

PREJUDICE to the Debtors filing another timely extension motion on or before March 2.

4. The bankruptcy code specifies that “Any party in interest ... may file a plan if ... the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan” (11 U.S.C. 1121(c)(3)). In this case, this 180-day period (the “Plan-Acceptance Period”) began on September 14, 2007, and originally would have ended on March 12, 2008 (the “Plan-Acceptance Deadline”).

5. Per 11 U.S.C. 1121(d), the Plan-Acceptance Period may be enlarged by order of the court, and, in this case, it has already been enlarged from 180 days to 535 days (with the Plan-Acceptance Deadline now March 2, 2009). The Debtors are now requesting that the period be further enlarged to 551 days, more than three times its original size.

6. The court stated, at one of the numerous previous hearings on extending this period, that “Clearly, the hurdle in extending exclusivity over time will rise, will grow higher” (June 17, 2008 hearing transcript, dkt. #508, at 31:24-25).

7. The Debtors have recently filed a second plan, but they have not yet risen any higher than they did almost a year ago when they filed their first plan (dkt. #368, February 29, 2008). The Debtors noticed a hearing on approval of a disclosure statement for that plan, to be held on April 2, 2008. It was not until two days before the hearing that the Debtors first announced that they were not ready proceed. (See hearing agenda, dkt. #421, March 31, 2008). Nothing further was ever filed in connection with the Debtors’ first plan.

8. The Debtors have now noticed a hearing on approval of a disclosure statement for the second plan, to be held on February 25, 2009 (see notice, dkt. #656,

January 8, 2009). If, as happened the first time, everything completely falls apart before the disclosure statement approval hearing has even started, then the time will clearly have come for exclusivity to end, and for the floor to be opened up for any other parties to propose plans.

9. The Debtors have until March 2 to file a timely motion to extend the Plan Acceptance Period. (See LR 9006-2). Thus, no harm will be caused to the Debtors by a denial without prejudice of their current extension request. In contrast, granting the extension now would be potentially damaging to the estate.

10. The Debtors apparently currently intend (barring another last-minute about-face) to seek approval of a disclosure statement on February 25. If such approval is obtained on that date, or on any date on or before March 2, and the Debtors then file another motion to extend the Plan Acceptance Deadline to March 18, I will have no objection.

11. However, if, come March 2, the Debtors have not made an iota of progress toward confirmation, then the estate would clearly be damaged if exclusivity needlessly continued, due to the court having prematurely granted an extension. Time is of the essence in bringing this case to a resolution. The Debtors' Monthly Operating Reports show that the health of the estate has been steadily deteriorating under the Debtors' stewardship.

12. Over the twelve most-recently-reported months (December 2007 through November 2008), the Debtors' reported cash has decreased by 59%, from \$5,979,107 to \$2,442,671 (dkt #339 at p. 2 and dkt. #666 at p. 3). More immediately worrisome, their reported unrestricted cash has decreased by 83%, from \$4,020,403 to \$663,556. (dkt. #339 at p. 11 and dkt. #666 at p. 15).

13. The Debtors state in their motion that "Debtors are paying their debts

as they come due” (Motion at ¶13(c)), but this is contradicted by their operating reports, in which they state that more than half a million dollars of post-petition debts are past due: \$441,393 are over 90 days past due and another \$72,992 are 31-60 days past due. (dkt. #666 at p. 17, form MOR-4). The U.S. Trustee’s form instructs the filer to “Explain how and when the Debtor intends to pay any past-due postpetition debts” (*Id.*), but no such explanation is included.

14. Although the length of time at issue in this motion appears to be only 16 days, the actual difference, in practice, will more likely be a full month, on account of this district’s liberal policies on extensions and the Debtors’ lack of shyness about filing extension motions (see LR 9006-2 “Bridge Orders Not Required in Certain Circumstances” and LR 9013-1(c) “Cases with Omnibus Hearing Dates”). That is, a March 2 deadline would almost certainly be automatically extended until an extension motion could be heard at the March omnibus hearing, and a March 18 deadline would almost certainly be automatically extended until an extension motion could be heard at the April omnibus hearing. What I am suggesting is that the appropriate hearing at which to decide this question on the merits is the March hearing – not the April hearing, and certainly not the January hearing.

15. For all the reasons above, I respectfully request that the Motion be DENIED as to the requested extension of the Plan Acceptance Deadline from March 2, 2009 to March 18, 2009, WITHOUT PREJUDICE to the Debtors filing another extension motion. As to the requested extension of the plan-filing deadline, I have no objection.

Respectfully submitted this Twenty-Second day of January, 2009,

/s/ Alan P. Petrofsky

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