

INTRODUCTION

1. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred twenty (120) days after the commencement of a chapter 11 case during which the debtor has the exclusive right to file a chapter 11 plan (the “**Exclusive Filing Period**”). Furthermore, section 1121(c)(3) of the Bankruptcy Code provides that if the debtor files a plan within the Exclusive Filing Period, the debtor has an exclusive period of one hundred eighty (180) days from the commencement of the chapter 11 case to solicit acceptances of and confirm such a plan (the “**Exclusive Solicitation Period**,” and together with the Exclusive Filing Period, the “**Exclusive Periods**”). The initial Exclusive Filing Period in these chapter 11 cases was through and including September 8, 2017, while the initial Exclusive Solicitation Period was through and including November 7, 2017.

2. On September 26, 2017, the Court entered an order [Docket No. 616] (the “**First Exclusivity Order**”) extending the Exclusive Filing Period through and including January 8, 2018, and the Exclusive Solicitation Period through and including March 7, 2018; and on January 19, 2018, the Court entered an order [Docket No. 819] (together with the First Exclusivity Order, the “**Exclusivity Orders**”) further extending the Exclusive Filing Period through and including May 8, 2018, and the Exclusive Solicitation Period through and including July 5, 2018. By the terms of the Exclusivity Orders, such extensions were without prejudice to the rights of the Debtors and their estates to seek further extensions of the Exclusive Periods.

3. Section 1121(d) of the Bankruptcy Code permits the Court to extend the Exclusive Periods “for cause.”

4. By this Motion, the Debtors request that (i) the Exclusive Filing Period in these chapter 11 cases be extended by one hundred and twenty (120) days, through and including

September 5, 2018, and (ii) the Exclusive Solicitation Period in these chapter 11 cases be extended by one hundred and twenty (120) days, through and including November 2, 2018, pursuant to section 1121(d) of the Bankruptcy Code.

5. For the reasons set forth herein, the Debtors submit that ample “cause” exists to grant such extensions.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b), and Local Rule 9006-2.

BACKGROUND

A. General Background

7. On May 11, 2017 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 18, 2017, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors in the chapter 11 cases (the “**Committee**”). No request has been made for the appointment of a trustee or an examiner.

8. Subsequent to the Petition Date, after conducting a thorough marketing process and an auction for their assets in accordance with certain bidding procedures approved by the Court [Docket No. 157], the Debtors sought approval of the sale (collectively, the “**Sale Transactions**”) of: (a) 11 stores and certain other assets to Topvalco, Inc. for a total purchase price of approximately \$16 million (the “**Topvalco Sale**”); (b) 15 stores and certain other assets to Generative Growth II, LLC for a total purchase price of approximately \$8 million (the “**Generative Growth Sale**”); and (c) 1 store and certain other assets to Triangle Pointe Properties, LLC for a total purchase price of approximately \$150,000 (the “**Triangle Pointe Sale**”). The Court entered orders approving each of the Sale Transactions. *See* Docket Nos. 335, 351 and 433. The Generative Growth Sale closed on June 22, 2017; the Topvalco Sale closed on July 17, 2017; and the Triangle Pointe Sale closed on July 24, 2017.

9. In addition to consummating the Sale Transactions, the Debtors rejected a number of their stores effective as of the Petition Date, and during the course of these chapter 11 cases, the Debtors conducted store closing sales (collectively, the “**Store Closing Sales**”) at the Debtors’ remaining stores pursuant to interim and final orders entered by the Court on May 12, 2017 and June 5, 2017, respectively [Docket Nos. 52 and 210], and subsequently rejected the stores.

