

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

TEMPUR-PEDIC  
INTERNATIONAL, INC.

PLAINTIFF

v.

Civil No. 07-2015

WASTE TO CHARITY, INC.; BROCO  
SUPPLY, INC.; JACK FITZGERALD;  
ERIC VOLOVIC; HOWARD HIRSCH;  
THOMAS SCARCELLO; NELSON SILVA;  
CLOSE OUT SURPLUS AND SAVINGS,  
INC.; ERNEST PEIA, and ACTION  
DISTRIBUTORS, INC.

DEFENDANTS

**ORDER**

Now on this 4th day of February 2013, there comes on for consideration Close Out Surplus and Savings, Inc.'s Motion to Reopen Case (doc. 258), Plaintiff's Response (doc. 260) and CSS's Reply (doc. 263). None of the remaining defendants responded to the Motion.

On September 24, 2008, the Court stayed this action pursuant to 11 U.S.C. § 362 pending the outcome of the bankruptcy proceedings of Separate Defendants Waste to Charity, Jack Fitzgerald and Thomas Scarcello. (Doc. 233). Separate Defendants were directed to promptly inform the Court once their respective bankruptcy proceedings were concluded. Separate Defendants failed to comply with the order of this Court. However, it is apparent these proceedings are completed (doc. 258-1, 258-2 & 258-3),

accordingly, the automatic bankruptcy stay is lifted, and this matter is reopened.

It is clear there is no consensus on what remains to be done in this case, specifically, in connection with discovery as it relates to Waste to Charity, and Mssrs. Fitzgerald and Scarcello. Accordingly, the Court directs the parties to conduct a status conference by March 8, 2013. A written report shall be submitted to the Court by March 22, 2013. Should the parties feel the assistance of a conference before a Magistrate might facilitate the matter, one may be requested. Once the Court receives the status report, this matter will be scheduled for trial or other disposition. Accordingly, CSS's Motion (doc. 258) is GRANTED.

IT IS SO ORDERED this 4th day of February, 2013.

/s/ Robert T. Dawson  
HONORABLE ROBERT T. DAWSON  
UNITED STATES DISTRICT JUDGE