WRITTEN DECISION – NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	Case Nos. 13-00119-CL11 13-00120-CL11
	)	Chapter 11
SILIKEN MANUFACTURING USA, INC.; SILIKEN USA, INC., Debtors,	)	MEMORANDUM DECISION AND ORDER GRANTING MOTION FOR SUBSTANTIVE CONSOLIDATION OF JOINTLY ADMINISTERED CASES
	)	Judge: Christopher B. Latham

MEMORANDUM DECISION AND ORDER GRANTING MOTION FOR SUBSTANTIVE CONSOLIDATION OF JOINTLY ADMINISTERED CASES

On September 9, 2013, the court heard Debtors Siliken USA, Inc. ("SUSA") and Siliken Manufacturing USA, Inc.'s ("MUSA") motion for substantive consolidation of their jointly administered estates. Debtors' parent, Siliken, S.A., and its affiliated entities brought the only opposition. The court has considered the parties' written submissions and oral argument. Good cause appearing, the court **grants** Debtors' motion to substantively consolidate their estates.

I. Factual Background

The Debtors are two privately held California corporations formed in 2007. [ECF No. 257, p. 8]. Siliken, S.A., a Spanish entity, wholly owns Debtor MUSA. [ECF No. 257, p. 8]. MUSA, in turn, wholly owns Debtor SUSA. [ECF No. 257, p. 8]. Debtors comprised the United States component of the larger Siliken global enterprise. Their prepetition business was the manufacture and sale of photovoltaic solar panels. [ECF no. 257, p. 8].

Debtor MUSA, as its name suggests, primarily produced the Debtors' main product, solar panels. [ECF No. 257, p. 8]. SUSA, in turn, was charged with marketing and selling the products that MUSA manufactured. It also provided technical support, accounting, sales, customer support, marketing and engineering of solar panel projects in the United States. [ECF No. 257, p. 8; ECF No. 293, p. 2].

The same officers and directors ran the daily operations of both Debtors. [ECF No. 257, p. 8]. For instance, Scott D. Sporrer served as vice president for both MUSA and SUSA. [ECF No. 258, p. 1 ¶ 1]. And Mark B. Janis was MUSA and SUSA's director of finance. [ECF No. 259, p. 1 ¶ 1]. In their official capacities as officers of both Debtors, Mr. Janis and Mr. Sporrer regularly communicated with outside creditors without "stating they were writing on behalf of SUSA or MUSA." [ECF No. 257, p. 9 ln 16-17; ECF No. 258, p. 3 ¶ 9; ECF No. 259, p. 2 ¶ 5]. Moreover, Mr. Sporrer "routinely" corresponded with MUSA's suppliers via email and signed his email messages as "Vice President and General Manager, Siliken USA." [ECF No. 258, p. 3 ¶ 9].

Specifically, the Debtors maintained:

- One website – www.silikenusa.com – for both Debtors;

- One e-mail domain name – "siliken.com" – for both Debtors;
- One e-mail signature block that identified the sender as working for "Siliken" for both Debtors;
- One main telephone number for both Debtors; and
- One administrative unit (i.e., accounting, etc.) for both Debtors at one physical location

[ECF No. 257, p. 5]. Debtors provided consolidated financial statements to creditors, suppliers and insurers. [ECF No. 257, p. 6]. They also shared the same office space at their headquarters in Carlsbad, California. [ECF No. 258, p. 3 ¶ 11]. But the Debtors kept separate bank accounts and maintained separate financial records.

A. Debtors' Intercompany Transfers

Regular and extensive intercompany transfers occurred between the debtors. Their vertically integrated business model depended on transfers from MUSA of finished goods to SUSA to supply customers. Although MUSA's purpose was to manufacture the Debtors' product, MUSA did not itself produce solar panels after 2011. [ECF No. 291, p. 24-25]. Instead, MUSA delegated manufacturing to a third party operator of a maquiladora facility in Mexico through a "shelter agreement." [ECF No. 291, p. 24-25]. Its continued operations focused on supplying raw materials under that agreement. [ECF No. 291, p. 24-25]. Finished goods were then shipped to a storage facility held by a non-debtor third party, to remain until SUSA sold them to the end user. [ECF No. 291, p. 25 ln 2-8].

