

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PLIANT CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 06-10001 (MFW)

Jointly Administered

Hearing Date: October 20, 2006 at 10:30 a.m.

Objection Deadline: October 13, 2006 at 4:00 p.m.

**MOTION FOR PAYMENT OF FEES AND EXPENSES OF
CHANIN CAPITAL PARTNERS AS FINANCIAL ADVISORS TO
WELLS FARGO, N.A., AS SUCCESSOR INDENTURE TRUSTEE AND
COLLATERAL AGENT FOR THE 11 1/8% SENIOR SECURED NOTES DUE 2009**

Wells Fargo Bank, N.A. (“Wells Fargo”), not in its individual capacity but solely in its capacity as successor indenture trustee to Wilmington Trust Company under the Second Lien Notes Indenture² and collateral agent for the collateral securing the Second Lien Notes, by and through its undersigned counsel, hereby moves this Court for entry of an order directing the Debtors and/or Reorganized Debtors to pay the reasonable fees and expenses of Chanin Capital Partners (“Chanin”) as financial advisors to Wells Fargo in accordance with the provisions of the Plan and Confirmation Order and as provided under the Second Lien Notes Indenture,³ and respectfully represents as follows:

¹ The Debtors consist of Uniplast Holdings, Inc., Pliant Corporation, Pliant Corporation International, Pliant Solutions Corporation, Pliant Film Products of Mexico, Inc., Pliant Packaging of Canada, LLC, Pliant Investment, Inc., Alliant Company LLC, Uniplast U.S. Inc., Uniplast Industries Co., and Pliant Corporation of Canada Ltd.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Debtors’ Fourth Amended Joint Plan of Reorganization (the “Plan”).

³ As Wells Fargo is requesting Chanin’s deferred fee under the terms of the engagement between Wells Fargo and Chanin and is not making a motion for compensation and reimbursement of expenses as an estate professional, Wells Fargo seeks a wavier pursuant to Local Rule 2016-2(g) of all requirements set forth under Local Rules 2016-2(c), 2016-2(d), and 2016-2(e).

PRELIMINARY STATEMENT

1. The Debtors and/or Reorganized Debtors are obligated to pay the fees and expenses of Wells Fargo under the terms of the Plan and Confirmation Order and pursuant to the Second Lien Notes Indenture. Thus, the fees and expenses of Chanin as financial advisors to Wells Fargo are entitled to be paid by the Debtors' bankruptcy estates and/or the Reorganized Debtors. This entitlement is derived from several clear and unambiguous sources. First, under the reinstated Second Lien Notes Indenture, the Debtors and/or Reorganized Debtors are required to pay all reasonable expenses incurred by the Second Lien Indenture Trustee, including but not limited to compensation of its financial advisors and experts, such as Chanin. Under the Plan, the claims arising under the Second Lien Notes Indenture were unimpaired; those claims include the Second Lien Indenture Trustee's reasonable fees and expenses, which must be paid in accordance with the underlying indenture and applicable nonbankruptcy law. Second, pursuant to the clear terms of the Plan, the Debtors and/or Reorganized Debtors agreed to pay the fees, costs, and charges owing to the Second Lien Indenture Trustee provided for under the Second Lien Notes Indenture. The Chanin Fee (defined below) is a cost provided for and allowable under the Second Lien Notes Indenture. Third, the Confirmation Order (defined below) further recognizes the Debtors' and/or Reorganized Debtors' obligation to pay the fees and expenses of the Second Lien Indenture Trustee and specifically recognizes the Second Lien Indenture Trustee's right to seek payment of the Chanin Fee.

2. The Chanin Fee is entirely reasonable in accordance with and as provided under the terms of the Second Lien Notes Indenture and thus must be paid. The Second Lien Indenture Trustee retained Chanin in accordance with the terms of the Second Lien Notes Indenture, Chanin rendered advisory services to the Second Lien Indenture Trustee and the Second Lien Ad

Hoc Committee during these cases, and in particular in connection with the contested confirmation hearing. Chanin was actively involved throughout these chapter 11 cases, which proceeded at an extraordinarily fast pace. Based upon the circumstances of this proceeding and related matters, the Second Lien Indenture Trustee has determined in the exercise of its fiduciary duties, that the Chanin Fee is reasonable. The Second Lien Ad Hoc Committee has determined the Chanin Fee is reasonable and appropriate under the Second Lien Notes Indenture. Accordingly, the Debtors and/or Reorganized Debtors are required by the Second Lien Notes Indenture, as well as the Plan and Confirmation Order, to pay the Chanin Fee.

