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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3200 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

In re:  
**DEXTER DISTRIBUTING  
CORPORATION, et al,**  
  
Debtors.

In Proceedings Under  
Chapter 11  
  
**Case No: 2-03-BK-03546-RJH**  
  
JOINTLY ADMINISTERED WITH:  
2.03-BK-03548-RJH;  
2-03-BK-04695-RJH THROUGH  
2-03-BK-04710-RJH;  
2-03-BK-05427-RJH;  
2-03-BK-11513-RJH;  
2-03-BK-11515-RJH;  
2-03-BK-04238-RJH;  
2:07-BK-01017-RJH;  
2:07-BK-01018-RJH;  
2:07-BK-01019-RJH;  
2:08-BK-05785-RJH; AND  
2:07-AP-00215-RJH  
(ASSOCIATED CASE: 2:07-AP-00215)

THIS FILING APPLIES TO:  
  
 ALL DEBTORS  
 SPECIFIED DEBTORS  
  
In re Taylor R. Coleman  
Case No. 03-bk-04238-RJH

**MOTION TO CONVERT TAYLOR  
COLEMAN'S BANKRUPTCY CASE  
TO A PROCEEDING UNDER  
CHAPTER 7**

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American National Mortgage Partners (“ANMP”), and the Official Committee of Unsecured Creditors in the 2007 Dexter Distributing Bankruptcy Case (the “Creditors’ Committee”) (collectively, “Movants”), jointly move to convert Taylor A. Coleman’s pending Bankruptcy Case No. 03-bk-04238-RJH from a Proceeding under Chapter 13 to a proceeding under Chapter 7 of the Bankruptcy Code.

Simply put, the Chapter 13 Case must be converted because Mr. Coleman has materially breached and defaulted on his obligations under his Chapter 13 Plan, and cannot cure such default. Additionally, Mr. Coleman has taken possession of \$1,000,000.00 of assets of his Chapter 13 Estate and improperly used such monies for his own benefit - rather than the benefit of his Creditors.

The Motion is based upon the following Memorandum of Points and Authorities, and the entire record before the Court in these Jointly Administered Proceedings.

DATED this 13<sup>th</sup> day of August, 2008.

**JABURG & WILK, P.C.**

/s/Jonathan P. Ibsen  
Lawrence E. Wilk, #006510  
Jonathan P. Ibsen #023284  
*Counsel for American National Mortgage Partners*

**TIFFANY & BOSCO, P.A.**

/s/Christopher R. Kaup  
Christopher R. Kaup, #014820  
*Counsel for the Official Committee of Unsecured Creditors in the 2007 Dexter Distributing Bankruptcy Case*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

3 This Court is well aware of the long, strange and intertwined nature of the  
4 Bankruptcy Estates being Jointly Administered in these Proceedings. Briefly, however,  
5 the lynchpin of these Proceedings is the co-dependency of the obligations of Mr. Coleman  
6 under his Chapter 13 Plan, and the obligations and proposed payments of Dexter  
7 Distributing Corporation (“Castle”) under its 2004 Chapter 11 Plan.

8 This co-dependency grew out of the Mr. Coleman’s pre-bankruptcy operations of  
9 Castle in which personal and corporate assets and obligations were often mixed and  
10 blurred. At the time his Chapter 13 Plan was filed and confirmed, the majority of Mr.  
11 Coleman’s Creditors were also Creditors of Castle.

12 Mr. Coleman’s obligations under his Chapter 13 Plan were, in essence, set  
13 artificially low by virtue of the fact that the Castle Plan had provided for a 100% of these  
14 same creditors’ claims. Additionally, the Order confirming Mr. Coleman’s Chapter 13  
15 Plan (the “Coleman Confirmation Order”) specifically provided that Mr. Coleman  
16 guaranteed the payments Castle was to make to ANMP and Castle’s Unsecured Creditors.  
17 (Coleman Confirmation Order, Docket Entry 1134, filed in Case No. 03-03546, at ¶ 3).

18 Castle ultimately breached its obligations under its 2004 Plan by failing to make  
19 payments to ANMP and its Unsecured Creditors, and again filed a new Chapter 11  
20 Petition in 2007. These breaches triggered Mr. Coleman’s guarantee obligations.

21 Mr. Coleman has failed to perform on his guarantee obligations as required by  
22 Paragraph 3 of the Coleman Confirmation Order, which provides:

23 Pursuant to the Castle Plan, the Debtor [Coleman] has  
24 personally guaranteed the payment of all obligations under the  
25 Castle Plan, and a voting trust for his business was  
26 established. In the event of an inconsistency between the  
27 terms of this order of the Court (“Order”) and the Castle Plan,  
28 the terms of this Order shall control with respect to the Debtor.

