

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

In Re: ) Chapter 11  
NEXPAK CORPORATION, *et al.*,<sup>1</sup> ) Case No. 09-11244 (PJW)  
 ) Jointly Administered  
 )  
Debtors. ) Objection Date: October 29, 2009 at 4:00 p.m.  
 ) Hearing Date: November 5, 2009 at 9:30 a.m.

**NOTICE OF (I) APPROVAL OF THE DISCLOSURE STATEMENT,  
(II) HEARING TO CONSIDER CONFIRMATION OF PLAN, AND  
(III) DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**APPROVAL OF DISCLOSURE STATEMENT**

1. By order dated September 30, 2009 (the “Disclosure Statement Order”) (Docket No. 407), the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) approved the First Amended Disclosure Statement for the First Amended Joint Plan of Liquidation for NexPak Corporation and its Affiliated Debtors (including all exhibits thereto and as amended, modified or supplemented from the time to time, the “Disclosure Statement”) as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the united state code (the “Bankruptcy Code”).

**CONFIRMATION HEARING**

2. On **November 5, 2009 at 9:30 a.m.** (prevailing Eastern time) before the Honorable Peter J. Walsh at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6<sup>th</sup> Floor, Courtroom No. 2, Wilmington, DE 19801, a hearing (the “Confirmation Hearing”) will be held to consider confirmation of First Amended Joint Plan of Liquidation for NexPak Corporation and its Affiliated Debtors (the “Plan”). The Confirmation Hearing may be adjourned from time to time without further notice to creditors and other parties in interest by an announcement of the adjourned date at the Confirmation Hearing of any adjournment thereof or an appropriate filing with the Court. The Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Plan and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

**ENTITLEMENT TO VOTE ON PLAN**

3. In accordance with the terms of the Plan and the Bankruptcy Code, holders of claims against the Debtors that are impaired by the Plan are entitled to vote on the Plan; holders of claims or interests that will receive no distribution under the Plan are deemed to have rejected the Plan and will not be entitled to vote. Holders of claims that are unimpaired by the Plan (Class 1 Non-Tax Priority Claims and Class 2 Other Secured Claims) are deemed to have accepted the Plan and are not entitled to vote on

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<sup>1</sup> The Debtors are the following entities: NexPak Corporation (2207); Atlanta Precision Molding Co., LLC (4923); EPM Holdings, Inc. (4658); NexPak Holdings LLC (8844); JMC Acquisition LLC (1660); and AEI Acquisition LLC (1655).

the Plan. In addition, holders of Class 5 Pre-Petition Lenders' Deficiency Claims are deemed to have accepted the Plan<sup>2</sup>.

4. September 30, 2009 has been established by the Bankruptcy Court as the record date for determining the creditors entitled to receive solicitation or notice materials for the Plan.

**SUMMARY OF PLAN TREATMENT OF CLAIMS AND INTERESTS**

5. The Plan proposes to modify the rights of certain creditors and equity holders of the Debtors. The Plan establishes the following classes of Claims and Interests with the following treatment:

<b>Class</b>	<b>Treatment</b>
Administrative Expense Claims	Each Holder of an Allowed Administrative Expense Claim shall be paid in full, in Cash, as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Administrative Expense Claim becomes an Allowed Claim, (iii) the date that such Administrative Expense Claim becomes due in the ordinary course of business and (iv) the date that the Reorganized Debtors and the Holder of such Administrative Expense Claim otherwise agree. Budgeted Administrative Expense Claims shall be paid in accordance with budgets approved by the Pre-Petition Lenders. Allowed Administrative Expense Claims, other than Budgeted Administrative Expense Claims and Section 503(b)(9) Claims, will be paid out of the Unsecured Claim Carve-Out. Section 503(b)(9) Claims will be paid out of the Section 503(b) Carve-Out and, if necessary, from the Unsecured Claim Carve-Out. holders of Administrative Expense Claims arising on or before August 15, 2009 (other than claims of Professionals) were required to file Requests for Payment of Administrative Expense Claims on or before October 15, 2009. Holders of administrative expense claims arising from August 16, 2009 through the effective date (other than claims of the debtors' professionals) must file requests for payment of administrative expense claims on or before 30 days after the effective date.
Priority Tax Claims	Each Holder of an Allowed Priority Tax Claim pursuant to Section 507(a)(8) of the Bankruptcy Code shall be paid in full, in Cash, as soon as practicable after the later of the Effective Date and the date that such Priority Tax Claim becomes an Allowed Claim.
Class 1: Priority Non-Tax Claims	Each Holder of an Allowed Class 1 Non-Tax Priority Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim as soon as practicable after the later of the Effective Date and the date such Claim becomes an Allowed Claim unless the Reorganized Debtors and the Claim Holder agree to different treatment. Class 1 is unimpaired. Holders of Class 1 Claims are conclusively deemed to accept the Plan and are not entitled to vote on the Plan.