BACKGROUND

3. On or about February 9, 2006, Wells Fargo succeeded Wilmington Trust Company in its capacity as indenture trustee and became the Second Lien Indenture Trustee under the Second Lien Notes Indenture. A copy of the Second Lien Notes Indenture is attached as Exhibit A to the Initial Objection of Wells Fargo Bank, N.A., as Indenture Trustee and Collateral Agent, to Confirmation of the Debtors' Second Amended Joint Plan of Reorganization. *See* Docket No. 753.

4. On April 19, 2006, the Debtors filed their Second Amended Joint Plan of Reorganization. This plan was subsequently amended after negotiations between the Debtors and various creditors and parties-in-interest including, but not limited to, Wells Fargo. Ultimately, on June 23, 2006, the Bankruptcy Court entered the Confirmation Order.

5. On February 10, 2006, Wells Fargo, in its capacity as Second Lien Indenture Trustee and Collateral Agent, and others associated therewith, retained Chanin pursuant to an engagement letter (the "Engagement Letter") to act as financial advisors to the Second Lien Indenture Trustee and Second Lien Ad Hoc Committee. A copy of the Engagement Letter is

attached as **Exhibit A.**⁴ The specific services to be rendered by Chanin are set out in the Engagement Letter and include, but are not limited to, evaluating the assets and liabilities of the Debtors; assisting in a determination of the appropriate capital structure of the Debtors; rendering financial advice and assistance to the Second Lien Indenture Trustee in meetings and negotiations with the Debtors, its creditors and equity holders in connection with the restructuring, modification or refinancing of the Debtors' existing debt; and providing other appropriate general restructuring advice. Chanin was co-engaged by the Second Lien Ad Hoc Committee. The Engagement Letter specifically set forth that Chanin was being engaged pursuant to the Second Lien Indenture Trustee's authority under the Second Lien Notes Indenture and that the Second Lien Indenture Trustee would assert recovery of these fees and expenses as part of the Second Lien Indenture Trustee's lien.

6. The Engagement Letter includes the manner by which Chanin is to be compensated for its services. First, the Engagement Letter provides that Chanin is entitled to a flat monthly fee of \$125,000 (the "Monthly Fee") plus a Deferred Fee (defined below). Pursuant to the Final DIP Order and subsequently under the Plan, the Debtors agreed to pay this Monthly Fee, and have done so. All that Chanin seeks pursuant to this Motion is the remainder of its compensation in the form of the Deferred Fee.

7. As to the Deferred Fee, as part of arm's length negotiations between Chanin, the Second Lien Indenture Trustee, and the Second Lien Ad Hoc Committee, the parties agreed that Chanin would be entitled to a Deferred Fee. The Deferred Fee is to be in an amount no less than \$250,000. *See* Engagement Letter at ¶ 3(b). Specifically, the Engagement Letter provides in part for the calculation of the Deferred Fee:

⁴ Pursuant to an instruction letter, the majority of the holders of the principal amount of the Second Lien Notes directed Wells Fargo to enter into the Engagement Letter and to take such actions as necessary for payment of the Chanin Fee by the Debtors and/or Reorganized Debtors.

[i]n addition to the Monthly Fee, Chanin shall be paid a deferred fee (the “Deferred Fee”) equal to the greater of (i) \$250,000 or (ii) two and one quarter per cent (2.25%) of the Total Consideration in excess of \$220 million; provided, however, the Deferred Fee shall not exceed \$1.25 million. The Company or the bankruptcy estates shall pay the Deferred Fee in cash as soon as practicable, but in no event later than 50 days, after the effective date of a plan of reorganization or Restructuring (the “Deferred Fee Payment Date”).⁵

