

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

|   |   |                                |
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|   | : | Chapter 11                     |
| In re:                                  | : |                                |
|   | : | Case No. 15-10197 (BLS)        |
| RADIOSHACK CORPORATION, <i>et al.</i> , | : |                                |
|   | : | (Jointly Administered)         |
| Debtors.                                | : |                                |
|   | : | <b>Related Docket No. 2345</b> |

**OBJECTION OF SALUS CAPITAL PARTNERS, LLC TO  
DEBTORS' MOTION TO EXTEND THEIR EXCLUSIVITY PERIODS**

Salus Capital Partners, LLC ("Salus"), a lender under the SCP Credit Agreement,<sup>1</sup> by and through its undersigned counsel, hereby objects to the *Debtors' Motion for an Order Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* [Docket No. 2345] (the "Exclusivity Motion"),<sup>2</sup> and in support thereof represents as follows:

**PRELIMINARY STATEMENT**

1. Salus moved to convert these chapter 11 cases to chapter 7 (the "Conversion Motion") on June 2, 2015.<sup>3</sup> Simultaneously herewith, Salus objected to the Debtors' solicitation procedures motion [Docket No. 2347] (the "Solicitation Procedures Motion").<sup>4</sup> As set forth more fully in the Conversion Motion and the Solicitation Procedures Objection, the Debtors have sold substantially all of their assets and have no viable business to reorganize. Yet the Debtors

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<sup>1</sup> "SCP Credit Agreement" means the Credit Agreement, dated as of December 10, 2013, as amended, among RadioShack Corporation, certain subsidiaries of RadioShack Corporation that are designated as credit parties, the lenders party thereto and Salus Capital Partners, LLC, as agent for such lenders.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Exclusivity Motion.

<sup>3</sup> *Motion Of Salus Capital Partners, LLC To Convert Debtors' Chapter 11 Cases To Cases Under Chapter 7 Of The Bankruptcy Code* [Docket No. 2296].

<sup>4</sup> Objection of Salus Capital Partners, LLC To Debtors' Solicitation Procedures Motion [Docket No. 2452] (the "Solicitation Procedures Objection").

continue to incur significant and unnecessary administrative costs which jeopardize creditors' recoveries in these cases.

2. Rather than voluntarily converting these cases to chapter 7 to conserve what little value remains for the benefit of their creditors, the Debtors now seek to extend their exclusive periods to file a plan of reorganization and solicit acceptances thereof (the "Exclusive Periods"), through and including July 6, 2015 and September 4, 2015, respectively, claiming that "the requested extension of the Exclusive Periods will not harm creditors or other parties in interest."<sup>5</sup> This is untrue. As set forth more fully in the Conversion Motion, "[i]n the context of a debtor who has ceased business operations and liquidated virtually all of its assets, any negative cash flow — including that resulting only from administrative expenses — effectively comes straight from the pockets of the creditors." *Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 516 (8th Cir. 2004). Even a "short extension" of the Debtors' Exclusive Periods imposes risks and costs of delay that will be borne by Salus. The Debtors cannot demonstrate cause for an extension of exclusivity to pursue an unnecessary and costly plan process that will diminish creditors' recoveries in these cases. Accordingly, the Court should deny the Debtors' Exclusivity Motion and convert these cases to chapter 7.

### OBJECTION

3. Section 1121 of the Bankruptcy Code limits the period during which a debtor has the exclusive right to file a plan of reorganization and solicit acceptances thereof to 120 and 180 days, respectively. *See* 11 U.S.C. § 1121(b)-(c). Once these initial periods expire - as the Debtors' exclusive period to file a chapter 11 plan did on June 5 - a debtor may only extend its exclusive periods upon a showing of "cause" for such an extension. *See* 11 U.S.C. § 1121(d);

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<sup>5</sup> Exclusivity Motion ¶ 8.

*see also In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) ("The debtor must make a clear showing of 'cause' to support an extension of the exclusivity period.").

