

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: JOHN COLEMAN CASE NO. 21-11833-SDM
DEBTOR(S) CHAPTER 11

UNITED STATES TRUSTEE’S MOTION TO CONVERT TO CHAPTER 7

COMES NOW David W. Asbach, Acting United States Trustee for Region 5 (“UST”), by and through undersigned counsel, pursuant to 11 U.S.C. § 1112(b) and Fed. R. Bankr. P. 1017, and files this Motion to Convert to Chapter 7 in the above styled and numbered cause, and in support thereof respectfully submits the following:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 1112 and the order granting automatic reference to this court. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The UST has standing to bring this motion pursuant to 11 U.S.C. § 307 and § 1112(b).

3. On September 29, 2021, Debtor John Coleman filed a voluntary Chapter 11 petition for relief. The Debtor is currently acting as the debtor-in-possession in this case.

4. On January 12, 2022, the Court entered its Order Denying Debtor’s Motion to Dismiss and Ordering the Appointment of an Examiner Under 11 U.S.C. § 1104(c).¹ [DKT. #94]. Per the Order, the Examiner was to investigate “the Debtor, his assets, any and all payments made

¹ While the Court found that cause existed to dismiss the Debtor, the Court considered the unique circumstances of the case and ordered the appointment of an Examiner in lieu of dismissal.

on behalf of the Debtor prepetition, and any other potential transfer of assets by the Debtor or on his behalf”.

5. On February 2, 2022, the Court entered an Order approving the UST’s Appointment of Albert Altro, CPA, CIRA as the Examiner. [DKT. #106]

6. Following several attempts to conduct a chapter 11 § 341 meeting of creditors, the meeting was finally concluded on March 29, 2022. [DKT. #157]

7. On October 28, 2022, the Examiner submitted his report to the Court. [DKT. #224] While the report is thorough and suggests additional avenues for investigation of potentially fraudulent transactions, the report ultimately does not report a finding of fraud or the discovery of previously undisclosed assets.

8. Other than the filing and granting of various applications for compensation of the Examiner and his counsel, no substantive activity has taken place in this case for a little more than two months.

9. Pursuant to various motions and orders granting same, the Debtor’s real property assets have been sold, and the proceeds are being held in a DIP account controlled by Debtor’s counsel and inaccessible to Debtor.

10. Currently there is no disclosure statement or plan filed. Considering the multiple criminal indictments entered against Debtor, there is no reasonable likelihood for reorganization.

11. Per the Agreed Scheduling Order [DKT. #70] and the Amended Agreed Scheduling Order [DKT. #187], Debtor is responsible for timely filing monthly operating reports (MORs). Debtor has not filed one of these reports since the September 2022 MOR. [DKT. #225] While Debtor is current on his UST Quarterly Fees, the fees paid for the 4th quarter 2022 are estimated.

12. With some exceptions, after proper notice and a hearing, “the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under [chapter 11], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1) (2010).

13. Pursuant to § 1112(b), grounds for cause exist to convert this case to a chapter 7 proceeding as they existed months ago when the Court entered its order. These grounds for cause include, but are not limited to, the following:

- (a) Failure to comply with a court order;
- (b) Failure to timely file monthly operating reports; and
- (c) Absence of a reasonable likelihood of rehabilitation.

14. The UST reserves the right to provide additional grounds for cause to convert this case at any hearing on this matter.

WHEREFORE, PREMISES CONSIDERED, the United States Trustee prays for an order converting this case to a chapter 7 proceeding. The United States Trustee further prays for all general and equitable relief to which entitled.

RESPECTFULLY SUBMITTED, this the 10th day of January 2023.

DAVID W. ASBACH
Acting United States Trustee
Region 5, Judicial Districts of
Louisiana and Mississippi

By: /s/Abigail M. Marbury
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served this day on the below named individual(s) via first class U.S. Mail at the address listed below or by Notice of Electronic Filing via the email address on file with the Court's CM/ECF system:

Craig M. Geno
Counsel for Debtor

DATED, this the 10th day of January 2023.

/s/Abigail M. Marbury
ABIGAIL M. MARBURY

