IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK, *et al.*,[1] Debtors.	Chapter 11 Case No. 17-10506 (BLS) (Jointly Administered) **Hearing Date: April 24, 2017 at 10:30 a.m. (ET)** **Objection Deadline: April 18, 2017 at noon (ET)[2]**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER APPROVING THEIR (I) KEY EXECUTIVE INCENTIVE PLAN AND (II) KEY EMPLOYEE RETENTION PLAN

The Official Committee of Unsecured Creditors (the "Committee") of General Wireless Operations Inc. dba RadioShack *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its undersigned proposed counsel, hereby submits this objection (the "Objection") to the *Motion of Debtors and Debtors-in-Possession for Entry of an Order Approving Their (I) Key Executive Incentive Plan and (II) Key Employee Retention Plan* (the "Motion").[3] In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors seek approval of over $1.4 million in KEIP payments to seven insiders based upon a metric that requires the Debtors to do nothing more than meet their cash collateral budget. As such, the KEIP is really a disguised retention plan for the Debtors' most

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[1] The Debtors in these cases are: General Wireless Operations Inc. dba RadioShack, General Wireless Holdings Inc., General Wireless Inc., and General Wireless Customer Service Inc.

[2] Extended as to the Committee with the consent of the Debtors to April 18, 2017 at noon (ET).

[3] Docket No. 347. Capitalized terms used but not otherwise defined in this Objection shall have the meanings set forth in the Motion.

senior management that does not satisfy the strict requirements of section 503(c)(1) of the Bankruptcy Code.

2. Although the Committee is not opposed to a KEIP program that is truly incentivizing and properly sized in light of the facts of these cases, the proposed KEIP achieves neither of these criteria. The Debtors inappropriately characterize the KEIP as incentive based, relying on a single metric that requires no real effort to achieve and will be met utilizing the Debtors' own budget forecast, which itself is a prerequisite for the Debtors' use of cash collateral.

3. At $75 million of distributable value, which would entitle the insiders to the maximum KEIP payment of over $1.4 million, the Debtors' junior lenders would be left with a deficiency claim of more than $50 million and no proceeds would be available for general unsecured creditors. In addition, there would be no guaranty that these estates would remain administratively solvent and no assurance that the Debtors would be able to confirm a plan that preserves value for all stakeholders. Assuming the Debtors did nothing beyond the hearing on the Motion and the lenders exercised remedies to foreclose on the collateral, the insiders would still receive a $506,000 KEIP payment.

4. The Debtors present no evidence that the insiders need to be incentivized in these cases beyond the payment of their negotiated salaries. The proposed KEIP seeks to reward the insiders for merely continuing to perform their obligations as executives of a company that is now a debtor-in-possession. At best, the proposed KEIP is excessive and not properly designed to incentive the insiders to maximize value and achieve a successful chapter 11 process.

5. Even if the KEIP was incentivizing in nature, it stills fails to meet the requirements of sections 363(b)(1) and 503(c)(3). As set forth in more detail below, the KEIP is not reasonable in light of the facts and circumstances of these cases and the ultimate goals of

chapter 11. The Debtors have not supported the KEIP with reliable data from cases that are truly comparable to these cases and have not demonstrated that the KEIP payments are rational based upon the realities of the compensation expectations of the insiders. The KEIP, therefore, fails regardless of the standard employed and should be denied by the Court.

6. As of the filing of this Objection, the Committee is working with the Debtors on a revised KEIP proposal that would address the concerns raised in this Objection. The Committee will continue to work with the Debtors in advance of the hearing on the Motion and is hopeful that a resolution can be reached.