Engagement Letter at ¶ 3(b). “Total Consideration” as defined therein, includes the value of cash, securities and obligations and the fair market value of any assets of the Debtors not freely tradable that are “received or *retained* by or for the benefit of the Noteholders, their agents or the [Second Lien] Indenture Trustee . . .” *Id.* (emphasis added). According to Chanin, on or about the Petition Date, the value of the Second Lien Notes totaled approximately \$220,000,000 (\$250,000,000 principal amount x \$0.88 trading value) and during the 45-day period after the Effective Date, the value of the Second Lien Notes totaled on average approximately \$237,250,000 (\$250,000,000 principal amount x \$0.949 average trading value). Pursuant to the Engagement Letter, Chanin is entitled to receive 2.25% of (i) the increase in total value of the Second Lien Notes (\$17,250,000) and (ii) the \$4,000,000 of Second Lien Additional Consideration, for an aggregate of \$21,250,000 which translates into a Deferred Fee owed to Chanin of \$478,125.00 (the “Chanin Fee”⁶). A copy of a summary of the deferred fee calculation is attached as **Exhibit B**.

8. Upon its retention, Chanin immediately took action to fulfill its obligations under the Engagement Letter to the Second Lien Indenture Trustee and to protect the interests of the holders of the Second Lien Notes by evaluating the financial position of the Debtors; conducting

⁵ The parties agreed, through the negotiation of the terms of the Confirmation Order, to modify the timing of the payment of the Chanin Fee.

⁶ Wells Fargo reserves the right to supplement the amount of the Chanin Fee with additional fees and expenses incurred up to and including the date of approval of the Chanin Fee.

an in-depth review and analysis of the Debtors' financial projections, business forecast and plan; reviewing thousands of financial documents on the Debtors' virtual due diligence room, submitting to depositions and preparing expert testimony in connection with the confirmation hearing, and assisting the Second Lien Indenture Trustee in negotiations with the Debtors regarding the treatment of holders of Second Lien Notes under the Plan. The information and analysis provided by Chanin assisted in the reinstatement of the Second Lien Notes, thus allowing the holders of these instruments to retain the full market value thereof and continue receiving revenue therefrom notwithstanding the Debtors' bankruptcy cases. Moreover, the reinstatement permitted the Debtors and their estates to retain the financial benefits derived from the Second Lien Notes and avoid the financial impact that would have resulted from the foreclosure of the Second Lien Notes; actions that were within the holders of Second Lien Note's rights to pursue. Accordingly, under the Engagement Letter, Chanin is entitled to the Chanin Fee with such payment to be paid directly by the Debtors and/or Reorganized Debtors pursuant to the terms of the Plan and Confirmation Order.⁷

ARGUMENT

I. The Debtors And/Or Reorganized Debtors Are Required To Pay The Chanin Fee Under The Plan

9. The Plan and Confirmation Order provide that the Debtors and/or Reorganized Debtors are required to pay the reasonable fees and costs of the Second Lien Indenture Trustee that are allowable under the Second Lien Notes Indenture. *See* Plan at §§ 3.2(e), 12.5 and Confirmation Order at ¶ 39. Specifically, the Plan, pursuant to section 1124(2) of the Bankruptcy Code, reinstates the Second Lien Notes and provides that the Debtors and/or Reorganized Debtors “*shall* pay the reasonable fees, costs and charges owing to the Second Lien

⁷ The Effective Date occurred on July 18, 2006.

Indenture Trustee and each Holder of a Second Lien Note Claim to the extent provided for, and allowable, under the Second Lien Notes Indenture or provided for under the Final DIP Order.” Plan at § 3.2(e) (emphasis added). In addition, the Plan provides that “on the Effective Date, the reasonable fees and expenses of . . . the Second Lien Indenture Trustee . . . shall be Allowed Administrative Expense Claims against the Debtors, pursuant to Section 503(b) of the Bankruptcy Code.” Plan at § 12.5. These provisions were approved by the Court in Paragraph 39 of the Confirmation Order, which states that “[t]he Debtors shall pay the reasonable fees, costs and charges owing to . . . the Second Lien Indenture . . . to the extent provided for, and allowed, under . . . the Second Lien Notes Indenture” Confirmation Order at ¶ 39. Accordingly, the Debtors and/or Reorganized Debtors are required to pay those reasonable fees and expenses of the Second Line Indenture Trustee that are allowable under the Second Lien Notes Indenture.

