IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
SS BODY ARMOR I, INC., et al.,	:	Case No. 10-11255(CSS)
	:	(Jointly Administered)
Debtors.	:	
	:	

OPINION[1]

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[1] This Opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

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Dated: April 1, 2015

Sontchi, J.

INTRODUCTION

Before the Court is Jeffrey R. Brooks' (hereinafter "Jeffrey Brooks") *Motion for Relief from the Automatic Stay as Necessary to Enforce Delaware State Law Rights to Compel an Annual Meeting* (D.I. 2851) (the "Motion").[2] Jeffrey Brooks seeks to file an action in the Delaware Court of Chancery to compel SS Body Armor I, Inc. to hold an annual shareholder meeting. As set forth in detail below, the Court finds that such action to compel an annual meeting is not barred by the automatic stay. The Court further finds that the oppositions to the motion, in effect, seek an injunction of any Chancery Court

[2] The Motion is supported by various shareholders: Khashayar Eynalhori (D.I. 2871), D. David Cohen (D.I. 2885), Steven Wildstein (D.I. 2886), Prescott Group Capital Management (D.I. 2887) and Eric Ley (D.I. 2890). The Motion is opposed by the above-captioned debtors and debtors in possession (D.I. 2866), the Official Committee of Equity Security Holders (the "Equity Committee"), the Official Committee of Unsecured Creditors ("Creditors Committee") (D.I. 2870), and Lead Plaintiffs (as defined below) (D.I. 2871). The Equity Committee originally filed a response (D.I. 2867) that neither supported nor opposed the Motion. However, at the hearing on the Motion, the Equity Committee affirmatively opposed the Motion. Tr. 16:2-3; 67:7-17 (Mar. 19, 2015) (D.I. 2942).

action to compel a shareholder meeting and/or the shareholder meeting, which is procedurally deficient pursuant to Federal Rule of Bankruptcy Procedure 7001(7). As such, the Court will grant the Motion and overrule the objections.

JURISDICTION AND VENUE

The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 362(d), as supplemented by Rule 4001 of the Federal Rules of Bankruptcy Procedure and Rule 4001-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. This is a core proceeding pursuant to 28 US.C. § 157(b)(2)(G) and this Court has the judicial power to enter a final order.

FACTS

A. General Background

On April 14, 2010, SS Body Armor I, Inc. ("SS Body Armor") and its debtor affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Thereafter, the Office of the United States Trustee appointed the Creditors Committee and the Equity Committee.

In October 2011, Judge Walsh entered an order authorizing the Debtors to sell substantially all of their assets. The asset sale closed on October 31, 2011.

B. The Settlement Motion

Since prior to the petition date, the Debtors have been involved in litigation and other disputes with SS Body Armor's former CEO, David H. Brooks[3] ("David Brooks"), Jeffrey Brooks' brother, and with a class of shareholders ("Class Plaintiffs") that commenced a class action ("Class Action") in 2005 against SS Body Armor, among others, in the Eastern District of New York (the "EDNY District Court") alleging securities fraud.

After David Brooks' conviction but before his sentencing, in or around June 2011, the Debtors, the Class Plaintiffs and David Brooks, among other parties, commenced settlement negotiations to resolve the parties' competing claims to two pools of funds: (i) approximately $180 million of restrained assets (the "Restrained Funds"); and (ii) approximately $37 million (the "Escrowed Funds") held by counsel to the Class Plaintiffs and plaintiff's counsel in a related derivative action ("Derivative Action") in connection with a 2006 settlement of the Class Action and the Derivative Action. The contemplated global settlement also would have resolved, in addition to the Class Action and the Derivative Action, a variety of other litigation matters involving the Escrowed Funds, including two appeals to the United States District Court for the District of

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[3] In 2010, David Brooks was criminally convicted on fourteen counts including securities fraud, mail and wire fraud, insider trading, obstruction of justice and material misstatements to auditors. David Brooks also pled guilty to tax counts of conspiracy to defraud the IRS and false filing of tax returns. In 2013, the EDNY District Court sentenced David Brooks to 17 years in prison for his criminal conduct.

SS Body Armor's former Chief Operating Officer, Sandra Hatfield, and former Chief Financial Officer, Dawn M. Schlegel, were also indicted based on, among other things, the same misconduct alleged in the Class Action and the Derivative Action. Hatfield was eventually convicted of conspiracy to commit securities fraud, securities fraud, conspiracy to commit mail and wire fraud, three counts of insider trading, conspiracy to obstruct justice, and obstruction of justice; and was sentenced to seven years in federal prison. Schlegel pled guilty to securities fraud conspiracy and tax fraud conspiracy and was sentenced to three years of supervised release. David Brooks, Hatfield and Schlegel are referred to herein as the "EDNY Defendants."

