

Associated Wholesalers, Inc., DIP

04/03/2018 - The Court approved a settlement agreement between Associated Wholesalers, Inc., DIP, and McKesson pursuant to which McKesson will be allowed an administrative claim of \$673,918 and a general unsecured claim of \$826,629. McKesson had filed administrative and general unsecured claims totaling \$947,486 and \$27.0 million, respectively.

Analyst: **Michael Blackburn**, (800) 789-0123, Ext. 131.

Debtor:	ADI Liquidation, Inc. (f/k/a AWI Delaware, Inc.)	
Status:	Chapter 11	
U.S. Bankruptcy Court: District of Delaware Address: 824 N Market St., Wilmington, DE 19801		
Filing Date:	September 9, 2014	From First Day Pleadings: Total Assets: \$100 million – to \$500 million Total Liabilities: \$50 million – to \$100 million
Case No.:	14-12092	
Judge:	Judge Kevin J. Carey	
Attorneys for Debtor: Mark Minuti Saul Ewing LLP 222 Delaware Ave, Suite 1200 P.O. Box 1266 Wilmington, DE 19899 302 421-6840 Fax : 302 421-5873 Email: mminuti@saul.com		Attorneys for Creditors Committee: David B. Stratton, Esq. Evelyn J. Meltzer, Esq. PEPPER HAMILTON LLP Hercules Plaza, Suite 5100 1313 N. Market Street Wilmington, Delaware 19899-1709 Telephone: (302) 777-6500 Facsimile: (302) 421-8390 Email: strattond@pepperlaw.com meltzere@pepperlaw.com
Attorneys for Creditors Committee: Mark S. Indelicato Mark T. Power, Esq. Janine M. Figueiredo, Esq Hahn & Hessen 488 Madison Ave, New York, NY 10022 212-478-7244 Fax : 212-478-7400 Email: mindelicato@hahn Hessen.com mpower@hahn Hessen.com jfigueiredo@hahn Hessen.com		
		Financial Advisors for Creditors Committee: Capstone Financial 3333 Peachtree Road NE, Suite 400 Atlanta, GA, 30326 (404)261-8900

Key Dates in Chapter 11 Case, Comment and Date

Hearing authorizing interim use of cash collateral	09/10/2014
DIP Financing, final hearing	10/3/2014
503(b)(9) Procedures hearing	10/3/2014
341 Meeting	10/20/2014
Sale Auction	10/24/2014
Sale Hearing	10/29/2014
503(b)(9) Motion Hearing	11/25/2014
Bar Date	02/06/2015
Bar Date – 503(b)(9) Claims	02/06/2015
Exclusivity for Filing Plan	05/04/2016
Exclusivity for Soliciting Acceptances to Plan	05/04/2016
Second Amended Plan Voting Deadline	09/20/2016
Plan Confirmation Hearing	09/30/2016
Plan Effective Date	11/21/2016

Pending Bankruptcy Cases Filed Attachment

Associated Wholesalers, Inc. District of Delaware
 Nell's, Inc. District of Delaware
 Co-Op Agency Inc. District of Delaware
 Associated Logistics, Inc. District of Delaware
 White Rose Inc. District of Delaware
 Rose Trucking Corp. District of Delaware
 W.R. Service Corp. District of Delaware
 W.R. Service II Corp. District of Delaware
 W.R. Service V Corporation District of Delaware
 White Rose Puerto Rico, LLC District of Delaware

Thirty Largest Unsecured Creditors as Listed by the Company in its Petitions

<u>Creditor</u>	<u>Amount</u>	<u>Creditor</u>	<u>Amount</u>
WESTERN FAMILY FOODS INC.	\$4,545,797.05	MCKESSON CORPORATION	\$648,512.89
TYSON FRESH MEATS	\$2,907,877.63	CHOBANI INC.	\$590,600.81
KELLOGG SALES COMPANY	\$2,697,840.23	BIMBO BAKERIES USA	\$584,619.43
GENERAL MILLS SALES INC.	\$2,440,666.36	ABBOTT NUTRITION	\$568,936.70
CONAGRA FOODS PACKAGED FOODS CO.	\$2,253,094.51	NESTLE PURINA PETCARE COMPANY	\$543,946.92
RENAISSANCE TRADING INC.	\$2,207,301.40	MILLER TRUCK LEASING	\$530,564.00
J M SMUCKER COMPANY	\$1,699,679.52	SANDERSON FARMS INC.	\$501,582.93
NESTLE USA	\$1,606,384.25	KIMBERLY-CLARK GLOBAL SALES LLC	\$498,464.43
KRAFT FOODS GROUP INC.	\$1,543,846.15	FAGE USA DAIRY INDUSTRY, INC.	\$469,616.41
NESTLE WATERS NORTH AMERICA INC.	\$1,428,214.99	JBS PACKERLAND INC.	\$465,889.19
TURKEY HILL LP DBA TURKEY HILL DAIRY	\$1,291,454.34	BUNZL YORK INC.	\$464,052.52
CLEMENS FOOD GROUP LLC	\$1,195,257.17	H P HOOD LLC	\$446,921.59
DANNON COMPANY-PA	\$1,075,518.31	PEPSI BOTTLING GROUP	\$414,688.05
MEAD JOHNSON NUTRITIONALS	\$1,005,223.08	FRESH EXPRESS INCORPORATED	\$389,159.45
SEABOARD FOODS LLC	\$712,309.55	GREAT LAKES CHEESE CO INC.	\$380,619.24



Creditors Committee:

NESTLE HOLDINGS
CONAGRA FOODS, INC.
THE J. M. SMUCKER COMPANY
KRAFT FOODS GROUP
MCKESSON CORPORATION
IBT WAREHOUSE DIVISION
PENSION BENEFIT GUARANTY CORPORATION

04/03/2018 - The Court approved a settlement agreement between Associated Wholesalers, Inc., DIP, and McKesson pursuant to which McKesson will be allowed an administrative claim of \$673,918 and a general unsecured claim of \$826,629. McKesson had filed administrative and general unsecured claims totaling \$947,486 and \$27.0 million, respectively.

01/30/2018 - Associated Wholesalers, Inc., DIP filed a post-confirmation quarterly report for the period ended December 31. At that date, the Company had \$39.0 million in assets, including \$38.4 million in cash, and \$107.9 million in unsecured prepetition liabilities, which effected the vast majority of its total liabilities of the same rounded amount.

1/23/2018 – The Court in the Associated Wholesalers, Inc., DIP, case extended the deadlines to object to all administrative, tax, secured, general unsecured and vendor claims and the period within which the Debtors may remove actions (proceedings in which various claims on behalf or against the Debtors were asserted as of the petition date) to June 30, 2018.

12/20/2017 – Our analysts have confirmed with the attorneys representing the Creditors Committee that Associated Wholesalers, Inc., DIP, has made initial first interim distributions to general unsecured creditors. Initial recoveries for debtors of AWI and White Rose (WR) were 11% and 8%, respectively. Subsequent distributions are expected. Pursuant to the Plan of Liquidation, estimated recoveries on general unsecured vendor claims ranged between 9% to 26% (see our 8/18/16 update below for details):

Class Name	Debtor	Claims Asserted	Est. Allowed Claims	Est. % Recovery
General Unsecured	AWI	\$196 million	\$136 million	9.2% - 24.3%
General Unsecured	WR	\$184 million	\$119 million	7.2% - 20.2%
Vendor Claims	AWI	N/A	\$28.5 million	10.7% - 26.3%
Vendor Claims	WR	N/A	\$22.6 million	8.7% - 22.2%

03/28/2017 – Associated Wholesalers, Inc., DIP filed a motion to extend the deadline to remove claims or causes of action from March 29, 2017 to December 31, 2017, which is the same as the Debtors' current deadline to file objections to claims. The Debtors state that losing the right to remove actions would only prejudice the Debtors, and potentially be detrimental to all creditors. The Plan of Liquidation became effective November 21, 2016. The post-confirmation Debtors indicated it needed the extra time due to a variety of factors including the ongoing negotiations with claimants holding large secured, administrative and priority claims, including 503(b)(9) claims and the numerous pending adversary proceedings. To date, the post-confirmation Debtors have made distributions on account of allowed secured, administrative and priority claims to approximately 325 claimants in an aggregate amount totaling approximately \$18.0 million. A hearing on the motion will be held on April 25.

02/28/2017 – The Court issued an order in the Associated Wholesalers, Inc., DIP case extending the claims objection deadlines for all administrative claims, priority tax claims, priority non-tax claims, secured claims, secured bank claims, general unsecured claims and vendor claims filed against any of the Debtors from May 22 to December 31, 2017.

02/08/2017 – Alan D. Halperin, as the Debtors' Representative of Associated Wholesalers, Inc., DIP, filed a motion to extend the deadlines to object to administrative claims, priority tax claims, priority non-tax claims, secured claims, secured bank claims, general unsecured claims and vendor claims from May 22, 2017 to December 31, 2017. The Debtor's Plan of Reorganization became effective November 21, 2016 and the administrative bar date was February 4, 2017. Since the effective date, 270 administrative claims totaling over \$13.0 million have been paid, and the balance is expected to be reconciled in the "coming months." The motion states the extension is necessary to allow the Debtor's representative time to complete an independent review and reconciliation of the claims, which is still in its initial stages. 415 administrative claims have been filed, and 350 have been allowed, including the 270 already paid. The Debtor's representative also need time to review the general unsecured claims. A post-confirmation report was filed for the period ending December 31, 2016, listing total assets including



cash and notes receivable of \$65.6 million, total liabilities subject to compromise of \$127.3 million including unsecured debt of \$99.7 million. The Debtor also paid \$1.2 million in professional fees from November 22 to December 31, 2016.

01/03/2017 – A Court order in the Associated Wholesalers, Inc., DIP case was issued granting Alan D. Halperin as the Debtors' representative to establish procedures governing adversary proceedings. For a copy of the Avoidance Action Procedures, please click [here](#).

The Court also issued an order approving a stipulation among the Debtors, Creditors Committee and the Pension Benefit Guaranty Corporation (PBGC) settling all PBGC claims for the payment of \$4.0 million from funds held in a custodial account. The PBGC was also allowed a \$25.0 million general unsecured claim against AWI and a \$25.0 million general unsecured claim against White Rose. The Debtors were allowed to receive payment of \$1.0 million from the custodial account and to use any remaining amounts in the account to reimburse themselves for payment of any amounts paid to the PBGC under the Plan on account of allowed PBGC claims. As of August 31, 2016, the custodial account contained approximately \$8.0 million.

12/13/2016 - Our analysts reached out to the attorney representing Associated Wholesalers, Inc., DIP for an update on when vendors could expect payment for their claims. The attorney indicated that they are focusing on getting all allowed 503(b)(9) claims paid this month. However, there are still a number of unreconciled claims, and payment for general unsecured claims will likely not occur before the second half of 2017.

11/22/2016 - Associated Wholesalers, Inc., DIP, filed a notice that its Second Amended Plan of Liquidation became effective November 21, 2016 (Effective Date). All administrative claims arising on and subsequent to November 12, 2014 must be filed within 30 days of the Effective Date (December 21, 2016); claims arising from the rejection of any contract or lease must be filed with the Court no later than 30 days after service of notice; and any professional fee claims must be filed within 60 days of the Effective Date (January 20, 2017).

