

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

21-cv-00583-MKB-VMS :

**GPB CAPITAL HOLDINGS,
LLC ASCENDANT CAPITAL,
LLC; ASCENDANT
ALTERNATIVE STRATEGIES,
LLC;
DAVID GENTILE;
JEFFRY SCHNEIDER; and
JEFFREY LASH,**

Defendants. :

**SUPPLEMENTAL DECLARATION OF JOSEPH T. GARDEMAL III, MONITOR,
IN SUPPORT OF THE U.S. SECURITIES AND EXCHANGE
COMMISSION’S MOTION FOR APPOINTMENT OF A RECEIVER
OVER GPB CAPITAL HOLDINGS LLC AND ITS AFFILIATES**

I, Joseph T. Gardemal III, declare under penalty of perjury as follows:

1. My name is Joseph T. Gardemal III and I am a Managing Director with Alvarez and Marsal (“A&M”), an international management consulting firm with headquarters in New York. I am based in A&M’s Washington, DC office. I am the independent Monitor appointed by this Court over GPB Capital Holdings LLC (“GPB CH”). My professional background, and various other factual matters, are further described in a prior declaration that I submitted on June 10, 2022 (the “Prior Declaration”). Capitalized terms used herein that are not otherwise defined herein have the meanings ascribed to such terms in the Prior Declaration.

2. I make this supplemental declaration based on my own personal knowledge, which is informed by review of applicable documents and discussions with colleagues at A&M, and

others, directly involved in this matter. I make this supplemental declaration, pursuant to 28 U.S.C. § 1746, in support of the motion by the U.S. Securities and Exchange Commission (the “SEC”) for the appointment of a receiver over GPB CH and its affiliates.

3. Since my appointment as Monitor, I have worked closely with management of GPB CH and the GPB Funds, and other professionals, in order to assist the GPB Funds in seeking to maximize the ultimate financial recovery for investors in the GPB Funds. At the time of my appointment as Monitor, the criminal and SEC proceedings against Mr. Gentile, other civil litigation against Mr. Gentile, the GPB Funds and their respective affiliates, and the lack of audited financial statements for the GPB Funds, had collectively caused many automobile manufacturer counterparties of Prime Auto to commence processes for terminating their contractual relationships with Prime Auto unless Prime Auto was divested by the GPB Funds – such contractual terminations, if ultimately consummated, would have resulted in a near-complete destruction of going concern value for Prime Auto’s underlying business. In addition, Prime Auto’s commercial lender (M&T Bank) required Prime Auto to enter into contractual amendments that deferred a contractual default (and likely foreclosing on outstanding loan balances), conditioned on Prime Auto being divested by the GPB Funds in the near-term. Indeed, illustrative of the detrimental effect of the above-described manufacturer and lender issues, I learned shortly following my appointment as Monitor that the GPB Funds had already been forced to divest several Prime Auto dealerships for similar reasons. Based on these collective circumstances, it was my belief (and the belief of management of GPB CH and Highline) that a failure of the GPB Funds to promptly divest Prime Auto would materially imperil investor assets.

4. In recognition of these circumstances, in the months preceding the sale of Prime Auto by the GPB Funds, I worked closely with GPB CH and Highline management to address these time-sensitive issues directly and to evaluate the best path for maximizing unitholder value with respect to Prime Auto. The ultimate sale of Prime Auto occurred as part of an orderly sales process that involved a full marketing of the business, aided by a financial advisor (Jefferies Group) and outside M&A counsel (Skadden, Arps, Slate, Meagher & Flom LLP).

5. Similarly, a thorough sales process was also undertaken by GPB CH and Highline in connection with the divestiture of Alliance Physical Therapy, which also included a marketing process assisted by an industry-focused financial advisor (Cain Brothers) and outside counsel

(McGuireWoods LLP). In both cases, it is my belief that the extensive and deliberate efforts undertaken by GPB CH and Highline management, in consultation with outside professionals, successfully achieved our collective objective of preserving these assets so that they could be divested on favorable terms, thereby resulting in receipt by the GPB Funds of substantial cash proceeds for ultimate distribution to the funds' investors. I note as well that it is my understanding (based on information presented to me by management of GPB CH) that the sale by GPB Cold Storage, LP of the Newark Property was completed after GPB CH had previously commenced a sale process for this property prior to my appointment as Monitor.

6. In the same thoughtful, deliberate and thorough manner that we collectively approached the above transactions, I am working with management of GPB CH and Highline to similarly consider the optimal approach with respect to the remaining portfolio companies of the GPB Funds. This consideration does not include any contemplation of a "fire sale" or other quick divestiture of any remaining portfolio companies or assets. Rather, the focus of these discussions continues to center on a careful and thorough evaluation of available approaches and strategies for obtaining and/or recouping the maximum value possible for investors, whether in any individual instance this ultimately may be best achieved by continuing to hold a specific portfolio company or asset (including by consideration of modest, strategic "tuck-in" acquisitions that might complement and/or unlock the value of existing businesses), or by the divestiture of such portfolio company or asset.