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<sup>2</sup> Notwithstanding the fact that they will receive no distribution under the Plan, holders of Class 5 Pre-Petition Lenders' Deficiency Claims are deemed to accept the Plan because such treatment is consistent with that certain Settlement Stipulation among the Debtors', the Debtors' pre-petition secured lenders and the Official Committee of Unsecured Creditors, which was approved by Order of the Bankruptcy Court dated July 15, 2009 (Docket No. 255).

Class 2: Other Secured Claims	Each Holder of an Allowed Class 2 Other Secured Claim will be placed in a separate subclass and each subclass will be treated as a separate class for distribution purposes. On or as soon as practicable after the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction of such Claim, in the sole discretion of the Reorganized Debtors, except to the extent that the Reorganized Debtors and the Holder of an Allowed Other Secured Claim agrees to a different treatment, either: (i) the collateral securing such Allowed Other Secured Claim; (ii) cash in a amount equal to the value of the collateral securing such Allowed Other Secured Claim; or (iii) the treatment required under Section 1124(2) of the Bankruptcy Code for such Allowed Other Secured Claim to be reinstated or rendered Unimpaired. Class 2 is unimpaired. Holders of Class 2 Claims are conclusively deemed to accept the Plan and are not entitled to vote on the Plan.
Class 3: Pre-Petition Lenders' Secured Claims	Holders of Allowed Class 3 Pre-Petition Lenders' Secured Claims shall retain their liens on the Debtors' assets and receive their Pro Rata share of the Class 3 Distribution Fund. Class 3 is impaired and Holders of Class 3 claims are entitled to vote on the Plan.
Class 4: General Unsecured Claims	Class 4 consists of General Unsecured Claims. On and after the Effective Date, each Holder of an Allowed Class 4 General Unsecured Claim shall receive its Pro Rata Share of the Unsecured Claim Carve-Out remaining after payment of Administrative Expense Claims and Priority Claims. Class 4 is impaired and Holders of Class 4 Claims are entitled to vote on the Plan.
Class 5: Pre-Petition Lenders' Deficiency Claims	Holders of Class 5 Pre-Petition Lenders' Deficiency Claims are impaired and shall neither receive nor retain any property under the Plan. Notwithstanding the treatment of Class 5 Claims, Holders of Class 5 Pre-Petition Lenders' Deficiency Claims are deemed to accept the Plan consistent with that certain Settlement Stipulation among the Debtors, the Debtors' pre-petition secured lenders and the Official Committee of Unsecured Creditors, which was approved by Order of the Bankruptcy Court dated July 15, 2009 (Docket No. 255).
Class 6: Interests	Class 6 Interests will be extinguished and Holders of Class 6 Interests shall neither receive nor retain any property under the Plan. Class 6 is impaired and Holders of Class 6 Interests are conclusively deemed to reject the Plan.

### **INJUNCTIONS, EXCULPATION AND RELEASES**

6. The Plan contains the injunction, exculpation and release provisions set forth below:

**6.2 The Reorganized Debtors.**

**(e) Exculpation and Indemnification. The Plan Administrator and the Reorganized Debtors, and their officers and the firms or corporations representing them, or any of their employees, Professionals or agents, shall have no liability for any of their acts or the acts of their employees, Professionals or agents, except for acts undertaken in bad faith, gross negligence or willful misconduct, in the performance of their respective duties. The Plan Administrator, the Reorganized Debtors, and their officers and the firms or corporations representing them, or any of their employees, Professionals or agents, shall be indemnified from and against any and all liabilities, expenses, claims, damages or losses incurred by them as a direct result of acts or omissions taken by them in good faith consistent with the Plan and applicable law.**

## **8.2 Injunction.**

Pursuant to Section 105 of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, all Persons who have held, hold, or may hold Claims against or Interests in the Debtors and any successors, assigns or representatives of such Person shall be precluded and permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order with respect to any Claim, Interest or other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, (c) creating, perfecting or enforcing any encumbrance of any kind with respect to any Claim, Interest, or any other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, and (d) asserting any Claims other than as provided in the Plan.