BACKGROUND

A. Procedural History

7. On March 8, 2017 (the "Petition Date"), each of the Debtors commenced their respective cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have continued in possession of their properties and to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On March 17, 2017, the Office of the United States Trustee for Region 3 appointed a seven-member Committee consisting of: (i) Brightstar US, Inc.; (ii) Brixmor Property Group, Inc.; (iii) Ideavillage Products Corp.; (iv) ION America, LLC; (v) Protop International, Inc.; (vi) Spectrum Brands, Inc.; and (vii) Weide Electronics Co., LTD.[4] The Committee selected Kelley Drye & Warren LLP to serve as its counsel, and Klehr Harrison Harvey Branzburg LLP to serve as its Delaware counsel. The Committee also selected Berkeley Research Group, LLC to serve as its financial advisor.

[4] Docket No. 170.

B. The Proposed KEIP

9. Pursuant to the Motion, the Debtors seek approval of a key employee incentive plan (the "KEIP") providing between $303,750 and $1.42 million in purported incentive bonus payments to seven insider executives (the "Insiders").[5] The aggregate bonus pool under the KEIP is premised on a single criteria – the amount of Distributable Proceeds – which the Debtors loosely define as the net proceeds available for distribution to creditors upon the occurrence of a KEIP Event, after payment of administrative costs.[6]

10. The KEIP proposes the following thresholds based on the amount of Distributable Proceeds:[7]

Tier	Distributable Proceeds	KEIP Payout Pool
Tier 1	$35 million or below	None
Tier 2	Exceed $35 million	$303,750
Tier 3	Exceed $45 million	$506,250
Tier 4	Exceed $55 million	$810,000
Tier 5	Exceed $65 million	$1,113,750
Tier 6	Exceed $75 million	$1,417,500

11. A "KEIP Event" includes: (a) the confirmation of a plan; (b) the sale of substantially all of the Debtors' assets; (c) the dismissal of the Debtors' chapter 11 cases; and (d) the conversion of the bankruptcy case to a chapter 7 proceeding.[8]

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5 Motion at ¶¶ 22, 23.

6 *Id.* at ¶ 22.

7 *Id*. at ¶ 23.

8 *Id.*

12. In support of the KEIP, the Debtors submit the declaration of Eric A.W. Danner of CR3 Partners, LLC ("CR3").[9] The Debtors retained CR3 on March 6, 2017, only two days prior to the Petition Date,[10] to "provide an independent assessment of the terms and structure of a key employee incentive program and a key employee retention program."[11] While the Danner Declaration highlights CR3's experience as financial advisor in various contexts, there is no discussion regarding CR3's or Danner's expertise in the areas of executive compensation or the development of incentive and retention plans in chapter 11 cases.[12]

13. It is unclear from the Danner Declaration the level of input CR3 provided to the Debtors in the development of the KEIP other than discussions regarding market data CR3 assembled of incentive plans for other companies in chapter 11.[13] Instead, it appears the Debtors prepared the KEIP on their own.[14]

14. Although the Danner Declaration concludes that the KEIP is consistent with incentive programs approved by courts in cases where payouts were dependent upon distributable proceeds from store closings, the declaration fails to provide any factual detail regarding the circumstances of those cases, other than raw data regarding the number of KEIP participants and the proposed KEIP payments.[15]

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9 Danner Declaration, ¶ 1.

10 *See Application to Employ and Retain CR3 Partners, LLC as Employee Retention Consultant and Advisor Nunc Pro Tunc to the Petition Date*. Docket No. 371.

11 Motion, ¶ 14.

12 Danner Declaration, ¶¶ 3-5.

13 *Id*. ¶ 7.

14 *Id*. ¶ 8 ("Based on information supplied by CR3 Partners and information regarding incentive and retention plans in other chapter 11 cases, the Debtor drafted preliminary proposals, which were discussed on several occasions prior to the Petition Date with CR3").

15 *Id*. ¶ 12.

15. The Danner Declaration provides little information regarding:

- How the Insiders are impacting the liquidation process and their influence on the amount of Distributable Proceeds;
- How the Distributable Proceeds thresholds were determined;
- The historic and current compensation of the Insiders as compared to the proposed KEIP payments;
- The Debtors' historic bonus plans for the Insiders as compared to the proposed KEIP; and
- Relevant details regarding the cases in CR3's list of comparable KEIP programs, including: (i) the factual history of those cases; (ii) the metrics utilized in those programs; (iii) the underlying salaries of the participants; (iv) whether the plans reference historic bonus programs; and (v) the duration of the participants' service to earn the bonus.

