

Hearing Date and Time: June 13, 2019 at 10:00 a.m. (ET)
Extended Objection Date: June 11, 2019 at 12:00 p.m. (ET)¹
Re: Docket No. 1122

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MIAMI METALS I, INC., *et al.*,

Debtors.

Chapter 11
Case No. 18-13359 (SHL)

(Jointly Administered)

**LIMITED OBJECTION TO JOINT MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT AGREEMENT PURSUANT TO BANKRUPTCY RULE 9019**

Jason Rubin, Lindsey Rubin, Rose Rubin, the Second Amended and Restated Rose Rubin Revocable Trust u/d/a 9/25/2013, the Amended and Restated Richard Rubin Revocable Trust u/d/a 12/8/2008, Republic Metals Warehouse, LLC, Richard Rubin Lindjay Investments, LLC, Jason Ross Rubin Enterprises, LLC, and RRLJ12, LLC (collectively, the “Affected Parties”), by and through undersigned counsel, file this Limited Objection to the Joint Motion for Entry of an Order Approving Settlement Agreement pursuant to Bankruptcy Rule 9019 [ECF 1122] (the “Motion”), filed jointly by the Debtors, the Committee, and the Senior Lenders, and state as follows:

¹ The movants granted the Affected Parties through and including 12:00 p.m. on Tuesday, June 11, 2019 to file this objection.

Limited Objection to Breadth of Proposed Third Party Releases

1. The proposed settlement subject of the Motion (the “Settlement”) contemplates the entry of third-party releases that will “forever bar[] and enjoin[]” all parties in interest “from seeking to exercise the rights of the Debtors’ estates to assert any Released Claim.” *See* Settlement Agreement, attached as Exhibit A to the Motion (the “Agreement”), at ¶ 7(b).

2. And “Released Claim” is broadly defined in the Agreement as any claims against the Senior Lenders “related in any way to the Debtors...including any so-called ‘lender liability,’ recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code” or similar state law provisions. *See* Agreement, ¶ 7(a).

3. The Affected Parties are former officers and directors of the Debtors and entities owned or controlled by those former officers or directors. The Affected Parties are also known targets of litigation to be brought by the Committee or, as contemplated by the Settlement, a post-confirmation Litigation Trust.

4. Consistent with case law authorizing courts to approve third-party releases, the Affected Parties presume the intent of the proposed release is to prevent third parties from asserting *affirmative* claims against the Senior Lenders, given in exchange for their contribution to the Debtors’ estate and/or proposed reorganization. *See e.g. In re SunEdison, Inc.*, 576 B.R. 453, 461–62 (Bankr. S.D.N.Y. 2017)(“In deciding whether a third party release is appropriate, courts may consider whether the estate has received a substantial contribution, whether the enjoined claims are channeled to a settlement fund rather than extinguished, [and] whether the enjoined claims would indirectly impact the debtor's reorganization through claims of indemnity or contribution.”); *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 272 (Bankr. S.D.N.Y. 2014)(approving third-party release of claims against secured creditors in exchange for their “concessions” and “give-

ups”). The Affected Parties have no objection to the proposed third-party release to the extent it will preclude third parties, including the Affected Parties, from asserting affirmative claims against the Senior Lenders.

5. But at this stage, and without knowing the exact nature of the claims that may be brought against the Affected Parties, it is possible that something that could be characterized as a “Released Claim” may be a valid defense or offset to an alleged cause of action against the Affected Parties—either because that defense is based on the same facts or occurrences that give rise to the Released Claim or because the defense, when asserted by an Affected Party, is or could be characterized as derivative of a Released Claim belonging to the Debtors’ estate.

6. Without clarifying language in an order approving the Settlement, the proposed third-party release could be interpreted to preclude the *defensive* use of a Released Claim the Affected Parties may be otherwise entitled to assert in response to claims later brought against them by the Committee or Litigation Trust. Precluding or limiting the Affected Parties’ potential defenses to claims brought against them does not serve the purpose of third-party releases; preserving the *defensive* use of a Released Claim in response to claims brought by the Committee or Litigation Trust does not affect the Senior Lenders at all.

7. To be clear, the Affected Parties are not asking the Court to make a determination that any Released Claim *is* a valid defense or that any Affected Party *is entitled* to assert rights of the Debtors. Rather, the Affected Parties simply wish to preserve their ability to bring whatever defenses would otherwise be available to them notwithstanding the entry of an order approving the Settlement and granting third-party releases in favor of the Senior Lenders.

8. The Senior Lenders have agreed to the inclusion of the following language in any order approving the settlement, as it relates to the breadth of the third-party release, which was

proposed by counsel for the Committee with a reservation that it was subject to further review and approval by the client:

Notwithstanding the foregoing, Jason Rubin, Lindsey Rubin and Rose Rubin (collectively, the “Rubins”) and entities owned/controlled by or related to the Rubins (“Rubin Entities”) shall not be enjoined or barred from raising Released Claims (to the extent they would otherwise be permitted to do so) solely in defense or offset of any claims or causes of action brought against them by the Committee, the Litigation Trust, or any other person or entity with standing to assert such claims; provided (a) that in no event shall the Rubins or Rubin Entities be entitled to assert any Released Claims directly against the Senior Lenders and (b) that nothing in this paragraph shall be construed as (i) granting or acknowledging any right or standing of the Rubins or Rubin Entities to raise any Released Claims or (ii) otherwise creating or expanding any claim, offset, defense, or other right of the Rubins or Rubin Entities that does not already exist under applicable law.

This language is acceptable to the Affected Parties. As of the date of this filing, the Committee and the Debtors have not indicated their affirmative agreement.

WHEREFORE, and solely in the event the Court approves the Settlement and the requested third-party release, the Affected Parties respectfully request that such order expressly state that the Affected Parties are not barred or enjoined from asserting or otherwise relying on a Released Claim as a defense or offset to any claims or causes of action subsequently brought against them.

Respectfully submitted,

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By: /s/ Zakarij N. Laux
Jeffrey P. Bast, Esq. (Admitted in New York)
Zakarij N. Laux, Esq. (Admitted Pro Hac Vice)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically via the Court's CM/ECF, system where available, on this 11th day of June, 2019, on the parties registered to receive electronic notification.

By: /s/ Zakarij N. Laux