10. Now that the Sale Transactions have closed and the Store Closing Sales have been completed and the related store leases have all been rejected, the Debtors are in the process of winding down their operations and affairs and these chapter 11 cases in an orderly and efficient manner. To that end, on March 22, 2018, the Debtors and the Committee filed the *Joint Plan of Liquidation of Marsh Supermarkets, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* [Docket No. 900] (as it may be amended, supplemented or

modified from time to time, the “**Plan**”) and the related *Disclosure Statement for the Joint Plan of Liquidation of Marsh Supermarkets, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* [Docket No. 901] (as it may be amended, supplemented or modified from time to time, the “**Disclosure Statement**”). On April 26, 2018, the Debtors filed amended versions of the Plan and the Disclosure Statement [Docket Nos. 955 and 956]. On May 1, 2018, the Court entered an order [Docket No. 963] (the “**Disclosure Statement Order**”) approving the Disclosure Statement in the form attached as Exhibit 4 to the Disclosure Statement Order (the “**Amended Disclosure Statement**”). Pursuant to the Disclosure Statement Order, a hearing is currently scheduled for June 11, 2018 at 10:00 a.m. (ET) to consider confirmation of the Plan in the form attached as Exhibit A to the Amended Disclosure Statement (the “**Amended Plan**”).

11. Additional information regarding the Debtors’ businesses, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Lee A. Diercks in Support of Debtors’ Chapter 11 Petitions and First Day Motions and Applications* [Docket No. 14] (the “**First Day Declaration**”).²

B. Prior Exclusivity Extension Request

12. On September 7, 2017, the Debtors filed their first request to extend the Exclusive Periods [Docket No. 569] (the “**First Exclusivity Motion**”), and on January 2, 2018, the Debtors filed their second request to extend the Exclusive Periods [Docket No. 778] (together with the First Exclusivity Motion, the “**Exclusivity Motions**”). The Exclusivity Motions identify and describe a number of the matters that the Debtors have previously addressed in these chapter 11 cases, which the Debtors incorporate by reference herein.

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.

RELIEF REQUESTED

13. By this Motion, the Debtors, out of an abundance of caution—in view of the fact that the Debtors (together with the Committee) have already filed the Amended Plan and the Amended Disclosure Statement and obtained approval of the Amended Disclosure Statement—request the Court to enter the Proposed Order, further extending (i) the Exclusive Filing Period in these chapter 11 cases by one hundred and twenty (120) days, through and including September 5, 2018, and (ii) the Exclusive Solicitation Period in these chapter 11 cases by one hundred and twenty (120) days, through and including November 2, 2018. The Debtors further request that entry of the Proposed Order be without prejudice to the Debtors’ rights to seek additional extensions of the Exclusive Periods.³

BASIS FOR RELIEF

14. The exclusive periods under section 1121(d) of the Bankruptcy Code are intended to afford the debtor a full and fair opportunity to formulate and propose a chapter 11 plan and to solicit acceptances thereof without the disruption that might be caused by the filing of competing plans of reorganization by non-debtor parties. To this end, where the exclusive periods prove to be unfeasible timeframes, section 1121(d) of the Bankruptcy Code allows the Court to extend such exclusive periods for “cause”:

(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

³ The Debtors have filed this Motion with the intent of it being heard at the June 11, 2018 omnibus hearing, which is scheduled to take place after the expiration of the Exclusive Filing Period in these chapter 11 cases. Pursuant to Local Rule 9006-2, the Exclusive Filing Period is automatically extended until the Court has had an opportunity to consider the relief requested in this Motion.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d).

A. Section 1121(d) of the Bankruptcy Code Permits the Court to Further Extend the Exclusive Periods for “Cause”

15. It is well established that the decision to extend a debtor’s exclusive periods is committed to the sound discretion of the Court, and should be based upon the facts and circumstances of a particular case. See First Am. Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986); 203 N. LaSalle Street P’ship v. Bank of Am., N.A., 1999 U.S. Dist. LEXIS 19425, at *12 (N.D. Ill. 1999); In re Mid-State Raceway, Inc., 323 B.R. 63, 68 (Bankr. N.D.N.Y. 2005); In re Reetz, 61 B.R. 412, 414 (Bankr. W.D. Wis. 1986). Although the Bankruptcy Code does not define “cause” for purposes of an extension request under section 1121(d), courts have looked to the legislative history of section 1121(d) for guidance. See In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996). Such legislative history indicates that Congress did not intend that the 120- and 180-day exclusive periods be a hard and fast limit. See Amko Plastics, Inc., 197 B.R. at 77 (noting that Congress intended courts to have flexibility in dealing with extensions of exclusivity); Gaines v. Perkins (In re Perkins), 71 B.R. 294, 297 (W.D. Tenn. 1987) (“The hallmark of [section 1121(d)] is flexibility.”). Rather, Congress intended that the debtor’s exclusive periods be of an adequate length, given the circumstances, for a debtor to formulate, negotiate and draft a viable plan without the disruptions that would occur with the filing of competing plans of reorganization. See Geriatrics Nursing Home v. First Fidelity Bank, N.A., 187 B.R. 128, 133 (D.N.J. 1995) (“The opportunity to negotiate its plan unimpaired by competition, the court held, is meant to allow the debtor time to