In accounting for these intercompany exchanges, the Sporrer and Janis declarations and the § 341(a) meeting transcript indicate that MUSA did not actually supply inventory directly to SUSA or enforce charges against SUSA at an intercompany transfer price. [ECF No. 258, p. 3 ¶ 12; ECF No. 259, p. 2 ¶ 6]. Rather, once SUSA obtained payment from the end user, "Debtors effectively credited revenue on MUSA's books and debited COGS [cost of goods sold] on SUSA's books and these entries were eliminated on consolidation. There was never a settlement made for the finished goods sold to SUSA at the intercompany transfer price." [ECF No. 259, p. 2 ¶ 6]. SUSA did not disburse payment to MUSA until it needed to "satisfy . . . vendor obligations and continue the manufacturing of solar panels for future sale." [ECF No. 258, p. 3-4 ¶ 12].

B. Debtors' Interactions with Creditors

Debtors advert to three specific events which they argue demonstrate the appropriateness of substantive consolidation: (1) their request for additional credit from AGC Flat Glass North America, Inc.; (2) an application for a working capital loan from Bridge Bank; and (3) an application for a surety policy from Barney & Barney LLC.

1. Request for Debtors' Consolidated Financial Statements to Increase MUSA's Credit Limit with AGC Flat Glass North America, Inc.

In the fall of 2010, Mr. Janis, on Debtors' behalf, sought an increased credit limit from one of MUSA's creditors, AGC Flat Glass North America, Inc. ("AGC"). [ECF No. 257, p. 13 ln 24-26]. Yet Mr. Janis's email correspondence with AGC's corporate credit manager represented that he was the "Director of Finance" for "Siliken Renewable Energy, Inc," one of SUSA's former names. [ECF No. 257, p. 14 ln 2-4; ECF No. 259-1].

In December 2011, in connection with another request to increase Debtors' credit limit, AGC requested consolidated financial reports from Siliken's "U.S. Division." [ECF No. 259-2, p. 1]. Mr. Janis responded via email with a signature block that stated:

> Mark Janis
> Director of Finance
> Siliken

Id. He then provided AGC with a consolidated financial report for MUSA and SUSA.

The financial report, prepared by Pricewaterhouse Coopers Auditories, S.L., lists the Debtors as "Siliken Manufacturing USA and its subsidiary" and refers to them collectively as "the Company." [ECF No. 259-2, p. 13]. It describes the Debtors' individual functions as they relate to the "Company's" operations as a whole. [ECF No. 259-2, p. 13]. For instance, under the heading "Certain risks and uncertainties," the report's notes advert to the risk the "Company's" reliance on "Major Customers" and "Major Suppliers" presented, without specifying that MUSA primarily procured suppliers while SUSA's role was to solicit customers. [ECF No. 257, p. 14 ln 26-27; ECF No. 259-2, p. 21 ¶ 11]. Further, the consolidated financial report advises, "The Company has significant transactions with the Parent and is dependent upon ongoing financial support from the Parent to finance its operations." [ECF No. 259-2, p. 8]. Specifically, it highlights the existence of

$33.2 million in short-term liabilities to the parent that its operating revenues at the time could not cover unless the parent agreed to extend the maturity date. [ECF No. 259-2, p. 13].

After reviewing the Debtors' consolidated financial statement, AGC requested a guarantee from the parent as a condition for extending their credit limit. [ECF No. 259-1]. It is unclear whether Debtors ultimately succeeded in increasing the credit line with AGC in December 2011.

2. Debtors' Application for a Working Capital Loan from Bridge Bank

In summer 2010, Debtor SUSA applied for a $3 million working capital loan from Bridge Bank specifically to facilitate manufacturing operations. [ECF No. 257, p. 15].[1] As part of the application package, Debtors compiled a presentation that "relied on consolidated financial statements and . . . referred to the Debtors as a single 'Company,' mixed together data from SUSA and MUSA without regard to the separateness of the entities." [ECF No. 257, p. 6 ln 10-13]. Bridge Bank ultimately presented Debtors with a term sheet for the loan, but they declined the offer, as it required a $1 million letter of credit from the parent. [ECF No. 259, p. 3 ¶ 10].