Delaware (the "DE District Court") from Judge Walsh's order approving the Debtors' rejection of the 2006 settlement, an adversary proceeding commenced by the Debtors in this Court seeking turnover of the Escrowed Funds,[4] and a related appeal and motion to withdraw the reference filed by plaintiffs in the Derivative Action and the Class Action.

At David Brooks' sentencing, the EDNY District Court found that SS Body Armor and its shareholders (including the Class Plaintiffs) were victims of David Brooks' criminal conduct and were entitled to restitution. SS Body Armor has asserted, with the Government's support, a restitution claim of $117 million, while the Class Plaintiffs have asserted a restitution claim of approximately $186 million.[5]

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[4] Adv. Case No. 10-55361 ("Turnover Action"). Debtors sought declaratory judgment that the Escrowed Funds are property of the Debtors' estate and that any adverse claims thereto are not interests in property but are at most, unsecured claims for rejection damages. David Brooks has moved to dismiss the Turnover Action. Plaintiff's counsel in the Derivative Action also filed a motion to dismiss the Turnover Action, a motion for determination that the Turnover Action is not a core proceeding ("Core Motion"), a motion to stay the Turnover Action ("Stay Motion"), and a motion to withdraw the reference. In May 2011, Judge Walsh denied the Stay Motion and the Core Motion. Plaintiffs in the Derivative Action filed a notice of appeal to the DE District Court from the order on the Core Motion. The DE District Court stayed the appeal from the order denying the Core Motion and the motion to withdraw the reference through March 4, 2015, and this Court granted a corresponding stay of the Turnover Action. *See* Adv. Case No. 10-55361, D.I. 160.

Adv. Case No. 11-51759 ("Injunction Adversary Proceeding"). Debtors filed an action against Jeffrey Brooks and the Jeffrey R. Brooks Individual Retirement Account ("Brooks IRA"). The Debtors also filed a preliminary injunction motion, in which the Debtors requested that the Court stay an action filed in New York State Court by the Brooks IRA against some of the Debtors' former officers and directors. In that New York State Court action, Jeffrey Brooks and the Brooks IRA asserted claims relating to the decision to de-register SS Body Armor as a publicly-traded company, which was authorized by Judge Walsh in an order approving a consent agreement between SS Body Armor and the SEC. D.I. 1259. The order approving the consent agreement between SS Body Armor and the SEC was appealed by David Brooks to the DE District Court and later stayed through March 4, 2015. The New York State Court action was also stayed through March 4, 2015.

[5] On March 27, 2015, the EDNY District Court ordered that, among other things: (a) the EDNY Defendants must pay restitution to SS Body Armor in the amount of approximately $53.9 million; and (b) the EDNY Defendants must pay restitution, in a total amount of approximately $37.6 million, to those individuals that have been identified as victims by virtue of holding their common stock in SS Body Armor during the relevant time.

Prior to David Brooks' sentencing, in December 2011, the Debtors, the Class Plaintiffs, the plaintiffs in the Derivative Action, and David Brooks, among other parties, executed a global settlement term sheet. The parties then commenced the process of seeking approval of the global settlement from the Government and EDNY District Court. In late 2013, however, David Brooks abandoned the global settlement.

Thereafter, the Debtors, the Class Plaintiffs and the plaintiffs in the Derivative Action continued to engage in settlement negotiations and eventually executed a term sheet in November 2014. The Debtors proceeded to file a motion to approve the settlement, pursuant to Bankruptcy Rule 9019 (D.I. 2735) (the "Settlement Motion"). The proposed settlement provides the Debtors with an exit strategy for these chapter 11 cases, resolves the litigation matters pending among the parties in this Court, the DE District Court and the EDNY District Court, and provides for a 50/50 allocation of the restitution/forfeiture awards to the Debtors and the Class Plaintiffs. More specifically, the proposed settlement term sheet (a) resolves competing claims to approximately $180 million restrained in connection with the criminal action against David Brooks, (b) provides for an interest-free $20 million loan to the Debtors to fund a chapter 11 plan that the Creditors' Committee has agreed to co-sponsor,[6] and (c) resolves claims asserted in the Class Action and a variety of other litigation matters pending in this Court, the DE District Court and the EDNY District Court.

[6] On March 17, 2015, the Debtors and the Creditors Committee filed a proposed plan (D.I. 2934) and related disclosure statement (D.I. 2935). A hearing on the disclosure statement is scheduled for June 4, 2015.