10/3/2016 – The Court issued an order approving Associated Wholesalers, Inc., DIP, Second Amended Plan of Liquidation. The Effective Date of the Plan is still subject to certain conditions under the C&S Settlement Agreement. As detailed in our August 18th Case Update, the Plan estimates non-priority, general unsecured vendor claim recoveries for the AWI Debtor to be between 10.7% to 26.3% and for the WR Debtor between 8.7% and 22.2%.

All administrative claims arising subsequent to November 12, 2014 must be filed no later than 30 days after the Effective Date.

9/10/2016 - As we reported yesterday, Associated Wholesalers, Inc., DIP filed over 300 complaints seeking to recover preference and other avoidance actions. We followed up with the attorney for the Creditors Committee who indicated that the majority of the preference complaints were filed in order to preserve their rights due to the impending termination in the statute of limitations. The estate had previously agreed to release any avoidance action involving a supplier who continued to sell C&S. Reportedly, C&S had not completed their review and therefore the preference actions were filed "as placeholders" until that review is completed. The statute of limitations period for bringing preference actions is two years from the date of the bankruptcy filing, and according to the attorney for the Creditors Committee, the Debtor plans to dismiss "the majority" of the actions pending confirmation of which suppliers were selling C&S per the agreement. In the meantime, the Debtor is not serving the complaints.

9/09/2016 – This week Associated Wholesalers, Inc., DIP filed over 300 complaints seeking to recover preference and other avoidance actions, including against general unsecured creditors. The Debtors filed for bankruptcy protection on September 9, 2014, and the two year statute of limitations for filing preference actions has now expired.

8/18/2016 – The Debtors filed an updated Second Amended Plan of Liquidation and related Disclosure Statement that includes estimated recoveries on general unsecured claims for Debtors of AWI Debtors and White Rose (WR). The following is a summary of unsecured claims:

Class Name	Debtor	Claims Asserted	Est. Allowed Claims	Est. % Recovery
General Unsecured	AWI	\$196 million	\$136 million	9.2% - 24.3%
General Unsecured	WR	\$184 million	\$119 million	7.2% - 20.2%
Vendor Claims	AWI	N/A	\$28.5 million	10.7% - 26.3%
Vendor Claims	WR	N/A	\$22.6 million	8.7% - 22.2%

The estimated allowed claims represent the Debtors' mid-range estimates for general unsecured and vendor claims. Holders of allowed vendor claims, which are included in general unsecured claims, are also entitled to receive a pro-rata share of \$1.0 million from the C&S Plan Release Contribution. The C&S Settlement Agreement resolves disputes between the Debtors and C&S over the ownership of vendor overpayments and trade credits, pursuant to which the credits were divided between the parties in exchange for certain payments including the \$1.0 million Plan Release Contribution. See our 8/12/16 update for further details of the settlement. The Creditors Committee anticipates that allowed 503(b)(9) claims will be paid in full after the C&S Settlement Agreement and Plan become effective.

8/16/2016 – The Court issued an order approving the Debtors Disclosure Statement relating to the Second Amended Chapter 11 Plan of Liquidation. The voting and objection deadlines for the Plan were set for September 20, 2016 and a confirmation hearing was set for September 30, 2016. As discussed in our 8/12/2016 update, the Debtors expect to file a revised estimate for general unsecured claim recoveries.



8/12/2016 - The Debtors filed a Second Amended Plan of Liquidation and a related Disclosure Statement. The Official Committee of Unsecured Creditors filed a letter in support of the Debtors' Plan. According to the Committee, the eleven Debtors in the case are being consolidated into two Debtor groups, AWI Debtors and White Rose (WR) Debtors. Based on the analysis done by the Committee's financial advisors, BRG Capstone, the partial substantive consolidation proposed in the Plan should not have a material adverse impact on any individual creditor's recovery. In addition, the Plan incorporates a comprehensive settlement with C&S Wholesalers, Inc. (C&S) whereby the Debtors, C&S and the Committee settled various claims, including the ownership of disputed vendor credits and overpayments. In connection with the settlement, vendors have the option of sharing a pro rata portion of the \$1.0 million C&S Plan Release Contribution. However, if the vendor opt-out election is exercised by vendors from whom C&S deducted more than \$3.2 million (in the aggregate) of C&S credits, then the Plan may not be approved by the Court. If the Plan is not approved, distributions to general unsecured creditors will be delayed and likely will be reduced. Accordingly, the Committee encourages that vendors not exercise the vendor opt-out election.

Pursuant to the terms of the C&S Settlement Agreement, on the Effective Date of the Plan: (i) C&S shall pay the Debtors \$7.75 million, which consists of (a) the \$6.75 million of C&S credits payment plus (b) the \$1.0 million C&S Plan Release Contribution, to be allocated between the AWI Debtors and the WR Debtors; (ii) the Debtors shall pay C&S the \$1.4 million net C&S settlement payment; and (iii) the releases set forth in the C&S settlement agreement shall be binding and effective. All vendors, except those who exercise the vendor opt-out, shall release C&S of all claims, liabilities, and causes of action.

The Disclosure Statement treats general unsecured claims and vendor claims separately for both the AWI debtors and White Rose (WR) Debtors. Details of vendor claims are not currently provided on a separate basis, but they are included in the general unsecured claim figures. The Debtors stated that they will update this summary to separately reflect the vendor claim amounts from the general unsecured claim amounts upon receiving a list of vendors from C&S Wholesale Grocers, Inc. in accordance with the C&S Settlement Agreement. The following is the summary of general unsecured claims:

Class Name	Debtor	Claims Asserted	Amount of Claims Asserted	Estimated Allowed Claims	Estimated % Recovery
General Unsecured	AWI	1877	\$196.0 million	\$136.0 million	N.A.
General Unsecured	WR	991	\$184.0 million	\$119.0 million	N.A.

Note: The prior estimated recovery ranges for AWI Debtors and WR Debtors General Unsecured Claims in the First Amended Plan of Liquidation were 7.1% - 17.7% and 5.7% - 18.5% respectively.

A confirmation hearing date has not yet been set.

7/13/2016 - The Debtors filed a First Amended Plan of Liquidation and a related Disclosure Statement. The Disclosure Statement provides a summary of claims asserted as well as estimated allowed claims and recoveries under the Plan. The claim amounts and recoveries reflect the Debtors mid-range calculations or estimates. The Disclosure Statement treats general unsecured claims and vendor claims separately for both the AWI debtors and White Rose Debtors. In summarizing the number and amount of claims asserted, the Debtors have attempted to exclude claims that have been withdrawn or expunged to date, as well as duplicative and amended claims.

Details of vendor claims are not currently provided on a separate basis, but they are included in the general unsecured claim figures. The Debtors stated that they will update this summary to separately reflect the vendor claim amounts from the general unsecured claim amounts upon receiving a list of vendors from C&S Wholesale Grocers, Inc. in accordance with the C&S Settlement Agreement. The following is the summary of general unsecured claims:

Class Name	Debtor	Number of Claims Asserted	Amount of Claims Asserted	Estimated amount of allowed claims	Estimated Recovery Percent
General Unsecured	AWI Debtors	1,135	\$187.1 million	\$149 million	7.1% to 17.7%
General Unsecured	WR Debtors	540	\$122.9 million	\$132 million	5.7% to 18.5%

3/21/2016 - Following last week's extension of the exclusive periods to file and solicit acceptances for a Plan of Liquidation to May 4, 2016, the attorney for the Creditors Committee confirmed that despite objecting to the previously filed redacted plan, which provided no estimate for general unsecured claim recoveries, the Committee and the Debtors have negotiated modifications to the Plan, and they anticipate the Debtors will be in a position to file a consensual amended plan in the near future. The Committee also prepared a distribution analysis (for claim recoveries), which is being refined by the Debtors. Once completed, the projected distribution numbers will be added to the amended plan.

3/15/2016 - The Court approved the Debtors' motion to extend the exclusive periods to file and solicit acceptances for a Plan of Liquidation through and including May 4, 2016.



3/4/2016 – The Court issued a bridge order extending the exclusive periods to file and solicit acceptances of a Plan of Liquidation to March 9, 2016 and March 18, 2016, respectively. A hearing on full relief requested in the Debtor's motion (see our 2/22/2016 entry) to extend the exclusive periods is continued to March 15.

2/22/2016 - Associated Wholesalers, Inc., DIP, filed its Plan of Liquidation and Disclosure Statement. Secured and priority claims are expected to be satisfied in full. However, the current plan does not include any recovery estimates for general unsecured claims. Also, portions of the settlement agreement with C&S related to the ownership of vendor overpayments and trade credits, has been redacted and a motion has been filed to file an unredacted Plan under seal. The Company was attempting to reconcile all 503(b)(9) claims and reach a settlement with C&S before it would begin making payment of any 503(b)(9) claims, which are expected to be paid in full. As previously disclosed, an auction of the Debtors' assets was held in October 2014, and concluded with C&S's final bid of approximately \$288.0 million. Miscellaneous other assets generated proceeds of approximately \$4.7 million.

The exclusive filing solicitation periods were extended through December 30, 2015 and February 24, 2016, respectively. On December 23, 2015, the Debtors filed a motion to further extend the exclusive periods through March 9, 2016 and May 4, 2016, respectively, which is currently pending before the Bankruptcy Court. The Official Committee of Unsecured Creditors had previously filed an objection to the motion to extend the exclusive periods, noting the lack of urgency in moving these cases toward confirmation and continued burn rate of administrative expenses (see our 2/17/2016 update).

2/17/2016 - The Official Committee of Unsecured Creditors objected to Associated Wholesalers, Inc.'s, DIP, motion to extend its exclusivity periods to file and solicit acceptances of its Plan of Reorganization, to March 9 and May 4, 2016, respectively. The Committee states the Debtors have not demonstrated significant tangible progress towards confirmation of a consensual plan. The Committee, on the other hand, drafted and circulated to the Debtors a proposed plan timeline, plan term sheet, and distribution model, and the Committee is even ready to go forward with its own draft plan of liquidation. The Committee is troubled both by the Debtors' lack of urgency in moving these cases toward confirmation and the continued burn rate of administrative expenses that are consuming potential recoveries for creditors to the tune of more than \$500,000/month. Meanwhile, the Debtors filed an objection to a \$15.7 million withdrawal liability claim filed by the Local 11 pension fund, which states the full amount is an administrative priority claim.

2/09/2016 – The Court entered an order approving the Debtors' settlement agreement with Associated Food Stores (AFS), pursuant to which AFS' \$3.1 million administrative claim is reduced to \$190,000, payable within 10 days of Court approval. As part of the settlement, any and all administrative expense claims asserted by AFS will be deemed disallowed with prejudice (meaning this is a final determination, as the claims cannot be filed again), but the settlement is without prejudice as to the disposition and/or determination of any asserted general unsecured claims (meaning this issue remains open).

