

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM
2:00-00000

Chapter

#0.00 All hearings scheduled for today are now simultaneously 1) In person in Courtroom 1539; 2) Via ZoomGov Video; 3) Via ZoomGov Audio. Parties are free to choose any of these options, unless otherwise ordered by the Court. Parties electing to appear in person shall comply with all requirements regarding social distancing, use of face masks, etc. that are in effect at the time of the hearing.

Parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. **MEMBERS OF THE PUBLIC MAY ONLY CONNECT TO THE AUDIO FEED USING THE TELEPHONE NUMBERS PROVIDED BELOW AND ARE NOT PERMITTED TO CONNECT TO THE VIDEO FEED.**

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For more information on appearing before Judge Bluebond by ZoomGov, please see the information on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-sheri-bluebond> under the tab, **"Phone/Video Appearances."**

Hearing conducted by ZOOMGov.

Video/audio web address: <https://cacb.zoomgov.com/j/16161090855>

ZoomGov meeting number: 161 6109 0855

Password: 148508

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**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT...

Chapter

(when prompted, enter meeting number and password shown above)

Judge Bluebond seeks to maintain a courtroom environment (both online and in person) in which all persons are treated with dignity and respect, irrespective of their gender identity, expression or preference. To that end, individuals appearing before the Court are invited to identify their preferred pronouns (e.g., he, she, they, etc.) and their preferred honorific (e.g., Mr., Miss, Ms., Mrs., Mx, M, etc.). Individuals may do so by advising the Courtroom Deputy or Judge prior to any appearance and/or, in the case of remote hearings, by providing this information in the person's screen name in ZoomGov.

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:25-12085 Eduardo Alfredo Paez

Chapter 7

#1.00 Motion for Order Sustaining the Trustee's Objection to Homestead Exemption

Docket 17

***** VACATED *** REASON: 6/6/25 - VOLUNTARY DISMISSAL OF
MOTION FILED**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Motion has been withdrawn by movant. Off calendar. No appearance necessary.

Party Information

Debtor(s):

Eduardo Alfredo Paez

Represented By
Barry E Borowitz

Movant(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:24-16517 Moto Holding, LLC

Chapter 7

#2.00 Chapter 7 Trustee's Rule 9019 Motion for Entry of an Order (I) Approving Compromise and Settlement with MBL Administrative Agent II LLC; (II) Authorizing Entry into Joint Prosecution Agreement; (III) Allowing MBL's Claim; and (IV) Authorizing Post-Petition Financing

Docket 113

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

6/20/25 -- Court approved stipulation continuing hearing to July 30, 2025 at 10:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

Moto Holding, LLC

Represented By
Marc Weitz

Movant(s):

Peter J Mastan (TR)

Represented By
Ronald Cheng
Hugh M Ray

Trustee(s):

Peter J Mastan (TR)

Represented By
Ronald Cheng
Hugh M Ray

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:25-10871 Milton Cook Anderson

Chapter 7

#3.00 Chapter 7 Trustee's Objection to Debtor's Homestead Exemption

Docket 47

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Based on site visit, Trustee has observed that debtor does not reside at the property. There are three bedrooms: one of which is a storage/workspace for the debtor's daughter; the second is a bedroom for the daughter's children; the third is the primary bedroom used by the daughter and her husband. Debtor has not filed an opposition. Sustain the objection and disallow the debtor's homestead exemption in full. Debtor must reside in the property as his principal residence as of the petition date, and he did not.

Party Information

Debtor(s):

Milton Cook Anderson

Represented By
Stephen L Burton

Movant(s):

Wesley H Avery (TR)

Represented By
Joseph E Caceres

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph E Caceres

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

Adv#: 2:25-01063 Yoo v. Pacific Alliance Medical Center, LTD. et al

#4.00 Status Conference re: 13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other) Complaint by Timothy J. Yoo against Pacific Alliance Medical Center, LTD., Pacific Alliance Medical Center, Inc., John R. Edwards, Shi-Yin Wong, Tit Sang Li, James Mason, Stephen Kwan, Carl K. Moy, T.G. Wing Chow, George Ma, Achievamed, Inc., Annex Financial, Inc., McDermott Will & Emery, LLP, DOES 1 THROUGH 10.

fr: 6-3-25

Docket 1

Courtroom Deputy:

5/13/25 - Notice That a Default Has Not Been Entered by the Clerk Against Defendants

Tentative Ruling:

4/28/2025 -- Court approved stipulation extending deadline for all defendants other than BUT Achievamed and Annex Financial to June 2, 2025.

Tentative Ruling for June 25, 2025:

Revisit status of action after conclusion of hearing on motion for approval of compromise.

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Defendant(s):

DOES 1 THROUGH 10

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... SynerMed, Inc.

Chapter 7

McDermott Will & Emery, LLP	Pro Se
Annex Financial, Inc.	Pro Se
Achievamed, Inc.	Pro Se
George Ma	Pro Se
T.G. Wing Chow	Pro Se
Carl K. Moy	Pro Se
James Mason	Pro Se
Tit Sang Li	Pro Se
Shi-Yin Wong	Pro Se
John R. Edwards	Pro Se
Pacific Alliance Medical Center, Inc.	Pro Se
Pacific Alliance Medical Center,	Pro Se
Stephen Kwan	Pro Se

Plaintiff(s):

Timothy J. Yoo

Represented By
Jason B Komorsky

Trustee(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

#5.00 Motion to Dismiss the Chapter 7 Case Pursuant to 11 U.S.C. § 707

fr: 4-16-25; 5-14-25

Docket 47

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

Tentative Ruling:

Tentative Ruling for April 16, 2025:

Deny motion to dismiss. Movant has withdrawn its proof of claim so it does not have standing as a creditor and it does not have standing in its capacity as the defendant in an adversary proceeding. It may, however, have standing in its capacity as the owner of all equity in the debtor. Nevertheless, it has not established cause to dismiss the case. As the trustee has explained, there may be sizeable claims that remain outstanding as the holders of these claims did not receive notice of the bar date.

Final Ruling for April 16, 2025:

Movant has now purchased additional claim (Angeles IPA) and did not waive it in the hope of not having a standing problem. Continue hearing to May 14, 2025 at 1:00 p.m. In the event of dismissal, movant agreed on record to pay administrative expenses of trustee and special counsel. Trustee should serve and file requests for payment of expenses of administration by April 23, 2025 and set for hearing on May 14, 2025 at 1:00 p.m. Any supplemental response will be due by April 30, 2025.

Tentative Ruling for May 14, 2025: [Withheld]

5/12/2025 -- Court approved stipulation continuing hearing to June 25, 2025 at 10:00 a.m. OFF CALENDAR FOR MAY 14, 2025.

6/11/2025 -- Court approved stipulation continuing hearing to July 30, 2025 at 10:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... SynerMed, Inc.

Chapter 7

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Movant(s):

PAMC Ltd.

Represented By
Jason D Strabo

Trustee(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

#6.00 Chapter 7 Trustee's Motion to Approve Compromise with Bankruptcy Defendants Pursuant to Federal Rule of Bankruptcy Procedure 9019

Docket 84

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion and approve compromise, but court does not want dismissal of adversary proceeding or case to be effective until all payments have been made and claim filed by Angeles-IPA has been withdrawn.

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Movant(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky
Jessica L Bagdanov

Trustee(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

#7.00 Motion For Allowance Of Chapter 7 Administrative Claim Of Trustees Special
Litigation Counsel, BG Law LLP

fr: 5-14-25

Docket 70

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for May 14, 2025: [Withheld]

5/12/2025 -- Court approved stipulation continuing hearing to June 25, 2025
at 10:00 a.m. OFF CALENDAR FOR MAY 14, 2025.

Tentative Ruling for June 25, 2025:

Revisit status of matter after conclusion of hearing on motion for approval of
compromise.

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Movant(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... SynerMed, Inc.

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By

Steven T Gubner

Ryan Coy

Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

#8.00 Application For Payment Of: Final Fees And/Or Expenses (11 U.S.C. § 330) for Timothy Yoo (TR), Trustee Chapter 7, Period: 4/7/2023 to 4/23/2025, **Fee: \$108,438.15, Expenses: \$0.**

fr: 5-14-25

Docket 69

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for May 14, 2025: [Withheld]

5/12/2025 -- Court approved stipulation continuing hearing to June 25, 2025 at 10:00 a.m. OFF CALENDAR FOR MAY 14, 2025.

Tentative Ruling for June 25, 2025:

Revisit status of matter after conclusion of hearing on motion for approval of compromise.

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Movant(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... SynerMed, Inc.

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12123 SynerMed, Inc.

Chapter 7

#9.00 Motion to Disqualify McDermott, Will & Emery LLC as Counsel for PAMC Ltd, PAMC Inc., The PAMC Ltd. or Inc. Boards, the PAMC Ltd. or Inc. Board Members, or Any Current or Former Officers of Synermed and/or PAMC Ltd. or Inc.

fr: 5-28-25

Docket 78

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

6/11/2025 -- Court approved stipulation continuing hearing to July 30, 2025 at 10:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

SynerMed, Inc.

Represented By
Ashley M. McDow
Shane J Moses
Susan L Poll Klaessy

Movant(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

Trustee(s):

Timothy Yoo (TR)

Represented By
Steven T Gubner
Ryan Coy
Jason B Komorsky

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Motion for Authority to Use Restricted Funds

fr: 1-8-25; 1-29-25; 2-5-25; 2-12-25; 3-5-25; 3-26-25

Docket 6817

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

12/20/2024 -- Court approved stipulation continuing hearing to January 29, 2025 at **2:00 p.m.** OFF CALENDAR FOR JANUARY 8, 2025.

1/13/2025 -- Court approved stipulation continuing hearing to February 5, 2025 at 10:00 a.m. and extended the deadline for the AG to respond to the motion from January 15, 2025 to January 22, 2025. OFF CALENDAR FOR JANUARY 29, 2025.

1/21/2025 -- Court approved stipulation continuing hearing to February 12, 2025 at 1:00 p.m. and extended the deadline for the AG to respond to the motion from January 22, 2025 to January 29, 2025. OFF CALENDAR FOR FEBRUARY 5, 2025.

2/5/2025 -- Court approved stipulation continuing hearing to March 5, 2025 at 10:00 a.m. and extended the deadline for the AG to respond to the motion from January 29, 2025 to February 26, 2025. OFF CALENDAR FOR FEBRUARY 12, 2025.

2/21/2025 -- Court approved stipulation continuing hearing to March 26, 2025 at 10:00 a.m. and extended the deadline for the AG to respond to the motion from February 26, 2025 to March 19, 2025. OFF CALENDAR FOR MARCH 5, 2025.

3/18/2025 -- Court approved stipulation continuing hearing to June 25, 2025 at 10:00 a.m. and extended the deadline for the AG to respond to the motion

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... **Verity Health System of California, Inc.** **Chapter 11**
from March 19, 2025 to June 18, 2025. OFF CALENDAR FOR MARCH 26, 2025.

5/21/2025 -- Court approved stipulation continuing hearing to July 30, 2025 at 10:00 a.m. and extended the deadline for the AG to respond to the motion from June 18, 2025 to July 18, 2025. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Kerry L Duffy
Brigette G McGrath
Gary D Underdahl
Nicholas C Brown
Anna Kordas
Mary H Haas
Robert E Richards
Lawrence B Gill
Richard Reding
Stephen J O'brien
Roger Kent Heidenreich

Movant(s):

Howard Grobstein

Represented By

Gary D Underdahl
Tania M Moyron

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Trustee(s):

Howard Grobstein Liquidating

Represented By
James Cornell Behrens

Howard Grobstein

Represented By
Gary D Underdahl
Tania M Moyron

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:22-13785 Marine Wholesale & Warehouse Co.