1 In fact, Mr. Coleman has not even made any payment required by his Chapter 13  
2 Plan since February 27, 2008, and thereby has materially breached his obligations under  
3 his Chapter 13 Plan.

4 Moreover, Mr. Coleman - by his own sworn admissions - has no ability to perform  
5 under his guarantee obligations or to otherwise move forward under his Chapter 13 Plan.  
6 Mr. Coleman appeared for a deposition on August 21, 2007 in connection with the  
7 confirmation process of the 2007 Castle Bankruptcy Case (the “Coleman 2007  
8 Deposition”).<sup>1</sup> During that deposition, Mr. Coleman confirmed his inability to cure his  
9 defaults under his Chapter 13 Plan by his testimony which indicated that, *inter alia*:

- 10 ➤ He has no real job (Coleman 2007 Deposition, Vol. I, pg. 218, Annexed  
11 hereto as Exhibit “A, Part I”);
- 12 ➤ He last received a paycheck in May, 2006. (Id.)

13 Most troubling, however, was that his testimony also confirmed that he improperly  
14 used \$1,000,000.00 of assets properly belonging to his Chapter 13 Estate for his own  
15 benefit, rather than for the benefit of his creditors. Mr. Coleman testified that:

- 16 ➤ Mr. Coleman was asked the source of the funds for payments made to his  
17 counsel, Perkins Coie Brown & Bain, P.A. (Coleman 2007 Deposition, Vol.  
18 I, pg. 134-135). He stated that the money came from 57<sup>th</sup> Avenue/I17, LLC  
19 (Coleman 2007 Deposition, Vol. I pg. 135), and that it was not disclosed in  
20 his Chapter 13 (Id.). The source of the \$1,000,000.00 was from a loan  
21 obtained and secured by the assets of 57<sup>th</sup> Avenue/I17, LLC. (Id.)
- 22 ➤ Mr. Coleman testified that the \$1,000,000.00 was not disclosed in his  
23 Chapter 13 (Coleman 2007 Deposition at Vol. I, pg. 136).
- 24 ➤ He further testified that the remaining funds were held in a checking account  
25 for 57<sup>th</sup> Avenue/I17, LLC at Meridian Bank in Phoenix, and that some of the  
26 funds were used to pay his other Counsel and Advisors (Coleman 2007  
27 Deposition, Vol. I, pg. 136-137).

28 <sup>1</sup> The Coleman 2007 Deposition is transcribed in three Volumes, Annexed hereto as Exhibit “A” Parts I, II and III.

1           Incredibly, 57th Avenue/I17, LLC, was not originally listed as an asset of Mr.  
2 Coleman’s Chapter 13 Estate when the case was commenced. It was similarly not  
3 disclosed when he filed his Chapter 13 Plan. It was also not disclosed prior to this Court’s  
4 issuing its Order Confirming Mr. Coleman’s Chapter 13 Plan on January 18, 2007.

5           Rather, it was only listed in a post-confirmation pleading captioned “Amendment  
6 to Schedule B- Personal Property” filed almost four (4) years after his petition on  
7 February 12, 2007. (Docket Entry 92, filed in Case No. 03-bk-03546). Additionally, the  
8 description of the value of 57th Avenue/I17, LLC, was at best, materially false and  
9 misleading.

10           Mr. Coleman described 57th Avenue/I17, LLC as an entity formed to hold a  
11 billboard. (February 12, 2007 Amendment to Schedule B, pg. 2, lines 17-19). He further  
12 described the value of the entity in the context of a 2004 transaction in which the  
13 “billboard” was valued at “\$250,000.00, which [Mr. Coleman] believed accurately  
14 reflected its value at that time.” (February 12, 2007 Amendment to Schedule B, pg. 2,  
15 lines 20-26.) Such description is materially false and misleading, given that shortly after  
16 making such statement Mr. Coleman obtained a \$1,000,000.00 loan secured by the assets  
17 of 57th Avenue/I17, LLC.

18           ANMP is currently owed in excess of \$13,000,000.00. The unsecured creditors are  
19 currently owed approximately \$2,100,000.00. Consequently, it would be in the best  
20 interest of Mr. Coleman’s Creditors that his Case be converted to a proceeding under  
21 Chapter 7, so that a Chapter 7 Trustee can liquidate his remaining assets and pursue  
22 recovery of the monies and assets which were omitted from his Chapter 13 Plan.

23  
24       **II. MR. COLEMAN’S ACTIONS AND OMISSIONS MANDATE**  
25       **THAT THIS CASE BE CONVERTED**

26           11 U.S.C. § 1307(c)(6) provides, in relevant part, that a case may be converted for  
27 cause including:

28           “A material default by the debtor with respect to a term of a confirmed plan.”