1/06/2016 - F&D Reports has confirmed with the attorney representing the unsecured creditors committee of Associated Wholesalers Inc., DIP, that substantially all of the 503(b)(9) claims that have requested reconciliation have been fully reconciled, and a global settlement with C&S is near final, which should allow for the payment of reconciled 503(b)(9) claims. Although the C&S settlement is expected to finalize "soon" which clears the way for 503(b)(9) payments, an estimate of when payments will begin was not provided. All administrative claims, including reconciled 503(b)(9) claims, are expected to be paid in full. As previously noted, there is a dispute between the Debtors and C&S Wholesale, which acquired the majority of the Debtors assets in November 2014, over the ownership of vendor overpayments and trade credits. The Debtors and the committee are moving forward with a plan of liquidation. The next status hearing is scheduled for January 20th.

The Debtors also entered into a settlement agreement with Associated Food Stores (AFS), pursuant to which AFS' \$3.1 million administrative claim shall be reduced to \$190,000, which will be payable within 10 days of Court approval. Upon entry of a final Court order approving the settlement agreement, any and all administrative expense claims asserted by AFS will be deemed disallowed with prejudice (meaning this is a final determination, as the claims cannot be filed again). On the other hand, the settlement is without prejudice as to the disposition and/or determination of any asserted general unsecured claims (meaning this issue remains open).

12/24/2015 – The Debtors filed a motion seeking court approval to extend the exclusivity periods for filing a Chapter 11 Plan and Disclosure Settlement and soliciting acceptances to March 9, 2016 and May 4, 2016, respectively. A hearing on the motion is scheduled for January 20, 2016.

11/24/2015 – The Court entered an order further extending the Debtors' exclusive periods to file a Chapter 11 Plan and to solicit votes by 65 days, through and including December 30, 2015 and February 24, 2016, respectively. There is currently no status update regarding the Debtors reconciliation and payment of 503(b)(9) claims.

10/23/2015 – The Debtors filed a motion seeking Court approval to extend the exclusive periods to file and solicit acceptances for a Chapter 11 Plan by 65 days to December 30, 2015 and February 24, 2016, respectively. In the motion, the Debtors state that over \$250.0 million in administrative claims, including over 400 503(b)(9) claims totaling in excess of \$53.0 million, have been filed in the case. Additionally, the Debtors claim the case involves pension issues, vendor disputes and employee benefit issues and disputes related to the liquidation of the Debtors' assets. There is currently no status update regarding the Debtors reconciliation and payment of 503(b)(9) claims.

10/13/2015 - The Court approved Associated Wholesalers, Inc., DIP's motion to sell the assets of its Co-OP Agency business, which provides insurance products to companies in the food industry, to Strickler Insurance Agency for \$246,610.

9/16/2015 – A hearing on the status of 503(b)(9) claims was continued to a date to be determined. The hearing was originally scheduled for this Thursday, September 17. A recent filing by the Creditors Committee indicated its concern that the Debtors "have not yet completed the reconciliation process for a significant portion of the secured setoff, administrative, and 503(b)(9) claims on file," and the Debtors are not yet in a position to file a Plan of Liquidation,



because, "they cannot currently demonstrate Chapter 11 Plan feasibility." The Committee also noted that "significant progress has been made recently in reconciling these claims, and the Committee fully anticipates that the estates' fiduciaries will be in a position in the near future to file and pursue confirmation of a consensual plan of liquidation." Administrative claims must be paid in full as a condition to confirmation of a Chapter 11 Plan, so it appears there was linkage between the inability to complete the reconciliation process and the recent extension of the exclusivity periods. The continuance of the September 17 hearing obviously pushes back the date for initial distributions of 503(b)(9) claims, which was previously estimated to start sometime in October, contingent on a favorable outcome at the September 17 hearing.

The extension of the exclusive period to file a Plan until October 26 implies that the reconciliation process must be completed before then.

9/14/2015 – The Court entered an order further extending the Debtors' exclusive periods to file a Chapter 11 Plan and to solicit votes thereon, through and including October 26, 2015 and December 21, 2015, respectively. The previous dates were August 10, 2015 and October 5, 2015. A motion to extend was entered on August 7, and the hearing was originally scheduled for September 17.

8/28/2015 – The Debtors provided the Court a verbal report on the status of 503(b)(9) claims process earlier this week, noting significant progress has been made in reviewing and either reconciling or filing objections to substantially all 503(b)(9) claims and other administrative claims, and with respect to settlement negotiations with C&S. However, payment of allowed 503(b)(9) claims are still being deferred. The Debtors hope to be in a position to advise the Court in September at the next status conference hearing when the estate can start to pay allowed 503(b)(9) claims, which could begin to occur in October.

8/10/2015 – The Debtors filed a motion to extend the periods in which they have the exclusive right to file a Chapter 11 Plan, and to solicit acceptances of the Plan, by 75 days, through and including October 26, 2015; and December 21, 2015, respectively. A hearing on the motion is scheduled for September 17.

7/2/2015 – At yesterday's status conference hearing, the Judge denied vendors request for payment of its 503(b)(9) claims. However, according to an attorney for the Official Committee of Unsecured Creditors, significant progress in reconciling the 503(b)(9) claims has occurred and the Debtors and Committee's settlement discussions with C&S continue. The next status hearing has been scheduled for August 25th.

6/30/2015 – The Bankruptcy Court approved the Debtors' motion to extend the exclusive periods to file and solicit acceptances of a Plan of Reorganization by 75 days through and including August 10, 2015 and October 5, 2015, respectively (the prior exclusive period to file a Plan expired on May 26). The extension is more of a formality in that there have been no rumors of a competing plan being developed.

A status conference on the Debtors delay in payment of 503(b)(9) claims is scheduled for tomorrow. However, the joint motion by the Debtors and the Official Committee of Unsecured Creditors to clarify certain rights under the asset purchase agreement with C&S, with respect to the recoupment and setoff of vendor overpayments and trade credits first against administrative or secured trade credits has been continued to a date to be determined. Further, various creditor motions for payment of administrative claims have been continued to August 4th or a date to be determined.

6/1/2015 - Associated Wholesalers, Inc., DIP, filed a Notice of Delay in Payment of allowed 503(b)(9) claims which states that they intend to delay payment of 503(b)(9) Claims until such time as the Debtors and the Official Committee of Unsecured Creditors determine that payment of such claims will not prejudice other creditors. This is the second Notice of Delay in Payment filed (see our 4/14/15 update). To date, the Debtors have provided no indication that they were ready to pay any 503(b)(9) claims, despite the Court approved 503(b)(9) procedures order (see our 2/24/15 update). The 503(b)(9) procedures order only requires the Debtors to file a notice of delay in payment of 503(b)(9) claims within 30 days of allowance of a 503(b)(9) claim, and the Court will hold a status conference with respect to the notice at the next available hearing date, which is currently scheduled for July 1, 2015.

As of May 27, 2015, a total of \$293.7 million of administrative claims have been asserted in the case. This includes approximately 480 proofs of claim asserting administrative expense claims (including 503(b)(9) Claims) totaling \$251.0 million, 22 motions asserting administrative expense claims (exclusive of 503(b)(9) claims) totaling approximately \$27.0 million, and 32 motions asserting 503(b)(9) claims totaling approximately \$15.7 million. There are also 150 503(b)(9) claims asserting an aggregate of \$20.6 million subject to the reconciliation process of the 503(b)(9) procedures.

The Debtors stated that it and the Official Committee of Unsecured Creditors believe (a) that many of the asserted administrative expense claims are overstated, misclassified and/or duplicative, (b) that the aggregate amount of such claims will be substantially reduced and/or reclassified upon reconciliation, and (c) that the Debtors have made substantial progress in resolving the 503(b)(9) claims subject to the 503(b)(9) Procedures, and until the Debtors have an opportunity to further reconcile and resolve the administrative expense claims, the Debtors and the Committee believe that payment of 503(b)(9) claims, at this time, may prejudice other creditors.

5/21/2015 - Associated Wholesalers, Inc., DIP, filed a Status Report regarding the 503(b)(9) reconciliation process. In the report, the Debtors noted that a report filed in April by the Ad Hoc Committee as well the frustration expressed by many 503(b)(9) claimants, led the Court to express its concern that greater progress had not been made in reconciling 503(b)(9) Claims. The Debtors commented that 531 motions or proofs of claims have been filed by creditors, including approximately \$53.4 million in 503(b)(d) claims.

The Debtors said they have been challenged to reconcile the 503(b)(9) claims, which is being managed by Carl Marks Advisory Group, LLC, for a number reasons including the volume of information and the fact that it wasn't until April 8, 2015 that they received documents and records from C&S to begin a complete reconciliation of



503(b)(9) claims. . The Debtors also believe that 503(b)(9) claims should be reduced by the recoupment or offset of any trade credits deemed to be owned by the Debtors. As previously noted, there is a dispute between the Debtors and C&S Wholesale, who acquired the majority of the Debtors assets last November, over the ownership of the trade credits. However, the joint motion by the Debtors and the Official Committee of Unsecured Creditors for an order clarifying the Debtors' and C&S Wholesale's rights under the asset purchase agreement with respect to the trade credits and vendor overpayments is being continued to a date to be determined.

As of an April 30 hearing, the Debtors had fully resolved in principal seven 503(b)(9) Claims, including related trade credits, and had signed three stipulations resolving 503(b)(9) claims and another four stipulations were in the process of being completed. Further, as of the April 30 hearing, the Debtors had reconciled almost all of the gross 503(b)(9) claims; meaning it either agreed or disagreed with the gross amounts asserted and had provided, or was in the process of providing, the claimants with the basis and back up for such disagreements. However, reconciliation of trade credits has proven to be a more time consuming and difficult task, but the Debtors noted "tremendous progress" since the April 30 hearing.

As of May 21, a further five claims have been the subject of stipulations approved by the Court and twelve claims are the subject of stipulations that are currently being negotiated by the parties or pending before the Court. As of the date of the Status Report, only 35 503(b)(9) claims subject to the 503(b)(9) procedures are not yet fully analyzed, or unresolved, but the Debtors expect to complete their analysis shortly.

A hearing on the Status Report is set for May 27.

5/20/2015 – The Bankruptcy Court approved the Associated Wholesalers, Inc., DIP (Debtors) and Official Committee of Unsecured Creditors joint motion authorizing the Debtors to offset trade credits, vendor overpayments and other amounts owed to the Debtors, as discussed in our May 19th and May 6th updates. Despite the order, the Court has yet to establish the argument between the Debtors and C&S, which acquired the majority of the Company's assets, over which party owns the credits.

The Debtors also filed a motion requesting a court order to extend its exclusive periods to file and solicit acceptances of a Plan of Reorganization by 75 days, through and including August 10, 2015 and October 5, 2015, respectively. The current exclusive periods expire May 26 and July 21, respectively. A hearing on the motion is scheduled for July 1, 2015.