10. The Chanin Fee is an appropriate and reasonable fee payable pursuant to the terms of the Second Lien Notes Indenture. Section 7.07 of the Second Lien Notes Indenture provides:

The Company shall pay to the [Second Lien Indenture] Trustee from time to time reasonable compensation for its services The Company shall reimburse the [Second Lien Indenture] Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition, to the compensation for its services. Such expenses shall include the reasonable compensation and expense, disbursements and advances of the [Second Lien Indenture] Trustee’s agents, counsel, accountants and experts.

* * *

Without prejudice to any other rights available to the [Second Lien Indenture] Trustee under applicable law, when the [Second Lien Indenture] Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(g) [the filing of a chapter 11 petition] or (h) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

Second Lien Notes Indenture at § 7.07. Consequently, under the foregoing provisions, the Debtors and/or Reorganized Debtors are obligated to pay the reasonable fees and expenses

incurred by the Second Lien Indenture Trustee and its agents, counsel, accountants and experts. Further, if such fees and expenses are incurred after a default, such fees and expenses shall be an administrative expense. *See* Second Lien Notes Indenture at § 7.07.

11. As described above, Chanin was retained pursuant to the Engagement Letter to act as the financial advisors to the Second Lien Indenture Trustee and the Second Lien Ad Hoc Committee throughout the Debtors' reorganization process. Accordingly, Chanin is an advisor, agent, and expert of the Second Lien Indenture Trustee under the Second Lien Notes Indenture. Therefore, the Debtors and/or Reorganized Debtors should be directed to immediately satisfy the Chanin Fee in accordance with the Plan, the Confirmation Order, and Section 7.07 of the Second Lien Notes Indenture. Moreover, since the Chanin Fee was incurred after the Petition Date, thus, after a Default under Section 6.01(g) of the Second Lien Notes Indenture, the Chanin Fee qualifies as an administrative expense pursuant to Section 503(b) of the Bankruptcy Code and should be satisfied as such.

12. Pursuant to Bankruptcy Code section 1123(d), the obligation to cure "shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." As set forth above, the Second Lien Notes Indenture plainly provides for the Second Lien Indenture Trustee to recover its reasonable fees and expenses; under applicable non-bankruptcy law (the Second Lien Notes Indenture provides for New York choice of law), such fees and expenses shall be paid as provided in the underlying agreement. Under New York law, the factors to be considered in determining the reasonableness of fees include, but are not limited to: the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented, the experience, ability, and reputation, the amount of money involved and the benefit flowing to the ward as a result of the services, fees awarded in similar

cases, the contingency or certainty of compensation, the results obtained, and the responsibility involved. *See Bankers Federal Savings Bank FSB v. Off West Broadway Developers*, 224 A.D.2d 376, 377-378, 638 N.Y.S.2d 72, 74; *Morgan & Finnegan v. Howe Chem. Co.*, 210 A.D.2d 62, 63, 619 N.Y.S.2d 719.

II. The Fees And Expenses Requested By Chanin Are Reasonable

13. The Second Lien Notes Indenture does require that the amount of fees and expenses be reasonable. To the extent the fees and expenses are reasonable, such fees and expenses must be paid by the Debtors and/or Reorganized Debtors. The fees and expenses requested by Chanin are reasonable given the circumstances of its retention, the tasks performed, and the results obtained thereby.

14. The Second Lien Ad Hoc Committee has determined the Chanin Fee is reasonable and appropriate under the Second Lien Notes Indenture. Based upon the circumstances of this proceeding and related matters, Wells Fargo has also determined that the Chanin Fee is reasonable.