7. In connection with all of these matters, I am drawing upon my own professional experience and judgment, as well as the expertise, institutional knowledge and judgment of management of GPB CH and Highline, and the experience and expertise of other outside professionals engaged by GPB CH, Highline or me (including my own colleagues at A&M).

8. In my capacity as Monitor, it is not my view that the GPB Funds are automatically committed to liquidating or divesting all remaining non-cash assets on any specific timeframe. To the contrary, it is my belief that the GPB Funds should continue to focus on preserving and recouping (and where feasible, enhancing) unitholder value, and it is my observation that management of GPB CH and Highline are doing that.

9. Since my appointment as Monitor, I have not observed any conduct by Mr. Chmiel or other current GPB CH or Highline management that, in my judgment, has led to any loss of

unitholder value during the period following institution of the Initial Order. In fact, to the contrary, my observations are that Mr. Chmiel and other members of current GPB CH and Highline management have been good stewards of investor capital, and instituted remedial measures to correct various material compliance and other issues that had contributed to a prior loss of value for investors. Based on my observations, current GPB CH and Highline management possess strong industry and institutional knowledge that has benefited investors, including by overseeing and operating remaining investments in a value-enhancing manner. My experiences with them to date have been constructive and collaborative.

10. Though a majority of the aggregate non-cash assets contained in the GPB Funds have now been divested, and most of the aggregate value of the GPB Funds today consists of cash, GPB Holdings II, L.P. continues to own and operate several businesses that function as going concerns and that are expected to continue to create long-term value for the owners thereof. However, in my judgment, the relatively small scale of these investments in proportion to the original \$1.7 billion of investor capital raised by the GPB Funds do not justify the overhead and other management fees that the holding company structure of the GPB Funds has historically incurred.

11. For example, while some portfolio companies of GPB Holdings II, L.P. have experienced increased revenues in 2022 versus the immediately preceding pandemic-dominated fiscal years, these revenue increases appear to be insufficient to make the current overall fund structure efficient for investors, particularly after a substantial portion of the profit at the portfolio company level is used to cover fees and expenses of GPB CH and Highline. As a result, I have recently approved proposals by GPB CH and Highline management to reduce staffing to “right size” the funds’ management structure to reflect the substantially smaller portfolio of operating assets that presently exist.

12. While I have approved these staffing reductions, I have had no discussion with GPB CH or Highline management planning for any divestiture of these businesses that would involve discontinuing their operations as long-term going concerns. To the contrary, GPB CH and Highline management continue to remain focused on operating these businesses to maximize shareholder value, irrespective of whether and when the equity ownership of these businesses may or not be transferred to new equity owners.

13. In my Prior Declaration, I addressed recent actions by Mr. Gentile to purportedly appoint three new Managers of GPB CH, with rights to compensation and indemnification, without Monitor approval (the “May 27, 2022 Purported Actions”), and steps taken by the purported new Managers to insert themselves into the business affairs of GPB CH. I referenced in my Prior Declaration that on May 31, 2022, I transmitted correspondence to GPB CH, in my capacity as Monitor, addressing certain of the above developments, and notifying GPB CH that the May 27, 2022 Purported Actions, among other things, violate Sections 6(d) and 6(e) of the Order. (Such correspondence was also contemporaneously transmitted to Mr. Gentile and his counsel.) Since the date of the Prior Declaration, I am unaware of Mr. Gentile taking any actions to cure the May 27, 2022 Purported Actions as contemplated by Section 20 of the Order, and the 10 business day cure period referenced therein has lapsed. I understand that, per Section 21 of the Order, the failure of GPB CH to materially comply with the Order following notice thereof and the passage of the 10 business day cure period, permits the Monitorship to convert to a receivership upon motion of the SEC and approval by the Court.

14. Moreover, since the date of my Prior Declaration, the purported three new Managers have continued to attempt to insert themselves into the business and operational affairs of GPB CH, including efforts with respect to personnel decisions, as evidenced by a recent communication from their counsel calling for the reinstatement of three highly paid employees of Highline, having aggregate salaries I understand to be more than \$1.7 million per year, who were part of the reduction in headcount referenced in paragraph 10 above.¹

Dated: July 7, 2022
Washington, D.C.



JOSEPH T. GARDEMAL III

¹ See Letter of Steven L. Hayes, dated June 30, 2022, attached as Exhibit A.

Exhibit A

Letter of Steven L. Hayes, dated June 30, 2022

Attached.

STEVEN L. HAYES, PA

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June 30, 2022

Sent via email

Glen Kopp
Counsel to GPB Capital Holdings, LLC
GKopp@mayerbrown.com
Brian O'Fahey
Counsel to Joseph T. Gardemal III
Monitor, GPB Capital Holdings, LLC
brian.ofahey@hoganlovells.com

Re: Request for Conferral and to Preserve Information

Dear Mssrs. Kopp and O'Fahey:

I write on behalf of Matt Judkin, Rick Murphy and Michael Fasano, the newly appointed managers of GPB Capital Holdings, LLC ("GPB"). The purpose of this letter is to address their status as managers and to explain what we view as their role in the management of GPB. I specifically write to you as counsel to GPB and to the monitor, respectively.