The Debtors noted that over 400 503(b)(9) claims totaling in excess of \$53.0 million have been filed. Additionally, in excess of \$200.0 million in administrative claims under section 503(b)(1) have been asserted against the Debtors. Although the Court has ordered and approved stipulations between the Debtors and certain trade creditors requesting allowance and immediate payment of their 503(b)(9) claims, no 503(b)(9) claims have yet been paid. The Debtors and the Unsecured Creditors Committee previously filed a Notice of Delay in payment of allowed 503(b)(9) claims, noting they believe that many of the asserted administrative expense claims are overstated, misclassified and/or duplicative, and that the aggregate amount of such claims will be substantially reduced and/or reclassified upon reconciliation. The Debtors stated that until they have an opportunity to further reconcile and resolve the claims, the Debtors and the Committee believe that payment of 503(b)(9) Claims, at this time, may prejudice other creditors. Therefore, the Debtors intend to delay payment of 503(b)(9) Claims until such time as the Debtors and the Committee determine that payment of the claims will not prejudice other creditors.

Certain individual creditor requests for the payment of administrative expenses have been continued to May 27, 2015.

5/19/2015 – The Debtors and the Official Committee of Unsecured Creditors filed a certification with the Bankruptcy Court indicating they were unable to reach an agreement, as we discussed in our May 6th update, regarding a consensual order authorizing the Debtors to offset trade credits, vendor overpayments and other amounts owed to the Debtors. As a result, the Debtors did make minor changes to its own original proposed order and re-filed it with the Court based on comments from parties that objected to its initial motion for a proposed order.

5/6/2015 – The Bankruptcy Court approved the joint motion of the Debtors and Official Committee of Unsecured Creditors for an order authorizing the Debtors to offset trade credits, vendor overpayments and other amounts owed to the Debtors first against any administrative or secured portion of creditors' claims; and disallowing claims for post-petition interest in connection with 503(b)(9) claims. The Debtors and Official Committee of Unsecured Creditors shall submit a joint order by May 15, or if they are unable to submit an agreed order, then submit competing orders to the Court by May 18.

A number of objections had been filed against the Debtors' right to set off or recoup the credits against 503(b)(9) claims. In particular, C&S contended that the "overpayments" include amounts that were transferred through its acquisition of the majority of the Debtors' assets, and therefore it in fact owned the credits.

The approved motion does not determine the dispute between the Debtors and C&S regarding ownership of the credits; ownership will be determined at a later date. According to an attorney for the Creditors Committee, the Debtors and C&S have agreed to meet toward the end of May to see if a consensual resolution can be reached, failing which the Debtors will commence an adversary proceeding against C&S.

5/1/2015 – The Bankruptcy Court approved the Debtors' motion to extend the exclusive periods to file and solicit acceptances of a Plan of Reorganization by 75 days through and including May 26, 2015 and July 21, 2015, respectively (the prior exclusive period to file a Plan expired on March 9). We expect the Debtors to file a motion to further extend the exclusive periods.

The Court also authorized the sale of two properties for \$4.7 million.

No decision has yet been rendered regarding the joint motion by the Debtors and the Official Committee of Unsecured Creditors for an order (i) authorizing the Debtors to offset trade credits and vendor overpayments



and/or any other amounts owed to the Debtors, at their discretion, first against the administrative or secured creditors' claims; and disallowing claims for post petition interest in connection with 503(b)(9) claims.

The Court ruled that motions of the Ad Hoc Committee of 503(b)(9) creditors, as well as individual creditors, for allowance and payment of 503(b)(9) claims are subject to the 503(b)(9) procedures order. Further certain individual creditor requests for the payment of administrative expenses have been continued to May 27, 2015.

The Ad Hoc Committee of 503(b)(9) creditors filed a report expressing concern over delays in the 503(b)(9) claims procedures. The report stated that despite nearly eight months passing since the Chapter 11 case was filed and two months since the 503(b)(9) procedures order was entered, not a single 503(b)(9) claim has been paid. To the Ad Hoc Committee's knowledge, only two stipulations to allow 503(b)(9) claims have been filed with the Court, and no payments have been or are likely to be made on those claims in the foreseeable future. A stipulation regarding the allowance and ultimate payment of most of the Ad Hoc Committee members' 503(b)(9) claims had been circulated, and credits/set offs were reconciled for most of the members of the Ad Hoc Committee. Only after the 503(b)(9) procedure order was entered did the Debtors and the Official Committee of Unsecured Creditors raise the issue that there were unknown credits/set offs that would require additional months to reconcile, and that no 503(b)(9) claims would be paid until the reconciliation was completed. The Ad Hoc Committee requested the 503(b)(9) procedures be modified as follows:

- For 503(b)(9) claims of less than \$100,000, where the electronic records of the Debtors show credits/set offs of less than \$25,000, the claims should be paid "post-haste" on a final basis based on the Debtors' electronic records;
- For 503(b)(9) claims that exceed \$100,000, the amounts of the 503(b)(9) claim in excess of the claims/set offs identified in the Debtors' electronic records should be paid "post-haste" with the understanding that payments may be recalled if it is later proven that the credits/set offs are greater than the electronic records show; and
- Any 503(b)(9) claim reconciliation that involves credits/set offs should be completed on a contingency fee basis.

The Ad Hoc Committee members listed total 503(b)(9) claims of just over \$2.0 million, including claims of over \$100,000 by Coca Cola, Clemens, JBS and Seaboard Foods. Further, of the Ad Hoc Committee members, only, Coca Cola, JBS/Pilgrim's Pride, and Ferrero have issues related to the allowance and payment of their 503(b)(9) claims due to the credit/set off claims by the Debtors.

4/21/2015 – This week the Debtors filed a motion to approve a stipulation with Renaissance Trading, Inc., whereby it requested Court approval to allow Renaissance to exercise its recoupment rights to resolve their respective Claims. According to the filing, prior to the Chapter 11 filing the Debtors and Renaissance, also a wholesaler, purchased goods from each other. As of the petition date, the Debtors owed Renaissance \$1.5 million, and Renaissance owed the Debtors \$1.86 million. The Debtors are seeking a Court order to allow Renaissance to exercise its recoupment rights and remit \$361,014.95 to the Debtors, which represents the net amount owed to settle all claims between the parties. The motion also states that C&S notified Renaissance it was taking a \$2.1 million deduction payable to Renaissance, which it said was "for accounts receivable C&S acquired from AWI/White Rose," and refused to acknowledge Renaissance's exercise of its recoupment rights.

4/14/2015 – Associated Wholesalers, Inc., DIP filed a Notice of Delay in payment of allowed 503(b)(9) claims. In the notice the Debtors' state that as of April 13 approximately 480 proofs of claim have been filed asserting administrative expense claims (including 503(b)(9) claims) totaling \$251.0 million, plus unliquidated amounts. In addition 22 motions have been filed asserting administrative expense claims (exclusive of 503(b)(9) claims) totaling \$27.0 million, plus unliquidated amounts, and 32 motions have been filed, asserting 503(b)(9) claims totaling \$15.7 million, for total asserted Administrative Expense Claims of \$293.7 million.

The Debtors have not completed the claim reconciliation process and do not have an updated estimate of 503(b)(9) claims; earlier in the case, the Debtors estimated total 503(b)(9) claims of \$23.1 million. To date, the Court has ordered and approved stipulations between the Debtors and C.W. Dunnet & Co., and Hartz Mountain Corporation requesting allowance and immediate payment of their 503(b)(9) claims. However, according to the attorney for the Debtor, these claims had not yet been paid.

The Debtors and the Unsecured Creditors Committee believe that many of the asserted Administrative Expense Claims are overstated, misclassified and/or duplicative, and that the aggregate amount of such claims will be substantially reduced and/or reclassified upon reconciliation. The Debtors stated that until they have an opportunity to further reconcile and resolve the claims, the Debtors and the Committee believe that payment of 503(b)(9) Claims, at this time, may prejudice other creditors. Therefore, the Debtors intend to delay payment of 503(b)(9) Claims until such time as the Debtors and the Committee determine that payment of the claims will not prejudice other creditors.

In accordance with the 503(b)(9) Procedures Order (see our 2/24/2015 update in this Case Summary), a status conference with respect to this Notice will be held at a hearing scheduled for May 27, 2015, although the matter may also be addressed at a hearing on April 30.

4/14/2015 - Associated Wholesalers, Inc., DIP filed a motion seeking court approval for the sale of two properties for gross proceeds of \$4.7 million. Objections to the motion are due by April 21, 2015 and a hearing is scheduled for April 30, 2015.

3/31/2015 - A number of objections were filed by creditors and the Ad Hoc Committee of 503(b)(9) creditors, against Associated Wholesalers, Inc., DIP and the Official Committee of Unsecured Creditors joint motion for an order authorizing the debtor to offset trade credits, vendor overpayments and other amounts owed to the debtor first against administrative or secured portions of claims; and disallowing claims for post petition interest in connection with claims asserted. A hearing on the motion is set for April 30.



3/6/2015 - Associated Wholesalers, Inc., DIP, filed a motion to extend the exclusive periods to file a Chapter 11 plan and solicit votes through May 26, 2015 and July 21, 2015, respectively. The Debtors' exclusive filing period is scheduled to expire on March 9, 2015 and the exclusive solicitation period is scheduled to expire on May 7, 2015. A hearing on the motion was set for April 30.

The motion to extend the exclusive periods was expected, given the fact that the Debtors' motion for the treatment of trade credits and vendor overpayments will also not be held until April 30.

3/2/2015 - Associated Wholesalers, Inc., DIP, and the Official Committee of Unsecured Creditors filed a joint motion for an order authorizing the Debtors to offset trade credits and vendor overpayments and/or any other amounts owed to the Debtors, at their discretion, first against the administrative or secured creditors' claims; and disallowing claims for post petition interest in connection with 503(b)(9) claims. Objections on the motion are due by March 30 and a hearing will be held on April 30.

As previously covered in this case, the Debtors claim they are entitled to trade credits and vendor overpayments, while C&S Wholesale Grocers disputes this and claims it acquired these assets as part of its acquisition of the majority of the Company's assets. Court action on this motion should serve to force a finalization to this ongoing dispute which has left many current suppliers in the middle.

2/27/2015 - The Bankruptcy Court in the Associated Wholesalers, Inc., DIP, Chapter 11 case set March 19 as the final hearing date on the Western Family Foods, Inc. (WFFI) motion for relief from the automatic stay to exercise asserted setoff rights. A joint objection was filed by the Debtors and Official Committee of Unsecured Creditors, and the Court ruled that a reasonable likelihood exists that the opposing parties will prevail at the conclusion of a final hearing. The automatic stay shall continue pending conclusion of the final hearing. WFFI also filed a motion last week seeking to prohibit the Debtor's attempted exercise in excess of \$2.8 million in alleged setoff or recoupment rights with respect to prepetition and post-petition trade credits and overpayments. The WFFI prepetition trade credits at issue total \$457,524.

Numerous motions have been filed seeking allowance and payment of administrative expense claims (see our February 24 Case Summary Update on the 503(b)(9) procedures order) amid a continuing dispute between the Debtors and C&S Wholesale Grocers, which acquired the majority of the Debtors' assets, over the ownership of trade credits and overpayments and the setoff and recoupment rights related to the trade credits and overpayments.