16. As set forth in the report (the "BRG Report") annexed to the declaration of David Galfus in support of this Objection, which is attached hereto as Exhibit A, in order to achieve Tier 6 and the full $1.4 million KEIP payment, the Insiders need only meet their proposed budget in these cases.[16] The budget indicates the Debtors reached Distributable Proceeds exceeding $35 million (Tier 2) on or around April 8, and are projected to reach Distributable Proceeds exceeding $45 million (Tier 3) by April 22, earning the Insiders approximately $506,000 in bonus payments prior to the hearing on this Motion.[17] Upon reaching Tier 3, an award of [redacted] of the Insiders' aggregate prorated salary for an approximate five month period through July 31, 2017 will be earned.[18]

[16] *See* Docket No. 437; BRG Report, at 3.

[17] BRG Report, at 3-4.

[18] *Id.* at 2.

17. The budget also indicates the Debtors will reach Distributable Proceeds exceeding $75 million (Tier 6) by June, triggering the full $1.4 million in aggregate bonus payments to the Insiders.[19] Based upon the current metrics, upon reaching Tier 6, the Insiders will earn a bonus of approximately [redacted] of their aggregate prorated salary for the same five month period.[20]

OBJECTION

I. The KEIP Is A Disguised Insider Retention Plan That Fails To Satisfy Section 503(c)(1) Of The Bankruptcy Code

18. The proposed KEIP, formulated by the Insiders for their own benefit, is not incentivizing in any discernable way and will not motivate the Insiders to do anything beyond meeting the approved budget. This metric amounts to nothing more than satisfying their statutory obligations as executives of a debtor-in-possession and fails to satisfy the strict requirements of section 503(c)(1).

19. Section 503(c)(1) was enacted to impose strict limitations on a debtor's ability to make retention payments to insiders in order to "eradicate the notion that executives were entitled to bonuses simply by staying with the Company through the bankruptcy process."[21] Section 503(c) was "enacted to limit a debtor's ability to favor powerful insiders economically and at estate expense during a chapter 11 case."[22]

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19 *Id.* at 3-4.

20 *Id.* at 2.

21 *In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007).

22 *In re Pilgrim's Pride Corp.*, 401 B.R. 229, 234 (Bankr N.D. Tex. 2009).

20. Section 503(c)(1) imposes upon a debtor a strict evidentiary burden before a court can authorize payments to insiders to induce them to remain with the debtor.[23] Specifically, section 503(c)(1) provides:

> [t]here shall neither be allowed, nor paid…a transfer made to…an insider of the debtor for the purpose of inducing such person to remain with the debtor's business…unless (A) the transfer…is essential to retention of the person because the individual currently has a bona fide job offer from another business at the same or a greater rate of compensation; (B) the services provided by the person are essential to the survival of the business; and (C) [the transfer falls below certain relative payment amounts].[24]

The effect of section 503(c) therefore, is to put in place "a set of challenging standards" and "high hurdles" for debtors to overcome before retention bonuses can be paid to insiders.[25]

21. The proponent of the plan bears the burden of proving that the plan is truly incentivizing, and therefore governed by section 503(c)(3), rather than a disguised retention plan governed by section 503(c)(1).[26] A debtor's characterization of a plan as incentive-based is not determinative. Bankruptcy courts have frequently uncovered retention plans masquerading as incentive plans, finding that "courts must be wary of attempts to characterize what is essentially

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23 *In re Dana Corp*., 351 B.R. 96, 100 (Bankr. S.D.N.Y. 2006).