On May 31, 2022, the appointed managers reached out to GPB CEO Robert Chmiel to have a managers' meeting. The next day, June 1, 2022, Mr. Chmiel informed them that he would not be having any meeting with them until "all legal actions involving this subject matter are resolved." They now understand that discussions about their intentions and involvement as managers are ongoing with the Government, so they once again write to invite Mr. Chmiel to reconsider his prior position and meet with the appointed managers as we believe it is in the best interest of the GPB investors to do so.

First, let me clarify who the newly appointed managers are and why they are here. They are a group of diverse professionals who have accepted the appointment as managers to participate in the management and governance of GPB, which they believe is best carried out by a Board of Managers, rather than a sole Manager who is also the Chief Executive Officer for the company. Matt Judkin has significant experience with building and running companies, especially with energy companies like those in GPB's energy portfolio. Matt Judkin has also already been engaged by you as a consultant for GPB's energy strategy. Rick Murphy is an M&A advisor who has significant management and governance experience, has worked with GPB's portfolio companies in the past, has experience on its

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advisory boards, and can provide valuable insight as GPB considers transactions to maximize asset value performance or convert assets to cash, and Michael Fasano, an attorney with significant experience in corporate governance, fiduciary duty, and partnership matters.

Together, the newly appointed managers hope to assist GPB and its portfolio companies to do what's best for the investors. They intend to work with the monitor and Mr. Chmiel to learn about the state of the company and to help determine the best course of action for the portfolio companies. They look forward to understanding the monitor's and Mr. Chmiel's current plans and ideas and they also want to understand the plans to distribute money to investors as soon as it is practical, so that that can happen expediently.

Second, we want to correct the perception that has been expressed in some court and press filings that the newly appointed managers are mere friends or worse, "cronies" of GPB member David Gentile and that their purpose is to assist Mr. Gentile in either tying up cash to generate additional management fees or to somehow allow Mr. Gentile to obtain improper personal gain. Those allegations are simply untrue. None of the appointed managers work for Mr. Gentile, and when they were approached by Mr. Gentile to become managers, they were told that their sole responsibility was to ensure that they work with GPB to maximize the value of the portfolio and explore exactly how distributions can be paid to the qualified investors in the near term, and as they are entitled.

In summary, the newly appointed managers do not anticipate it will require more than 90 days (the "Initial Period"), provided they have access to all the needed information as is a Manager's right, and be in a position to make recommendations as to how all of the Managers believe the value of the remaining assets of GPB can be best maximized for an optimum liquidity event, with such proceeds being distributed to the investors according to their documents. If after this Initial Period, the Managers conclude that the best way to move forward is to agree that receivership is the proper path, then they may recommend that be done.

Again, the newly appointed managers' only purpose is to ensure that the investors enjoy the maximum value for their investment and the distributions that they are entitled to receive within a reasonably predictable time frame. That certainly involves working with the monitor and Mr. Chmiel and, as soon as possible, for GPB to create a plan to start distributing funds to the eligible investors under that plan.

With that said, we have also learned that GPB has terminated three key executives of Highline Management, which is directly overseen by GPB. We do not understand, and we wish to understand, why GPB would take such action during this period of transition without consultation with the newly appointed managers. It is our understanding that those executives were key to managing the remaining assets and were also, due to their institutional knowledge, critical in making determinations about maximizing portfolio value—including making decisions on how best to operate the remaining assets to

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maximize return on investment for the investors. We believe they should be reinstated as soon as practical, for the benefit of the company and in the investors' best interests.

We believe that it is in the best interests of the GPB investors that GPB maintains status quo unless and until the newly appointed managers' positions are confirmed by the appropriate court or until the parties can reach an agreement on the newly appointed managers' role. Similarly, until GPB's current manager confers with the newly appointed managers and allow the newly appointed managers to participate in GPB governance and management oversight, with specific regard to maximizing value for the investors, liquidation of GPB portfolio company assets, distributions of capital, and major decisions that will affect the course of the GPB funds should not take place.

The new managers were appointed to assist GPB through a difficult and turbulent time. They intend to work with Mr. Chmiel and the monitor to do that. The newly appointed managers are willing to meet with you and your clients and begin working together immediately. We believe that the newly appointed managers' participation is a critical step in working for the best interest of the investors.

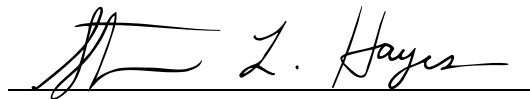
While I am sure you are doing this anyway, please maintain and preserve all information relevant to GPB, its funds, and its affiliates so that we may review all appropriate books and records.

We sincerely hope you will take the opportunity to meet with us and allow us to work with you in the best interest of GPBs investors. The new managers have been appointed, have perspectives that are different and valuable, and are certain that their desire to maximize the value for the investors should be the same as your own interests.

Please be advised that should you not be willing to meet with us, or do not respond promptly, we intend to ask the judge to mediate the issue.

We look forward to your prompt response.

Respectfully,

A handwritten signature in black ink, appearing to read "S. L. Hayes", is written over a horizontal line.

Steven L. Hayes, For the Firm