

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 09-11786-CSS

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In the Matter of:

VISTEON CORPORATION, et al.

Debtors.

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United States Bankruptcy Court
824 North Market Street
5th Floor
Wilmington, Delaware

May 12, 2010

10:05 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

1 THE COURT: Thank you. Excuse me. All right, the
2 issue, of course, before the Court, is whether to appoint an
3 examiner, pursuant to the motion in front of the Court. And
4 the statute which is applicable, of course, is 1104(c). "If
5 the Court does not order the appointment of a trustee," which I
6 have not, "then at any time before the confirmation ... on
7 request of a party in interest ... and after notice and a
8 hearing, the court shall order the appointment of an examiner
9 to conduct such an investigation of the debtor as is
10 appropriate, including" and then it goes on, "if such
11 appointment is in the interests of creditors" equity holders,
12 et cetera, "or the debtor's fixed, liquidated, unsecured debts
13 ... exceed \$5,000,000." It's a troubling -- well, troubling,
14 it's a somewhat ambiguous statute notwithstanding the fact that
15 it says "shall", because it immediately limits the scope of
16 that "shall". I don't think it's true, and I think it would be
17 an absurd result to find that in every case where the financial
18 criteria is met and a party-in-interest asks, the Court must
19 appoint an examiner. There has to be an appropriate
20 investigation that needs to be done.

21 Now, it's -- until someone does an investigation, of
22 course, you don't know whether an investigation really needed
23 to be done or not. But at some point there has to be a level
24 of smoke, if you will -- not a lot but more than none, more
25 than just a whiff of smoke -- but some sort of indication, some

1 sort of allegation or facts that make the Court think in a
2 whole that, hmm, somebody needs to look into this independently
3 and tell the Court what's going on. It's easy in Lehman or
4 Revco to figure out that somebody's got to figure this out.
5 But not every case that has over five million dollars of
6 nontrade needs an examiner.

7 This case does not need an examiner. We are in a
8 good old fashioned brawl, all right? We all know it. And the
9 prize is an automobile company -- excuse me, a parts -- well,
10 an automobile manufacturer of parts -- with a nice healthy
11 client. Kind of a rarity, but it's nice to have. And we're
12 going to fight. There's going to be a fight. Well, let's get
13 to it. And I don't think there's any reason to keep tiptoeing
14 around it. Equity thinks they're in the money. They're going
15 to come to confirmation and they're going to try to prove it.
16 Mr. Willett's clients have an issue with what's on the table.
17 They're going to come in and litigate it. The bondholders like
18 what's on the table or support it; they're going to come in and
19 litigate it. There are no hidden motivations, here. There are
20 hidden agendas, here. I think this is just a good old
21 fashioned fight over a debtor that has some value, if it's
22 restructured. It's a good company with a bad balance sheet.
23 That's what it looks like. Maybe that's wrong. Maybe it's a
24 good company with a good balance sheet. But that's what
25 confirmation is going to tell us.

1 To say that, well, look, Judge, you know, they say
2 they don't want more than 400 million dollars in debt, well,
3 all right, that's their business judgment. When we get to
4 confirmation and we're looking at value and part of the value
5 is a debt analysis or a debt carry analysis and the absolute --
6 applicability of the absolute priority rule, we'll hear about
7 it, and we'll figure out whether that makes sense or not. We
8 don't need an examiner to look into that.

9 Has the debtor not fulfilled its fiduciary duties by
10 not taking enough attention to what the value is to equity,
11 first of all, I think the Gheewalla decision and those other
12 cases, it's important to remember that that arises in the
13 context of a defense, of a shareholder suit based on a breach
14 of fiduciary duty by the board when it takes actions of an
15 insolvent corporation that are for the benefit of creditors.
16 And the Court says that's not a breach of fiduciary duty of
17 care or loyalty to the corporation or its shareholders. It's a
18 very narrow focus. Is it true that insolvent debtors owe a
19 fiduciary duty to their creditors? I think it becomes a bit of
20 a "how many angels are there on the head of a pin". I think
21 the reality is that the board of directors of a company in this
22 kind of context owes a fiduciary duty to the company, which is
23 probably the best way to say it, to maximize value. And that
24 means reorganization value in this context, and that can take
25 into account debt load.

1 So again, and I'm probably rambling more than I
2 should because it's late, but I just don't see any appropriate
3 investigation in this case for which we need the time and
4 expense of an examiner. We don't need an ad hoc -- we don't
5 need an official committee of equity holders. We don't need,
6 frankly, continuing status reports on a plan. We need to get
7 busy and get it done and roll the dice and see what happens.
8 That's just me. Probably talking more than I should.

9 All right. Motion denied. Debtors submit an order,
10 please.

11 MR. KIESELSTEIN: We will do so, Your Honor. Thank
12 you. One last housekeeping item, Your Honor, relates to the
13 19th. We do have a motion to shorten notice on file with
14 regard to our motion to approve the ECA, the plan support
15 agreement, and the rights offering procedures. Again, at least
16 in our view, and I know we're imposing a burden on the Court,
17 it doesn't make sense to decouple that from the disclosure
18 statement hearing itself, given that those are the foundation
19 documents associated with our toggle plan of disclosure
20 statement. So if the Court can -- if I can impose on the Court
21 at this late hour for guidance in that regard, I think it would
22 help all parties prepare for the next few days or week.

23 THE COURT: Well, I have the motion. I just hadn't
24 decided it yet. Well, does anyone wish to be heard on that?
25 Mr. Willett?