24 11 U.S.C. § 503(c)(1). Part (C) requires: either — (i) the amount of the transfer to the insider is not greater than ten (10) times the amount of the mean transfer of a similar kind given to non-management employees for any purpose during the calendar year of the insider transfer, or (ii) if no such similar transfers were made to non-management employees during the calendar year, the amount of the insider transfer does not exceed twenty-five percent of any similar transfer made to the insider for any purpose during the prior calendar year.

25 *Global Home Prods.*, 369 B.R. at 784–85.

26 *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012); *see also In re Mesa Air Group, Inc.*, 2010 WL 3810899 at *3 (Bankr. S.D.N.Y. Sept. 24, 2010); *In re Residential Capital, LLC*, 478 B.R. 154, 170 (Bankr. S.D.N.Y. 2012).

an insider retention plan as an 'incentive' plan 'to bypass the requirements of section 503(c)(1).'"[27] Courts look with disfavor upon such attempts.[28]

22. A debtor must closely link the proposed bonuses to metrics that "are directly tied to challenging financing and operational goals for the business, tailored to the facts and circumstances of the case."[29] For a plan to be incentivizing, it should be tied to significant goals that are difficult to achieve.[30] In determining whether a proposed plan is a true incentive plan or simply a disguised retention program, a court must "determine whether the proposed targets are designed to motivate insiders to rise to a challenge or merely report to work."[31] If the Debtors fail to establish that the KEIP is truly an incentive plan, the KEIP fails under the strict standards of section 503(c)(1).[32]

23. The Debtors fail to offer anything beyond conclusory statements that the KEIP incentivizes the Insiders to "protect, preserve and maximize the value of the Debtors' estates for the benefit of stakeholders."[33] The Debtors state that the Distributable Proceeds "will require Key Executives to make significant efforts towards maximizing creditor recoveries."[34] Merely stating that the KEIP is incentivizing, however, does not make it so. Other than sweeping

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27 *Hawker Beechcraft,* 479 B.R. at 313 (quoting *In re Velo Holdings Inc., et al.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012); *see also In re Borders Group Inc.*, 453 B.R. 459, 470 (Bankr. S.D.N.Y. 2011).

28 *See Borders Group*, 453 B.R. at 470.

29 *Residential Capital*, 478 B.R. at 173.

30 *See id.* at 164 (when analyzing a KEIP, "the issue is whether each of these hurdles is sufficiently challenging and incentivizing"); *see also Hawker Beechcraft*, 479 B.R. at 313 (performance targets must be "designed to motivate insiders to rise to a challenge"); *Velo Holdings*, 472 B.R. at 209 (section 503(c) requires "a set of challenging standards and high hurdles") (internal quotations omitted); *Mesa Air Group*, 2010 WL 3810899 at *2 (incentive plans must "motivate"); *Global Home Prods.*, 369 B.R. at 784–85 (section 503(c) "impose[s] a set of challenging standards debtors must meet).

31 *Hawker Beechcraft*, 479 B.R. at 313

32 *See id.* at 312-13.

33 Motion ¶ 46.

34 *Id.*

generalizations regarding the difficulty to obtain the various thresholds, the Debtors present no evidence that the KEIP is "directly tied to challenging financing and operational goals for the business, tailored to the facts and circumstances of the case."[35]

24. The proposed thresholds are not "stretch goals that will be difficult to achieve."[36] Tier 2 (Distributable Proceeds in excess of $35 million) was reached on April 8, only one month after these cases began, and Tier 3 (Distributable Proceeds in excess of $45 million) is projected to be reached just two weeks later by April 22.[37] A simple review of the budget demonstrates that Distributable Proceeds are projected to reach the more than $75 million needed for the Insiders to earn the maximum bonus of over $1.4 million under Tier 6 by June.[38] A portion of Distributable Proceeds were earned prior to the Petition Date and before the Debtors were even debtors-in-possession.[39]

25. It is difficult to understand how the Debtors believe that simply meeting their own budget targets, which is nothing more than avoiding a default under their negotiated cash collateral order, can be considered significant goals that are difficult to achieve. Approval of the budget in connection with the cash collateral order was accomplished under the auspice that it was reasonably achievable. If the budget was characterized as a high hurdle to meet, as the Insiders now allege in connection with the Motion, it is unlikely the Debtors' use of cash collateral in accordance with that budget would have been approved. The metrics and thresholds proposed by

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35 *Residential Capital*, 478 B.R. at 173.