4. It is well-established that "a request to either extend or reduce the period of exclusivity is a serious matter" and "should be granted neither routinely nor cavalierly." *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (internal quotations and citation omitted); *In re Parker St. Florist & Garden Ctr., Inc.*, 31 B.R. 206, 207 (Bankr. D. Mass. 1983) ("[T]he Court should not routinely grant an extension."); *Curry Corp.*, 148 B.R. at 756 ("This court will not routinely extend the exclusivity period absent a showing of 'cause' when creditors object to such requests for extensions.").

5. In considering a request to extend a debtor's exclusivity period, "the court needs to consider more than just the articulated cause" and "must also consider the history and purpose of § 1121 and the competing interests which Congress sought to balance when it enacted these time tables." *All Seasons Indus.*, 121 B.R. at 1004. *See also Curry Corp.*, 148 B.R. at 755 ("Section 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.") (quoting *In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987), *aff'd*, 484 U.S. 365 (1988)); *Timbers of Inwood*, 808 F.2d at 372 ("[A]ny bankruptcy court involved in an assessment of whether 'cause' exists should be mindful of the legislative goal behind § 1121", which "represents a congressional acknowledgment that creditors, whose money is invested in the enterprise no less than the debtor's, have a right to a say in the future of that enterprise."); *All Seasons Indus.*, 121 B.R. at 1006 (denying debtors' exclusivity motion after finding that "such an extension would have the result of continuing to hold creditors hostage to the Chapter 11 process and pressuring them into accepting a plan they believe to be unsatisfactory").

6. While the Bankruptcy Code does not define what constitutes "cause," courts generally consider various factors to determine whether cause exists to extend a debtor's exclusivity periods, including: "(1) the size and complexity of the case; (2) the necessity of sufficient time to negotiate and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) whether the debtor is paying its debts as they come due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiating with creditors; (7) the length of time the case has been pending; (8) whether the debtor is seeking the extension to pressure creditors; and (9) whether unresolved contingencies exist." COLLIER ON BANKRUPTCY ¶ 1121.06[2] (16th Ed. 2015).

7. Here, the relevant factors weigh against granting an extension of the Debtors' Exclusive Periods. *First*, the Debtors have no ongoing business operations, have sold substantially all of their assets and have no business to restructure. The only remaining assets are potential litigation claims, which a chapter 7 trustee can just as easily prosecute under chapter 7 of the Bankruptcy Code. Accordingly, the current size and complexity of these Debtors' cases, as evidenced by the scope of the remaining liquidation, do not weigh in favor of granting an extension of their Exclusive Periods.

8. *Second*, the Debtors have intentionally excluded key stakeholders from the plan formulation and negotiation process. While the Debtors acknowledge that "with the assistance and support of the Committee," they "are currently formulating the terms of a proposed plan"<sup>6</sup>, the Debtors have purposefully excluded Salus, the fulcrum security holder in these chapter 11 cases, from meaningful discussions concerning the terms of the plan. Indeed, Salus received

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<sup>6</sup> See Debtors' Motion For Determination Of Tax Claim Under Section 505(a) Of The Bankruptcy Code Or, In The Alternative, Estimation Of Tax Claim Under Section 502(c) Of The Bankruptcy Code, And Entry Of Scheduling Order ¶ 17 [Docket No. 2087] (the "Tax Determination Motion").

virtually no information with respect to the Debtors' proposed plan before June 10, 2015, two days prior to the Debtors filing of the plan with this Court. The Debtors refusal to involve Salus in substantive discussions concerning matters that are crucial to formulating a viable plan undermines the Debtors' claim that "significant progress" has been made.<sup>7</sup> Moreover, the Debtors' exclusion of Salus from the plan process hardly qualifies as "good faith progress" under any definition.