The settlement agreement has been executed and the Settlement Motion was scheduled to be heard on April 1, 2015.[7] However, on March 30, 2015, the Debtors requested that the April 1 hearing go forward as a "case status conference."[8] The Debtors made this request due to entry of a restitution order by the EDNY District Court, on March 27, 2015, in the criminal action against the EDNY Defendants. As mentioned earlier, the EDNY District Court ordered that, among other things: (a) the EDNY Defendants must pay restitution to SS Body Armor in the amount of approximately $53.9 million; and (b) the EDNY Defendants must pay restitution, in a total amount of approximately $37.6 million, to those individuals that have been identified as victims by virtue of holding their common stock in SS Body Armor during the relevant time. As this restitution award is a substantial component of the settlement agreement in the Settlement Motion and was less than the Debtors anticipated, the Debtors requested that the April 1 hearing on the Settlement Motion become a case status hearing; although, the Debtors have not withdrawn the Settlement Motion. The Court has continued the hearing on the Settlement Motion until May 12, 2015.

C. Corporate Governance

SS Body Armor is a Delaware corporation. Jeffrey Brooks is an owner of common stock in the company. SS Body Armor's by-laws require an annual meeting of its shareholders; yet SS Body Armor has not held a meeting of its stockholders since

[7] To date several parties have objected to the Settlement Motion: D. David Cohen, former general counsel of the Debtor and a current shareholder (D.I. 2921, 2923); Jon E. Jacks, a shareholder (D.I. 2938); David Brooks (D.I. 2941), the Equity Committee (D.I. 2945), and a group of former directors (D.I. 2946).

[8] D.I. 2958.

September 9, 2009. On November 28, 2014, pursuant to 8 Del. C. § 211, Jeffrey Brooks issued a demand that a shareholder meeting be held (the "Demand"). To date, no shareholder meeting has been scheduled or held, and, in fact, SS Body Armor opposes any efforts to schedule or hold such meeting.

Through the pending Motion, Jeffrey Brooks seeks to enforce his shareholder remedies under 8 Del. C. § 211 in the Delaware Court of Chancery. In relevant part, section 211(c) of the Delaware Code provides:

> If there be a failure to hold the annual meeting or to take action by written consent to elect directors in lieu of an annual meeting . . . for a period of 13 months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder or director.[9]

In the pending Motion, Jeffrey Brooks asserts that he is entitled to commence a proceeding in the Court of Chancery to compel SS Body Armor to hold a shareholder meeting and requests a ruling that such a proceeding would not violate the automatic stay, or, in the alternative, relief from the automatic stay in order to commence such a proceeding in Chancery Court.

Jeffrey Brooks has not asserted any specific reasons for requesting a shareholder meeting; however, the Debtors assert that Jeffrey Brooks is seeking the meeting to vote the family's approximately 25% interest in the company to elect a new board of directors that would then reevaluate/abandon the global settlement and the Settlement Motion.

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[9] Del. Code Ann. tit. 8, § 211(c) (West).

The Motion is fully briefed and the Court held an evidentiary hearing on March 19, 2015 (the "Hearing"). This is the Court's decision thereon.

D. Evidence Presented at the Hearing

At the Hearing, the Debtors presented evidence in support of their objection through the testimony of Scott Avila[10] of Deloitte Transactions and Business Analytics LLP, the current chief restructuring officer of the Debtors. Mr. Avila testified that the Debtors have no current operations and, in addition to $217,000 in cash, the only assets of the Debtors are claims against the Restricted Funds and the Escrowed Funds.[11] He further testified that the current board of directors ("Board"), which does not include any member of the Brooks family, has authorized the plan, as filed, as well as the disclosure statement both of which incorporate the global settlement approved by the Board.[12] Mr. Avila opined that the proposed settlement, as well as the plan and disclosure statement, are reasonable exercises of the Board's business judgment.[13] Mr. Avila continued that no other alternatives have been presented to him nor has he been able to research any other viable options for the Debtors' rehabilitation.[14] Mr. Avila testified that conversion to Chapter 7 would only increase costs and cause delay.[15] Mr. Avila also testified that he did not think there were any advantages to the stakeholders in replacing the Board at this

[10] *See* Tr. 11:9 -23:4 (The transcript lists the witness' name as "Scott Abila;" which is a typographical error.).

[11] Tr. 12:12-14; 12:23-13:11.

[12] Tr. 14:22-24. *See also* 2934 (liquidating plan) and 2935 (disclosure statement) (both filed on March 17, 2015).

[13] Tr. 14:25-15:14.

[14] Tr. 15:15-19.

[15] Tr. 18:2-15.