## **8.3 Exculpation.**

The Debtors, the Creditors' Committee, NexBank and the Pre-Petition Lenders, and their respective officers, directors, employees, members, attorneys, accountants, consultants and agents, shall (a) not have or incur any liability to any person or entity for any act or omission in connection with the Chapter 11 Cases and/or arising out of their formulation, implementation, confirmation, consummation or administration of the Plan (including solicitation or rejection thereof) or the treatment or administration of the property to be distributed under the Plan, except if such act or omission is determined in a Final Order to reflect bad faith or constitute gross negligence, willful misconduct or willful fraud, and (b) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan, and (c) shall be fully protected in acting or in refraining from acting in accordance with such advice; provided, however, that nothing contained herein shall relieve any of the foregoing of any liability of any kind or nature related to any act or omission prior to the Petition Date.

## **8.4 Releases by the Debtors.**

In addition to the Releases provided for in the Settlement Stipulation and Settlement Order, the Debtors also shall unconditionally and forever release the Debtors' agents, advisors, accountants, attorneys, and other representatives (including the Debtors' current directors, officers, employees, members and Professionals) and the Creditors' Committee, NexBank and the Pre-Petition Lenders, and their respective officers, directors, employees, members, attorneys, accountants, consultants and agents, from all claims, obligations, suits, judgments, damages, rights, Causes of Action, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing on the Effective Date or thereafter arising in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event, or other occurrence taking place on or after the Petition Date and before the Effective Date and in any way relating to the Debtors or the Chapter 11 Cases or the Plan. In furtherance of the foregoing, the Confirmation Order will constitute an injunction permanently enjoining the commencement or prosecution by any entity, derivatively or otherwise, of any Claim, demand, debt, liability, Cause of Action, right, or Interest released and waived pursuant to the Plan against such entities and individuals.

## **DEADLINE FOR OBJECTIONS TO CONFIRMATION OF THE PLAN**

7. Objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, filed with the clerk of the Bankruptcy Court, 3<sup>rd</sup> Floor, 324 North Market Street, Wilmington, Delaware 19801 together with proof of service, and shall: (a) state the name and address of the objecting party and the amount of its claim or the nature of its interest in the Debtors' chapter 11 cases; (b) state with particularity the provision or provisions of the Plan objected to and for any objection asserted, the legal and factual basis for such objections; (c) provide proposed language to remedy any objection asserted; and (d) be served by hand delivery or in a manner as will cause such objection to be **received** on or before **October 29, 2009 at 4:00 p.m.** (prevailing Eastern time), upon: (i) Counsel to the Debtors, Sullivan Hazeltine Allinson LLC, 4 East 8<sup>th</sup> Street, Suite 400, Wilmington, DE 19801, Attn: William A. Hazeltine, Esquire ([whazeltine@sha-llc.com](mailto:whazeltine@sha-llc.com)); (ii) Counsel to the Creditors' Committee, Lowenstein Sandler P.C., 65 Livingston Avenue, Roseland, NJ 07068, Attn: Sharon L. Levine, Esquire ([slevine@lowenstein.com](mailto:slevine@lowenstein.com)) and Drinker Biddle & Reath LLP, 1100 N. Market Street, Suite 1000, Wilmington, DE 19801. ATTN: Howard A. Cohen, Esquire ([howard.cohen@dbr.com](mailto:howard.cohen@dbr.com)); (iii) Counsel to NexBank, SSB, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, TX 75219, Attn: Mark X. Mullin, Esquire ([mark.mullin@haynesboone.com](mailto:mark.mullin@haynesboone.com)); and Duane Morris, LLP, 1100 North Market Street, Suite 1200, Wilmington, DE 19801, Attn: Richard W. Riley, Esquire ([rw Riley@duanemorris.com](mailto:rw Riley@duanemorris.com)); and (iv) The Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David L. Buchbinder, Esquire. Any objections not filed and served as set forth above will not be considered by the Bankruptcy Court.

## **COPIES OF PLAN AND DISCLOSURE STATEMENT**

8. The Disclosure Statement and Plan are on file with the clerk of the Bankruptcy Court, and copies of the same may be obtained by parties in interest, from the Debtors' Voting Agent, at the following address: Delaware Claims Agency, LLC ("DCA"), 230 North Market Street, Wilmington, Delaware 19801 or on DCA's dedicated webpage related to these cases (<http://www.delclaims.com/caseinfo/C09-11244.html>). Copies of the Disclosure Statement are also available for inspection during regular business hours at the Clerk's Office, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801. In addition, copies of the Disclosure Statement may be viewed at the Court's website (<http://www.deb.uscourts.gov>) by following the directions for accessing the ECF system on such website.

Dated: October 1, 2009  
Wilmington, Delaware

**SULLIVAN • HAZELTINE • ALLINSON LLC**

*/s/ William A. Hazeltine*

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