36 Motion, ¶ 37.

37 BRG Report, at 4.

38 *See* Docket No. 437; BRG Report, at 3-4.

39 BRG Report, at 3.

the Debtors, therefore, are a *fait accompli*, falling far short of the requirement that "the proposed targets … motivate insiders to rise to a challenge" and not "merely report to work."[40]

26. The Debtors maintain, without support, that the Insiders' "knowledge of the Debtors' businesses and their intimate involvement in the day-to-day operations, asset disposition planning and negotiations with key creditor constituencies, makes the Insiders critically important to maximizing the value of the Debtors' estates for the benefit of all of the Debtors' stakeholders."[41] The involvement of executives in the day-to-day operations of a debtor's business is nothing more than the discharge of an executive's duties in the context of a bankruptcy case and does not support the allowance and payment of a bonus award.[42] The Debtors present no factual support for any substantial efforts the Insiders have or will continue to make in liquidating inventory, which is primarily being conducted by store-level employees.

27. The Debtors, therefore, have failed to satisfy their burden of demonstrating the KEIP is a true incentive plan. The Debtors have also failed to present sufficient evidence that the thresholds of Distributable Proceeds are real and rationally-based incentivizing goals as opposed to easily obtainable targets designed to provide retention bonuses to the Insiders. Thus, absent a showing that the Debtors can meet the requirements of section 503(c)(1), the KEIP must fail.

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40 *Hawker Beechcraft*, 479 B.R. at 313

41 Motion, ¶ 20.

42 *See Residential Capital,* 478 B.R. at 168 ("While it is no doubt true that the requirements of these chapter 11 cases and the proposed assets sales have altered or increased the work required of insiders, such would also be true in virtually all chapter 11 cases; section 503(c) requires more than increased responsibilities to justify increased pay for insiders").

II. The KEIP Does Not Satisfy Sections 363(b)(1) Or 503(c)(3)

28. Even if the Court finds that the KEIP is not an insider retention plan subject to the stringent standards of section 503(c)(1), the KEIP still fails under sections 363(b)(1) and 503(c)(3) of the Bankruptcy Code. The Debtors fail to demonstrate that the KEIP is the product of the Debtors' reasonable business judgment under section 363(b)(1). Similarly, section 503(c)(3) prohibits transfers to insiders that are obligations that are "not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition."[43]

29. Consideration of the KEIP, and whether the Debtors have exercised their sound business judgment, is based upon the totality of the circumstances of these cases. The court "should consider all salient factors pertaining to the proceeding and accordingly, act to further the diverse interest of the debtor, creditors and equity holders alike."[44] The Debtors have the burden to prove that the development of the KEIP was a proper exercise of their business judgment.[45] The Debtors, therefore, must demonstrate not only an exercise of sound business judgment in proposing the KEIP, but also that it is warranted under the facts and circumstances of these cases, including the historic transactions that culminated in the Debtors' chapter 11 cases and the ultimate benefits being provided by the Insiders to the estates and for general unsecured creditors.

30. The Debtors have not demonstrated that the KEIP is appropriate given the facts and circumstances of these cases. The Debtors are in the process of liquidating substantially all of their assets. Following the conclusion of the store closing sales, more than half of the Debtors' second lien debt will remain unpaid and there is no recovery projected for general

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43 11 U.S.C. § 503(c)(3).

44 *In re Montgomery Ward Holding Corp.,* 242 B.R. 147, 153 (D. Del. 1999).