3. Debtors' Application for a Surety Policy from Barney & Barney, LLC

Also in 2010, Debtors applied for a surety policy from Barney & Barney, LLC to cover a solar project development. [ECF No. 257, p. 16]. Debtors again provided a consolidated financial statement, which was substantially identical to the statement provided to AGC. [ECF No. 257, p. 16; ECF No. 259-4]. And the email communications between Mr. Janis and the Barney & Barney's representative referred to Debtors collectively as the "U.S. subsidiary." [ECF No. 259-4].

II. Procedural Posture

Debtors filed this motion on July 22, 2013 [ECF No. 257], but they indicated as early as their first day motion filings that they would seek substantive consolidation. Their motion argues that substantive consolidation is appropriate given the functional reality that SUSA and MUSA operated as a single economic unit. Debtors contend that, although they constituted distinct legal entities, the

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[1] Siliken, S.A. and its related entities object to the admissibility of this evidence under Federal Rule of Evidence 402. [ECF No. 294]. They contend that it is not relevant because Bridge Bank never became a creditor of either debtor. Bridge Bank did offer Debtors a term sheet for a working capital loan based on their representations, however. [ECF No. 310-8]. The court **overrules** Siliken, S.A.'s objection because its argument speaks to the weight the court should afford this evidence, not its admissibility.

manner in which they conducted business with creditors demonstrates that they operated as one. They assert that the primary rationale for keeping the companies separate was to capture the tax benefits of MUSA's net operating losses. Finally, Debtors stress that neither company could stand alone because of the way the parent structured their operations.

Siliken, S.A.'s opposition emphasizes that the Joint Debtors maintained distinct corporate identities: separate bank accounts, separate accounting, no comingled assets, separate creditors and "meticulously documented" intercompany transfers. [ECF No. 290]. Siliken, S.A. argues that the extraordinary nature of substantive consolidation militates against its application in this case. It further points out that creditors filed proofs of claim in the Debtors' respective claims registers. And Siliken, S.A. counters Debtors' evidence by highlighting the detailed internal accounting procedures for intercompany transactions. It also suggests that the Siliken, S.A.'s website quite clearly delineates the Debtors' relationship to one another and is publicly available. [ECF No. 290, p. 16 ln 18-21].

Notably, the Official Joint Committee of Unsecured Creditors' (the "Committee") brief declares its unanimous support for substantive consolidation. [ECF No. 313]. First, it attacks the parent's argument that intercompany transfers were "meticulously documented." [ECF No. 313, p. 2 ln 14-17]. Instead, the Committee asserts that "such documentation was often ginned up after the fact as part of the scheme the non-debtor affiliates orchestrated to elevate their status to that of creditors." [ECF No. 313, p. 2 ln 15-17]. It also disputes Siliken, S.A.'s contention that the corporate Siliken website clarifies the Debtors' relationship within the group, since the website is actually confusing and inaccurate. For instance, the Committee asserts that it lists Siliken, S.A. as the 100 percent owner of SUSA, when in actuality, MUSA wholly owns SUSA. [ECF No. 313, p. 5]. The Committee argues that approximately 48% of the claims filed in the MUSA case, including that of a former employee, had documentation attached suggesting that they should have been filed in SUSA's case. [ECF No. 313, p. 8].[2] Finally, the Committee urges the court to deny any continuance because Siliken, S.A. had six weeks' notice to engage in discovery and failed to timely do so.

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[2] The court recognizes, as counsel for Siliken, S.A. contended at the hearing, that the court's instructions might have created ambiguity as to whether creditors should file only papers in the low-numbered case or proofs of claim as well. [ECF No. 13].

III. Legal Standard for Substantive Consolidation

Substantive consolidation is an equitable remedy arising from the court's inherent authority to "ensure equitable treatment of all creditors." *Alexander v. Compton* (*In re Bonham*), 229 F.3d 750, 764 (9th Cir. 2000) (quoting *Union Savings Bank v. Augie/Restivo Banking Co., Ltd.* (*In re Augie/Restivo Banking Co., Ltd*), 860 F.2d 515, 518) (2d Cir. 1988)). It fundamentally alters the Debtors' relationship with their creditors by "creat[ing] a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.*; *see also Flora Mir Candy Corp. v. R.S. Dickson & Co.* (*In re Flora Mir Candy Corp.*), 432 F.2d 1060, 1062 (2d Cir. 1970) (stating that substantive consolidation "is no mere instrument of procedural convenience . . . but a measure vitally affecting substantive rights"). Because this remedy overrides the presumption of corporate separateness, it is to be used "sparingly." *See In re Owens Corning Corp.*, 419 F.3d 195, 211 (3d Cir. 2005); *In re Bonham*, 229 F.3d at 767. That said, "[w]ithout the check of substantive consolidation, debtors could insulate money through transfers among inter-company shell corporations with impunity." *In re Bonham*, 229 F.3d at 764.