satisfy all creditors and win support for its restructuring scheme and thus ensure its survival as a business.”). Further, Congress recognized that often a one hundred twenty (120) day exclusive period will not afford a debtor sufficient time to formulate and negotiate a chapter 11 plan:

[t]he court is given the power, though, to increase . . . the 120-day period depending on the circumstances of the case. [T]he bill allows the flexibility for individual cases that is not available today. For example, if an unusually large company were to seek reorganization under chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement.

H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 232 (1977) (footnotes omitted); see also In re Amko Plastics, 197 B.R. at 77 (noting that Congress intended courts to have flexibility in dealing with extensions of exclusivity); Gaines, 71 B.R. at 297.

16. Factors considered by the courts in deciding whether cause exists to grant an extension of the exclusive periods include: (a) the size of the debtor and difficulty in formulating a plan; (b) the necessity of sufficient time to negotiate a plan and prepare adequate information to allow a creditor to determine whether to accept the plan; (c) the existence of good faith progress toward reorganization; (d) whether the debtor is paying its debts as they come due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress in negotiating with creditors; (g) the length of time the case has been pending; (h) whether the debtor is seeking the extension to pressure creditors to submit to its demands; and (i) whether unresolved contingencies exist. In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Adelpia Commc'ns Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002).

17. Not all of the above factors are necessary or relevant in determining whether to grant an extension of the exclusivity periods. See, e.g., In re Express One Int'l, Inc.,

194 B.R. 98, 100-01 (Bankr. E.D. Tex. 1996) (identifying only four of the factors as relevant in determining whether cause exists to support an extension); In re United Press Int'l, Inc., 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding cause to extend exclusivity based on three of the factors). Here, however, nearly all of the factors are relevant and are in favor of further extending the Exclusive Periods. Moreover, as noted above, the Debtors (together with the Committee) have already filed the Amended Plan and the Amended Disclosure Statement, and obtained entry of the Disclosure Statement Order. Thus, although the relief requested herein is sought out of an abundance of caution, sufficient cause nevertheless exists to further extend the Debtors' Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

B. Cause Exists For a Further Extension of the Debtors' Exclusive Periods

18. The Debtors have been operating under the protections of chapter 11 for just under a year. During this time, the Debtors have worked diligently to ensure the smooth transition of the Debtors' operations into chapter 11, to maximize the value of the Debtors' estates for the benefit of all stakeholders, and to negotiate with the Committee and draft a consensual chapter 11 plan of liquidation (i.e., the Amended Plan), and the various related documents, including the Amended Disclosure Statement. Furthermore, the Debtors have worked with a number of their significant creditors to resolve their disputes with the Debtors and their concerns regarding the Amended Plan.

19. Since the filing of the Exclusivity Motions, the Debtors have continued to diligently prosecute these chapter 11 cases by, among other things: (i) evaluating additional executory contracts and unexpired leases of the Debtors; (ii) entering into settlement agreements with a number of significant creditors, that, among other things, resolve a number of disputes in a timely and efficient manner and without the costs and risks associated with litigation; and (iii)

continuing to perform a number of tasks related to the wind down of the Debtors' operations and affairs and the prosecution of the Amended Plan and the transactions contemplated thereby.

20. Accomplishing these tasks, as well as those described above and in the Exclusivity Motions, within less than a year has been a labor-intensive process, fully occupying the Debtors' representatives and professionals. In light of these circumstances, the Debtors submit that the requested extensions are both appropriate and necessary.

(i) ***The Size, Complexity, and Duration of the Debtors' Cases Necessitates an Extension of the Debtors' Exclusive Periods.***

21. Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for extension of a debtor's exclusive period to file a plan and solicit acceptances of such a plan. H.R. No. 95-595, at 231-232,406 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191, 6362 (“[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement”); see also In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) (“The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.”).

