

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

MIG, INC.,

Debtor.

Chapter 11

Case No. 09-12118 (KG)

**DEBTOR MIG, INC.'S OBJECTION TO THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS' MOTIONS FOR LEAVE TO I) FILE
RESPONSES TO DEBTOR'S MOTIONS *IN LIMINE* CONTAINED IN THE
PROPOSED PRETRIAL ORDER [D.I. 564] AND II) EXCEED PAGE
LIMIT WITH RESPECT TO ITS RESPONSES**

The above-captioned debtor and debtor-in-possession (collectively, the "Debtor") hereby objects to the Motion for Leave to I) File Responses to Debtor's Motions *In Limine* Contained in the Proposed Pretrial Order [D.I. 564] and II) Exceed Page Limit with Respect to Its Responses [Docket No. 568] ("Motion for Leave") filed by the Official Committee of Unsecured Creditors ("Committee") to the Debtor's Motions *in Limine* filed in advance of the hearing on the Committee's Motion for Order Pursuant to Sections 105(a), 1104(a), 1121(c)(1) and (d)(1) and 1112(b), Appointing a Chapter 11 Trustee and Terminating the Debtor's Exclusivity to File a Plan or, in the Alternative Dismissing Chapter 11 Case for Cause [Docket No. 78] ("Trustee Motion"). The Second Amended Scheduling Order entered in this case [Docket No. 494] (the "Second Amended Scheduling Order") and Section XV(A) of this Court's standard Pretrial Order followed by the parties in this case in their joint Proposed Final Pretrial Order expressly preclude the Committee's written responses. In the alternative, the Debtor respectfully requests that this Court grant it leave to submit reply briefs in support of its motions *in limine* and to file written responses to the Committee's pending motions *in limine*. In support of this Motion, the Debtor states as follows:

1. On July 23, 2009, the Committee filed the Trustee Motion.

2. On August 31, 2009, the Court entered the first Scheduling Order [Docket No. 168]. The first Scheduling Order did not include provisions regarding motions *in limine*.

3. On November 3, 2009, the Court entered the Amended Scheduling Order [Docket No. 309]. In the Amended Scheduling order, the Court included a provision for written responses to motions *in limine*. (Amended Scheduling Order § 6(h).)

4. On December 30, 2009, the Court entered the Second Amended Scheduling Order jointly proposed by the Committee and the Debtor. The Second Amended Scheduling Order eliminated the provision allowing written responses for motions *in limine* and amended this provision to instead follow the procedure established by this Court's standard Pre-Trial Order, which bars such written responses.

5. Specifically, the Second Amended Scheduling Order provides: "The Parties shall file a Joint Pre-Trial Order in accordance with this Court's standard Pre-Trial Order, including any Motions *in Limine* on or before February 5, 2010." (Second Amended Scheduling Order § 7.)

6. The Court's standard Pre-Trial Order expressly states that no written responses are allowed for motions *in limine*: "Briefing shall not be submitted on *in limine* requests, unless otherwise permitted by the Court." (Court's Proposed Final Pretrial Order § XV(A).)

7. The Second Amended Scheduling Order further provides that: "The Parties shall serve any Motions *in Limine* on or before 5 p.m. EST on February 3, 2010 and file such Motions *in Limine* with this Court with the Joint Pre-Trial Order" and that "[a]ny Motions *in limine* filed by the parties shall be heard at the commencement of the hearing" on February 10, 2010. (Second Amended Scheduling Order § 7(d) and 8.)

8. Pursuant to Section 7(d) of the Second Amended Scheduling Order, on February 3, 2010 by 5 p.m. EST, the Debtor served four Motions *in Limine* (“Motions *In Limine*”) on the Committee. The Committee served two motions *in limine* on the Debtor after 5 p.m. EST on February 3, 2010.

9. Despite the fact that the Second Amended Scheduling Order and the Court’s standard Pre-Trial Order expressly prohibit written responses to the Debtor’s Motions *in Limine* the Committee indicated to the Debtor on February 5, 2010 that it intended to file written responses to some of the Debtor’s Motions *in Limine*.

10. The Debtor immediately advised the Committee that no such written responses were allowed. Even after pointing out the express terms prohibiting written responses to the Debtor’s Motions *In Limine*, the Committee stated that it did not intend to abide by the governing procedure and would proceed to file written responses.

11. The Debtor and the Committee *never* discussed including anything in the joint pretrial order to be submitted to the Court about written responses to motions *in limine*. Yet in the Proposed Final Pretrial Order filed by the Committee, the Committee included such language in the section entitled “Other Matters.” (Proposed Final Pretrial Order § XIII.) The Committee only indicated its intention to include the second point listed in that section, namely that the parties disagree on whether the inclusion of a marketability discount should be decided as a matter of law. (*Id.*) None of the drafts exchanged between the parties prior to its filing includes the Committee’s new claim regarding responses to motions *in limine*, and this provision was inserted unbeknownst the Debtor. The Committee cannot now rely on this surreptitious insertion as a basis for its Motion for Leave. (Mot. for Leave ¶ 5.)

12. The Committee proceeded to file its Motion for Leave on February 8, 2010.

13. The parties jointly proposed the Second Amended Scheduling Order, which does not provide for written responses. The terms of the Second Amended Scheduling Order govern here, which expressly incorporate the requirements of the Court's standard pre-trial order for motions *in limine*, not the terms of the Court's model scheduling order upon which the Committee now solely relies as a basis for its proposed written responses. (Mot. for Leave ¶ 6.) There is no basis for the Committee's shift in position nor would the Committee be prejudiced in any way by abiding by the previously agreed upon procedure.

14. The Debtor intends to present its Motions *In Limine* to the Court at the beginning of the hearing as anticipated by the Second Amended Scheduling Order and the Court's pre-trial order. The Court, the Committee and the Debtor can proceed as envisioned by the Second Amended Scheduling Order.

15. On the other hand, the Debtor will be prejudiced should the Court allow the Committee to file written responses to the Debtor's Motions *In Limine*, as the Debtor intends to abide by the Scheduling Order and the Court's standard Pre-Trial Order, thereby not submitting written responses to the Committee's two motions *in limine*.

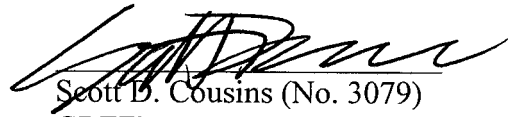
16. Should the Court grant the Committee's Motion for Leave, the Debtor respectfully requests that this Court permit it to file reply briefs in support of its Motions *In Limine* and to file written responses to the Committee's pending motions *in limine*.

17. If the Court grants the Committee's Motion for Leave, the Debtor does not oppose the Committee's request to file responses in excess of five pages.

WHEREFORE, MIG, Inc., the Debtor herein, respectfully requests that the Court (a) deny the Committee's request for leave to file written responses to the Debtor's Motions *in Limine*; (b) in the alternative, permit the Debtor to file reply briefs in support of its motions *in*

limine and written responses to the Committee's pending motions *in limine*; and (c) grant such other relief as the Court deems appropriate and necessary.

Dated: Wilmington, Delaware
February 8, 2010



Scott B. Cousins (No. 3079)
GREENBERG TRAUIG, LLP
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
Tel.: (302) 661-7000
Fax: (302) 661-7360
cousinss@gtlaw.com

- and -

Kevin D. Finger
Bevin M. Brennan
GREENBERG TRAUIG, LLP
77 W. Wacker Drive, Suite 3100
Chicago, IL 60601
Tel.: (312) 456-8400
Fax: (312) 456-8435
fingerk@gtlaw.com
brennanb@gtlaw.com