Chapter 11

#11.00 Motion to Use Cash Collateral

Docket 369

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion. Authorize debtor to continue using cash collateral on same terms through December 31, 2025. Waive appearances. Movant is authorized to upload order consistent with tentative ruling.

Party Information

Debtor(s):

Marine Wholesale & Warehouse Co.

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Movant(s):

Marine Wholesale & Warehouse Co.

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:23-12276 Ryan Magdi Girgis

Chapter 11

#12.00 Motion to Use Cash Collateral

Docket 201

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion. Authorize debtor to use cash collateral on same terms previously authorized through December 31, 2025. Waive appearances. Movant is authorized to upload order consistent with tentative ruling.

Party Information

Debtor(s):

Ryan Magdi Girgis

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Movant(s):

Ryan Magdi Girgis

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:24-19127 Unrivald Brands, Inc.

Chapter 11

#13.00 Motion To Further Extend The Exclusivity Periods For The Debtors To File A Plan And Obtain Acceptance Thereof

Docket 188

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion. Extend debtor's exclusive period to file plan until September 4, 2025 and its exclusive period to solicit acceptances for its plan until November 1, 2025. Waive appearances. Movant is authorized to upload order consistent with tentative ruling.

Party Information

Debtor(s):

Unrivald Brands, Inc.

Represented By
John-Patrick M Fritz
Robert Carrasco
Jeffrey S Kwong

Movant(s):

Unrivald Brands, Inc.

Represented By
John-Patrick M Fritz
John-Patrick M Fritz
Robert Carrasco
Robert Carrasco
Jeffrey S Kwong
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

2:24-16988 Nicholas Santiago and Daniella Ventrone

Chapter 7

#14.00 Motion to compel trustee to abandon interest in property of estate

Docket 33

***** VACATED *** REASON: CONTINUED TO 8-20-25 AT 1PM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Sustain trustee's evidentiary objections. The debtor has received distributions post-petition on account of the interests that the debtor wants the trustee to abandon that should have been paid to the estate. This demonstrates that these interests do indeed have value. Deny motion. The interests in question are neither burdensome nor of inconsequential value.

6/24/2025 -- Court approved stipulation continuing hearing to August 20, 2025 at 11:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

Nicholas Santiago

Represented By
Todd J Mannis

Joint Debtor(s):

Daniella Ventrone

Represented By
Todd J Mannis

Movant(s):

Nicholas Santiago

Represented By
Todd J Mannis

Daniella Ventrone

Represented By
Todd J Mannis

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

10:00 AM

CONT... Nicholas Santiago and Daniella Ventrone

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:22-13785 Marine Wholesale & Warehouse Co.

Chapter 11

#100.00 Hearing re: Motion RE: Objection to Claim Number 5 by Claimant Alcohol Tobacco Tax & Trade Bureau (Phase IV)

fr: 11-30-22; 2-7-23; 6-13-23; 7-18-23; 8-15-23; 10-17-23; 12-5-23; 1-30-24;
4-2-24; 5-7-24; 6-20-24; 7-16-24; 8-13-24; 10-10-24; 10-17-24; 12-5-24;
1-22-25; 3-26-25; 5-7-25; 5-14-25

Docket 90

Courtroom Deputy:

ZoomGov Appearance by:

5/13/25 - David Haberbush

5/13/25 - John Peterson

Tentative Ruling:

Tentative Ruling for November 30, 2022:

It would in any event have been the court's intention to conduct this initial conference as a status conference. Continue hearing to give debtor an opportunity to remedy any possible service defects. Set new status conference within approximately the next 60 days to discuss timing for discovery, potential for mediation, and any other procedural issues.

Final Ruling for November 30, 2022:

(Service problems have now been remedied.) Deem matter to be adversary proceeding for procedural purposes. (Court entered order to this effect on December 1, 2022, docket no. 107.) Set continued status conference for February 7, 2023 at 2:00 p.m. Parties should file joint status report not later than January 24, 2023.

Tentative Ruling for February 7, 2023:

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

Parties have both asked that matter be sent to mediation. Continue status conference for approximately 90 to 120 days and order parties to complete a day of mediation prior to date of continued status conference.

3/15/23 -- court approved scheduling order with following dates:

Cont'd status conference -- June 13, 2023 at 2:00 pm

L/D to attend mediation -- June 13, 2023

L/D to lodge order appointing mediator -- March 27, 2023

L/D to file status report -- May 30, 2023

3/28/23 -- Court approved order appointing mediator.

Tentative Ruling for June 13, 2023:

At request of parties, continue status conference to July 18, 2023 at 2:00 p.m. Parties should file a joint status report, utilizing the court's mandatory form for this purpose, not later than July 5, 2023. APPEARANCES WAIVED ON JUNE 13, 2023.

Tentative Ruling for July 18, 2023:

At the request of the parties, continue status conference to August 15, 2023 at 2:00 p.m. to give them a further opportunity to meet and confer about how best to bifurcate discovery so that the "change of control" issue can be litigated first. APPEARANCES WAIVED ON JULY 18, 2023.

Tentative Ruling for August 15, 2023:

Debtor outlines a proposal for bifurcating issues. The first of the issues identified on page 4 of its supplement to the status report may be a factual issue. The second appears to be purely a legal issue, no? What is the TTB's response to the debtor's proposal?

Set deadline for completion of discovery on change of control issue and set continued status conference shortly thereafter for parties to discuss how best

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

to proceed once that discovery has been completed. (Court agrees that number of interrogatories, depositions, etc. completed during this first phase should be disregarded in future phases of litigation, if there need to be any.)

8/22/23 -- Court signed scheduling order with following dates:

Parties to complete discovery with regard to facts surrounding 2012 transfer of shares in Debtor, the control of debtor's operations before and after the transfer and whether such transfers constituted a reportable event and/or a change of control not later than October 16, 2023. Court will conduct a continued status conference on October 17, 2023 at 2:00 p.m. (No status report is required for this status conference.)

10/16/23 -- Court approved stipulation continuing hearing to December 5, 2023 at 2:00 p.m., extending deadline for parties to respond to each other's outstanding written discovery to October 31, 2023 and extending the discovery cutoff for phase 1 of the litigation to December 1, 2023 for the sole purpose of conducting certain depositions. OFF CALENDAR FOR OCTOBER 17, 2023.

Tentative Ruling for December 5, 2023:

Are the parties requesting an extension of the discovery cutoff for what they are referring to as "phase I"? If so, for how long? Hearing required.

12/15/23 -- Court signed scheduling order setting following dates:

L/D to file discovery motions -- January 9, 2024
L/D to lodge joint pretrial order -- January 16, 2024
Pretrial conference -- January 30, 2024 at 2:00 p.m.

Tentative Ruling for January 30, 2024:

No discovery motions for phase 1 were filed by cutoff date. Parties have lodged a proposed pretrial order. Approve parties' proposed order and discuss with parties whether there is any need for an evidentiary hearing for phase 1 or whether the court can resolve the issues with briefing only.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

Either a change in legal control or a change in actual control can trigger a duty to report and an automatic lapse of the permits. As the pretrial order does not contain either any facts or any issues concerning who actually controlled or managed the entity, the Court assumes that the dispute here is whether or not there was a change in "legal control." Assuming the court can disregard the fact that Robert L. Hartry's shares were transferred to a (presumably revocable) family trust somewhere before 2012, he nevertheless went from owning 80.4 percent of the shares to 45.4 percent as a result of the 2012 transactions. He therefore ceased to be a "majority" shareholder, but, after the 2012 transfers/sales there was no new majority shareholder. Is this "a change in the person who owns or controls the majority of the voting stock" of the debtor? This would appear to be a legal issue that can be resolved based on the facts outlined in the pretrial order, no?

1/30/2024 -- Court modified and approved pretrial order during status conference and set the following dates:

1. Debtor's opening brief in relation to Phase I of the litigation of the Objection to Claim is due no later than February 27, 2024.
2. TTB's responsive brief in relation to Phase I of the litigation of the Objection to Claim is due no later than March 19, 2024.
3. Debtor's reply brief in relation to Phase I of the litigation of the Objection to Claim is due no later than March 26, 2024.
4. Court will conduct a hearing on Phase I of the litigation of the Objection to Claim will take place on April 2, 2024 at 11:00 a.m.
5. The parties shall meet and confer regarding the need for exhibits in relation to the above-reference briefing of Phase I of the litigation of the Obligation to Claim in light of the entered Pretrial Order [docket number 219].

NOTE: Parties agreed on record at January 30, 2024 pretrial conference that the court can resolve the Phase I issues with briefs and argument and that they have stipulated to all operative facts relevant to the determination of these issues.

Tentative Ruling for April 2, 2024:

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

1992 - On December 29, 1992, the shares of Debtor were held as follows:

Robert L. Hartry -- 804 shares, 80.4%

Robert H. Hartry -- 50 shares, 5%

Eric M. Hartry -- 146 shares, 14.6%.

2012 - At a meeting of Debtor's Board of Directors held on December 15, 2012, the shares of Debtor were transferred and sold, resulting in the following share ownership:

Robert L. Hartry, as Trustee of the

Robert L. Hartry and Margareta I.

Hartry Living Trust for the Benefit

of Robert L. Hartry and Margareta I.

Hartry and their issue under instrument

Dated November 16, 1981

-- 454 shares, 45.4%

Eric M. Hartry

-- 146 shares, 14.6%

Robert H. Hartry

-- 250 shares, 25%

Jerry Anderson

-- 150 shares, 15%.

§ 44.107 Change in stockholders of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as an

export warehouse proprietor, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate proprietor shall, within 30 days after the change occurs, make application for a new permit; otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the proprietor shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of §§ 44.146 and 44.151, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

Neither the Internal Revenue Code's tobacco export warehouse provisions, nor the

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

related TTB regulations, specifically define the phrase "a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation" as it appears in 27 C.F.R. § 44.107. However, TTB's website contains information under a drop-down tab entitled "Changes After Original Qualification - Permits Online":

Change in Control

A change in control can either be a change in legal or actual control within a business entity holding a permit as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor under the IRC. **A change in legal control occurs when there has been a change in the person who owns or controls the majority of voting stock in a corporate entity.** A change in actual control occurs when there is a change in the person who exercises managerial control over the operations of the business. Examples of changes in actual control include changes in partnership ownership interest, in LLC membership ownership, and in officers and directors of a corporation or other business entity.

Debtor argues that there was no change in legal or actual control because (1) members of the Hatry family still controlled 85 percent of the shares of the corporation and (2) debtor remained a subchapter S corp and, pursuant to subchapter S of the IRC, all shareholders from the same family are to be treated as a single shareholder for the purpose of determining whether the corporation has satisfied the subchapter S requirement that there be less than 100 shareholders. (Hartry family members that owned stock in debtor are sufficiently closely related to qualify as members of a family for this purpose per definitions in 26 U.S.C. section 1361(c).) Debtor also argues that the officers and employees of the debtor remained unchanged and their roles and responsibilities remained unchanged, so there was no change in actual control.

Debtor also notes that, pursuant to the bylaws of the corporation, a simple majority vote is required for matters requiring shareholder approval and that therefore that the change in ownership did not alter the votes needed to achieve a majority. This is not accurate, however. Pursuant to the bylaws, each shareholder is entitled to one vote for each share he or she owns and is entitled to aggregate his/her votes. Prior to the

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

change, Robert L. Hatry, acting alone, held a majority of the shares and therefore did not need anyone else's vote to approve an action that was required to be approved by a majority vote. Following the transaction, other shareholders, acting together, could outvote him and, if everyone voted all of their shares, at least one other shareholder would need to vote with him in order to achieve a majority.