2/24/2015 - The Bankruptcy Court issued an order approving procedures for 503(b)(9) claims proposed by Associated, Wholesalers, Inc., DIP (the Debtors), in concert with the Creditors' Committee. The order was similar to the previous proposal (see our February 19 update below), with a few changes, including:

- The order allows for expedited consideration of a 503(b)(9) claim.
- The Debtors have no more than 10 days (instead of 30) to request any relevant documentation from C&S after the filing of a motion for payment of a claim.
- If the Claim and any issues regarding vendor overpayments and trade credits are reconciled, the parties shall submit a stipulation for approval of the Court allowing the Claim; provided, however, that for any Claim greater than \$250,000, the parties submit a stipulation for approval of the Court after appropriate notice and opportunity for a hearing, or, in the alternative, the Claim is allowed by Final Order, the Debtors shall pay such claim no later than 30 days (not 60) following of a Final Order approving the stipulation or allowing the claim, provided it is determined such claim will not prejudice other creditors.
- If the claim has been reconciled, but ownership of trade credits and vendor overpayments have not been resolved by a Final Order, the parties shall submit a stipulation for approval of the Court allowing such partially allowed Claim; provided, however, any Claim greater than \$250,000 shall submit a partial stipulation for approval of the Court, after appropriate notice and opportunity for a hearing or, in the alternative, the Claim, exclusive of trade credits and vendor overpayments, is partially allowed by Final Order, the Debtors shall pay such claim no later than 30 days (not 60) following of a Final order approving the stipulation, provided it is determined such claim will not prejudice other creditors.
- Prior to submitting a partial stipulation of claims less than \$250,000, C&S shall be provided a copy of any partial stipulation and shall have 15 days (not 10) after receipt to object. The parties then would have 10 days to resolve the objection before the partial stipulation is submitted for Court approval.

With the procedures in place, any reconciled claim below \$250,000 could be paid in 30 days of an order approving the allowed claim, except if it involves setoff or recoupment (claims over \$250,000 are subject to a hearing). Then the issue would first need to be resolved with C&S. The Debtors have 60 days to dispute a claim. If disputed, they then have 30 days to resolve the dispute with the creditor or enter a defined dispute resolution process. If not resolved, then a hearing will be scheduled no earlier than 21 days thereafter. Once resolved, the parties will execute and file a stipulation for the Court to approve payment of the Claim within 30 days.

The automatic stay shall remain in place with respect to all 503 (b)(9) Claimants and assertion of setoff rights, and the Debtors and all 503(b)(9) Claimants rights with respect to setoff and/or recoupment shall be preserved.

A status conference will held April 30 at which time Claimants may raise any procedures that should be modified and/or any objection they may have to manner the procedures have been implemented and/or not complied with.

2/19/2015 - Today, the Court is holding a "status conference" on Section 503(b)(9) procedures proposed by Associated Wholesalers, Inc., DIP (the Debtors), in concert with the Creditors' Committee. The purpose of the status conference wasn't specifically stated, but it is presumably to gauge the progress being made to address numerous objections to the motion and to see if the issues can be resolved before the hearing, which is currently scheduled for March 19.



The proposed procedures assume that the Debtors' joint motion with the Creditors' Committee regarding the recoupment and/or setoff of vendor overpayments and trade credits is approved (the estate would retain the rights to these assets).

The Debtors and the Committee circulated the proposed procedures ahead of today's hearing for comments and input from the claimants and C&S Wholesale Grocers, Inc. The Debtors and the Committee continue to receive and consider comments to the proposed procedures, and will inform the Court of further changes at the hearing. To be clear, certain parties continue to object to the proposed order and procedures and will raise such objections with the Court at or prior to the hearing.

Pursuant to the current proposed procedures, and assuming it is approved at the March 19 hearing, the Debtors would have 60 days to dispute a claim. If disputed, they then have 30 days to resolve the dispute with the creditor or enter a defined dispute resolution process. If not resolved, then a hearing will be scheduled no earlier than 21 days thereafter. Once resolved, the parties will execute and file a stipulation for the Court to approve payment of the Claim. If the Claim is over \$250,000, it will be paid within 60 days after the stipulation. So undisputed Claims would be paid no later than mid May; however, if it is over \$250,000 it could be as late as mid July unless the dispute takes an inordinate amount of time to resolve.

Detailed Timeline

- No later than 30 days after the later of the filing of a motion seeking allowance and payment of a 503(b)(9) claim (Claim) or entry of an order approving the procedures (Order), the Debtors, in consultation with the Committee, may request supporting information and documentation regarding each Claim. Any claimant receiving such request must respond within 10 business days.
- No later than 30 days after the later of the filing of a motion seeking allowance and payment of a Claim or, the Debtors, in consultation with the Committee, may request relevant information and documentation from C&S for the purpose of determining the Claim, vendor overpayment, trade credit and/or other amounts owed to the Debtors relevant to any Claim. C&S shall respond within 10 days.
- Within the later of 60 days after entry of the Order; (ii) 60 days after filing a motion seeking allowance and payment of a Claim; or (iii) 10 business days after receipt by Debtors and the Committee of all information and documents requested (per above), the Debtors and/or the Committee shall provide a written response to the claimants stating whether they agree with the Claim, or whether both dispute the claim for any reason; provided however that for certain claimants (which we were unable to identify in the filing) within 30 days of entry of the Order, the Debtors and Committee shall provide a written response to the claimants providing an update on the current status and reconciliation process.
- If the Debtors and Committee agree with the Claim, the response shall indicate such, depending on determination by Final Order (the order has not been stayed, reversed, or amended, and the time to appeal has passed) of which party owns the rights to vendor overpayments and trade credits.
- If Debtors and/or Committee dispute a Claim, it shall indicate in a response. The Debtors and Committee then have 30 days after the response to attempt to resolve the dispute. If not resolved, Debtors or Committee will file a notice scheduling a hearing on at least 21 days notice to the claimant.
- Debtors and/or Committee must file a motion no later than 5 business days after the Order seeking authority to utilize vendor overpayments and/or trade credits to reduce Claims, setoff, or other claims of claimants. Such motion shall be noticed for the next omnibus hearing date that is at least 30 days after filing the motion. Any claimant objections must be filed within 30 days, and the Debtors or Committee shall file a reply no later than 5 days before the hearing on such motion.
- Payment – If the Claim and any issues regarding vendor overpayments and trade credits are reconciled, the parties shall submit a stipulation for approval of the Court allowing the Claim; provided, however, that for any Claim greater than \$250,000, the parties submit a stipulation for approval of the Court after appropriate notice and opportunity for a hearing, or, in the alternative, the Claim is allowed by Final Order, the Debtors shall pay such claim no later than 60 day following of a Final Order approving the stipulation, provided it is determined such claim will not prejudice other creditors.
- If the Claim, vendor overpayments and trade credits have been reconciled, but ownership of trade credits and vendor overpayments have not been resolved by Final Order, the parties shall submit a stipulation for approval of the Court allowing such partially allowed Claim; provided, however, any Claim greater than \$250,000 shall submit a partial stipulation for approval of the Court, after appropriate notice and opportunity for a hearing or, in the alternative, the Claim, exclusive of trade credits and vendor overpayments, is partially allowed by Final Order, the Debtors shall pay such claim no later than 60 day following of a Final order approving the stipulation, provided it is determined such claim will not prejudice other creditors.
- Prior to submitting a Partial Stipulation to the Court for approval of a Claim in an amount equal to or less than \$250,000, the Debtors and the Committee shall provide counsel to C&S with a copy of such stipulation. C&S shall have ten days from receipt of the stipulation to object.

2/17/2015 - At a telephonic hearing held last week, the Bankruptcy Court approved Associated Wholesalers, Inc.'s, DIP, motion requesting the Court adjourn the various creditors' motions seeking allowance and immediate payment of 503(b)(9) claims. The order states the Court will hold a hearing on February 19 to discuss unresolved issues related to the 503(b)(9) motions. The Court also ordered that the debtors prepare procedures governing the timing and process for reconciling 503(b)(9) claims, the timing of payment of such claims, and a briefing schedule for any common unresolved legal issues with respect to such claims and circulate the proposed procedures to C&S Wholesale Grocers, Inc. Further, the Court ordered the debtors solicit input from the claimants and C&S as to the proposed procedures.



2/10/2015 - Since closing of the asset purchase agreement (APA) with C&S on November 12, there have been numerous motions by creditors to pay administrative claims, including 503(b)(9) claims. Meanwhile, the debtors claim they have made progress with verifying numerous 503(b)(9) claims. The debtors also filed a motion seeking an adjournment of the various 503(b)(9) motions until March 19, or after the hearing date of the Joint Motion (see below) to allow it to continue to reconcile claims with C&S, and assuming its Joint Motion is approved, establish how vendor overpayments and trade credits should be accounted for when reconciling these claims.

One problem has been the reconciliation of vendor overpayments and trade credits. Yesterday we discussed the Joint Motion by the debtors and the Official Committee of Unsecured Creditors, which requested an order:

- declaring that all vendor overpayments remain property of the debtors' estates;
- directing C&S to account for and return to the debtors any vendor overpayments received;
- enjoining C&S from collection efforts relating to vendor overpayments; declaring that trade credits arising under unassigned vendor agreements are excluded assets under the APA;
- enjoining third parties from asserting their setoff rights against the debtors' estates unless they have first exercised their recoupment rights; and
- authorizing the debtors to setoff any trade credits and/or vendor overpayments owed to them first against 503(b)(9) Claims (or any other administrative claims asserted by a vendor) and, only after the administrative liability has been completely offset, against the vendor's general unsecured claims

C&S has filed separate motions demanding payment of its administrative claims of about \$1.5 million, and to continue the Joint Motion hearing, scheduled for February 19, which it also argues should be pursued as an adversary proceeding. C&S said it has a number of claims against the Debtors' estates, arising out of, among other things, the debtors' breach of the APA. Given these pending claims, and its request for the relief listed in the Joint Motion to proceed as an adversary, C&S seeks a continuance of the motion so that C&S, and any third party who wishes to protect its right to elect setoff as it chooses, will have ample opportunity in the adversary proceeding to be commenced to take discovery and present claims and defenses in an efficient manner for the Court's consideration and resolution. The Unsecured Creditors Committee agreed to continue the Joint Motion hearing and that the Joint Motion should be an adversary proceeding.

Hearings on C&S' motion to continue the Joint Motion hearing, and the debtors motion to adjourn the various creditors 503(b)(9) motions will be held tomorrow.

2/09/2015 – According to a joint motion filed by Associated Wholesalers, Inc., DIP and the Unsecured Creditors Committee (Movants), following the November 12, 2014 sale of substantially all of the debtors assets to C&S Wholesale Grocers, the Committee and the debtors have been working together to develop a consensual plan of liquidation, including reconciling vendor claims. The motion specifically seeks a Court order to clarify certain rights under the asset purchase agreement with C&S, with respect to the recoupment and setoff of vendor overpayments and trade credits. The motion states that there are disputes between the Movants and C&S concerning whether the debtors have retained the rights to vendor overpayments and trade credits that arose under vendor supply agreements not assumed by and assigned to C&S, and that many creditors are feeling caught in the middle between C&S and the Movants over which side owns the rights. The Movants essentially want the Court to issue an order stating that the related overpayments and trade credits are property of the debtors' estates. The Movants argue that claimants should exercise their recoupment rights, by netting out the obligations owed under their supply agreements, and then assert setoff claims against the debtors' estate once recoupment rights are exhausted. On the other hand, C&S has taken the position it owns the rights to the overpayments and trade credits

1/22/2015 – The Bankruptcy Court issued an order extending the debtors' exclusive periods to file a Chapter 11 plan and solicit acceptances through and including March 9, 2015 and May 7, 2015, respectively.