15. Furthermore, the Chanin Fee is reasonable when viewed in comparison to the market for financial advisors in a complex chapter 11 case such as this. Specifically, the other financial advisors involved in these chapter 11 cases have sought similar, if not substantially higher, fees. Jefferies & Company, Inc., the Debtors' financial advisor, requested payment of fees (excluding expenses) in the amount of \$ 3,977,419.35 (consisting of monthly fees in the amount of \$977,419.35 and a success fee in the amount of \$3,000,000.00); and Kramer Capital Partners LLC, the Committee's financial advisor, has requested payment of fees (excluding expenses) in the amount of \$1,400,000.00 (consisting of monthly fees in the amount of \$750,000.00 and a transaction fee in the amount of \$650,000.00). Both of these fee requests demonstrate that in complex chapter 11 cases, such as these, financial advisors are required to

expend significant resources to obtain the most beneficial results for their clients. Indeed, these cases required the expenditure of significant resources by all parties and their respective financial advisors to ultimately yield the successful reorganization that was obtained. The Second Lien Indenture Trustee's reliance on Chanin is no exception. Chanin did expend a significant amount of resources in analyzing the Debtors' financial health and potential restructuring opportunities, which ultimately assisted in the ability to reinstate the Second Lien Notes. Such treatment under the Plan afforded the holders of the Second Lien Notes with the most beneficial recovery possible and, as described above, furthered the Debtors' ability to reorganize. Moreover, Chanin's fees and expenses incurred in obtaining this goal were comparable to, if not less than, the fees incurred by other financial advisors.

III. Section 1124 Requires Payment By The Debtors And/Or Reorganized Debtors

16. Section 1124(2) of the Bankruptcy Code also requires the Debtors and/or Reorganized Debtors to pay the Chanin fee. Section 1124(2) "provides the debtor in distress with the statutory tools necessary to effect a total healing of the scars of contractual default, by placing the parties into the same position they were in immediately before the default occurred." *Levy v. Forest Hills Associates (In re Forest Hills Associates)* 40 B.R. 410, 415 (Bankr. S.D.N.Y. 1984). This section permits a debtor to continue with the terms of a valuable contract so long as the debtor is willing to cure past defaults and, more importantly, perform under the terms of the original agreement. *See In re Madison Hotel Assoc.*, 749 F.2d 410, 420 (7th Cir. 1984) (citing S. REP. NO. 95-989 at 120, (1978), *as reprinted in* 1987 U.S.C.C.A.N. 5787, 5906.). Since the Debtors reinstated the Second Lien Notes, they are required to perform in accordance with the terms of the Second Lien Notes Indenture. To do so requires that the Debtors and/or Reorganized Debtors, among other things, pay the reasonable fees and expenses incurred by an agent and/or expert of the Second Lien Indenture Trustee. The Chanin Fee was

incurred by an agent and/or expert of the Second Lien Indenture Trustee and, as demonstrated above, this fee is reasonable. Thus, pursuant to Section 1124 of the Bankruptcy Code and Section 7.07 of the Second Lien Notes Indenture, the Chanin Fee must be paid by the Debtors and/or Reorganized Debtors.

17. Moreover, since a default under Section 6.01(g) of the Second Lien Notes Indenture occurred, the payment of the Chanin Fee is to be made as an administrative expense. Accordingly, in order to be in compliance with the requirements of Section 1124(2), the Debtors and/or Reorganized Debtors are required to make the Chanin Fee payment as an administrative expense and should be directed to do so immediately.

RESERVATION OF RIGHTS

18. Wells Fargo reserves the right to supplement or modify this Motion as warranted and also to seek payment of the Chanin Fee pursuant to Sections 503(b) and 506 of the Bankruptcy Code. Wells Fargo further reserves the right to supplement or modify this Motion as warranted by further submission to this Court, at oral argument or by testimony to be presented at any hearing. Furthermore, Wells Fargo reserves its rights under the Second Lien Notes Indenture, the Plan, Confirmation Order, and the Bankruptcy Code, all of which are expressly reserved.

CERTIFICATION

19. Wells Fargo has reviewed the Local Rules and certifies that this Motion substantially complies with the requirements therein to the extent applicable.

CONCLUSION

WHEREFORE, Wells Fargo respectfully requests that the Court enter an Order directing the Debtors and/or Reorganized Debtors to immediately pay the Chanin Fee as an administrative expense pursuant to Section 503 of the Bankruptcy Code, or in the alternative, directing the

Debtors and/or Reorganized Debtors to immediately pay the Chanin Fee under the terms of the Plan and Confirmation Order and pursuant to the Second Lien Notes Indenture, and grant such other and further relief as the Court deems just and proper.

Dated: September 15, 2006

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