Court agrees with the debtor that it does not appear that deference to the agency's views is warranted here under Auer v. Robbins, 519 U.S. 452 (1997) and Kisor v. Wilkie, 588 U.S. ___, 139 S.Ct. 2400 (2019). The TTB does not actually have an authoritative or official interpretation of 27 C.F.R. section 44.107. The relevant regulations do not provide an official or uniform definition or any guidance as to the meaning of the phrase "change in the identity," "principal shareholders," or "control." Therefore, the court must interpret these phrases.

The debtor complains of the fact that, although Stacey Houston of the TTB learned about the change in ownership on November 16, 2015, no cease and desist letter was sent until March 31, 2017 and that, prior to the issuance of that letter, the TTB had only complained of a change of ownership, management or control giving rise to an automatic termination of the debtor's alcohol permits and not the debtor's tobacco permits or that the TTB was applying the standards set forth in sections 1.42 and 1.44 to its situation, rather than those of section 44.107. This argument is a bit difficult to follow. There is an email exchange earlier in March of 2017 that only refers to sections 1.42 and 1.44, but the March 31, 2017 cease and desist letter does cite section 44.107 and asserts that there has been an unreported change of control resulting in the loss of the tobacco permits under that section. (See Exhibit G of Compendium.) While it may be unclear when the TTB first decided that the provisions of section 44.107 had been triggered, it is clear that, by the time the March 31, 2017 cease and desist letter was drafted, the TTB was looking at the correct section and arguing that the type of change referenced in that section had occurred. And section 44.107 does provide for an automatic termination of the relevant permits if notice is not given within 30 days (subject to an extension if an application for a new permit is submitted within this 30-day period).

These facts, if relevant at all, do not have any bearing on the answer to the only issue the court will be adjudicating during Phase I -- "Whether the December 15, 2012 transfer of shares in the Debtor 'result[ed]' in a change in the identity of the principal

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

stockholders exercising actual or legal control of the operations of the corporation' within the meaning of 27 C.F.R. section 44.107." [See Pretrial Order, p. 8, at lines 13-15.] Whether the debtor can make an equitable argument of some kind based on any delay on the part of the TTB in raising the argument that its tobacco permits automatically terminated in 2012 based on the debtor's failure to give the required notice and apply for a new permit within 30 days after the transfer or based upon the TTB's failure to provide clearer guidance and definitions is a matter for a later phase of this litigation.

Admittedly, the action commenced by the debtor against the TTB on June 30, 2017 in the US District Court for the District of Columbia [Marine Wholesale & Warehouse Co. v. United States, 315 F. Supp. 3d 498 (D.C. 2018)], was dismissed for lack of subject matter jurisdiction, but in the section in which it concludes in the alternative that the debtor has failed to state a claim upon which relief can be granted, its analysis of the relevant facts is directly on point, well-reasoned and persuasive. The following are excerpts from that decision. (Emphasis added.)

In this case, MWW's amended complaint makes clear that, "[p]rior to December 15, 2012, Robert L. Hartry [was] the principal shareholder of MWW, holding 80.4% of the shares of the corporation," and that "[t]he remaining shares were owned 5% by Robert H. Hartry, son of Robert L. Hartry, and 14.6% by Eric M. Hartry, son of Robert L. Hartry." Am. Compl. ¶ 18. MWW then states that, "[o]n or about December 31, 2012, Mr. [Robert L.] Hartry transferred a percentage of MWW shares such that, after the transfer, the shareholdings were as follows: Robert L. Hartry, 45.4%; Robert H. Hartry, and Eric M. Hartry, his sons, 25% and 14.6%, respectively; and Mr. Jerry Anderson, 15%." Id. ¶ 20. MWW does not allege that it reported **this change—which changed Robert L. Hartry's ownership by nearly 40 percent, changed Robert H. Hartry's ownership by 20 percent, and added a new shareholder from outside the Hartry family—to the TTB. Thus, taking the facts stated in MWW's amended complaint as true, MWW's permits terminated by operation of law when this transfer, resulting in a change of control and a new owner, was made**, and accordingly no notice or opportunity for a hearing was required. See 27 U.S.C. § 204(e) (requiring "due notice and opportunity for hearing to the permittee" only for the revocation, suspension, or

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT...

Marine Wholesale & Warehouse Co.

Chapter 11

annulment of a permit but not for an automatic termination).

MWW nevertheless argues that " 'actual or legal control' of MMW [sic] has not been acquired by any other person as a result of the 2012 share transfer transaction" and that "[t]he Hartry family, required to be treated as a single shareholder of the Subchapter S corporation which holds the permit, retained 85% of the shares of the company after the share transfer occurred." Pl.'s Opp'n at 11. MWW is an S-corporation and is correct that, under 26 U.S.C. § 1361(c)(1), "all members of a family"—which means "common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant," id. § 1361(c)(1)(B)(i) —shall be treated as one shareholder, id. § 1361(c)(1)(A)(ii). **The fact that MWW is an S-corporation, however, does not mean that the shareholder-counting rules applicable to S-corporations also apply throughout the United States Code. Rather, § 1361(c)(1) applies only "[f]or purposes of subsection (b)(1)(A)," which defines a "small business corporation" as a "domestic corporation" with no more than 100 shareholders. Id. § 1361(b)(1)(A). Thus, the requirement in § 1361(c)(1) that family members be treated as a single shareholder applies only to § 1361(b)(1)(A), and does not extend to other sections of Subchapter S, let alone to the rest of Title 26 and Title 27 of the U.S. Code.** Indeed, the D.C. Circuit has previously affirmed an order of the TTB's predecessor agency concluding that a transfer of shares from wife to husband "constitutes a change in the control and management of the business ... necessitating the issuance of a new basic permit under the Federal Alcohol Act." United Distillers II , 243 F.2d at 668 (internal quotation marks omitted; alteration in original).

Even assuming, as the plaintiff argues, that Subchapter S of the Internal Revenue Code applies to the provisions of the Internal Revenue Code and the FAAA at issue in this case, the plaintiff's argument fails. The plaintiff ignores the fact that Jerry Anderson—who is not a member of the Hartry family—acquired 15 percent of outstanding MWW shares as a result of the 2012 share transfer. See Am. Compl. ¶ 20. Thus, even treating the Hartry family as a single shareholder, MWW failed to notify the TTB of "a change in the identity of the principal stockholders exercising actual or legal

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

control of the operations of the corporation." 27 C.F.R. § 44.107

This Court agrees on both counts. The manner in which family members are to be counted for the purpose of determining whether an S Corp has more than 100 shareholders has no bearing on the determination of whether or not there has been a change of actual or legal control for the purpose of section 44.107. And the December 2012 transaction did result in a change in the identity of the principal stockholders exercising legal control over the operations of the corporation. Therefore, this change should have been reported to the TTB.

And this should not come as news to the debtor. It had previously failed to report changes in ownership and had had its permits automatically terminated. It then applied for new permits and, in conjunction with those applications, reiterated its obligation to notify the TTB of changes in ownership. Notice should have been given here as well.

Discuss with parties how best to proceed with the balance of this litigation. Do the parties want an opportunity to return to mediation?

Final Ruling for April 2, 2024:

Court adopted tentative ruling. Continue hearing to May 7, 2024 at 2:00 p.m. Court waived the requirement of a written status report. Parties should be prepared to discuss how best to proceed with the balance of the issues in this action.

Tentative Ruling for May 7, 2024:

Court held that the December 15, 2012 transfer of shares constituted a change of legal control within the meaning of 27 CFR section 44.107. Discuss with parties how to proceed with the next phase of this litigation.

6/7/24 -- Court approved stipulation continuing hearing to **July 16, 2024 at 2:00 p.m.**
OFF CALENDAR FOR JUNE 20, 2024.

7/2/24 -- Court approved stipulation continuing hearing to August 13, **2024 at 2:00 p.m.** OFF CALENDAR FOR JULY 16, 2024.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

Tentative Ruling for August 13, 2024:

Finalize with parties the issues to be resolved in Phase II of this litigation and determine whether it will be necessary to give the parties an opportunity to conduct discovery at this juncture. Hearing required.

Tentative Ruling for October 17, 2024:

Both parties overlook and misstate the relevant issues to some extent. The debtor places too much emphasis on the TTB's admission that it had a bond in place throughout the relevant period. This is not the issue. The question is whether the debtor qualifies as a "bonded internal revenue warehouse" or an "export warehouse proprietor" even though it no longer had a valid permit during the relevant time period. The TTB argues that the debtor cannot be an "export warehouse proprietor" because 27 CFR section 44.82 requires it to have a permit. This is an inaccurate reading of section 44.82.

27 CFR section 44.11 defines as "export warehouse" as "A bonded internal revenue warehouse [which term is not defined in the statute] for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States."

27 CFR section 44.82 says (emphasis added):

Every person, before commencing business as an export warehouse proprietor, must apply on TTB form 2093 (5200.3) and obtain the permit provided for in section 44.93. All documents required under this part to be furnished with such application shall be made a part thereof.

It does not appear that anyone disputes that, before it commenced business as an export warehouse proprietor, the debtor applied for and obtained the required permit. The issue is whether one remains an "export warehouse proprietor" if the permit that it

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

once had is terminated.

Debtor also provides a misleading discussion of 26 U.S.C. section 5761(c). That section provides as follows (emphasis added):

(c) Sale of tobacco products and cigarette papers and tubes for export
Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the
jurisdiction of the United States any tobacco products or cigarette papers
or tubes which have been labeled or shipped for exportation under this
chapter,

(2) every person who sells or receives such relanded tobacco
products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or
receiving, shall, in addition to the tax and any other penalty provided in
this title, be liable for a penalty *equal to the greater of \$1,000 or 5 times
the amount of the tax imposed by this chapter*. All tobacco products and
cigarette papers and tubes relanded within the jurisdiction of the United
States shall be forfeited to the United States and destroyed. All vessels,
vehicles, and aircraft used in such relanding or in removing such
products, papers, and tubes from the place where relanded, shall be
forfeited to the United States. This subsection and section 5754 shall not
apply to any person who relands or receives tobacco products in the
quantity allowed entry free of tax and duty under subchapter IV of
chapter 98 of the Harmonized Tariff Schedule of the United States. No
quantity of tobacco products other than the quantity referred to in the
preceding sentence may be relanded or received as a personal use
quantity.

The \$1,000 penalty described in section 5761(a) is limited to \$1,000 (in addition to any other penalty imposed by the chapter) for anyone who willfully omits, neglects or refuses to comply with any duty imposed upon him by the chapter, etc., but this willfulness requirement does not appear in section 5761(c). And subsection (c) does

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

not merely impose a penalty of \$1,000 (in addition to other penalties imposed by the chapter). The penalty is the *greater* of \$1,000 and five times the amount of the tax.

The TTB says that, if section 5761(c) applies, then the exemption of section 5704(b) does not apply. (See docket no. 277 at lines 23 through 24.) Why would this be the case? Section 5761(c) is expressly subject in the introductory language to the exceptions set forth in section 5704(b) and (d). The issue here is again whether the debtor, having lost its permit, still falls within the definition of an "export warehouse proprietor" that appears in section 5704(b).