The Court also issued orders extending the date the debtors must assume or reject unexpired leases by 90 days through and including April 7, 2015, and the deadline by which the debtors may remove civil actions through and including April 7, 2015.

Certain creditors continue to file motions requesting immediate payment of 503(b)(9) claims including Western Family Foods, Inc. which has asserted an administrative claim of \$4.6 million. However, the debtors have objected, arguing among other things that only after the universe of secured, administrative and priority claims are known would it be appropriate to consider paying 503(b)(9) claims. The bar date for filing proofs of claim, including 503(b)(9) claims is February 6, 2015.

1/6/2015 – Associated Wholesalers, Inc., DIP filed a motion to extend the exclusive periods to file a Plan of Reorganization and solicit acceptances of the Chapter 11 plan by 90 days through and including April 7 and June 8, 2015, respectively. Currently, the Debtors' exclusive filing period is scheduled to expire January 7, and its exclusive solicitation period is scheduled to expire on March 8.

The debtors also presented a motion to the Bankruptcy Court seeking an extension to April 7 for the option to assume or reject two non-residential real property leases located in Pennsylvania. The assets of Co-Op Agency, which includes the two leases, were excluded from its sale of substantially all assets in mid-November to C&S Wholesale Grocers for \$288.0 million. The lease deadline is currently set to expire January 7. A hearing on the two motions will be held January 21

12/17/2014 – F&D Reports attended the hearing today in which the Court approved the debtors' motion to establish February 6, 2015 as the bar date for filing proofs of claim, including 503(b)(9) claims, and March 9, 2015 as the bar date for filing proofs of claim by all government units.



Of most significant importance, the Court adjourned until a March 19th the hearing date with respect to the various motions by creditors for early payment of 503(b)(9) claims. The judge did comment in open court that he expects the parties to engage in meaningful dialogue that could result in payment of these claims prior to the continuance date.

12/1/2014 – The debtors filed a motion to establish February 6, 2015 as the bar date for filing proofs of claim on account of unsecured or secured, priority or nonpriority claims, including 503(b)(9) claims, and March 9, 2015 the bar date for filing proofs of claim by all governmental units.

Separate motions were also filed to set February 6, 2015 as the bar date for PACA claims and all administrative expense claims. To date, debtors have reconciled and paid \$1.7 million of PACA claims and do not believe there are substantial amounts, if any, of remaining PACA claims.

A hearing date for the motions is set for December 17th which, as reported last week, is also the date set to hear the motions requesting early payment of certain 503(b)(9) claims.

11/25/2014 – The Court adjourned to December 17 the various creditors' motions seeking allowance and immediate payment of 503(b)(9) claims.

11/24/2014 – As a result of the sale of the majority of its assets to C&S Wholesale Grocers, AWI Delaware, Inc., DIP, Associated Wholesalers, Inc., DIP, and White Rose Inc., DIP have changed their names to ADI Liquidation, Inc., AW Liquidation, Inc., DIP and WR Liquidation, Inc., DIP, respectively. Also, the official committee of unsecured creditors withdrew their emergency motion asking the court to reconsider the final order authorizing the debtors to obtain post - petition financing.

There were a few instances of returned checks last week which were purportedly in the system before the sale closing and are expected to be replaced expeditiously.

11/19/2014 – Associated Wholesalers, Inc., DIP, filed a motion to adjourn the November 25 hearing date on the motion by various creditors, including the Ad Hoc Committee of Section 503(b)(9) creditors, for immediate payment of 503(b)(9) claims to December 17. According to the motion, the Ad Hoc Committee has already agreed to adjourn the hearing, although certain claimants, New World Pasta/Riviana Foods and Bob Evans Farms, LLC, have not.

The Official Committee of Unsecured Creditors also filed an objection to the claimant motions seeking allowance and immediate payment of 503(b)(9) claims. The motion states that the committee and the debtor are working together to finalize revised 503(b)(9) procedures that will provide claimants with a fair and reasonable opportunity to request and receive consideration of their claims prior to confirmation of a chapter 11 plan.

11/18/2014 – As we reported last week, Associated Wholesalers, Inc., DIP, filed a Notice of Closing, announcing that the sale of substantially all of its assets to C&S Wholesale Grocers, Inc. was completed on November 12, 2014.

11/13/2014 – Although the Court has yet to record the official transaction, F&D Reports has confirmed with representatives at C&S Wholesale Grocers that it has closed on its asset purchase agreement related to Associated Wholesalers Inc.'s, DIP, as of 3pm yesterday afternoon. We previously reported that the Court approved C&S' increased bid of \$288.1 million.

11/10/2014 - A hearing on the various objections to assigned contracts related to Associated Wholesalers, Inc.'s, DIP purchase agreement with C&S Wholesale Grocers Inc. was held on Friday. The Court issued an order approving the assignment of contracts and leases, although a few objections were continued until a hearing set for November 25. The order also notes that agreements and related intellectual property with Western Family Holding Company are not assigned contracts and related assets, including stock of Western Family Holding Company; these are "excluded assets" not being sold or assumed by C&S. The sale is expected to close by tomorrow.

11/5/2014 – The Ad Hoc Committee of Section 503(b)(9) creditors including The Coca-Cola Company; Clemens Food Group, LLC; JBS USA, LLC.; Sun Products Corporation; Johnsonville Sausage, LLC; Ferrero USA, Inc.; ARYZTA A.G.; Great Lakes Cheese Co.; Seaboard Foods LLC; Mount Olive Pickle Company, Inc.; Foxfire Printing & Packaging; and Ventura Foods, LLC, filed a motion seeking allowance and payment of their respective 503(b)(9) claims of approximately \$2.1 million (the motion does not seek payment of any non-committee member claim). In its motion the Committee notes the auction of the debtors assets resulted in increasing the purchase price to approximately \$288.1 million to the stalking horse bidder C&S Wholesale Grocers Inc., and after payment of the debtors' secured creditors, unpaid wages, and investment bankers' fees, approximately \$81.0 million will remain for distribution among the administrative and unsecured creditors. Although the asset purchase agreement lists cash that should be available for distribution to administrative and unsecured creditors of \$91.5 million, that amount must be reduced by the buyer protection credit of \$5.25 million, and the value of any inventory that has been delivered by C&S and remains unpaid as of the closing of the sale in an amount not to exceed \$5.0 million. The sale to C&S, anticipated to close on November 11, excludes two parcels of real property owned by the debtors worth approximately \$4.0 million, and the debtors' Co-op business valued at \$1.4 million. The motion also states the debtor commented at the sale hearing that as a result of the auction, they can envision no situation where there would be insufficient cash to pay all administrative expenses, including 503(b)(9) claims which are estimated to total \$23.1 million. Although the motion seeks immediate payment and the Court could rule in favor of the Claimants, it seems highly unlikely that any 503(b)(9) payment would be authorized until after the yet to be set Bar Date or until the true magnitude of all such claims is known rather than estimated.

10/30/2014 – The Court has issued an order approving Associated Wholesalers Inc.'s, DIP, asset purchase agreement with C&S Wholesale Grocers. According to the order, C&S increased its original bid of up to \$170.1 million, plus an \$18.1 million credit bid for its secured claim, by \$86.5 million. In addition, C&S did not acquire certain assets valued

at approximately \$5.4 million and agreed to pay up to \$2.8 million for certain union and non-union employee paid time off expenses.

C&S' original bid provided \$5.0 million for claims above the payment of secured debt, professional fees and accrued wages. Accordingly, the approved asset purchase agreement now provides for up to \$91.5 million above these items. The debtor previously indicated there were \$23.1 million in 503(b)(9) claims and \$72.0 million in total trade debt. In addition, there are undisclosed claims related to the debtor's pension plans. C&S commented that it expects the transaction to close on or about November 11, 2014, and the purchase agreement includes substantially all of the debtor's assets.

Associated Food Stores, which owes certain amounts to the debtor, had filed an objection to the sale agreement asserting cure amounts owing of approximately \$6.9 million in connection with its supply agreement and \$1.5 million in connection with a transfer agreement. Associated doesn't believe its agreements with the debtor will be assumed and assigned to C&S, and pursuant to the sale agreement, the amounts its owes could be sold to C&S free and clear of its rights of setoff and recoupment of amounts it owes the debtor.

A hearing on various objections to the assumption and assignment of assigned contracts was continued until November 7th.

10/28/2014 – F&D Reports has confirmed with Hahn & Hessen LLP, who represent the unsecured creditors committee of Associated Wholesalers Inc., DIP, that the debtors' selected the final bid submitted by C&S as the highest and best bid for its assets, providing aggregate consideration of up to \$288.1 million, inclusive of the break-up fee and expense reimbursement for comparison purposes relative to Supervalu's last bid, which provided aggregate consideration of up to \$284.6 million. Excluding the break-up fee and expense reimbursement, C&S will pay \$282.8 million. Supervalu's bid was selected as the back-up bid consistent with the Bid Procedures. A hearing to consider approving the sale is scheduled for tomorrow.

The value of C&S initial stalking horse bid was \$193.5 million (including C&S DIP credit amount and bid protections).

The Court previously issued an order approving DIP financing consisting of secured commitments of up to \$175.0 million provided by the prepetition secured lenders and a secured revolving loan of up to \$18.0 million (the subordinated "first in, last out" loan) provided by C&S. The DIP financing order authorized the payment of \$117.0 million of pre-petition secured debt. The debtor also estimated it owed \$72.0 million to prepetition trade creditors. The debtor previously proposed it would pay any prepetition claims pursuant to a Chapter 11 Plan confirmed by the Court.

10/27/2014 – As we previously noted, the Creditors' Committee in the Associated Wholesalers Inc., DIP Chapter 11 bankruptcy case has expressed concerns regarding the selection, or at least the terms of C&S Wholesale Grocers Inc. as the stalking horse bidder. We also indicated that Supervalu had previously submitted a stalking horse bid. On Friday, October 24, 2014, it was reported that both C&S and Supervalu were qualified as bidders for the auction, which was held in the offices of AWI's bankruptcy attorneys, Saul Ewing LLP. This development has not yet been reported in the bankruptcy court dockets and no other details have yet to be disclosed. A hearing on the sale is scheduled for October 29, 2014. Based on our internal analysis of AWI's supply contracts, real estate holdings and other key assets, we would expect the Company to be sold for a price well above the \$170.1 million stalking horse bid.

10/20/2014 - The Bankruptcy Court issued an order authorizing Associated Wholesalers, Inc., DIP, to make employee incentive payments not to exceed \$584,252 to 15 employees. Those receiving the incentive payments must waive and release any severance claims.