45 *See id.*

unsecured creditors.[46] To date, the Debtors have not identified an exit strategy with respect to these cases or even a concrete decision with respect to the Debtors' remaining store locations. The KEIP is not tied to the consummation of a chapter 11 plan, or the creation of distributable value for unsecured creditors. In fact, the proposed KEIP authorizes the award of bonuses even if the Debtors' cases convert to chapter 7. In light of these facts, the KEIP is not justified by the current facts and circumstances of these cases, and is in no way tied to a successful outcome for stakeholders.

31. Notwithstanding the assertions of CR3, the Debtors also fail to establish that the KEIP satisfies the Debtors' reasonable business judgment. Factors that courts consider when determining whether the structure of a compensation proposal and the process for its development meet the business judgment test include:

- *First*, is there a reasonable relationship between the plan proposed and the results to be obtained?
- *Second*, is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?
- *Third*, is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- *Fourth*, is the plan or proposal consistent with industry standards?
- *Fifth*, what were the due diligence efforts of the debtor in (a) investigating the need for a plan, (b) analyzing which key employees need to be incentivized, and (c) reviewing what is generally applicable in a particular industry?
- *Sixth*, did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?[47]

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[46] *See* Docket No. 437.

[47] *Global Home Prods.*, 369 B.R. at 786 (evaluating an incentive plan under the business judgment standard of section 363 by applying the factors listed above).

After analyzing the KEIP according to these factors, it is clear that the KEIP is inappropriate under either section 363(b)(1) or 503(c)(3) and should be denied.

32. First, the Debtors have failed to demonstrate the results to be achieved justify the payment of over $1.4 million in bonus payments to the Insiders. The Insiders will receive a maximum bonus if the Debtors achieve $75 million of Distributable Proceeds. The Debtors achieve this target largely by conducting inventory liquidation sales primarily being performed by store level employees.

33. An incentive plan for senior executives should be tied to their direct contributions and benefits to the estates. At a maximum $75 million threshold, the junior lenders in these cases will have a deficiency claim exceeding $50 million and no proceeds will be available for general unsecured creditors.[48] The $1.4 million bonus would be payable regardless of whether the Debtors remain administratively solvent or confirm a plan and remarkably, even if these cases convert to chapter 7. It is alarming that the Insiders believe these results warrant over $1.4 million of bonus payments.

34. Second, and for the same reasons, the cost of the KEIP is not justified in the context of the Debtors' assets and liabilities. The Debtors provide no analysis of the KEIP in relation to the Insiders' compensation expectations, including any historic bonus programs. As set forth in the BRG Report, the proposed KEIP payments aggregate approximately [redacted] of the aggregate base salaries of the Insiders when prorated over an expected five month period during which some or all of the Insiders are likely to remain.[49] Although the Debtors assert that in the last two years there were numerous compensation programs for the Insiders, they fail to provide

[48] *See* Docket No. 437.

[49] BRG Report, at 2.

any details regarding such programs, including the underlying metrics employed in such programs, the potential bonus payments, or the actual amounts earned.[50] As a result, the Debtors present no evidence that the KEIP was reasonably designed to correspond to historic earning expectations.

35. Third, the Debtors submit no evidence as to the due diligence conducted in determining the need for the KEIP. Notably, the Motion is silent as to whether the KEIP was presented to any compensation committee or independent members of the Debtors' board of directors. The only conclusion, therefore, the Committee can reach with respect to the need for the KEIP is simply that the Insiders want one. The Motion similarly offers no evidence as to how the Debtors selected these Insiders and what their respective contributions will be to achieving the thresholds established in the proposed KEIP.

36. Fourth, the involvement of CR3 should not be afforded conclusive weight. As noted above, CR3 is not a compensation expert and was retained by the Debtors on the eve of bankruptcy to apparently supply market data regarding KEIPs in other bankruptcy cases. As a result, the market data provided by CR3 should be carefully scrutinized to determine whether such data truly supports Court approval of the KEIP.