Section 5704(b) provides as follows:

(b)Tobacco products and cigarette papers and tubes transferred or removed in bond from domestic factories and export warehouses

A manufacturer or *export warehouse proprietor* may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or *export warehouse proprietor*, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary shall prescribe. Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe.

So it appears to be true that, if the debtor no longer qualified as an export warehouse proprietor after its permit terminated, that it would not be able to transfer product without tax liability under 5704(b), but would it have liability in the first place? Perhaps it has its own liability under section 5761, but the manufacturer's liability would not be transferred to it under section.

Section 5703(a) provides as follows:

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

(a) Liability for tax

(1) Original liability

The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

(2) Transfer of liability

When tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, the liability for tax shall be transferred in accordance with the provisions of this paragraph. When tobacco products and cigarette papers and tubes are transferred **between the bonded premises of manufacturers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles, and the transferor shall thereupon be relieved of his liability for such tax.** When tobacco products and cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of his liability for such tax. All provisions of this chapter applicable to tobacco products and cigarette papers and tubes in bond shall be applicable to such articles returned to bond upon withdrawal from the market or returned to bond after previous removal for a tax-exempt purpose.

Perversely, does this mean that, if the debtor is not an "export warehouse proprietor," liability for the unpaid taxes never transfers from the manufacturer to the warehouse proprietor and the manufacturer is never relieved of the liability for this tax? The debtor may have acknowledged that it has liability under section 5703, but that is because the debtor contends that it is an "export warehouse proprietor" within the meaning of these sections. If, as the TTB contends, the debtor no longer qualified as an "export warehouse proprietor" after its permit terminated, then the debtor would not have liability as the transferee of tobacco products under this section (although it may well have liability under section 5761(c) that it could not then transfer away under section 5703).

In any event, this is a long-winded way of saying that the issue the Court needs to focus on for Phase II is whether the debtor still qualifies as an "export warehouse

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

proprietor" for the purpose of these sections if its permit has terminated by the time it is receiving and transferring product on which the taxes have not been paid. Once we have the answer to this question, the Court should be able to apply the relevant code sections and determine whether they impose liability upon the debtor in the first place and whether they permit the debtor to transfer that liability on to another.

Rather than adopt either party's "decision tree," the Court would like to focus on the answer to this question. This appears to be a pure issue of law as to which there are no relevant factual disputes. Is this correct?

Hearing required.

Final Ruling for October 17, 2024:

Continue hearing to December 5, 2024 at 10:00 a.m. Parties have agreed that the following are legal issues only that can be resolved by the court without the need for an evidentiary hearing at that time. Parties are to file simultaneous briefs concerning these issues not later than November 6, 2024 and replies not later than November 20, 2024.

The issues to be decided at the December 5, 2024 hearing are as follows:

1. Whether, when 26 U.S.C. § 5704(b) says that an export warehouse proprietor may remove tobacco products and cigarette papers and tubes for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States (or for consumption beyond the jurisdiction of the internal revenue laws of the United States) without the payment of tax, **“in accordance with such regulations . . . as the Secretary shall prescribe”** (provided that the removed items bear such marks, labels or notices as the Secretary by regulations prescribes), the quoted and highlighted language includes:

a. the requirement that the export warehouse proprietor have a valid permit in effect at the time of such removal (because of the language of 26 U.S.C. § 5713(a), 27 C.F.R. 44.81 and/or 27 C.F.R. 44.93); and/or

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

b. the requirement that the export warehouse proprietor have fulfilled its obligation to notify the TTB in a timely manner of any change of control pursuant to 27 C.F.R. 44.107.

2. Whether the Debtor still qualifies as an “export warehouse proprietor” as defined in 27 C.F.R. 44.11 after its permit has terminated.

Tentative Ruling for December 5, 2024:

26 U.S.C. section 5713(a) reads:

(a) Issuance. A person shall not engage in business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor without a permit to engage in such business. Such permit, conditioned upon compliance with this chapter and regulations issued thereunder, shall be issued in such form and in such manner as the Secretary shall by regulation prescribe, to every person properly qualified under sections 5711 and 5712. A new permit may be required at such other time as the Secretary shall by regulation prescribe.

27 C.F.R. section 44.81 reads as follows:

Persons required to qualify. Every person who intends to engage in business as an export warehouse proprietor, as defined in this part, shall qualify as such in accordance with the provisions of this part.

27 C.F.R. section 44.93 reads as follows:

Issuance of Permit. After the application for permit, bond, and supporting documents, as required under this part, has been approved, the appropriate TTB officer will issue a permit to the export warehouse proprietor. The proprietor must keep such permit at the export warehouse and make it available for inspection by an appropriate TTB officer.

27 C.F.R. section 44.11 reads, in pertinent part, as follows:

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor: Any person who operates an export warehouse.

27 C.F.R. section 44.107 reads as follows:

Change in Stockholders of a Corporation. Where the issuance, sale, or transfer of the stock of a corporation, operating as an export warehouse proprietor, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate proprietor shall, within 30 days after the change occurs, make application for a new permit; otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, ***and the proprietor shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of §§ 44.146 and 44.151, respectively, and surrender his permit with such inventory and report.*** If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application. [Emphasis added.]

The debtor argues that, even though, as this Court has already found, its export warehouse permit expired automatically by operation of law 30 days after the change of control that occurred on December 15, 2012, due to its failure to report the change of control, it is still able to rely on the tax exemption created by 26 U.S.C. section 5704(b) so long as it operated its business during the relevant time period in accordance with the regulations that govern its day-to-day operations (such as labelling requirements), and that the regulations referenced in section 5704(b) do not include the requirement that it maintain a valid permit. The Court rejects this analysis.

It is true that the definitions of export warehouse and export warehouse proprietor that appear in 27 CFR section 44.11 do not specifically make reference to the need for a permit, but, read in their entirety, the applicable statutes and regulations make clear that no one is permitted to operate as an export warehouse proprietor without a valid permit in effect. Section 5713(a) says as much: A person shall not engage in business as a manufacturer or importer of tobacco products or processed tobacco **or as an**

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

export warehouse proprietor without a permit to engage in such business.

Before starting business as an export warehouse proprietor, persons need to apply for and obtain a permit. 27 CFR section 44.82. And, following an automatic termination of a permit due to a failure to report a change of control, unless it promptly applies for a new permit (which did not happen here), the proprietor is required to windup its export warehouse business and stop operating as such. See 27 C.F.R. section 44.107 (quoted above) (requiring proprietor to "dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report

. . . and surrender his permit with such inventory and report"). The applicable statutes and regulations do not permit the continued operation of an export warehouse after termination of the required permits.

Although the opinions cited by the TTB were cases in which courts ultimately dismissed the relevant actions for lack of jurisdiction (as they were attempts to enjoin the collection of taxes in violation of the Anti-Injunction Act), all of these cases assume or expressly state that, once the proprietor's permit terminates automatically due to a failure to report a change of control, the proprietor becomes liable for any taxes and penalties not paid by the manufacturer: "Export warehouse permits . . . afford tobacco exporters an exemption from federal excise taxes." Gulf Coast Mar. Supply, Inc. v. United States, 867 F.3d 123, 126 (D.C. Cir. 2017) (per curiam); "Without valid permits, export warehouse proprietors are liable for the unpaid excise taxes and penalties that would otherwise apply" to such products. Marine Wholesale & Warehouse Co. v. United States, 315 F. Supp. 3d 498, 502 (D. D.C. 2018) (citing 26 U.S.C. §§ 5703(a)(2), 5704(b), (d), 5761(c)); Gulf Coast Mar. Supply, 867 F.3d at 125 (export warehouse permits "immunize" their holders "from penalties—and in the case of tobacco, taxes as well—on the unauthorized sale of tobacco"); Gulf Coast Mar. Supply, Inc. v. United States, 218 F. Supp. 3d 92, 94-95 (D. D.C. 2016) ("Export warehouse proprietors must operate with a permit issued by TTB. . . . Without such a permit, they may become liable for the excise tax and penalties if they receive tobacco products that did not have the excise tax paid by the manufacturer. 26 U.S.C. §§ 5703(a)(2), 5704(b), 5761(c).").

The Court finds that, at a minimum, CFR section 44.107 is one of the regulations that govern how an export warehouse proprietor must operate in order to qualify for the

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

tax exemption available under 26 U.S.C. section 5704(b). That regulation requires the proprietor to dispose of its tobacco products, make a closing inventory and a closing report after an automatic termination occurs (unless the proprietor timely applies for a new permit). That is, the proprietor is supposed to close up its tobacco sales operation and stop operating as an export warehouse proprietor of tobacco products. There is no dispute that the debtor did not do that and, instead, continued to operate its tobacco business (until it received a cease and desist letter sometime in 2017). Therefore, even if the debtor still fell within the definition of an export warehouse proprietor after the termination of its permit, it did not comply with the regulations that govern the operation of its business, and the tax exemption created by section 5704(b) ceased to be available to the debtor after the automatic termination of its permit.

01/02/2025 -- Court entered order resolving Phase II of the litigation, in which it held that the debtor ceased to be eligible for the tax exemption created by section 5704(b) once its permit terminated. Court directed parties to file statements setting forth their respective views as to what issues the court should address in the next phase of this litigation not later than January 10, 2025. Court scheduled a continued hearing for January 22, 2025 at 10:00 a.m. and enjoined discovery until that date.

Tentative Ruling for January 22, 2025:

Court has reviewed its records and files in this matter and the parties' respective pretrial statements. Based on this review, it appears that the debtor does not understand which code sections, theories and assessments the TTB is relying on in asserting that it owes the amounts set forth in claim no. 5 and that the TTB does not know what defenses the debtor believes it may still have to the TTB's contention that it owes these amounts.

The TTB says, on page 1, at lines 23 and 24 of its pretrial statement (Docket No. 305) that "The United States can provide to the Debtor the calculations and underlying information used to support TTB's assessment." Court should set a date for the TTB to do this, as well as articulate the legal theories that underlie its calculations (i.e., respond to the arguments advanced in the debtor's pretrial statement as to the absence of a basis to assess these amounts). Court should set a later deadline for the debtor to articulate in writing the defenses that it believes it is entitled to assert with regard to the amounts claimed by the TTB. Thereafter, the court should conduct a continued

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

status conference to discuss with the parties whether there are additional legal issues that should be resolved summarily and whether there are factual disputes for which discovery will be required.

Final Ruling for January 22, 2025:

TTB must send backup to the debtor reflecting its claim calculations not later than February 24, 2025. (This backup need not be filed with the court.) Not later than February 26, 2025, TTB shall file and serve any reply/response that it may have to the debtor's last reply, setting forth its theories of liability. Not later than March 12, 2025, the debtor will file and serve a memorandum of points and authorities that includes a recitation of the defenses that it plans to assert in response to the TTB's theories of liability. The court will conduct a continued status conference on March 26, 2025 at 11:00 a.m. to discuss how best to proceed with this litigation based on the parties' respective filings. In the interim, the stay on discovery will remain in effect (other than the discovery directed by the court in this ruling).

Tentative Ruling for March 26, 2025:

26 U.S.C. section 5761(c) provides as follows:

(c) Sale of tobacco products and cigarette papers and tubes for export:

Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT...

Marine Wholesale & Warehouse Co.

Chapter 11

the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

The debtor describes this section as only imposing a penalty and, from that, reasons that there is no basis for it to have liability for the taxes themselves (as distinguished from penalties) on tobacco. Therefore, the debtor is of the view that the only possible basis for it to have liability for the taxes themselves is transferee liability under section 5703(a)(2), which should not apply here as the court has found that the debtor does not qualify as an export warehouse proprietor after termination of its permits.