22. The Debtors' chapter 11 cases are sufficiently large and complex to warrant the requested extension of the Exclusive Periods. As of the Petition Date, the Debtors owned and operated a chain of 60 grocery stores in Indiana and Ohio and employed approximately 4,400 employees. Since the Petition Date, the Debtors have already obtained approval for, and closed on an expedited basis, the Sale Transactions; completed store closing sales at their remaining locations and rejected all of the associated non-residential real property

leases; rejected hundreds of unnecessary, and therefore burdensome, executory contracts and unexpired leases; and filed eight omnibus claims objections and two notices of satisfied claims.

23. Simply put, during the less than a year since the commencement of these chapter 11 cases, the Debtors have devoted substantially all of their resources to ensuring a smooth transition of their operations into chapter 11, preserving and maximizing the value of their estates and negotiating the Amended Plan. The Debtors respectfully submit that the size, complexity, and duration of these cases, combined with the fact that the Debtors have already filed the Amended Plan, and obtained approval of the Amended Disclosure Statement, weigh in favor of granting the requested extension of the Exclusive Periods.

(ii) The Debtors Have Shown Significant Good Faith Progress in These Chapter 11 Cases.

24. The requested extension of the Exclusive Periods is more reasonable given the Debtors' progress to date and the current posture of these chapter 11 cases. Since the Petition Date, the Debtors, their management, and their professional advisors have worked diligently to preserve and maximize the value of the Debtors' assets for the benefit of all stakeholders by, among other things, obtaining approval of the Sale Transactions and completing the Store Closing Sales. The Debtors are currently focusing their efforts on winding down their operations and affairs and these chapter 11 cases in an orderly and efficient manner, including by obtaining confirmation of the Amended Plan, which the Court is currently scheduled to consider on June 11, 2018. The current posture of these chapter 11 cases more than justifies the requested extension of the Exclusive Periods.

(iii) *The Debtors Are Paying Their Debts as They Come Due.*

25. The Debtors continue to timely pay their undisputed postpetition obligations. As such, the requested extension of the Exclusive Periods will not prejudice parties in interest in these chapter 11 cases in that regard.

(iv) *An Extension of the Debtors' Exclusive Periods Will Not Prejudice the Debtors' Creditors.*

26. Throughout the chapter 11 process, the Debtors have endeavored to establish and maintain cooperative working relationships with their primary creditor constituencies, and believe that these relationships will continue during the extension requested herein. Importantly, the Debtors are not seeking the extension to delay administration of these chapter 11 cases or to exert pressure on their creditors, but rather to continue the orderly, efficient, and cost-effective chapter 11 process. The Debtors' engagement with these parties therefore weighs in favor of the requested extension of the Exclusive Periods.

(v) *Additional Factors Exist to Support an Extension of the Debtors' Exclusive Periods.*

27. In addition to the factors discussed above, termination of the Exclusive Periods in these chapter 11 cases would adversely impact the Debtors' wind-down efforts and their progress in administering these chapter 11 cases. If the Court were to deny the Debtors' request for an extension of the Exclusive Periods, upon the expiration of the Exclusive Filing Period, any party in interest would be free to propose a chapter 11 plan for the Debtors and solicit acceptances thereof. Such a ruling could foster a chaotic environment for the Debtors and their estates, delay the administration of these chapter 11 cases, and otherwise impair the Debtors' ability to successfully prosecute these chapter 11 cases, without any corresponding benefit to the Debtors' estates and creditors. Indeed, denying the relief requested herein could

very well thwart the objectives of the chapter 11 process and result in reduced recoveries for the Debtors' stakeholders.

28. Based on the foregoing, the Debtors respectfully submit that more than sufficient cause exists, pursuant to section 1121(d) of the Bankruptcy Code, for the Court to extend the Debtors' Exclusive Filing Period through and including September 5, 2018, and the Debtors' Exclusive Solicitation Period through and including November 2, 2018.

NOTICE

29. Notice of this Motion has been provided to the following parties: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the Senior Lien Agent; (iv) counsel to the Junior Noteholder; and (v) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors request the Court to enter the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 8, 2018
Wilmington, DE

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