entry No. 747; Examiner's Second Supplement to Memorandum, Docket
Entry No. 762; Notice of Distribution to Administrative Claimants, Docket Entry No. 824;
Examiners' Legal Memorandum in Support of Settlements, Docket Entry No. 886.

8. Docket Entry No. 936 contains the settlements entered into with many of the
administrative expense claimants.

1 claimants, one notes that the Examiner followed the protocol as outlined concerning the creditors
2 and interested parties of the Debtors. The Examiner “reviewed the claims asserted by the
3 Claimants.”⁹ What the Examiner submitted was the approved allowed administrative expenses
4 of many claimants. The purpose of the protocol was “to avoid any further disputes or protracted
5 litigation for [the] estates regarding the priority and amount of [the] claims . . . [T]he Examiner . .
6 .[recommended] that the Court enter an order providing that [the] Claimants [should have] an
7 allowed administrative priority claim under section 507(a)(1) of the Bankruptcy Code in the
8 amounts set forth on Exhibit A [to the Order].”¹⁰ The Contested Claimants were all incorporated
9 into the allowance provisions of the Order.¹¹ Thus, the Contested Claimants presented their
10 administrative expense claims in 2004, well prior to the September 20, 2007 deadline in the
11 Notice.¹² A claimant need not file again an administrative expense claim already presented to
12 the Court. In re LeBlanc Inc., 299 B.R. 546 (Bankr. N.D.Iowa 2003); In re Klein Sleep Products,
13 Inc., 78 F.3d 18 (2nd Cir. 1996); In re Pro Set, Inc., 193 B.R. 812 (Bankr.N.D.Tex.,1996); In re
14 Bicoastal Corp., 147 B.R. 258 (Bankr. M.D. Pa., 1992).

15 Importantly, if the Court reviews the *current* pleading filed by the Trustee for
16 another interim distribution to the administrative expense claimants, the Trustee has incorporated
17 the same allowed amounts from the 2004 Order as a starting point for the current proposed
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21 **9.** See Docket Entry No. 951, October 14, 2004 Order, at 2, ¶2.

22 **10.** Id.

23 **11.** Id. at Exhibit A. Citicapital Commercial Leasing Corporation had an allowed
24 administrative expense in the amount of \$153,412.74; Bombardier Capital, Inc. had an allowed
25 administrative expense in the amount of \$135,294.05; and Empire Southwest, LLC had an
26 administrative expense in the amount of \$67,275.00.

27 **12.** The Notice stated that Chapter 11 administrative expenses should be filed within 90
28 days of June 21, 2007, or September 20, 2007.

1 distribution to the Contested Claimants.¹³ The 2004 Order did provide that the administrative
2 expense claimants, not other creditors and interested parties, could pursue additional
3 administrative expenses against the Debtors' estates if they did not receive the full amount of
4 their proposed distributions by December 31, 2004.¹⁴ However, the Trustee has not proposed,
5 and the Contested Claimants have not sought, any additional administrative expenses in the
6 Trustee's current Motion. What the Contested Claimants had approved as their administrative
7 expenses in 2004 is what has been incorporated into the Trustee's current Motion.¹⁵ The Court
8 shall overrule the Objection of Goodman on this point.

9 **B. The Settlement Agreement between the Trustee and Comerica does not bar**
10 **the current Motion of the Trustee**

11 Let it suffice that this Court has entered numerous decisions concerning various
12 objections interposed by Goodman, over the years, as to the settlement entered into between the
13 Trustee and Comerica and the effect thereof. The Court has entered an injunction under the All
14 Writs Act precluding Goodman from raising this issue yet again.¹⁶ The Trustee's current Motion
15 concerning a distribution to the Contested Claimants has nothing to do with the Settlement
16 Agreement. Goodman's objection on this point is summarily overruled.

17 **C. The Contested Claimants have followed the sale procedures under bankruptcy**
18 **law, the sale has become final, as a matter of law.**

19 Goodman initially argues that the sale of the Debtor's assets, which closed in

20 **13.** A review of Exhibit D to the Trustee's current Motion, which was approved by all
21 parties as to interim distributions and which was approved by separate court order entered on
22 December 24 , 2009 [Docket Entry No. 1590], states that Citicapital Commercial Leasing
23 Corporation has a "reviewed claim" in the amount of \$153,412.74; Bombardier Capital, Inc., a
"reviewed claim" in the amount of \$135,294.05, and Empire Southwest, LLC, has a 'reviewed
claim" in the amount of \$67,275.00.

24 **14.** See Docket Entry No. 951, October 14, 2004 Order, at 3-4, ¶B.

25 **15.** See Docket Entry No. 1565, Chapter 7 Trustee's Motion, Exhibit D thereto.

26 **16.** See Adversary No. 09-00006, Docket Entry No. 47. See Also, In re GTI Capital
27 Holdings, LLC, 420 B.R. 1 (Bankr.D.Ariz. 2009).

1 early 2004, should somehow be set aside and was inappropriate as a matter of law. First, the sale
2 of assets occurred in 2004. The order concerning the sale of assets became a final,
3 nonappealable order years ago. The Court will not reopen any issues concerning the sale of
4 assets. Next Goodman potentially asserts that the Contested Claimants have not complied with
5 the Uniform Commercial Code concerning the sale of assets. However, the Debtor's assets were
6 sold pursuant to Section 363 of the Bankruptcy Code, not pursuant to the Uniform Commercial
7 Code. As to the Section 363 sale of assets, that sale is final. The reasonableness of the sale of
8 the Debtors' assets is no longer open to question.

9 To the extent that Goodman believes that the Contested Claimants may have
10 separately sold any of the Debtors' assets serving as their collateral outside of the bankruptcy
11 context, Goodman has presented no evidence to reflect that. Even if the Examiner did allow one
12 or more of the Contested Claimants to repossess one or more items of their collateral, separate
13 from the Section 363 sale of assets, the Trustee is requesting different relief from this Court. The
14 Trustee has acknowledged that this bankruptcy estate is administratively insolvent, and he is now
15 seeking court permission to pay the Contested Claimants only a portion of their Chapter 11
16 administrative expenses. Even after the Trustee makes the requisite distribution, as set forth in
17 Exhibit D to his Motion, none of the Contested Claimants will receive full payment of their
18 Chapter 11 administrative expenses. Thus, the Court does not have a concern, at this time, that
19 the Contested Claimants have somehow received more than 100 percent of their allowed Chapter
20 11 administrative expenses. The Trustee may separately request disclosure of any collateral
21 which the Contested Claimants have recovered, determine what has transpired with respect to
22 that collateral, and make appropriate adjustments to any future distributions to said Claimants.
23 The objection of Goodman on this point is overruled.

24 III. CONCLUSION

25 Based upon this Court's review of the Objection of Goodman, the Court shall
26 summarily overrule same and allow distribution to the Contested Claimants. The Trustee may
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1 submit a form of order as to the Contested Claimants.

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4 DATED 24th day of March, 2010.

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7 Honorable Sarah Sharer Curley
8 United States Bankruptcy Judge
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