The Court rejects this analysis. Section 5761(c) is broader than the debtor has chosen to read it. It *does* impose liability for the payment of taxes and is not merely a statute imposing penalties. It says that the specified persons shall be liable, in addition to the tax and any other penalties, for the additional penalties imposed by the section. Moreover, the Court did not find that the debtor is exempt from transferee liability under section 5703(a)(2) because it is not a bonded export warehouse proprietor. **The question that the court answered in phase II was whether the debtor could continue to rely upon the exemption from tax liability provided by section 5704(b) after its permits terminated. The court answered that question in the negative.** (See Court's January 27, 2025 order, docket no. 319, at page 5, lines 21 through 23.) The court found that the debtor failed to operate in accordance with the applicable regulations because it did not have a permit. Although it raised the issue, the Court did not make a finding as to whether the debtor would, or would not, have transferee liability under section 5703(a)(2) after its permits terminated.

The following language appears on page 7, at lines 16 through 26, of the Court's

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

January 27, 2025 order (emphasis added):

The Court finds that, at a minimum, 27 C.F.R. § 44.107 is one of the regulations that govern how an export warehouse proprietor must operate in order to qualify for the tax exemption available under 26 U.S.C. § 5704(b). That regulation requires the proprietor to dispose of its tobacco products, make a closing inventory and a closing report after an automatic termination occurs (unless the proprietor timely applies for a new permit). That is, the proprietor is supposed to close up its tobacco sales operation and stop operating as an export warehouse proprietor of tobacco products. There is no dispute that the Debtor did not do that and, instead, continued to operate its tobacco business (until it received a Notice to Cease and Desist dated March 31, 2017).

Therefore, even if the Debtor still fell within the definition of an export warehouse proprietor after the termination of its permit, it did not comply with the regulations that govern the operation of its business, and the tax exemption created by section 5704(b) ceased to be available to the Debtor after the automatic termination of its permit.

This is why the TTB can accurately describe its contention that the debtor has liability under section 5703(a)(2) as an alternate theory of liability. In the court's view, both section 5761(c) and section 5703(a)(2) may be appropriate bases for tax liability in this case.

The Court was unable to locate any authority in the debtor's brief for the debtor's contention that section 5761(c) is only about imposing penalties and cannot itself be a basis upon which a taxing authority may rely to impose the taxes themselves. Has the debtor been able to locate any authority to support this proposition? (It is notable that, in all of the cases that the parties have cited to the court that discuss whether a export warehouse proprietor would have tax liability after its permits terminated conclude or assume that such liability exists and that the loss of the permit means the exemption from this tax liability is no longer available. None of these cases entertained the possibility that both the tax liability and the exemption would terminate when the permit terminated.)

The debtor also makes a variety of assertions about assessment of the penalties and claims that the appropriate procedures were not followed. On what is the debtor basing this assumption? How does the debtor know that there was never an

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

assessment of penalties or that the appropriate supervisor did not approve any such assessment?

The debtor also asserts that it is now too late for the TTB to assert that the debtor is liable for penalties and offers citations to 28 U.S.C. section 2462 and 26 U.S.C. section 6501, but provides no discussion or analysis as to what these sections say or how they apply on these facts.

28 U.S.C. section 2462 provides: Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

(This section talks about when a lawsuit must be filed. It does not discuss when a penalty may be assessed, and when does a claim "first accrue" within the meaning of this section? Perhaps a claim for taxes accrues when the tax is first assessed? Debtor does not shed any light on these issues.)

26 U.S.C. section 6501 provides, in pertinent part:

(a) General rule: Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed

* * *

(3) Return executed by Secretary: Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

limitations on assessment and collection.

(4) Return of excise taxes: For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c)Exceptions:

(1) False return: In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax: In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return: In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(Again, the debtor does not discuss how this section would apply on these facts. Would there actually be a three-year time limit here, or would one of the sections that permit an assessment at any time be the applicable provisions on these facts?)

Would it make sense as a next step to have the parties brief the statute of limitations arguments that the debtor has made with regard to the penalties, or are there material facts in dispute that would make this inappropriate? (Note: Court assumes that this argument applies only to any claim by the TTB for penalties, and not to its claim for the taxes themselves, as the attachments to its proof of claim list assessment dates for at least the taxes and then accrued interest. Court was unable to determine definitively whether the amounts reflected on the attachments that show assessment dates include penalties or not.)

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

Hearing required.

Final Ruling for March 26, 2025:

The Parties agreed on the record that the following issues (the "Phase III Issues") are purely legal issues that can be resolved by the Court without the need for an evidentiary hearing and should be resolved by the Court at the next hearing on the Claim Objection:

1. Whether 26 U.S.C. § 5761(c) can itself be the basis for the imposition of tax liability (as distinguished from liability for the payment of a penalty) or whether this section only creates liability for the payment of penalties;
2. Whether a TTB Form 5220.4 qualifies as a "return" within the meaning of 26 U.S.C. § 6501; and
3. May a tax assessment be sustained on any applicable basis whether or not that basis is set forth in the assessment, or must an assessment specify the code section(s) that is/are the correct basis for the tax liability in order for an assessment to be valid.

The Parties shall file and serve simultaneous briefs on the Phase III Issues not later than April 16, 2025. The Parties shall file and serve any responses that they may have to the foregoing briefs not later than April 30, 2025. The Court will conduct a hearing on May 7, 2025 at 11:00 a.m., at which it will consider the Parties' respective briefs and oral arguments with regard to the Phase III Issues and, to the extent possible, resolve these issues.

4/25/2025 -- Court approved stipulation continuing hearing to May 14, 2025 at 1:00 p.m. OFF CALENDAR FOR MAY 7, 2025.

Tentative Ruling for May 14, 2025:

As a preliminary matter, the Court notes that the debtor has again mischaracterized the Court's prior holdings in this matter. In Phase II, the Court held (in docket no. 319) that the debtor was not eligible for the tax exemption created by section 5704(b) NOT

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

because it was no longer an export warehouse proprietor after it lost its permit, but rather because it did not operate its business in accordance with the applicable regulations. (The Court found that these regulations included the requirement that an export warehouse proprietor maintain a valid permit to engage in this business.) Therefore, debtor cannot argue that liability for any applicable taxes remained with the manufacturer and never transferred to it based on any ruling made by this Court.

The Court also rejects the debtor's argument that it was operating without a permit due to a mistaken view of the law. The debtor had already had the applicable law explained to it when it failed to report an earlier change of control. The debtor knew that it was supposed to report changes of control and yet failed to do so, and failed to apply for a new permit based on the change of control.

The debtor also raises for the first time in its brief the argument that it would be unconstitutional to impose tax liability upon it for products that were exported. This issue is not presently before the Court; however, the Court notes that this argument would render the tax exemption of section 5704 meaningless and unnecessary. Anyone could avoid tax liability, whether they had a permit or not, whether they packaged the products appropriately or not, whether they operated their business in compliance with any other applicable regulations or not, so long as they actually exported the relevant products. The TTB's reply does a good job of explaining why the sections in question do not violate the Export Clause. The tax in question is not being imposed because of the exports.

Issue 1 -- Does section 5761(c) itself create tax liability (as distinguished from liability for penalties)? The Court agrees with the debtor that, when read in context, the better reading of this section appears to be that it merely relates to penalties and is not itself an independent basis for the imposition of a tax itself.

Issue 2 -- Does a TTB Form 5220.4 (the "Report") qualify as a "return" within the meaning of section 6501? No.

The Court in Beard v. Commissioner of Internal Revenue Service identified four factors to determine whether a filing constitutes a "return" sufficient to trigger the running of a statute of limitations. These factors are:

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

(1) Sufficient Data: The document must contain enough information to allow the Commissioner of the Internal Revenue Service to compute the taxpayer's tax liability.

(2) Purported Return: The document must purport to be a return, meaning it must appear to be intended as a tax return.

(3) Honest and Reasonable Attempt: The filing must represent an honest and reasonable attempt to satisfy the requirements of the tax law.

(4) Execution Under Penalties of Perjury: The document must be executed under penalties of perjury, which typically requires the taxpayer's signature.

If a filing meets all four of these criteria, it may be considered a valid return for purposes of triggering the statute of limitations.

The Report here was signed under penalty of perjury and the Court is not in a position to adjudicate summarily whether or not the Report represented an honest and reasonable attempt to satisfy the requirements of the tax law, but, even if the Report satisfies both the third and fourth requirements, it does not satisfy the first two. And all four must be satisfied for the Report to constitute a "return" within the meaning of the applicable authorities.

Most significantly, the Report does not purport to be a return and the debtor certainly did not intend it as such. The debtor continues to insist that it was not then and is not now liable for any taxes on the products it received and sold. It did not submit the Reports for the purpose or with the intent of submitting a tax return. The Report is a form for operational reporting. It does not require the debtor to identify outstanding tax liability and does not reflect any calculation of taxes. It does not put the TTB on notice that taxes were going to be or should have been assessed.

Secondly, it does not contain all the information sufficient to permit the TTB to calculate the tax liability. It omits a key fact necessary to ascertain the debtor's tax liability -- namely, the fact that gave rise to its liability -- the loss of its permit due to the change of control. Court agrees that this fact pattern is analogous to that relied on by the Tax Court in Ya Glob. Invs. L.P. v. Comm'r of Internal Rev., 161 T.C. 173 (2023) in reaching the conclusion that the form filed by the partnership did not

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

constitute a return and therefore did not trigger the running of the applicable statute of limitations.

Issue 3 -- May a tax assessment be sustained on a basis not set forth in the assessment. Yes.

The cases the debtor cites stand for the proposition that assessment of a tax is not the same as assessment of a penalty and that a tax penalty must be assessed before it is enforceable. Court agrees that taxes and penalties are two different things. Here, the TTB assessed taxes, interest and penalties based on the debtor's failure to pay those taxes. Although the TTB has reserved its argument that it may even now go back and assess additional/different penalties (such as those set forth in section 5761(c)) (the validity of which argument is not presently before the court), the TTB is not arguing that it has already assessed a penalty for five times the amount of taxes due. The TTB's contention is that it properly assessed the tax itself (and the penalty for failure to pay that tax) and that its assessment was made by an appropriate TTB officer and identified the taxpayer, the type of tax or penalty assessed, the taxable period and the amount of the assessment. None of the applicable rules and regulations require the TTB to specify a particular code section or stand for the proposition that, if the assessment specifies an incorrect code section that it is invalid. Court agrees that, because the debtor did not file tax returns for the relevant period, the applicable statute of limitations for the TTB to assess taxes and penalties attributable to this period has not run.

Final Rulings for Phase III (May 14, 2025) (see order entered May 27, 2025, Docket No. 365]

A. Interpretation of 26 U.S.C. § 5761(c)

The Court held that 26 U.S.C. § 5761(c) does not itself provide an independent basis for the imposition of tax liability but rather relates to the imposition of penalties. The statutory language and the surrounding framework indicate that section 5761(c) is focused on penalties for the unauthorized sale or receipt of export-only tobacco products, rather than the assessment of the underlying tax itself.

Section 5761(c) provides that any person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

cigarette papers or tubes which have been labeled or shipped for exportation under this chapter, every person who sells or receives these items and every person who aids or abets in selling, relating or receiving these items shall *"in addition to the tax and any other penalty provided for in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter."*

[Emphasis added.] The remaining subparts of section 5761 all discuss penalties, rather than the underlying taxes, and the plain language of this section suggests that such persons' liability for the taxes themselves derives from other portions of the chapter. Therefore, the Court found that any liability that the Debtor may have for excise taxes on tobacco products must arise from a code section other than section 5761(c).