1 As set forth in detail above, Mr. Coleman has materially breached the provisions of  
2 the Plan by:

- 3 ➤ Failing to make his requisite monthly Plan payments; and
- 4 ➤ Failing to make payments to ANMP and the Unsecured Creditors pursuant  
5 to his obligations as guarantor, as mandated by his Chapter 13 Confirmation  
6 Order.

7 Moreover, conversion would clearly be in the best interest of creditors. Simply  
8 put, Mr. Coleman's lack of candor in his late disclosure of 57th Avenue/I17, LLC  
9 deprived his creditors of \$1,000,000.00.<sup>2</sup> Further, Mr. Coleman's own admissions clearly  
10 establish that he cannot cure such default as he has no financial resources to pay the over  
11 \$15,000,000.00 now due and owing to ANMP and the Unsecured Creditors.

12 Accordingly, Mr. Coleman's case must be converted to protect the best interests of  
13 his creditors.

14 **III. THE \$1,000,000.00 IS AN ASSET OF MR. COLEMAN'S**  
15 **BANKRUPTCY ESTATE**

16 Property of a chapter 13 debtor's estate is codified in 11 U.S.C. §§ 1306, which  
17 provides in relevant part, that:

- 18 (a) Property of the estate includes, in addition to the property  
19 specified in section 541 of this title—
  - 20 (1) all property of the kind specified in such section that the  
21 debtor acquires after the commencement of the case but  
22 before the case is closed, dismissed, or converted to a case  
23 under chapter 7, 11, or 12 of this title, whichever occurs first;  
24 and
  - 25 (2) earnings from services performed by the debtor after the  
26 commencement of the case but before the case is closed,  
27 dismissed, or converted to a case under chapter 7, 11, or 12 of  
28 this title, whichever occurs first.

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<sup>2</sup> Additionally, ANMP is informed and believes that there are additional assets, which should have been included in Mr. Coleman's Chapter 13, but were omitted including certain bank accounts in other jurisdictions.

1            “In a Chapter 13 proceeding, the concept of what constitutes property of the estate  
2 is more all inclusive than under other chapters of the Bankruptcy Code.” *In re O’Brien*,  
3 181 B.R. 71, 74 (Bankr. D. Ariz. 1995). Clearly, under the above definition, 57th  
4 Avenue/I17, LLC should have been property of the Chapter 13 Estate, and included in the  
5 Plan. If it were so included, Mr. Coleman’s ability to pay his creditors would have been  
6 much greater, thereby allowing additional direct payments to his creditors, which would  
7 have accelerated their payments – even under the concept that Castle would also be  
8 responsible for making up the balance of such payments.

9            Moreover, by failing to include 57th Avenue/I17, LLC as an asset under his  
10 Chapter 13 Plan, Mr. Coleman cannot argue that the asset or the \$1,000,000.00 proceeds  
11 of its pledge in some way vest outside of the Chapter 13 Estate to Mr. Coleman pursuant  
12 to 11 U.S.C. § 1327(b). In fact, the Eleventh Circuit on August 4, 2008 addressed a very  
13 similar issue.

14            In *Waldron v. Brown*, the Eleventh Circuit held that post-confirmation proceeds of  
15 an uninsured motorist claim, which arose post-confirmation and were brought by a  
16 Chapter 13 Debtor were property of the Estate and did not pass post-confirmation to the  
17 debtor.<sup>3</sup> The Court focused its rationale on the broad language of 11 U.S.C. § 1306, and  
18 the fact that nothing in section 1306’s definition of property of the estate imposed a  
19 limitation based upon confirmation.

20            Accordingly, Movants request that this Court find that the \$1,000,000.00 in  
21 proceeds are property of Mr. Coleman’s Chapter 13 Estate and that, upon conversion, the  
22 Chapter 7 Trustee will thereby be able to seek the return of this asset for the benefit of Mr.  
23 Coleman’s Creditors.

24            ///

25            ///

26            ///

27 \_\_\_\_\_  
28 <sup>3</sup> Although designated for publication, the Decision is not yet published, and is annexed hereto as Exhibit  
“B.”

1 **IV. CONCLUSION**

2 Based upon the foregoing, the Movants request that Mr. Coleman’s proceeding  
3 under Chapter 13 be converted to a proceeding under Chapter 7 of the Bankruptcy Code.

4 DATED this 13th day of August, 2008.

5 **JABURG & WILK, P.C.**

6  
7 /s/Jonathan P. Ibsen  
8 Lawrence E. Wilk, #006510  
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12 **TIFFANY & BOSCO, P.A.**

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14 Christopher R. Kaup, #014820  
15 *Counsel for the Official Committee of*  
16 *Unsecured Creditors in the 2007 Dexter*  
17 *Distributing Bankruptcy Case*

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