37. Fifth, the Debtors have failed to demonstrate that the KEIP is consistent with industry standards. Debtors' reliance on CR3's list of comparable incentive plans is misplaced. The Debtors fail to identify the particulars of the cases cited and whether such cases involved a sale of a going concern business or a liquidation of the debtor's assets. The Debtors also fail to indicate the metrics used in those incentive plans, including whether they included other variables, such as confirmation of a chapter 11 plan or distributions to unsecured creditors. Finally,

[50] Motion, ¶ 36.

the Debtors do not disclose the impact that meeting those metrics had on the value of the estates and overall outcome of the cases.

38. The Committee does not question that the comparable incentive plans assembled by CR3 include a similar number of participants and similar bonus amounts. Those data points, however, are only part of the analysis. Only three of the cases assembled by CR3 were asset liquidations, while the remaining eight were going concern sales.[51] Further, six of the comparable cases included a specific metric that a plan be confirmed, including those same three cases that were asset liquidations.[52] Taken together, simply because CR3 was able to identify KEIPs that appear similar on their face, does not make the KEIP rational in the context of these cases.[53]

III. Modifications To The Terms Of The KEIP

39. To the extent the Court is inclined to approve a KEIP program for some or all of the Insiders, it should be modified as follow:

- The definition of Distributable Proceeds does not clearly articulate the metrics for determining how Distributable Proceeds are to be calculated. The definition must be modified to clearly identify what proceeds and payments will be taken into account and the measurement start date. Distributable Proceeds should also not include proceeds obtained prior to the Petition Date.

- Distributable Proceeds should exclude any value resulting from actions taken by third parties, including any increased value resulting from litigation initiated by the Committee and/or other third parties.

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51 BRG Report, at 5.

52 *See Id.*

53 *See Residential Capital,* 478 B.R. at 166 ("The fundamental flaw in Mercer's analysis is the assumption that a KEIP can be approved simply because the amount of KEIP Awards falls within a range of reasonableness based on a percentage of asset sales proceeds. While limiting the amount of the aggregate KEIP Awards to a percentage of sale proceeds may be a *necessary* requirement for reasonableness of the amount of the awards, it is not a *sufficient* requirement for approval of the KEIP"). (emphasis in original)

- The Key Executives should not be awarded a bonus in a scenario where the estates are left administratively insolvent or the cases are converted to chapter 7.

- No Insider should receive a KEIP without waiving any claims against the Debtors or their estates with respect to any prepetition bonus programs or other potential payments under their respective prepetition employment agreements.

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Motion as set forth in this Objection, and (ii) grant the Committee such further relief as the Court deems just and appropriate.

Dated: April 18, 2017
Wilmington, Delaware

KLEHR HARRISON HARVEY BRANZBURG LLP

By: */s/ Michael W. Yurkewicz*

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK, *et al.*,[1] Debtors.	Chapter 11 Case No. 17-10506 (BLS) (Jointly Administered)

DECLARATION OF DAVID E. GALFUS

I, David E. Galfus, pursuant to 28 U.S.C. section 1746, do declare under the penalty of perjury as follows:

1. I am over the age of eighteen and competent to testify as to all matters contained herein.

2. I am a Managing Director in the Corporate Finance practice of Berkeley Research Group, LLC ("BRG") with more than 30 years of financial restructuring and business experience. A true and accurate copy of my curriculum vitae is attached hereto as Exhibit 1.

3. The Official Committee of Unsecured Creditors (the "Committee") of General Wireless Operations Inc. dba RadioShack, *et al.*, the above-captioned debtors and debtors-in-possession, has proposed to retain BRG as its financial advisor.

4. I submit this declaration in support of the *Objection of the Official Committee of Unsecured Creditors to Motion of Debtors and Debtors-in-Possession for Entry of*

[1] The Debtors in these cases are: General Wireless Operations Inc. dba RadioShack, General Wireless Holdings Inc., General Wireless Inc., and General Wireless Customer Service Inc.

an Order Approving Their (I) Key Executive Incentive Plan and (II) Key Employee Retention Plan (the "Objection").[2]

5. During my career, I have served in numerous capacities as a financial advisor in bankruptcy related matters, representing debtors, secured creditors and unsecured creditors in mergers and acquisitions, liquidations, recapitalizations, and restructurings. The bankruptcies and turnaround situations I have been involved in cover various industries, including entertainment and media, financial services, food and agriculture, manufacturing, metals and mining, professional and other services, retail and wholesale distribution and transportation. In connection with those matters, I have provided a broad range of advisory services, including strategic planning, cash management, business plan analysis, trade and investor relations and cost reduction.