B. Qualification of TTB Form 5220.4 as a "Return"

The Court in Beard v. Commissioner of Internal Revenue Service, 82 T.C. 766 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986), identified four factors that determine whether a particular document submitted to the Internal Revenue Service constitutes a "return" sufficient to trigger the running of the statute of limitations:

- (1) the document must contain sufficient data to allow the taxing authority to calculate the taxpayer's tax liability;
- (2) the document must purport to be a return;
- (3) the document must represent an honest and reasonable attempt to satisfy the requirements of the tax law; and
- (4) the document must be executed under penalties of perjury.

All four factors must be satisfied for the relevant document to constitute a "return" under this standard.

Here, the reports submitted by the Debtor were signed under penalty of perjury, and the Court is not in a position to adjudicate summarily whether the Debtor's submission of the reports constituted an honest and reasonable attempt to satisfy the requirements of the tax law. However, even if the Court were to

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

assume that both the third and fourth factors have been satisfied, the reports would not qualify as “returns” within the meaning of Beard because they do not satisfy the first two requirements set forth in Beard. The Report does not purport to be a tax return, and it does not contain all the information necessary for the Alcohol and Tobacco Tax and Trade Bureau (the “TTB”) to calculate the Debtor's tax liability.

Most significantly, the reports do not purport to be tax returns, and the Debtor did not intend them as such. The Debtor continues to insist that it was not then and is not now liable for any taxes on the tobacco products in question. The Debtor did not submit these reports for the purpose or with the intent of submitting a tax return. The form is primarily used for inventory tracking and does not provide the comprehensive financial information required for tax assessment purposes. The form does not require the Debtor to identify outstanding tax liability and does not reflect any calculation of taxes. It does not put the TTB on notice that taxes were going to be or should have been assessed.

Moreover, it does not contain all of the information necessary to enable the TTB to calculate the Debtor's tax liability. It omits a key fact necessary to ascertain the Debtor's tax liability – the fact that gave rise to its tax liability—the loss of its permit due to the change of control. That is, the Report omits the critical fact that the Debtor had lost its export warehouse permit due to a change of control, which was the basis for the Debtor's tax liability. The Court agrees that this fact pattern is analogous to that relied upon by the Tax Court in Ya Glob. Invs. L.P. v. Comm'r of Internal Rev., 161 T.C. 173 (2023) when it reached the conclusion that the form filed by the partnership did not constitute a return and therefore did not trigger the running of the applicable statute of limitations.

Therefore, the Court found that the Report did not constitute a valid return for purpose of triggering the statute of limitations under Section 6501. This ruling is consistent with the Ninth Circuit's interpretation of what constitutes a "return"

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

for tax purposes, as articulated in United States v. Hatton (In re Hatton), 220 F.3d 1057, 1061 (9th Cir. 2000) (“The Beard definition was derived from two Supreme Court cases, Germantown Trust Co. v. Commissioner, 309 U.S. 304, 84 L. Ed. 770, 60 S. Ct. 566 (1940) and Zellerbach Paper Co. v. Helvering, 293 U.S. 172, 79 L. Ed. 264, 55 S.Ct. 127 (1934), and provides a sound approach under both the Bankruptcy Code and the I.R.C.”).

C. Validity of Tax Assessment

The Court held that a tax assessment may be sustained on any applicable basis, whether or not the specific basis is set forth in the assessment, so long as the assessment otherwise complies with the relevant rules and regulations. The applicable rules and regulations do not require the TTB to specify a particular code section in the assessment, nor do they render an assessment invalid if it cites an incorrect code section. As long as the assessment identifies the taxpayer, the type of tax or penalty assessed, the taxable period, and the amount of the assessment, it is valid.

The cases the Debtor cites stand for the proposition that the assessment of a tax is not the same as the assessment of a tax penalty and that a tax penalty must be assessed before it may be enforced. The Court agrees that taxes and penalties are two different things and that a tax or penalty must be assessed before it may be enforced, but these principles have no bearing on the outcome of the instant dispute. Here, the TTB assessed taxes, interest on those taxes and penalties for the Debtor’s failure to pay those taxes. It did not assess (or has not yet assessed) either of the penalties referenced in section 5761(c). The TTB has reserved the argument that it may even now go back and assess these penalties – which argument is not presently before the Court – but the TTB is not arguing that it has already assessed a penalty for either \$1,000 or 5 times the amount of the tax due. The TTB’s contention is that it properly assessed the tax itself (and the penalty for failure to pay that tax) and that its assessment was made by an appropriate TTB officer and identified the taxpayer, the type of tax or penalty assessed, the taxable period, and the amount of the assessment. None of the applicable rules and regulations requires the TTB to specify a particular code section or stands for the proposition that, if the assessment specifies an incorrect code section, it is invalid. Therefore, if the TTB can demonstrate that

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

the Debtor should be held liable for the taxes that it assessed under any code section, the assessment can be upheld, even if the TTB specified the wrong code section or sections in its assessments.

Based on the foregoing, the Court ruled that:

1. 26 U.S.C. § 5761(c) does not itself provide an independent basis for the imposition of tax liability, but rather relates to the imposition of penalties;
2. TTB Form 5220.4 does not qualify as a "return" within the meaning of 26 U.S.C. § 6501 and therefore will not trigger the running of the applicable statute of limitations; and
3. A tax assessment may be sustained on any applicable basis, whether or not the specific basis is set forth in the assessment, so long as the assessment otherwise complies with the relevant rules and regulations.

The Court in its May 15, 2025 Scheduling Order [Docket No. 357] directed the parties to brief the following issues (the "Phase IV Issues"), which the parties agreed on the record are purely legal issues that can be resolved by the Court without the need for an evidentiary hearing:

If the Debtor can demonstrate that it exported all of the tobacco products on which the TTB seeks to impose taxes and/or penalties, would that render the Debtor exempt from these taxes and penalties, and, if so, what would be the basis for that exemption?

The Court further ordered the parties to file and serve simultaneous briefs on the Phase IV Issues not later than May 28, 2025 and to file and serve responsive briefs not later than June 11, 2025. The Court scheduled a hearing on the Phase IV issues for June 25, 2025 at 11:00 a.m.

Tentative Ruling for June 25, 2025:

1. Section 5703

The Court has already rejected the debtor's argument that it never received transferee liability under 26 U.S.C. section 5703(a)(2) because it had lost its permit. As the Court has previously explained, the loss of the permit made the debtor ineligible for the exemption from tax liability under section 5704(b)

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

because the debtor was not in compliance with applicable regulations due to the loss of its permit, but did not mean that it never obtained transferee liability in the first instance. The problem was the debtor's failure to operate in compliance with applicable regulations. That language appears only in 5704(b) and is not a condition precedent to its acquisition of tax liability in the first instance.

2. Export Clause

Excise taxes on tobacco products are imposed upon manufacture and not on the exportation of the products. Taxes imposed on manufacture (e.g., under IRC § 5701) are not prohibited by the Export Clause, even if the goods are eventually exported. Liggett & Myers Tobacco Co. v. United States, 299 U.S. 383, 386 (1937). The fact that the timing of the payment may be deferred until removal or sale does not change the nature of the tax or make it unconstitutional. Cases decided after Liggett have agreed that the excise tax on tobacco products (or, similarly, alcohol products) is imposed upon the manufacture of the goods, even if the time of payment is deferred. See R.J. Reynolds Tobacco Co. v. Robertson, 94 F.2d 167, 169 (4th Cir. 1938) (The "tax was none the less a tax upon manufacture" even though it "was not payable by the manufacturer or collectable by the United States until the sale or removal of the goods."). See also Cornell v. Coyne, 192 U.S. 418, 429 (1904) ("[I]t is clear that there is no constitutional objection to the imposition of the same manufacturing tax on filled cheese manufactured for export and, in fact, exported, as upon other filled cheese."). It is unconstitutional under the Export Clause to tax goods *because* they are being exported -- that is, to tax the exportation itself. It is not unconstitutional to tax the manufacture of goods that may later be exported.

3. 27 C.F.R. section 44.66,

Section 44.66 provides as follows:

A manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor is relieved of the liability for tax on tobacco products, or cigarette papers or tubes upon providing evidence satisfactory to the appropriate TTB officer of exportation or proper delivery. The evidence

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

must comply with this part. Such evidence shall be furnished within 90 days of the date of removal of the tobacco products, or cigarette papers or tubes: Provided, That this period may be extended for good cause shown.

Court agrees with the TTB that the debtor's argument takes this regulation entirely out of context and that an interpretation of this implementing regulation in the manner that the debtor recommends would undermine entirely rather than implement the statutory scheme to which it relates. Court finds the following portion of the TTB's brief persuasive on this point:

As with other federal regulations, section 44.66 “must not [be] isolated and read alone. It is an integral part of a complex group of regulations which must be read and construed in *pari materia*.” See United States v. Neckels, 451 F.2d 709, 711 (9th Cir. 1971) (citing United States v. Smith, 423 F.2d 559 (9th Cir. 1970)); Marlowe v. Bottarelli, 938 F.2d 807, 813 (7th Cir. 1991) (“[W]henver possible courts construe statutes and regulations in *pari materia*.”); Navajo Health Found. v. Burwell, 220 F. Supp. 3d 1190, 1261 (D. N.M. 2016) (The canon of *in pari materia* “states that regulations on the same matter or subject are to be construed together if possible.”). Thus, section 44.66 should be read in *pari materia* with IRC chapter 52 (including, at a minimum, sections 5703 and 5704) and the remainder of part 44.

Properly construed in this context, it is evident that section 44.66 in no way confers complete and unconditional relief from liability upon export warehouses or manufacturers. . . . For instance, section 44.61 specifies that tobacco products may be removed without payment of tax for exportation only “in accordance with the provisions of [part 44].” 27 C.F.R. § 44.61(a). It further states that tobacco products are eligible for removal or transfer in bond under part 44 “only if they bear the marks, labels, and notices required by this part.” 27 C.F.R. § 44.61(b) (emphasis added). Section 44.62 specifies that all removals of tobacco products from an export warehouse without payment of tax, for delivery to vessels and consumption outside the United States, are “subject to the applicable provisions of this part.” 27 C.F.R. § 44.62. TTB’s part 40 regulations provide even further context through which one may discern the limited scope of section 44.66. “The removal of tobacco products . . . for shipment to a foreign country . . . or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in

United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

accordance with the provisions of [27 C.F.R. part 44]." 27 C.F.R. § 40.235.

Marine Wholesale's argument that proof of exportation is a "complete defense" to taxation is not only unsupported and erroneous, it is legally indefensible because section 44.66 cannot itself confer a tax exemption that does not otherwise exist in law. . . . Here, the applicable statute is 26 U.S.C. § 5704(b), and Marine Wholesale is not eligible for the exemption it confers. Marine Wholesale, 667 B.R. at 575-76. Further, Marine Wholesale's "complete defense" argument would negate the statutory requirements for export marks imposed by section 5704(b); for export warehouse and manufacturing permits imposed by section 5713; and for bonds imposed by section 5711. It would render an intent to defraud irrelevant and prevent imposition of a "tax equal to the tax" pursuant to section 5751(b). . . . Illicitly manufactured (but subsequently exported) tobacco products, the tax upon which is statutorily "due and payable immediately upon manufacture" pursuant to section 5703(b)(2)(F), would instead be exempt from taxation under section 44.66. Given these potential consequences, the Court should reject Marine Wholesale's alleged defense under section 44.66. See Bong v. Alfred S. Campbell Art Co., 214 U.S. 236, 248 (1909) (Where the Secretary of the Treasury "is authorized to make regulations in aid of the law, he cannot make regulations which defeat the law."); Campbell v. United States, 107 U.S. 407, 410 (1882) (Regulations cannot "repeal or annul the law" and if they "worked such a result, no court would hesitate to hold them invalid as being altogether unreasonable."); United States v. Two Hundred Barrels of Whiskey, 95 U.S. 571, 576 (1877) (Treasury regulations "cannot have the effect of amending the law. They may aid in carrying the law as it exists into execution, but they cannot change its positive provisions."). Moreover, to the extent that there may be any doubt as to the proper construction of these provisions in their entirety, "then that construction must be adopted which is most advantageous to the interests of the government. The statute being a grant of a privilege, must be construed most strongly in favor of the grantor." Cornell, 192 U.S. at 431.

