

American Apparel Unsecured Creditors Blast DIP Loan Details

By **Matt Chiappardi**

Law360, Wilmington (December 7, 2016, 5:25 PM EST) -- Unsecured creditors of American Apparel LLC took aim at its up to \$30 million in debtor-in-possession financing, arguing Wednesday it not only curtails their ability to launch a lien investigation but also improperly protects secured lenders from scrutiny over the struggling retailer's prior bankruptcy.

In a limited objection before the Delaware bankruptcy court, the official unsecured creditors committee argued that American Apparel's prepetition secured lenders, who the committee said were in "complete control" of the debtor between its Chapter 11 cases, are trying to secure themselves significant rights in the final DIP financing order without actually supplying any post-petition financing.

The prepetition lenders include the DIP lenders from the prior bankruptcy and hedge fund Standard General LP, which was at the center of very public fisticuffs with American Apparel founder and former CEO Dov Charney over his ouster from the clothing chain. Those lenders pushed DIP lender Encina Business Capital LLC to allow them to grab liens on American Apparel's assets that were not already encumbered, and to curb unsecured creditors' ability to investigate both the debtor's and creditors' conduct from before the latest Chapter 11 filing.

"At the prepetition secured parties' behest, the proposed final order curtails the committee's investigation period into the prepetition conduct of the debtors' lenders and equity holders and unduly limits the committee's access to the resources necessary to fulfill this essential fiduciary duty," Wednesday's objection stated. "These potential claims, and the committee's ability to meaningfully investigate and, if warranted, pursue them, must not be short-circuited by unnecessary and overreaching provisions of the proposed DIP facility."

The committee said it plans to open a probe into possible causes of action the company may have against its secured lenders, but the DIP loan order as proposed would shield prepetition lenders from any claims as if they were getting a liability release, an outcome the unsecured creditors called unfair and said lets the secured creditors off the hook.

American Apparel's exit from the prior Chapter 11, which saw creditors back in bankruptcy court in less than a year, was an "epic failure," and the proposed final DIP order serves only to insulate the secured creditors from potential liability, according to the objection.

"The nine months between the debtors' two bankruptcy proceedings were plagued by a string of broken

promises to creditors, the complete failure of the debtors' turnaround strategy, and staggering operating losses that left American Apparel on the brink of liquidation," the objection stated.

Representatives for American Apparel did not immediately respond to requests for comment Wednesday.

American Apparel has clashed with the committee several times during its second spin in Chapter 11, most recently over the company's intellectual property auction plans, which unsecured creditors claimed did not afford enough time to fully market the assets.

The parties came to an agreement earlier this month, which did bump the auction date further out in 2017.

American Apparel had filed for court protection barely a year after the court confirmed a Chapter 11 plan from its previous bankruptcy case, saying its turnaround efforts were unsuccessful.

This time, the company listed about \$215 million in debt, much of it resulting from its previous DIP financing package and related exit facilities.

American Apparel is represented by Scott J. Greenberg, Erin N. Brady and Michael J. Cohen of Jones Day and Laura Davis Jones, James E. O'Neill and Joseph M. Mulvihill of Pachulski Stang Ziehl & Jones LLP.

The committee is represented by Justin R. Alberto, Evan T. Miller and Gregory J. Flasser of Bayard PA and Cathy Hershcopf, Seth Van Aalten and Michael Klein of Cooley LLP.

The case is In re: American Apparel LLC et al., case number 1:16-bk-12551, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan. Editing by Edrienne Su.