The test for substantive consolidation in the Ninth Circuit is a disjunctive two-factor analysis of: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." *In re Bonham*, 229 F.3d at 766 (quoting *Reider v. Fed. Deposit Ins. Corp.* (*In re Reider*), 31 F.3d 1102, 1108 (11th Cir. 1994)). The *Bonham* Court elaborated:

> The first factor, reliance on the separate credit of the entity, is based on the consideration that lenders "structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." Consolidation under the second factor, entanglement of the debtor's affairs, is justified only where "the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors" or where no accurate identification and allocation of assets is possible.

229 F.3d at 766 (citations omitted). If the Debtors make a prima facie showing that substantive consolidation is appropriate, the burden shifts to the objectors to overcome the presumption that they did not rely on the Debtors' separate identity. *In re Bonham*, 229 F.3d at 767.

The reported decisions on substantive consolidation vary widely in approach and outcome. *See, e.g.*, *Id.* (adopting the Second Circuit's test in *Augie/Restivo*); *In re Owens Corning, Inc.*, 419 F.3d 195 (embracing a strict interpretation of *Augie/Restivo*); *Drabkin v. Midland–Ross Corp.* (*In re Auto–Train Corp., Inc.*), 810 F.2d 270, 276 (D.C. Cir. 1987)[3]; *In re Vecco Construction Indus.*, 4 B.R. 407, 410 (Bankr. E.D. Va. 1980)[4]; *see also In re Standard Brands Paint Co.*, 154 B.R. 563 (Bankr. C.D. Cal. 1993)[5]; *In re Richton Intern. Corp.*, 12 B.R. 555 (Bankr. S.D.N.Y. 1981) (endorsing substantive consolidation where, *inter alia*, the various subsidiaries could not stand alone). But the cases uniformly hold that substantive consolidation is not permissible if a creditor specifically relied on a particular Debtor's financial condition before extending credit. Nor is it appropriate to use substantive consolidation as a mechanism to gain a tactical advantage over a dissenting class of creditors. *See In re Owens Corning, Inc.*, 419 F.3d at 211.

As such, the Second Circuit in *Augie/Restivo* held that the debtors could not substantively consolidate over the secured lender's objection that it had extended credit to one debtor before the two debtor entities had attempted a merger. 860 F.2d at 520-21. Likewise, the Third Circuit in *Owens Corning* rejected substantive consolidation where a bank consortium firmly established that it had lent the debtor corporate group, including the parent and several subsidiaries, $2 billion through a loan

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[3] The D.C. Circuit's test requires a proponent to show that: (1) a "substantial identity between the entities to be consolidated;" and (2) "that consolidation is necessary to avoid some harm or to realize some benefit."

[4] The *In re Vecco* court formulated seven factors to determine whether "substantial identity" between related entities exists: "(1) the presence or absence of consolidated financial statements; (2) the unity of interests and ownership between various corporate entities; (3) the existence of parent and intercorporate guarantees on loans; (4) the degree of difficulty in segregating and ascertaining individual assets and liabilities; (5) the existence of transfers of assets without formal observance of corporate formalities; (6) the commingling of assets and business functions; (7) the profitability of consolidation at a single physical location." *See In re Bonham*, 229 F.3d at 766 n.10.

[5] The court in *Standard Brands*, decided before *Bonham*, temporarily consolidated five related corporate entities whose affairs and operations were functionally entangled for voting and distribution purposes on a consensual basis. 154 B.R. at 572. In dicta, the court noted "that creditors could not have relied on the separate identity of the subsidiaries or parent in extending credit to them, due to the fact that the debtors always held themselves out as a consolidated entity." *Id.*

facility expressly conditioned on their receiving guarantees from all of the debtor's U.S. based subsidiaries with significant assets. 419 F.3d at 213-14.

