

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

Comprehensive Vascular Surgery of
Georgia, Inc.,

Debtor.

CHAPTER 11
CASE NO. 17-53761-mgd
JUDGE DIEHL

NOTICE OF HEARING

PLEASE TAKE NOTICE that Comprehensive Vascular Surgery of Georgia, Inc. (the “Debtor”) has filed **Debtor’s Final Motion Pursuant to Section 1121(d) of the Bankruptcy Code for an Order Further Extending Its Exclusive Periods to File a Chapter 11 Plan and to Solicit Acceptances Thereof** and related papers (the “Motion”) with the Court seeking an order further extending its exclusive periods to file a Chapter 11 plan and solicit acceptances thereof, as set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion in **Courtroom 1201, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia,** at **10:30 A.M.** on **February 15, 2018.**

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

[signature follows]

Dated: January 23, 2018

DENTONS US LLP

/s/ Bryan E. Bates

Bryan E. Bates

Georgia Bar No. 140856

303 Peachtree Street, Suite 5300

Atlanta, Georgia 30308

404-527-4073 (phone)

404-527-4198 (fax)

Email: bryan.bates@dentons.com

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
Comprehensive Vascular Surgery of Georgia,
Inc.,
Debtor.

CHAPTER 11
CASE NO. 17-53761-mgd
JUDGE DIEHL

**DEBTOR'S FINAL MOTION PURSUANT TO SECTION 1121(d)
OF THE BANKRUPTCY CODE FOR AN ORDER
FURTHER EXTENDING ITS EXCLUSIVE PERIODS TO FILE
A CHAPTER 11 PLAN AND TO SOLICIT ACCEPTANCES THEREOF**

COMES NOW Comprehensive Vascular Surgery of Georgia, Inc., the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Debtor"), and hereby files this motion for an order further extending its exclusive periods to file a Chapter 11 plan and solicit acceptances thereof (the "Motion"), respectfully stating as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this Chapter 11 case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On March 1, 2017 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

3. The Debtor is a Georgia for-profit corporation. Its primary place of business is located at 150 Country Club Drive, Suite 100, Stockbridge, GA 30281.

4. The Debtor is a medical practice specializing in vascular surgery and related services (the "Practice"). Albert T. Tagoe, M.D. owns the Debtor and operates the Practice. Dr. Tagoe is the primary surgeon for the Practice.

5. The Debtor is currently a debtor-in-possession seeking to restructure and reorganize the Practice and is taking any and all actions necessary to preserve, protect, and maximize the value of the estate and to effectively reorganize pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

6. No official committee of unsecured creditors has been appointed in this bankruptcy case.

7. On May 18, 2017, the Debtor filed a motion to extend the exclusive period within which the Debtor may propose and file a Chapter 11 plan (the “Exclusive Filing Period”) from June 29, 2017 to September 27, 2017, and the period to solicit acceptances of such plan (the “Exclusive Solicitation Period”) from August 28, 2017 to November 26, 2017 (the Exclusive Filing Period and Exclusive Solicitation Period are collectively, the “Exclusive Periods”).

8. On June 9, 2017, this Court entered an Order [Docket No. 44] extending the Exclusive Filing Period to September 27, 2017, and the Exclusive Solicitation Period to November 26, 2017.

9. On August 30, 2017, the Debtor filed a motion to further extend the Exclusive Filing Period from September 27, 2017 to December 26, 2017, and the Exclusive Solicitation Period from November 26, 2017 to February 24, 2018.

10. On September 22, 2017, this Court entered an Order [Docket No. 67] extending the Exclusive Filing Period to December 26, 2017, and the Exclusive Solicitation Period to February 24, 2018.

11. On November 16, 2017, the Debtor filed a motion to further extend the Exclusive Filing Period from December 26, 2017 to February 24, 2018, and the Exclusive Solicitation Period from February 24, 2018 to April 25, 2018.

12. On December 8, 2017, this Court entered a Consent Order [Docket No. 80] extending the Exclusive Filing Period to February 24, 2018, and the Exclusive Solicitation Period to April 25, 2018. The Consent Order further provided that the Debtor was entitled to seek additional extensions of the Exclusive Periods, provided, however, that in no event shall the Debtor's Exclusive Filing Period be further extended beyond March 30, 2018, or the Debtor's Exclusive Solicitation Period be further extended beyond May 30, 2018. The relief requested herein is consistent with the Consent Order.

REQUESTED RELIEF

13. Pursuant to Section 1121(d) of the Bankruptcy Code, the Debtor requests the entry of an order, substantially in the form attached hereto as Exhibit A, further extending the Debtor's Exclusive Periods to and including March 30, 2018, and May 30, 2018, respectively, which would be the final extension of the Debtor's Exclusive Periods.