In short, the debtor's argument under section 44.66 proves too much. Were the Court to accept the Debtor's interpretation of section 44.66, it would create an exception that would swallow the entire taxation scheme created by the remaining code sections applicable to the parties' interactions and

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

completely undermine the entire permitting scheme. If all one has to do to avoid payment of taxes is export the product and show proof of exportation in a timely manner, why would anyone ever apply for a permit in the first place? Why would anyone bother to package the product appropriately for export? Why would anyone post the required bonds? And so on.

The debtor has not supplied the Court with examples of any other courts that have read section 44.66 in such an expansive manner, and this Court does not intend to be the first.

Party Information

Debtor(s):

Marine Wholesale & Warehouse Co.

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Movant(s):

Marine Wholesale & Warehouse Co.

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:22-13785 Marine Wholesale & Warehouse Co.

Chapter 11

#101.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr: 9-7-22; 9-13-22; 12-14-22; 2-7-23; 6-13-23; 7-18-23; 8-15-23; 10-17-23;
12-5-23; 1-30-24; 4-2-24; 5-7-24; 6-20-24; 7-16-24; 8-13-24; 10-10-24;
10-17-24; 12-5-24; 1-22-25; 3-26-25; 5-7-25; 5-14-25

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

5/13/25 - David Haberbush

5/13/25 - John Peterson

Tentative Ruling:

7/28/22 -- Court granted motion to set bar date, setting bar date of October 3, 2022. Notice of bar date must be served by August 5, 2022.

Tentative Ruling for September 7, 2022

Continue case status conference to September 13, 2022 at 10:30 a.m. to be heard concurrently with motion for continued use of cash collateral. No updated status report required. APPEARANCES WAIVED ON SEPTEMBER 7, 2022.

Tentative Ruling for September 13, 2022:

Has the debtor made any progress on the remaining compliance issues since its status report was filed? Has debtor filed an objection to the TTB's claim yet? If not, why not and when does debtor anticipate being in a position to file this objection? Hearing required.

Tentative Ruling for December 14, 2022:

Has the debtor provided updated insurance declarations and proof of renewed licenses/certificates to the U.S. Trustee?

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

Were there any surprises in the claims filed prior to the October 3, 2022 bar date? Court is not inclined to set a deadline for the filing of objections to claims at this time. (Debtor has already filed an objection to the claim of the TTB.)

Continue case status conference to February 7, 2023 at 2:00 pm to coincide with continued hearing on objection to TTB claim. Waive requirement of updated status report for that status conference.

Tentative Ruling for February 7, 2023:

Court waived requirement of updated status report for this status conference, but how are the debtor's operations doing? Is the debtor currently in compliance with US Trustee requirements? Are there any significant developments that should be brought to the court's attention? Hearing required.

Tentative Ruling for June 13, 2023:

Continue case status conference to July 18, 2023 at 2:00 p.m. to coincide with continued status conference on claim objection. Debtor need not file updated status report for this status conference. APPEARANCES WAIVED ON JUNE 13, 2023.

Tentative Ruling for July 18, 2023:

Continue case status conference to August 15, 2023 at 2:00 p.m. to coincide with continued status conference on claim objection. Debtor need not file updated status report for this status conference. APPEARANCES WAIVED ON JULY 18, 2023.

Tentative Ruling for August 15, 2023:

Revisit status of case after conclusion of related matter on calendar. Continue case status conference to date of continued hearing on claim objection.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

10/16/23 -- Court added language to parties' stipulation re continuance of hearing on claim objection continuing case status conference to December 5, 2023. OFF CALENDAR FOR OCTOBER 17, 2023.

Tentative Ruling for December 5, 2023:

Revisit status of case after conclusion of hearing on claim objection.

Final Ruling for December 5, 2023:

Continue case status conference to January 30, 2024 at 2:00 p.m. Waive requirement of updated status report.

Tentative Ruling for April 2, 2024:

Revisit status of case after conclusion of hearing on claim objection.

Tentative Ruling for May 7, 2024:

Continue case status conference to next hearing date scheduled in related adversary proceeding.

6/7/24 -- Court approved stipulation continuing hearing to **July 16, 2024 at 2:00 p.m.** OFF CALENDAR FOR JUNE 20, 2024.

7/2/24 -- Court approved stipulation continuing hearing to August 13, **2024 at 2:00 p.m.** OFF CALENDAR FOR JULY 16, 2024.

Tentative Ruling for January 22, 2025:

Continue case status conference to next hearing date scheduled in related adversary proceeding.

Tentative Ruling for March 26, 2025:

Revisit status of case after conclusion of hearing on claim objection.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Marine Wholesale & Warehouse Co.

Chapter 11

4/25/2025 -- Court approved stipulation continuing hearing to May 14, 2025 at 1:00
p.m. OFF CALENDAR FOR MAY 7, 2025.

Tentative Ruling for May 14, 2025:

Revisit status of case after conclusion of hearing on claim objection.

Party Information

Debtor(s):

Marine Wholesale & Warehouse Co.

Represented By

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:24-15230 810 Wilton Ventures LLC

Chapter 11

#102.00 Status Conference re: Second Amended Disclosure Statement

fr: 1-29-25; 4-2-25; 5-28-25

Docket 51

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

ZoomGov Appearance by:

4/1/25 - David Shevitz

4/1/25 - Alla Tenina

Tentative Ruling:

Tentative Ruling for January 29, 2025:

The secured creditor has again objected to approval of the debtor's disclosure statement. At the heart of the objection is the creditor's concern that the proposed sale will not be consummated within the time frame envisioned by the plan, or perhaps at all, and it is true that all previous estimates of the time to completion of the permitting process have been inaccurate.

The plan and disclosure statement could be amended to provide for what will happen if the contemplated sale does not materialize by the drop dead date set forth in the plan (and depending on what that treatment is, creditors may in fact be impaired), but does confirmation of a plan on these facts actually make sense at this juncture? Would it make more sense for the court to wait until a date certain to see if the required permits have been obtained by then?

Hearing required.

Final Ruling for January 29, 2025:

Continue hearing to April 2, 2025 at 11:00 a.m. as a status conference only.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... 810 Wilton Ventures LLC

Chapter 11

Tentative Ruing for June 25, 2025:

Court waived the requirement of a status report for case status conference.
Has there been any progress since the last hearing?

6/24/25 -- Court approved stipulation continuing hearing to July 30, 2025 at
10:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

810 Wilton Ventures LLC

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:24-15230 810 Wilton Ventures LLC

Chapter 11

#103.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr: 9-4-24; 10-16-24; 12-10-24; 1-29-25; 4-2-25; 5-28-25

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 10AM**

Courtroom Deputy:

ZoomGov Appearance by:

4/1/25 - David Shevitz

4/1/25 - Alla Tenina

Tentative Ruling:

Set bar date and deadline for serving notice of bar date. Has debtor filed financing motion yet? Hearing required.

9/6/24 -- Court approved scheduling order setting following dates:
Cont'd case status conference -- October 16, 2024 at 11:00 (requirement of filing updated status report waived for this conference only)
L/D to serve notice of bar date -- September 6, 2024
Bar date -- October 15, 2024

Tentative Ruling for October 16, 2024:

This is not a subchapter V case. Debtor filed a plan and a disclosure statement on September 30, 2024. Is there some reason that the debtor did not set and notice a hearing on the disclosure statement? When does the debtor anticipate that it will complete the clearance process with regard to the three remaining permits? What, if anything, has to happen before this can be accomplished?

The plan contemplates a sale of the property, no? The property is the debtor's only significant asset, no? If this is the case, the plan cannot provide

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... **810 Wilton Ventures LLC**
for the debtor to receive a discharge.

Chapter 11

Hearing required.

Tentative Ruling for January 29, 2025:

Revisit status of case after conclusion of hearing on disclosure statement.

Tentative Ruling for April 2, 2025:

Court waived the requirement of a status report for case status conference.
Has there been any progress since the last hearing?

5/23/25 -- Court approved stipulation continuing hearing to June 25, 2025 at
11:00 a.m. OFF CALENDAR FOR MAY 28, 2025.

Tentative Ruling for June 25, 2025:

Court waived the requirement of a status report for case status conference.
Has there been any progress since the last hearing?

6/24/25 -- Court approved stipulation continuing hearing to July 30, 2025 at
10:00 a.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

810 Wilton Ventures LLC

Represented By
Stella A Havkin

Movant(s):

810 Wilton Ventures LLC

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:24-17177 Mercury Investments LLC

Chapter 11

#104.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr: 10-30-24; 1-29-25; 4-2-25

Docket 10

Courtroom Deputy:

ZoomGov Appearance by:

4/1/25 - David Shevitz

Tentative Ruling:

Set deadline for filing notice of bar date and bar date. Is debtor currently USING any cash collateral? Has debtor succeeded in negotiating an agreement with secured creditor concerning the use of cash collateral? Hearing required.

10/31/2024 -- Court approved scheduling order with following dates:

Cont'd case status conference -- January 29, 2025 at 11:00 a.m.

L/D for debtor to serve notice of bar date -- November 8, 2024

Bar date -- January 6, 2025

L/D to file updated case status report -- January 17, 2025

Tentative Ruling for January 29, 2025:

At debtor's request, continue case status conference to April 2, 2025 at 11:00 a.m. Debtor should file updated status report not later than March 21, 2025.
APPEARANCES WAIVED ON JANUARY 29, 2025.

Tentative Ruling for April 2, 2025:

Debtor reports that it has now entered into an agreement to sell its real property. When does debtor anticipate that it will be in a position to file a

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Mercury Investments LLC

Chapter 11

motion for approval of that sale? Hearing required.

Tentative Ruling for June 25, 2025:

Pursuant to a stipulation approved by the Court, Debtor was to complete a sale of the apartment building by April 22, 2025 or lender would receive relief from stay to foreclose. Sale did not occur and court granted relief from stay by order entered April 24, 2025. Debtor reports that foreclosure sale occurred on May 14, 2025. As there are no more assets, debtor requests (in status report filed June 11, 2025) that court dismiss case sua sponte at June 25, 2025 status conference.

Hearing required.

Party Information

Debtor(s):

Mercury Investments LLC

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:25-11354 The Nuno Mansion LLC

Chapter 11

#105.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr: 4-16-25

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

4/14/25 - David Shevitz

4/15/25 - Maureen Shanahan

Tentative Ruling:

Set bar date and deadline for serving notice of bar date. Continue case status conference until a date that is shortly after the bar date.

6/9/2025 -- Court approved scheduling order with following dates:

L/D to serve notice of bar date -- April 21, 2025

Bar date -- May 30, 2025

L/D to file updated status report -- June 13, 2025

Cont'd status conference -- June 25, 2025 at 11:00 a.m.