Similarly, the *World Access, Inc.* court observed:

> Common ownership or a parent/subsidiary relationship, common directors and officers, inter-affiliate transfers, incorporation caused by the parent, the existence of inter-corporate claims, and consolidated financial statements or tax returns are all typical of most affiliated corporations, yet substantive consolidation is not typically ordered on the presence of the close corporate relationship represented by these elements. Additional elements are required.

R^2 Investments, LDC v. World Access, Inc. (*In re World Access, Inc.*), 301 B.R. 217, 276 n.59 (Bankr. N.D. Ill. 2003) (quoting 2 L. King, COLLIER ON BANKRUPTCY ¶ 105.09[2][a] (15th ed. 2003)). The court found that the proponents had failed to establish these additional elements. *Id.* The *World Access* case is distinguishable, however, in that it involved objecting institutional investors that had purchased securities in the debtor entities on the secondary market and specifically relied on their priority. *See id.* at 223.

IV. Analysis and Discussion

This case presents an unusual twist on the typical scenario presented by substantive consolidation. That the Committee and Debtors favor substantive consolidation is unremarkable. But the acrimony between Debtors and their parent adds uncommon complexity to this matter. It is undisputed that the Siliken entities hold the vast majority of claims against the estates. Notably, they have filed claims primarily against SUSA, while most of non-debtor affiliate debt is asserted against MUSA. Further, SUSA has significantly more assets available for distribution than MUSA. Thus, substantive consolidation will benefit MUSA's creditors to the detriment of SUSA's estate.

A. Hopeless Entanglement

The second *Bonham* factor is almost certainly not met. Debtors concede that it is not impossible to untangle the Debtors' affairs. In fact, it appears that this would merely involve reconciling and auditing the last remaining transfers between the companies. Because MUSA and SUSA kept records of the intercompany transactions, they are not hopelessly entangled. This is further undermined by the plan's focus on unwinding the numerous intercompany transfers to the non-Debtor affiliates. Indeed, the only hope of paying creditors rests on recovering these transactions through the liquidating trust. It is therefore not too costly to "unscramble" these transactions. So, Debtors and the Committee must justify substantive consolidation under the first *Bonham* factor.

B. Whether Creditors Treated Debtors as a Single Economic Unit and Did Not Rely on Their Separate Identity in Extending Credit

As noted above, the paramount objective of this element is to preserve the benefit of the creditor's bargain with the prepetition debtor. *In re Bonham*, 229 F.3d at 766. Hence, if a creditor relied on recourse to a separate asset pool for satisfaction of its claims before extending credit, it should not have to compete with creditors of a less asset-rich entity for repayment. *See id.*

In this case, there are no secured lenders to object on this basis. Indeed, the evidence, taken together, shows that the Debtors comprised an organic part of the larger Siliken Group. In particular, creditors negotiating with the Debtors appear to have referred to them as either the "U.S. division" or "U.S. subsidiary" of the parent. The Debtors shared the same officers and directors and did not often specify which Debtor they represented when engaging creditors. In fact, the record indicates that creditors and Debtors' officers alike referred to the Debtors interchangeably, without regard to their current or former corporate identities. [ECF No. 259-3; ECF No. 310, p. 4]. The evidence supports the finding that creditors did not look to the separateness of either Debtor before extending credit, but rather considered them an extension of the parent's operations in the United States. This is bolstered by the fact that the parent primarily negotiated the largest supply contract that the Debtors entered into with an outside creditor. [ECF No. 310-2]. Additionally, SUSA is the only Debtor named as a party to that contract, but the contract language imposes obligations on SUSA that implicate MUSA's functions. [ECF No. 310-2, p. 1].

Thus Debtors, although legally separate, functioned as a cohesive unit, and their creditors treated them as such. Moreover, the Debtors' structure – with SUSA receiving the bulk of the revenue for MUSA's products but only paying MUSA intermittently to satisfy immediate obligations – demonstrates that neither Debtor could survive independently of the other. Further, the Committee unanimously supports consolidation. While most of the Committee's constituents hold claims only against MUSA, it represents that all of its constituents, including those with claims solely against

SUSA, affirmatively support consolidation. For all of these reasons, Debtors have met their burden of going forward.