10/7/2014 – The Bankruptcy Court issued a final order authorizing Associated Wholesalers, Inc.'s, DIP, post-petition secured indebtedness and authorizing the use of cash collateral. The DIP financing consists of secured revolving commitments from the prepetition bank group of up to \$175.0 million and a secured revolving loan of up to \$18.0 million (the subordinated "first in, last out" loan) provided by C&S. The order authorizes the payment of \$117.0 million of pre-petition secured debt.

10/3/2014 – The Court issued an order approving the bid procedures relating to the sale of Associated Wholesalers, Inc.'s, DIP, assets, with C&S Wholesale Grocers, Inc. named as the stalking horse bidder. Pursuant to the order, the bid deadline is set for October 22, an auction is to be held on October 24, 2014 and a sale hearing will be conducted on October 29, 2014. The order also stated the break-up fee payable to C&S was reduced from \$5.1 million to \$3.75 million. Each qualified bid shall have an initial cash minimum bid requirement equal to \$170.1 million (the C&S purchase price), plus \$18.1 million (the C&S DIP credit amount), plus \$5.3 million (C&S bid protections including \$1.5 million for expense) and a \$500,000 initial bid increment, for a total of \$193.9 million.

10/1/2014 – Following a previously filed preliminary objection, the Creditors Committee filed a supplemental objection to Associated Wholesalers, Inc.'s, DIP, motion for bid procedures related to the sale of its assets, including C&S' stalking horse bid (APA). Under the C&S APA, the only post-petition expenses being prorated are employee payroll expenses and no other post-petition administrative expenses are being paid or assumed by C&S (other than the DIP Loan and Lazard's investment banking fee). Consequently, if the sale were to close on or after November 2, 2014 and the rent under the debtors' real property, equipment and fleet is contractually due on the first of the month, the debtors may be liable for the entire November rent and other monthly expenses while C&S will get virtually the full benefit of these unpaid November administrative expenses. This could "add millions of dollars in additional unpaid administrative expense on the already burdened estates." To address this the Committee requested that the Court agree that the economic closing on the sale shall be deemed to occur on October 31, 2014, even if the actual closing is delayed a few days, or alternatively, that the C&S APA first be modified to provide for the appropriate proration mechanism in the purchase price to cover post-petition expenses. The Committee expressed concerns regarding unpaid administrative expenses is heightened because of the existence of potential priming claims related to PACA and the White Rose Voluntary Customer Reserve Fund Agreements (White Rose customers Better Fruit and Prince Food allege sums aggregating \$3.0 million are held in customer reserve accounts). C&S is setting aside \$3.5 million to cover the priming claims in the event the \$5.0 million reserved for the debtors' estates from the purchase price is not sufficient to cover. There were excerpts from a hearing in the objection with the Court noting that

the proposed sale “troubled” the Court when it did not adequately provide for payment of all administrative expense claims,

The Committee also requested that the order approving the bidding procedures be revised to state that any lease not designated for assumption and assignment and not specifically identified by the debtors be deemed rejected as of October 31, 2014. Further, the Committee proposes that the bid deadline and auction be delayed by two days in order to afford all parties the maximum amount of time possible under the current circumstances. Finally, the Committee once again strongly objected to any bid protections, let alone protections totaling over \$6.6 million in cases (C&S’ termination fee plus expenses) that may be administratively insolvent and when other bidders are willing to proceed to an auction without such protections.

In a separate filing, the Committee filed an objection to motion for a final order approving the DIP financing of up to \$193.0 million to be provided by the prepetition lenders and C&S. Despite resolving some of its issues with the debtor and secured lenders, the Committee was unable to reach an agreement on several issues. The Committee argued the DIP facility should not repay in full the prepetition secured debt and thereby provide a first priority security interest in whatever unencumbered assets exist. Further, the roll up of secured debt and payment of all related fees and expenses is inequitable because 503 (b)(9) administrative claims, whose claimants provided good that increased the value of the debtor’s collateral, may not be paid in full. The Committee objected to the section 506(c) waiver, whereby the debtor waived its right to surcharge the prepetition or DIP collateral, and thereby agree to pay for any and all expenses associated with the preservation and disposition of such collateral in an auction, to the benefit of the DIP lenders. Finally, the Committee argued the \$300,000 carve-out budgeted for the Committee’s fees and expenses should be increased to \$1.2 million, and reserved its rights with respect to remaining issues.

In other recent court filings, C&S replied to bid procedure objections, ultimately saying the parties misunderstood “key documents and the Debtors’ current business situation, and an illusory argument that some entity other than C&S has made a binding commitment to purchase the Debtors’ assets on terms and conditions acceptable to the Debtors.” C&S believes its bid procedures are standard.

The investment committee overseeing the pension plan for certain former executives of Di Giorgio, which had owned White Rose prior to its sale to the debtor, filed an objection to the DIP financing, essentially arguing the DIP financing restricts use of escrow funds set aside to fund pension obligations.

9/29/2014 –The Ad Hoc Committee of section 503(b)(9) creditors filed a limited objection to the debtor’s proposed final order (i) authorizing the debtors’ incurrence of post-petition secured indebtedness with administrative superpriority, (ii) granting liens, (iii) authorizing the use of cash collateral and (iv) modifying the automatic stay. The Ad Hoc Committee is comprised of nine creditors - The Coca-Cola Company; Kellogg Sales Company; Clemens Food Group, LLC; JBS Packerland, Inc.; Sun Products Corporation; Johnsonville Sausage, LLC; Ferrero USA, Inc.; ARYZTA A.G.; and Ventura Foods, LLC - holding approximately \$3.5 million of the \$23.1 million in total 503(b)(9) claims.

The objection argues the motion would give debtors and DIP lenders the unfettered ability to control the payment of administrative expense claims, and usurp the Court’s discretion in this process. Specifically, the objection noted the failure to make any allowance in the debtor’s budget for the payment of 503(b)(9) claims (the budget provides for no payments for the purported \$72.0 million in prepetition trade claims), constitutes a prepackaged excuse for refusing to pay 503(b)(9) claims on par with similarly situated administrative expense priority claims. Further, the proposed DIP Facility will provide a windfall to the bank lenders and C&S, provides no benefit to any prepetition unsecured creditors, discriminates among administrative expense creditors, leaves the debtors’ estates administratively insolvent, and ignores other potential DIP lenders. The debtors have entered into a DIP Facility with their pre-petition secured creditors and the proposed stalking horse bidder (C&S), which provides only enough availability to allow the debtors to “limp along until a sale with C&S closes in December.” Further the Ad Hoc Committee argues the modest DIP Facility only works to assist the bank lenders and C&S, burdens the estate with significant fees and expenses, and numerous overreaching protections in favor of the bank lenders and ultimately results in an administratively insolvent estate.

The Ad Hoc Committee also filed an objection to the debtor’s motion for establishing procedures for 503(b)(9) claims, arguing the motion does not actually establish any “procedures.” The Ad Hoc Committee argued that rather, it sets open-ended dates for the reconciliation and allowance of section 503(b)(9) claims, and gives the debtors the unfettered discretion to establish those dates at some future point in time.

Finally, the US Trustee filed an objection to the debtor’s motion for establishing procedures for 503(b)(9) claims, arguing the motion seeks to enjoin creditors from exercising their rights to assert and receive payment of administrative claims, and relegates 503(b)(9) claims to the status of prepetition claims since the debtor does not propose to pay the claims as administrative expenses. The objection concludes the motion seeks inappropriate relief which must be sought through an adversary proceeding or be contained as a provision in a plan. The US Trustee also noted that based upon the budget the debtors submitted, there is a likelihood that a significant portion of 503(b)(9) claims may not be paid.

9/22/2014 – A number of objections to Associated Wholesalers, Inc’s, DIP, motion for bid procedures have been filed. The US Trustee filed an objection noting specifically the \$5.1 million breakup fee, plus up to \$1.5 million for expenses, which it deems was sought primarily to “chill bidding,” and the limited financial disclosure regarding the value of the debtor relative to the stalking horse bid of no more than \$170.1 million by C&S.

The Official Committee of Unsecured Creditors (Committee) also filed an objection, and sought to adjourn tomorrow’s scheduled hearing date on the motion until October 3, the last date allowed pursuant to the DIP credit facility, to allow it time to get up to speed on the expedited sales process, which contemplates an auction on October 24 and a sale closing by early November in order to allow it to start ramping up inventory heading into the holiday season. In general, the Committee is requesting the debtor utilize the flexibility they have under the DIP credit facility to ensure the auction results in the highest and



best bids. The Committee said there are at least two other strategic bidders in the case, including Supervalu. Supervalu, which was actively engaged as a bidder in the pre-bankruptcy process, has submitted a stalking horse bid, with no break-up fee. As a result, the Committee has serious concerns regarding the selection of C&S as the stalking horse bidder "given the over-reaching Bid Protections demanded by C&S, and the one-sided, highly problematic form of asset purchase agreement" and "there is simply no need to seek approval of over \$6.6 million in Bid Protections (the breakup fee and expense reimbursement) which will only serve to chill bidding, limit participation at the Auction and potentially reduce recovery to creditors by \$6.6 million. This is especially true in the present case where there appears to be significant unpaid section 503(b)(9) administrative claims and pursuant to the terms of the C&S APA, little, if any, post-petition liabilities are being assumed by C&S." Specifically, the Committee said it was problematic whether the \$5.0 million in cash that C&S proposes to pay beyond the secured debt and other fees will be sufficient to cover all unpaid post-petition liabilities, much less make a distribution to any pre-petition creditors. While the Committee does not know how the bidding at the auction will conclude, given the competitive bids currently in place, and the value the three bidders have ascribed to the assets, the Committee believes it is highly likely that the two highest bids will be less than \$6.6 million apart. However, the Committee is confident that if given until October 3, 2014, it will be able to negotiate with C&S and/or the two bidders and ultimately be able to select a much improved stalking horse bid with either no Bid Protections or significantly reduced Bid Protections.

The Bankruptcy Court subsequently continued tomorrow's scheduled hearing to October 3.

Although the second strategic bidder was not identified, Bozzutto's filed a notice of appearance on the first date of this case.

9/22/2014 – Associated Grocers of New England, Inc. (AGNE), submitted a protective objection and reservation of rights to Associated Wholesalers, Inc.'s, DIP, motion to approve bid procedures relating to the sale of its assets, which names C&S Wholesale Grocers as the stalking horse bidder. AGNE noted it is a direct competitor of C&S. AGNE is a member of AWI, purchases certain products from AWI and AWI purchases some products from AGNE. AGNE is a member and licensee of Retailer Owned Research Company (RORC). In 2001, AGNE informally contracted with AWI to sub-license the RORC software—which provides cash management, check-out services, inventory tracking and other data management functions—to AGNE's retailer-members. The pricing information and other data flowing through the RORC software used by AGNE and its members are confidential and proprietary. Under the terms of the proposed asset purchase agreement, AWI would assign ninety-one "RORC" sub-licenses covering propriety and confidential pricing information belonging to AGNE and its retailer members to C&S. AGNE objects to the proposed assumption and assignment to C&S of the RORC sub-licenses between AGNE's retailer-members and AWI. A hearing on the bid motion is scheduled for tomorrow.

The debtor also filed a motion to approve to pay up to \$584,252 in employee incentive payments. A hearing will be held on October 3.