Tentative Ruling for June 25, 2025:

Has debtor received documents it has requested from lender? If not, set deadline for debtor to file motion for 2004 examination to obtain the information that it needs to make a decision as to how it intends to proceed with regard to the secured loan.

Party Information

Debtor(s):

The Nuno Mansion LLC

Represented By
Maureen J Shanahan

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... The Nuno Mansion LLC

Chapter 11

Movant(s):

The Nuno Mansion LLC

Represented By
Maureen J Shanahan

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

2:22-14165 Treetop Development, LLC

Chapter 11

#106.00 Post-Confirmation Scheduling and Case Management Conference in a Chapter 11 Case

fr: 9-14-22; 12-14-22; 12-21-22; 2-1-23; 5-3-23; 7-12-23; 8-9-23; 8-10-23;
12-6-23; 12-19-23; 1-23-24; 2-7-24; 4-17-24; 5-15-24; 7-9-24; 11-6-24; 1-15-25;
2-25-25; 3-11-25; 4-30-25

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

4/29/25 - Douglas Neistat

4/29/25 - David Shevitz

Tentative Ruling:

Set bar date and deadline for serving notice of bar date. Continue case status conference approximately 90 days.

9/14/22 -- Court approved scheduling order and bar date order setting following dates:

L/D to serve notice of bar date -- 9/15/2022

Bar date -- 11/18/2022

Cont'd status conference -- 12/14/2022 at 11:00 a.m.

L/D to file updated status report -- 12/2/2022.

Tentative Ruling for December 14, 2022:

Continue hearing to December 21, 2022 at 10:00 a.m. to be heard concurrently with final hearing to consider approval of DIP financing. No new status report required. APPEARANCES WAIVED ON DECEMBER 14, 2022.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Treetop Development, LLC

Chapter 11

Tentative Ruling for December 21, 2022:

Is there is something missing at the bottom of page 3 of the status report filed December 2, 2022 or should the sentence fragment simply be deleted? Did the Independent Manager retain anyone other than Roman James Design Build and LC Engineering?

Revisit status of case after conclusion of hearing on motion for approval of post-petition financing.

Tentative Ruling for February 1, 2023:

Court waived the requirement that an updated status report be filed. What progress, if any, has been made since the last status conference? Hearing required.

Tentative Ruling for May 3, 2023:

Continue case status conference approximately 60 days and set deadline for filing updated status report.

Tentative Ruling for July 12, 2023:

The debtor's status report states that the court set a status conference in the adversary proceeding with Skylark for the same date and time as the case status conference. This is incorrect. The status conference in the adversary proceeding is set for September 12, 2023 at 2:00 p.m.

Completely absent from the debtor's case status report is any information about what is going on with regard to the debtor's only asset -- its real property. What, if any, progress has been made with regard to either the condition of the property and/or the debtor's analysis of the best course of action with regard to this property?

Hearing required.

8/2/23 -- At request of parties, court agreed to continue case status

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Treetop Development, LLC

Chapter 11

conference to August 10, 2023 at 10:30 a.m. to be held concurrently with continued hearing on debtor's motion to modify financing. Requirement of status report for this conference is waived. NO APPEARANCE REQUIRED ON AUGUST 9, 2023.

Tentative Ruling for August 10, 2023:

Now that servicer and counsel for lender have changed, have the parties made any progress toward a global resolution? Hearing required.

Final Ruling for August 10, 2023:

Continue case status conference to December 6, 2023 at 11:00 a.m. Debtor should file updated status report by November 29, 2023.

Tentative Ruling for December 6, 2023:

The court has seen the stipulation filed November 30, 2023, extending the maturity date of the DIP Facility, but where is the status report that should have been filed by November 29, 2023? Hearing required.

Final Ruling for December 6, 2023:

The only party that appeared on December 6, 2023 was debtor's special litigation counsel. Court issued notice continuing hearing to December 19, 2023 at 2:00 p.m. and directing debtor to file updated status report not later than December 8, 2023.

Tentative Ruling for December 19, 2023:

Discuss with debtor what it anticipates with regard to litigation with the City. Hearing required.

STATUS CONFERENCE CONTINUED TO JANUARY 23, 2024 AT 2:00 P.M. TO COINCIDE WITH CONTINUED STATUS CONFERENCE IN ADVERSARY PROCEEDING. NO NEW STATUS REPORT REQUIRED FOR JANUARY 23 CONFERENCE. OFF CALENDAR FOR DECEMBER 19,

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... **Treetop Development, LLC**
2023.

Chapter 11

Tentative Ruling for January 23, 2024:

Continue case status conference to February 7, 2024 at 11:00 a.m. as a holding date to be heard concurrently with debtor's motion for summary adjudication of action against City. No new status report required for that conference. OFF CALENDAR FOR JANUARY 23, 2024.

Tentative Ruling for February 7, 2024:

Revisit status of case after conclusion of hearing on matter no. 102.10 on calendar. Set further status conference date at that time.

Tentative Ruling for April 17, 2024:

Have compromise and financing motions referenced in status report been filed yet? If not, why not? Did the initial call with Meredith Jury with regard to the adversary proceeding go forward on April 9, 2024?

Continue case management conference to July 9, 2024 at 2:00 p.m. to coincide with status conference in adversary proceeding against the City.

Final Ruling for April 17, 2024:

Continue status conference to May 15, 2024 at 11:00 a.m. Requirement of written status report waived.

Tentative Ruling for May 15, 2024:

Ninth Circuit has granted request for direct appeal, but denied request for expedited briefing schedule, without prejudice to renewal in the appeal that will be opened.

Have the parties made any progress in settlement negotiations with the City?
Hearing required.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Treetop Development, LLC

Chapter 11

(Status conference in adversary proceeding against City is currently scheduled for July 9, 2024 at 2:00 p.m.)

Tentative Ruling for July 9, 2024:

Court waived requirement that case status report be filed in main case. Revisit status of case after conclusion of status conference in adversary proceeding.

Tentative Ruling for November 6, 2024:

Skylark filed notice of default in which it alleges that (1) DIP loans matured September 30, 2024 and have not been repaid; (2) reversal of this Court's order granting partial summary judgment allows Skylark to terminate the parties' settlement agreement pursuant to section 3(a)(1) thereof; and (3) the fact that no sale of the property occurred on or before September 30, 2024 allows Skylark to terminate the settlement agreement under section 3(a)(5) thereof. Nevertheless, although it has reserved its rights, Skylark has not (yet) exercised the right to terminate the settlement agreement and exercise its rights and remedies with regard to its collateral.

Court is aware of the above developments. What else, if anything, has transpired since the last case status conference? Hearing required. (The court again waived the requirement of a written status report from the debtor.)

Final Ruling for November 6, 2024:

Continue status conference to January 15, 2025 at 11:00 a.m. Debtor should file and serve updated status report not later than January 6, 2025.

Tentative Ruling for January 15, 2025:

Continue status conference to same date and time as status conference in adversary proceeding (February 25, 2025 at 2:00 p.m.) Debtor need not file updated case status report for that conference. APPEARANCES WAIVED ON JANUARY 15, 2025.

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

11:00 AM

CONT... Treetop Development, LLC

Chapter 11

Tentative Ruling for February 25, 2025:

Set hearing on disclosure statement and deadline for filing plan and disclosure statement.

Tentative Ruling for April 30, 2025:

Revisit status of case after conclusion of related matters on calendar.

Tentative Ruling for June 25, 2025:

According to debtor's status report, it did not receive any other bids for its property and therefore closed a sale to its stalking horse bidder, Skylark, on May 19, 2025. The plan became effective on that date. Continue case status conference approximately 90 days to date that could serve as date of hearing on objections to claims if liquidation trustee elects to file any.

Party Information

Debtor(s):

Treetop Development, LLC

Represented By
Lewis R Landau

Movant(s):

Treetop Development, LLC

Represented By
Lewis R Landau

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

2:00 PM

2:24-17820 Skylock Industries Inc

Chapter 11

#200.00 Disclosure Statement Describing Original Chapter 11 Plan

Docket 236

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 2PM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

6/4/25 -- Court approved stipulation cotninuing hearing to July 30, 2025 at 2:00 p.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

Skylock Industries Inc

Represented By
Jeffrey S Shinbrot

Movant(s):

Skylock Industries Inc

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

2:00 PM

2:24-17820 Skylock Industries Inc

Chapter 11

#201.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr: 11-13-24; 11-27-24; 12-10-24; 12-17-24; 1-15-25; 3-5-25; 3-12-25; 5-14-25

Docket 51

***** VACATED *** REASON: CONTINUED TO 7-30-25 AT 2PM**

Courtroom Deputy:

ZoomGov Appearance by:

5/12/25 - David Shevitz

Tentative Ruling:

11/6/2024 -- At hearing held this date, Court agreed to continue case status conference to same date and time as continued hearing on cash collateral and motion to dismiss -- November 27, 2024 at 10:00 a.m. APPEARANCES WAIVED ON NOVEMBER 13, 2024.

Tentative Ruling for November 27, 2024:

Set bar date and deadline for serving notice of bar date. Revisit status of case after conclusion of related matters on calendar.

Final Ruling for November 27, 2024:

Continue case status conference to December 10, 2024 at 11:00 a.m. as a holding date. Requirement of filing a status report in connection with the continued status conference is waived.

Tentative Ruling for December 10, 2024:

Revisit status of case after conclusion of hearings on related matters on calendar.

Final Ruling from December 10, 2024:

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

2:00 PM

CONT... Skylock Industries Inc

Chapter 11

Continue hearing to December 17, 2024 at 10:00 a.m.

Tentative Ruling for December 17, 2024:

Revisit status of case after conclusion of related matters on calendar.

12/17/24 -- Court approved order setting following dates:

L/D to serve notice of bar date -- December 20, 2024

Bar date -- January 31, 2025

Cont'd status conference -- January 15, 2025 at 11:00 a.m. (status report waived)

Tentative Ruling for January 15, 2025:

Revisit status of case after conclusion of related matters on calendar.

Tentative Ruling for March 5, 2025:

Court has reviewed debtor's updated status report. Continue case status conference to same date and time as proposed sale of personal property -- March 12, 2025 at 1:00 p.m. (No new status report is required for the March 12 conference.) APPEARANCES WAIVED ON MARCH 5, 2025.

Tentative Ruling for March 12, 2025:

If sale is approved and consummated, what does the debtor intend to do with this case? Should it be converted to chapter 7 or is there any reason that the case should remain in chapter 11?

Hearing required.

Final Ruling for March 12, 2025:

Debtor anticipates proposing a liquidating plan if sale is approved and consummated. Continue hearing to May 14, 2025 at 1:00 p.m. Debtor

**United States Bankruptcy Court
Central District of California
Los Angeles
Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, June 25, 2025

Hearing Room 1539

2:00 PM

CONT...

Skylock Industries Inc

Chapter 11

should file updated status report not later than May 2, 2025 and may set hearing on disclosure statement for same date and time as continued status conference.

Tentative Ruling for May 14, 2025:

At debtor's request, continue case status conference to June 25, 2025 at 2:00 p.m. to coincide with hearing on debtor's disclosure statement.
APPEARANCES WAIVED ON MAY 14, 2025.

6/4/25 -- Court approved stipulation cotninuing hearing on disclosure statement and case status conference to July 30, 2025 at 2:00 p.m. OFF CALENDAR FOR JUNE 25, 2025.

Party Information

Debtor(s):

Skylock Industries Inc

Represented By
Jeffrey S Shinbrot