9. *Third*, the Debtors cannot pay their bills as they come due. As described more fully in the Conversion Motion, the Debtors' eight-week forecast for the period ending March 28, 2015 estimated \$15,355,000 in professional fees and expenses.<sup>8</sup> As of the closing of the Standard General sale on April 1, 2015, the Debtors were already \$12 million (78%) over that budget, with \$27,531,000 in professional fees and expenses.<sup>9</sup> Pursuant to the terms of the Final DIP Order, the Debtors are prohibited from paying fees and expenses that exceed the agreed-upon budget.<sup>10</sup> Accordingly, the Debtors have not paid, and cannot pay, their bills as they come due.

10. *Fourth*, the Debtors have not met their burden in demonstrating reasonable prospects for proposing a viable plan. The Debtors admit that "[b]ecause of the potential magnitude of the Tax Claim, and in the absence of a settlement with the IRS regarding the treatment of that claim, it may be difficult for the Debtors to establish that any plan is feasible or

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<sup>7</sup> Exclusivity Motion ¶ 8.

<sup>8</sup> Conversion Motion ¶ 16.

<sup>9</sup> *Id.*

<sup>10</sup> See *Final Order (I) Authorizing the Debtors to (A) Obtain Financing and (B) Utilize Cash Collateral of Pre-Petition Secured Parties, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363(c), (d) & (e), 364(c), (d) & (e) and 507(b) ¶¶ G(xvii) and 1.2 [Docket No. 947] (the "Final DIP Order")*.

otherwise confirmable."<sup>11</sup> Thus, by the Debtors' own admission, the IRS's priority tax claim, which may exceed \$100 million, may well affect the feasibility of confirming a viable plan.<sup>12</sup> Upon information and belief, the Debtors also have approximately \$46 million in unredeemed gift cards which the State of Texas has asserted are entitled to priority treatment.<sup>13</sup> This poses another obstacle to the feasibility of the plan. Accordingly, the Debtors cannot demonstrate that the proposed plan is viable.

11. *Fifth*, the Debtors are using exclusivity to force upon Salus a plan process to which it objects. The Debtors' improper exclusion of Salus from plan negotiations, combined with the Debtors' request for an extension of exclusivity, appears to be a calculated effort by the Debtors to gain leverage over the largest remaining creditor in these cases. The Debtors should not be allowed to hold Salus hostage to the chapter 11 process while providing none of its corresponding benefits. The relief sought by the Exclusivity Motion unfairly tilts the playing field in favor of the Debtors and allows them to manipulate the bankruptcy process to force upon Salus an unfavorable resolution of these cases. An extension for this purpose is inappropriate and should be denied.

12. Finally, and as explained more fully in the Conversion Motion, there is no justification for the Debtors to pursue confirmation of a liquidating plan; rather, the interests of the Debtors' estates and creditors are best served by the immediate conversion of these cases to chapter 7. Conversion would stop the financial hemorrhage that will otherwise continue on account of mounting professional fees and expenses in these chapter 11 cases.

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<sup>11</sup> Tax Determination Motion p. 2.

<sup>12</sup> *Id.*

<sup>13</sup> Limited Objection [As It Pertains To Consumers Holding Unredeemed Gift Cards] By The State Of Texas To Debtors' Motion For An Order (I) Establishing Bar Dates For Filing Claims And (II) Approving The Form And Manner Of Notice Thereof ¶¶ 1, 5 [Docket No. 2167].

13. For these reasons and those set forth in the Solicitation Procedures Objection and the Conversion Motion, Salus respectfully requests that this Court deny the Exclusivity Motion and convert these cases to chapter 7 of the Bankruptcy Code so that a chapter 7 trustee can wind down these estates in an efficient and cost-effective manner.

**CONCLUSION**

WHEREFORE, Salus respectfully requests that this Court enter an order denying the Exclusivity Motion and granting such other and further relief as this Court deems just and proper.

Dated: June 18, 2015  
Wilmington, Delaware

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

*/s/ Anthony W. Clark*

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**CERTIFICATE OF SERVICE**

I, Anthony W. Clark, hereby certify that on June 18, 2015, I caused the foregoing  
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