9/17/2014 – The Official Committee of Unsecured Creditors includes: Nestle Holdings, Conagra Foods, Inc., J.M. Smucker Company, Kraft Foods Group, McKesson Corporation, IBT Warehouse Division and the Pension Benefit Guaranty Corporation. The committee hired Hahn & Hessen as legal advisor and Capstone Financial as financial advisor to the Committee.

9/15/2014 - In line with what we had speculated this past June, Associated Wholesalers, Inc., DIP filed Chapter 11 on September 9. The subsequent week was a busy one, with the Court issuing orders approving several first-day motions, including interim approval of secured DIP financing from a bank group led by Bank of America for borrowings of up to \$152.1 million and an \$18.0 million secured first in, last out loan from C&S Wholesale Grocers. Proceeds were used to repay \$117.0 million in pre-petition secured debt provided by the bank group and support post-petition operations. The debtor has entered into a sale agreement with C&S, the stalking horse bidder, and is requesting that the Court proceed to an auction as quickly as possible in order to preserve their going concern value. A hearing on bid procedures, which proposes an auction to be held on October 24, is scheduled for September 23. According to Court filings, the debtor received letters of intent from two other potential strategic buyers. The Court also set a hearing date for establishing 503(b)(9) claims procedures for October 3. 503(b)(9) claims were estimated at \$23.1 million, and the Company proposed that they be paid pursuant to a Chapter 11 Plan confirmed by the Court. In total, the debtor estimated trade debt of \$72.0 million and has so far received Court authorization to pay up to \$2.9 million in PACA claims and \$3.0 million of prepetition claims for goods delivered post petition. The C&S purchase price essentially provides just \$5.0 million, above the payment of secured debt, professional fees and accrued wages. We are also looking into laws governing returned checks. Please click here to let us know date, amount and reason for the return on any checks received by your company.

9/11/2014 - Over the course of the last two days, we have seen letters to vendors from both C&S and Associated Wholesalers, Inc., DIP, (AWI) dealing with post petition shipments. C&S, as we reported yesterday, has authorized a number of AWI ship-to locations with billing to C&S. Now this morning, AWI is contacting vendors attempting to reestablish normalized credit terms with the DIP. Looking at the latter, we see absolutely nothing so far from the debtor that would motivate a trade supplier to take on a new post petition financial risk. Their "smoke screen" is to point at administrative expense status for the new shipments, however, what is known about super priority secured debt, DIP facility availability, the stalking horse bid, and likely near term cash burn; the prospect of jumping back in provides very little comfort in our opinion.

It looks as though any business billed to C&S to service AWI customers would involve wire transfers from AWI to C&S....most likely as we have seen in the past with debtors like A&P where weekly purchases were estimated, prepaid by wire, and then reconciled the following week creating essentially a CIA relationship. Cash at AWI is clearly very tight....so if they could somehow establish open account with at least some vendors this additional working capital stress would be somewhat mitigated. Again, from what we have seen, there has not been anything made available that

9/10/2014 - Associated Wholesalers, Inc., DIP, received court orders approving a number of its first day motions, including; retention of professionals; payment of up to \$2.9 million for PACA claims; payment of \$80,000 of prepetition amounts owed to shippers and warehousemen, and prepetition claims for goods delivered postpetition, but not to exceed \$3.0 million; debtor's continued use of existing cash management system and bank accounts; payment of prepetition wages and

benefits; payment of prepetition taxes; payment of utilities; maintaining insurance; extending the time to file schedules of assets and liabilities; and an order granting the joint administration of the debtor and its subsidiaries related Chapter 11 cases.

The court also issued an interim order authorizing the incurrence of post-petition secured indebtedness with administrative superpriority. The interim order authorized the debtor to fund pre-petition obligations plus up to \$43.5 million. A final hearing date has been scheduled for October 3, 2014.

9/9/2014 - Associated Wholesalers, Inc., DIP (AWI or debtor) filed several first day motions seeking court approval, including: establishing procedures for 503(b)(9) claims, estimated at \$23.1 million, consistent with the normal prepetition claims process and subject to the general bar date to be set for all prepetition claims; authorizing, but not requiring the payment of \$2.9 million of PACA claims in the ordinary course of business; directing joint administration of related (subsidiary) Chapter 11 cases; hiring of professionals; paying prepetition taxes; continuing use of existing cash management system and maintenance of existing bank accounts; paying prepetition wages and benefits; paying utilities; maintaining insurance; and seeking a 15 day extension, for a total of 45 days from the petition date to file its schedules of assets and liabilities, and statements of financial affairs, among other matters. A bar date for prepetition trade claims is expected to be filed after the debtor files its schedules of assets and liabilities and statements of financial affairs. All 503(b)(9) claims will be deemed accepted and allowed unless objected to by debtor or any other party in interest, and be paid pursuant to the Chapter 11 Plan confirmed by the court.

At the petition date, the debtor owed approximately \$131.9 million to the secured bank group, including letters of credit, plus accrued interest, and approximately \$72.0 million of trade debt. The debtors pre-petition secured debt included a \$15.0 million term loan and \$225.0 million revolver with a bank group, led by Bank of America. The debtors have negotiated post-petition financing with the bank group. However, the amount of financing proposed by the bank group was not a sufficient amount for C&S, which agreed to provide additional secured funding which is junior in priority to the bank lenders. Accordingly, the proposed DIP credit agreement (motions seeking interim and final approval were filed) consists of secured revolving commitments from the bank group up to \$175.0 million and a secured revolving loan of up to \$18.0 million (the subordinated "first in, last out" loan) provided by C&S. Subject to a final order, the maximum amount available from the bank group revolver is equal to the lesser of (i) \$152.1 million plus the amount of letters of credit obligations outstanding minus availability reserves, and (ii) the borrowing base, calculated from eligible inventory and accounts receivable. The maturity date of the DIP credit agreement is December 1, 2014, or earlier under certain conditions such as consummation of an approved sale of the debtor. The DIP financing proposes the roll up of \$126.1 million in pre-petition outstanding revolving loans, plus any unpaid interest and fees. The DIP financing also has certain "Sale Milestone Covenants" including obtaining court approval of sale bid procedures no later than 24 days after the petition date; conducting an auction no later than 55 days after the petition date; obtaining a court order approving a sale no later than 62 days from the petition date; and consummating the approved sale by no later than December 1. A motion was also filed to approve the bid procedures, which assumes similar deadlines, with the sale closing to occur within 100 days.

Following the marketing process of its sale, conducted with its investment banker Lazard Middle Market, LLC (LMM), the Company said it received letters of intent from three potential strategic buyers, that resulted in the asset purchase agreement with C&S Wholesale Grocers, Inc. Subject to court approval, C&S will serve as the stalking horse bidder in a competitive bidding process through the court. The C&S purchase price consists of: (i) the lesser of the amount of the bank debt, and \$152.1 million, plus (ii) the lesser of an amount equal to amounts owed to LMM as of the closing date (of the sale), and \$1.9 million, plus (iii) the lesser of \$8.6 million, and an amount equal to 105% of the amount of certain outstanding letters of credit as of the closing date, plus (iv) the lesser of the amount of debtor's accrued wages, and \$2.5 million, plus (v) a "credit bid" of C&S' \$18 million participation in the DIP credit facility, plus (vi) \$5 million, minus (vii) any unreinvested insurance recovery; or not more than \$170.1 million minus the amount of unreinvested insurance recovery. In addition, C&S has agreed to supply products to the debtors, and if necessary, serve as a primary or secondary supplier to the debtors' customers if such support is necessary to meet customer demands. The sale includes avoidance actions. If C&S is not the successful bidder, it may receive a \$5.1 million break up fee, plus expenses up to \$1.5 million.

Finally, motions were filed for authorization to pay in \$80,000 in ordinary course owed to shippers and warehousemen, and pay as administrative expense claims approximately \$12.0 million of goods ordered for which delivery will not occur until after petition date.

9/9/2014 - In a move which we first began postulating on June 20th, today, Associated Wholesalers, Inc. and its subsidiaries, including White Rose, Inc. filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The Chapter 11 case has been designated case number 14-12092. A judge has not yet been assigned to the case.

Associated Wholesalers entered into an asset purchase agreement (the "APA") with C&S Wholesale Grocers under which C&S will acquire substantially all of AWI's assets, including its White Rose distribution business. Under terms of the APA, C&S will serve as the "stalking horse bidder" in a court-supervised auction process. Accordingly, the APA is subject to higher and otherwise better offers, among other conditions.

This action is expected to provide for an orderly sale of the AWI businesses under Section 363 of the Bankruptcy Code.

AWI and White Rose are expected to continue operating in the normal course during the sale process.

In conjunction with the proposed transaction, AWI has received a commitment for debtor in possession financing to support its continued operations during the pendency of the sale process. C&S has also made a commitment to participate in the debtor in possession financing package. AWI has filed a number of customary motions seeking court authorization to continue to support its business operations during the transaction process, including the continued payment of employee wages, salaries and

health benefits without interruption. AWI has also asked for authority to continue existing customer programs and intends to pay suppliers in full under normal terms for goods and services provided after the filing date of September 9, 2014.

The proposed transaction is subject to higher and otherwise better offers, court approval, antitrust approval, any other such approvals as may be required by law, and other customary conditions. Given these conditions, there can be no assurance that the proposed transaction will be consummated.

Commenting on the developments, Joyce Fasula and Mike Rothwell, Chairman and Vice-Chairman of the AWI Board of Directors said, "We believe that the asset purchase agreement with C&S is in the best interest of AWI and its stakeholders. After conducting a thorough process, which included the exploration of a range of alternatives and reaching out to multiple interested parties, we determined the best course of action for AWI was to enter this agreement with C&S and to undertake the court-supervised sale process."

Matt Saunders, President and Chief Executive Officer of AWI said, "As we move through this transaction process, we will continue to focus on serving our customers. We also intend to work closely with our suppliers and the winning bidder to help ensure that our customers continue to receive the level of service they expect."

"The addition of AWI and White Rose would expand C&S's footprint and enhance our significant capabilities in servicing independent grocers," said Rick Cohen, Chairman and CEO of C&S. "AWI and White Rose have a terrific customer base, and their distribution capabilities are a natural complement to our existing portfolio. We believe we are strongly positioned to provide all of their customers with the goods and services they need to successfully run and even grow their businesses."

Saul Ewing LLP and Rhoads & Sinon LLP are serving as legal advisors, Lazard Middle Market is serving as financial advisor, and Carl Marks Advisors is serving as restructuring advisor to AWI.

The information contained in this **ISC Case Summary** is issued to subscribers only for their **confidential** and **exclusive** use. All or some of the financial and other information contained herein is compiled from sources which Information Clearinghouse Incorporated [ICI], 310 East Shore Road, Great Neck, NY 11023, does not control and unless indicated is not verified. ICI, its principals, writers and agents do not guarantee the accuracy, completeness or timeliness of the information provided nor do they assume responsibility for failure to report any matter omitted or withheld. This special report and analysis and any/or part thereof may not be reproduced, and/or re-transmitted in any manner whatsoever. Any reproduction and/or re-transmission without the written consent of ICI is in violation of Federal and State Law.