Notably, Siliken, S.A. interposed the only opposition to substantive consolidation. Although the presence of numerous intercompany transfers is often cited as a factor favoring consolidation,[6] the beneficiaries of such transfers are the opponents of substantive consolidation in this case. There is little doubt that Siliken, S.A. and the other non-debtor affiliates structured their financial dealings with the Debtors such that they had access to the less exposed Debtor, SUSA. In this manner, they could shield their transactions from competing creditors' claims in an eventual insolvency proceeding, all while preserving the tax benefits of the Debtors' separate existence – most significantly, MUSA's net operating losses.

But substantive consolidation emerged as an equitable doctrine to remedy this type of arrangement, in which insider creditors benefit and trade creditors are left with a cash-starved debtor.[7] Indeed, the Code often subjects insider dealings to heightened scrutiny in recognition that even ostensibly arm's length transactions between insiders have an inherently coercive element to them.[8] This case presents no exception, and substantive consolidation is appropriate. Siliken, S.A. structured Debtors as separate corporate subsidiaries to suit its own organizational objectives. But when it allowed Debtors to create an impression that they formed a single American unit in its global enterprise, it failed to respect this separation. Where it is apparent that non-insider creditors did not acknowledge or rely on Debtors' separate existence in their transactions with them, emphasis on the Debtors' internal procedures to maintain this separation cannot fend off consolidation.

In its papers and at the hearing, Siliken, S.A. made no effort to rebut the Committee's unanimous support for consolidation other than to suggest the Committee has a conflict stemming from its "joint" nature. In addition, the Siliken entities failed to offer so much as a declaration from the

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[6] *See, e.g.*, *In re Vecco Construction Indus.*, 4 B.R. at 410.

[7] *See In re Bonham*, 229 F.3d at 764; *see also* Mary Elizabeth Kors, *Altered Egos: Deciphering Substantive Consolidation*, 59 U. PITT. L. REV. 381, 386-97 (1998).

[8] *See, e.g.*, 11 U.S.C. §§ 503(c), 510(c), 547(b)(4)(B), 1129(a)(10); *see also Official Comm. of Unsecured Creditors v. Hancock Park Capital II, L.P.* (*In re Fitness Holdings Int'l, Inc.*), 714 F.3d 1141, 1148-49 (9th Cir. 2013) (authorizing re-characterization of insider debt as equity in the context of a fraudulent transfer).

parent to support its position. On this showing, the court therefore finds that creditors dealt with Debtors as a single entity and did not rely on their separate existence before extending credit.

C. Further Continuance or an Evidentiary Hearing Is Not Necessary

Siliken, S.A. requests more time to conduct discovery if the Debtors' motion is not denied. But it has not alluded to the character of additional evidence it may uncover and present at an eventual evidentiary hearing. Further, Debtors and the Committee stress that Siliken, S.A. and its related entities already possess the information needed to oppose this motion. The court additionally notes that the Debtors early in the case effectively put parties in interest on notice of their intent to seek substantive consolidation. It was therefore within Siliken, S.A.'s power and discretion to conduct discovery through Rule 2004, or under Rule 9014(c) once Debtors filed their motion.[9] The court thus **denies** Siliken, S.A.'s request for continued hearing on this matter.

V. Conclusion

For the foregoing reasons, the court **grants** Debtors' motion for substantive consolidation. It is not lost on the court that this motion comes during an aggressive campaign by the Committee to disallow and equitably subordinate the non-debtor affiliate claims. And this decision should not be read to countenance substantive consolidation for every vertically integrated corporate enterprise. Nevertheless, the court finds that in the circumstances at bar, substantive consolidation best accords with the way Debtors held themselves out to creditors and how their creditors viewed them.

IT IS SO ORDERED.

Dated: September 19, 2013

CHRISTOPHER B. LATHAM, JUDGE
United States Bankruptcy Court

[9] Notably, Siliken, S.A. employed a similar tactic earlier in the case by filing a "reservation of rights" to challenge Debtors' counsel's disinterestedness, but then declined to pursue its objection once the court set a discovery and briefing schedule. *See* [ECF Nos. 201, 208, 218, 221].