BASIS FOR RELIEF REQUESTED

14. 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 a debtor has the exclusive right to file a Chapter 11 plan. Section 1121(c) of the Bankruptcy Code provides that, if a debtor files a plan within the 120-day exclusive period, a debtor has an initial period of one hundred eighty (180) days after the commencement of a Chapter 11 case to solicit acceptances of such plan, during which time competing plans may not be filed. The Exclusive Periods are intended to afford a debtor a full and fair opportunity to propose a consensual Chapter 11 plan and solicit acceptances thereof without the deterioration and disruption of the Debtor's business that is likely to be caused by the filing of competing plans by non-debtor parties.

15. Where the initial Exclusive Periods prove to be an unrealistic timeframe, Section 1121(d)(1) of the Bankruptcy Code allows a bankruptcy court to extend the Exclusive Periods upon a showing of cause:

[O]n request of a party in interest made within the respective period 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.

11 U.S.C. § 1121(d). However, the 120-day period “may not be extended beyond a date that is 18 months after the [commencement] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [commencement] date.” 11 U.S.C. § 1121(d)(2).

16. Although the Bankruptcy Code does not define the term “cause” for purposes for exclusivity, the legislative history indicates it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231, 232 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to protect a Debtor’s interest by allowing unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

17. Bankruptcy courts in the Eleventh Circuit and other jurisdictions have held that the decision to extend the Exclusive Periods is left to the sound discretion of the bankruptcy court, and should be based on the totality of the circumstances. *See In re Friedman’s, Inc.*, 336 B.R. 884, 888 (Bankr. S.D. Ga. 2005); *In re Service Merchandise Co., Inc.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Courts have considered the following non-exhaustive factors to determine whether “cause” exists to extend the Exclusive Periods:

- (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 negotiating with creditors;
- (7) the length of time the case has been pending;
- (8) whether the debtor is seeking an extension to put pressure on its creditors; and
- (9) whether unresolved contingencies exist.

Friedman's, 336 B.R. at 888.

18. An analysis of these factors demonstrates that “cause” exists to extend the Exclusive Periods in this bankruptcy case. Though this case is not overly large or complex, the case involves a medical practice that is very important to the patients and communities it serves, as well as to its employees. The Debtor has made significant progress in this case. Over the ten months the case has been pending, the Debtor has continued its operations, is paying its administrative debts as they come due, is paying its employees, and has made substantial progress negotiating with its creditors toward the overall goal of confirming a Chapter 11 plan. The Debtor respectfully submits that it will require additional time than is afforded by the present Exclusive Periods to accomplish that goal.

19. The Debtor previously advised that it expected to soon file a motion for authority to sell its medical office building -- the Debtor’s principal tangible asset -- the proceeds of which were anticipated to satisfy all claims against the Debtor. Unfortunately, that sale did not proceed as expected, but the Debtor is continuing in its efforts to sell the building, and is otherwise continuing in its negotiations with creditors. Accordingly, the Debtor is making good faith

progress toward reorganization, and is demonstrating reasonable prospects for filing a viable plan.

20. The Debtor is not seeking this extension to put pressure on its creditors, but rather needs more time than is afforded by the current Exclusive Periods to market and sell its medical office building, continue negotiations with creditors, obtain adequate information for a plan, and to prepare appropriate court filings for a plan.

21. In sum, the Debtor respectfully represents that the totality of the circumstances warrants the requested extensions of the Exclusive Periods, and that cause exists to extend the Exclusive Periods. The Debtor notes that the requested extensions comply with 11 U.S.C. § 1121(d)(2) because the proposed extension of the Debtor's exclusive period to file a Chapter 11 plan to March 30, 2018 is well within 18 months after the Petition Date, and the proposed extension of the Debtor's exclusive period to solicit acceptances of the Debtor's proposed Chapter 11 plan to May 30, 2018 is well within 20 months after the Petition Date.

NOTICE

22. Notice of this Motion will be given to: (i) the Office of the United States Trustee; (ii) RiverSource Life Insurance Company; (iii) the parties reflected on the Debtor's list of 20 largest unsecured creditors filed pursuant to Bankruptcy Rule 1007(d); and (iv) all other parties that have appeared in this case and requested notice. The Debtor submits that, under the circumstances, no other or further notice is required.

NO PREVIOUS REQUEST

23. No previous request for the relief sought in this Motion has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests an order (i) extending the Debtor's Exclusive Periods to file a Chapter 11 plan and solicit acceptances thereof to March 30, 2018,

and May 30, 2018, respectively; and (ii) granting the Debtor such other and further relief as is just and proper.

This 23rd day of January, 2018.

DENTONS US LLP

/s/ Bryan E. Bates

Gary W. Marsh
Georgia Bar No. 471290
Bryan E. Bates
Georgia Bar No. 140856
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
404-527-4073 (phone)
404-527-4198 (fax)
Email: bryan.bates@dentons.com

Attorneys for the Debtor

EXHIBIT A

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
Comprehensive Vascular Surgery of Georgia,
Inc.,
Debtor.