6. In connection with the Objection, the Committee requested that BRG, at my direction, perform an analysis of: (i) the timeline in which the Debtors are projected to reach the Distributable Proceeds thresholds under the final cash collateral budget; (ii) the KEIP bonuses as a percentage of the Insiders' aggregate compensation for the approximate five month period from the Petition Date through July 31, 2017; and (iii) the incentive plans provided by CR3 in support of the Motion as compared to the Debtors' proposed KEIP.

7. In performing this analysis, BRG has relied upon information provided by the Debtors and other publically available information.

8. The results of BRG's analysis are included in a report attached hereto as Exhibit 2 (the "BRG Report"). The BRG Report sets forth the substance and basis of the opinions to which I would testify if called upon in connection with the Objection.

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[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Objections.

9. I declare under penalty of perjury that the foregoing is true and correct

Executed this 18 day of April, 2017

David E. Galfus

EXHIBIT 1

professionals

David E. Galfus

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Industry Experience

Entertainment and Media
Financial Services
Food and Agriculture
Manufacturing, Metals and Mining
Professional and Other Services
Retail and Wholesale Distribution
Transportation

Selected Public Cases

Adelphia Communications Corp.
Atlas Air
Associated Wholesalers Inc.
Brookstone Holdings Corp.
Caché
Camelot Music
dELiA*s
Loews Cineplex Entertainment Corp.
MEE Apparel (dba Ecko Unlimited)
MF Global
Molycorp, Inc.
Peabody Energy Corporation
Penson Worldwide Inc.
Purina Mills
Refco, Inc.
Reichhold Holdings US, Inc.

Experience

David Galfus specializes in financial advisory services in bankruptcy matters and turnaround situations. His assignments have included strategic planning, cash management, business plan analysis, cost reduction, trade and investor relations, mergers and acquisitions, liquidations, recapitalizations, and restructurings. In addition, he has substantial experience in forensic analysis and related investigations.

With more than 30 years of financial restructuring and business experience, Mr. Galfus has advised creditors, management teams, boards of directors, secured lenders, and other constituent groups in roles ranging from financial adviser to interim management.

Mr. Galfus is a leader of BRG's Creditor Rights practice and has led recent assignments with AWI, Brookstone, Caché, dELiA*s, Ecko Unlimited, MF Global, Molycorp, Peabody Energy Corporation, Penson Worldwide, and Reichhold creditor committees.

Since 2007, Mr. Galfus has served as president of the Refco, Inc. bankruptcy estate, successfully leading its wind down. He has been responsible for liquidating/selling assets, distributing billions of dollars to creditors, and interfacing with international affiliates, and has been instrumental in various investigations related to its causes of actions.

Recent committee advisor assignments with KEIP and or executive compensation negotiations

- Peabody Energy Corporation – Advisor to the Unsecured Creditors' Committee
- Molycorp, Inc. – Advisor to the Unsecured Creditors' Committee
- dELiA*s, Inc. – Advisors to the Unsecured Creditors' Committee

Professional Experience

- Deloitte & Touché LLP - 1986 to 1997
- Policano & Manzo, LLC - 1997 to 2000
- FTI Policano & Manzo - 2000 to 2004
- Capstone Advisory Group - 2004 to June, 2015
- Berkeley Research Group, LLC – June, 2015 to current

Education and Affiliations

Mr. Galfus holds a BBA in Public Accounting from Pace University. He is a Certified Public Accountant (inactive), and a member of the American Institute of CPAs.