CHAPTER 11
CASE NO. 17-53761-mgd
JUDGE DIEHL

ORDER GRANTING DEBTOR'S FINAL MOTION PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE FOR AN ORDER FURTHER EXTENDING ITS EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND TO SOLICIT ACCEPTANCES THEREOF

This matter came on for hearing on February 15, 2018 at 10:30 a.m. (Eastern) (the "Hearing") on the motion for an order extending the exclusive period to file a Chapter 11 plan and solicit acceptances thereof [Docket No. _____] (the "Motion")¹ filed by Comprehensive Vascular Surgery of Georgia, Inc., the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Debtor") requesting entry of an order extending the exclusive period to propose and file a Chapter 11 plan (the "Exclusive Filing Period") and solicit acceptances thereof (the "Exclusive Solicitation Period;" the Exclusive Filing Period and the Exclusive Solicitation Period are collectively, the "Exclusive Periods") all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Motion having been given to: (i) the Office of the United States Trustee; (ii) RiverSource Life Insurance Company; (iii) the parties reflected on the Debtor's list of 20 largest unsecured creditors filed pursuant to Bankruptcy Rule 1007(d); and (iv) all other parties that have appeared in this case and requested notice; and it appearing that no other or further notice need be provided; and the Court having

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

determined that cause exists to extend the Exclusive Periods pursuant to 11 U.S.C. § 1121 and that the relief sought in the Motion is in the best interests of the Debtor, the Debtor's bankruptcy estate, and all creditors and other parties in interest; and having considered the record; and after due deliberation; and good cause existing to grant the relief requested in the Motion,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to 11 U.S.C. § 1121(d), the Debtor's Exclusive Filing Period is extended to, through and including March 30, 2018.
3. Pursuant to 11 U.S.C. § 1121(d), the Debtor's Exclusive Solicitation Period is extended to, through and including May 30, 2018.
4. This Order shall be with prejudice to the Debtor's right to seek additional extensions of the Exclusive Periods.
5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

- END OF ORDER -

Prepared and Presented By:

DENTONS US LLP

/s/ Bryan E. Bates

Gary W. Marsh

Georgia Bar No. 471290

Bryan E. Bates

Georgia Bar No. 140856

303 Peachtree Street, Suite 5300

Atlanta, Georgia 30308

404-527-4073 (phone)

404-527-4198 (fax)

Email: bryan.bates@dentons.com

Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing *Debtor's Final Motion Pursuant to Section 1121(d) of the Bankruptcy Code for an Order Extending Its Exclusive Periods to File a Chapter 11 Plan and to Solicit Acceptances Thereof* and *Notice of Hearing* regarding same to be served on all parties listed below via United States mail with sufficient postage affixed thereto:

Vivieon E. Kelley
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

RiverSource Life Insurance Co. of New York
c/o Drew H. Gandy, Esq.
Holland & Knight LLP
Suite 1800
1180 West Peachtree St. NW
Atlanta, GA 30309

Martin P. Ochs
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Bryn Mawr Equip. Finance, Inc.
P.O. Box 692
Bryn Mawr, PA 19010-0692

AT&T
P.O. Box 5019
Carol Stream, IL 60197-5019

CR Bard
P.O. Box 75767
Suite 109
Charlotte, NC 28275

Cardinal Health 200 LLC, As Agent
7000 Cardinal Place
Dublin, OH 43017

First Federal Leasing
P.O. Box 1145
Richmond, IN 47375

First Bank Richmond, NA
dba First Federal Leasing
P.O. Box 1145
Richmond, IN 47374

McKesson Medical Surgical
P.O. Box 933027
Atlanta, GA 31193-3027

Cobalt Funding Group
65 Enterprise
Aliso Viejo, CA 92656

Moore Medical LLC
P. O. Box 99718
Chicago, IL 60696

MCF Systems Atlanta, Inc.
4219 Tanners Church Road
Ellenwood, GA 30294

Phillips, Patricia B. And George
c/o Robert E. Roll, Esq.
Watkins, Lourie, Roll & Chance, P.C.
5607 Glenridge Drive
Suite 500
Atlanta, GA 30342

Gateway EDI LLC
Dept CH 16897
Palatine, IL 60065-6897

Rutherford, Gregory And Robin
c/o George B. McMenemy, Jr., Esq.
McMenemy Law
One Buckhead Plaza
3060 Peachtree Rd., Ste 310
Atlanta, GA 30305

Quill Corporation
P.O. Box 37600
Philadelphia, PA 19101-0600

Waste Industries
P.O. Box 791519
Baltimore, MD 21279-1519

Vascular Access Center Of South Atlanta, LLC
c/o Charles H. Van Horn, Esq.
Berman Fink Van Horn P.C.
3475 Piedmont Road, Suite 1100
Atlanta, GA 30305

Wellstar Atlanta Medical Center
c/o James S. Rankin, Jr.
Parker, Hudson, Rainer & Dobbs LLP
303 Peachtree Street NE, Suite 3600
Atlanta, GA 30308

This 23rd day of January, 2018.

DENTONS US LLP

/s/ Bryan E. Bates
Gary W. Marsh
Georgia Bar No. 471290
Bryan E. Bates
Georgia Bar No. 140856
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
404-527-4073 (phone)
404-527-4198 (fax)
Email: bryan.bates@dentons.com

Attorneys for the Debtor