

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	§	
	§	
COPSYNC, INC.	§	CASE NO.: 17-12625
	§	
Debtor	§	CHAPTER 11
	§	
	§	

DEBTOR’S SECOND MOTION AND MEMORANDUM IN SUPPORT OF EXTENSION OF THE EXCLUSIVE PERIODS WITHIN WHICH TO FILE THE PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCE OF THE PLAN AND REQUEST FOR A BRIDGE ORDER

NOW INTO COURT, through undersigned counsel, comes the debtor, COPsync, Inc. (“COPsync” and/or “Debtor”) who, with respect represents:

1.

COPsync filed its voluntary petition for relief herein under Chapter 11 of the United States Bankruptcy Code on September 29, 2017.

2.

No Trustee has been appointed and the Debtor is continuing to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3.

No committee of unsecured creditors has been appointed.

4.

Pursuant to U.S.C. §1121(b), only the debtor may file a plan until 120 days after the date of the order for relief and the Debtor has 180 days from the date of the order for relief to obtain

confirmation and/or acceptance of the plan of reorganization. Originally, COPsync's plan was due to be filed on or about January 29, 2018 and was due to be confirmed and/or accepted by March 28, 2018.

5.

The Debtor filed a Motion to Extend the Exclusivity Period within which to file a Plan of Reorganization and to Solicit Acceptances to the Plan ("Motion to Extend Exclusivity") and a Motion to Expedite Motion to Extend Exclusivity on January 12, 2018 [D. E. 140 and 141]. On January 16, 2018, an Order was entered granting the Motion to Expedite Motion to Extend Exclusivity scheduling the hearing for January 24, 2018 [D. E. 142].

6.

On January 24, 2018, the Court entered an Order Granting the Motion to Extend Exclusivity after the review of the record and pleadings, proper service having been made and there being no objection to the requested relief [D. E. 148]. This order extended the Exclusivity to and including March 30, 2018, within which to file the plan of reorganization and extended through and including May 27, 2018, within which to obtain confirmation and acceptance of the plan of reorganization.

7.

The Debtor respectfully requests an additional thirty (30) day extension of the exclusive periods as set forth in 11 U.S.C. §1121(b) and (d) within which to file the plan of reorganization and an additional thirty (30) days from May 27th to obtain confirmation and acceptance of its Plan of Reorganization for the following reasons. The Debtor and Debtor's counsel have made strides in the plan process and foresee being able to file the proposed plan and disclosure statement within the time requested herein. Some negotiations with creditor's counsel, particular

those that are claiming administrative expenses, require additional time to resolve prior to the filing of the proposed plan and disclosure statement. Additionally, the Debtor is still in the process of reconciling its post-sale payables, and the buyer of the Debtor's assets has not yet fully funded the initial \$600,000 sale proceeds. More certainty is needed with respect to the remainder of that payment prior to finalizing the proposed plan and disclosure statement. Finally, although the Debtor has done its best to estimate potential governmental claims, the Debtor believes there is a benefit in waiting until the governmental units claim bar date passes on March 28, 2018, so that it can provide better information to all creditors regarding the scope and classification of the claims against it.

8.

The Debtor seeks this second extension of the exclusivity period of thirty (30) days from March 30, 2018, through and including April 29, 2018, within which to file the plan of reorganization and thirty (30) days from May 27, 2018, through and including June 26, 2018, within which to obtain confirmation and acceptance of the plan of reorganization.

9.

Debtor's exclusive period for filing the plan is currently set to expire on March 30, 2018 and the next available hearing date without requesting for expedited consideration is April 18, 2018. In order to ensure that the period does not expire prior to hearing set on April 18, 2018, the Debtor respectfully requests that the Court enter a bridge order, in a form substantially similar to the proposed bridge order submitted herewith, to preserve the status quo and extend such exclusivity deadline until after the hearing is conducted on April 18, 2018.

10.

Undersigned counsel has contacted the parties who have actively participated in this bankruptcy case including counsels for the United States Trustee, Kologik Capital, LLC, Kologic Financing Partners, LLC, and Thinkstream Acquisition, LLC and all have advised that they are not opposed to the requested relief. Undersigned counsel contacted Brandon Copsync, LLC's counsel, but at this time Brandon Copsync's counsel has not received a response from their client.

11.

Section 1121(b) of the Bankruptcy Code vests debtors with the exclusive right to propose a chapter 11 plan for the first 120 days of a chapter 11 case. 11 U.S.C. § 1121(b). Section 1121(c)(3) of the Bankruptcy Code further extends the period of exclusivity for an additional 60 days, to a maximum of 180 days, where the debtor has filed a chapter 11 plan and is soliciting votes on such plan. 11 U.S.C. § 1121(c)(3). The point of exclusivity is "to promote an environment in which the debtor's business may be rehabilitated and a consensual plan may be negotiated." H.R. Rep. No. 103-835, at 36 (1994).

12.

Section 1121(d)(1) permits a court to extend a debtor's exclusivity "for cause," subject to certain limitations not relevant here. Specifically, section 1121(d) provides that "on request of a party in interest made within the respective periods . . . 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). Although the term "cause" is not defined by the Bankruptcy Code, such term should be viewed flexibly "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th Cong., 1st Sess., 232 (1978); *see also In re Public Serv. Co.*

of New Hampshire, 88 B.R. 521, 534 (Bankr. DN.H. 1988) (“legislative intent ... [is] to promote maximum flexibility”).

13.

Courts in the Fifth Circuit and in other jurisdictions have held that the decision to extend the Exclusivity Periods is left to the sound discretion of a bankruptcy court and should be based on the totality of circumstances in each case. *See, e.g., In re Express One Int’l, Inc.*, 194B.R. 98, 100 (Bankr. E.D. Tex. 1996); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D.Mich. 1997); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). Courts generally examine a number of factors to determine whether a debtor has had an adequate opportunity to develop, negotiate, and propose a chapter 11 plan and thus whether there is “cause” for extension of the Exclusivity Periods. These factors include:

- a. the size and complexity of the case;
- b. the existence of good-faith progress;
- c. the necessity of sufficient time to negotiate and prepare adequate information;
- d. whether creditors are prejudiced by the extension;
- e. whether the debtor is paying its debts as they become due;
- f. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- g. whether the debtor has made progress negotiating with creditors;
- h. the length of time a case has been pending;
- i. whether the debtor is seeking an extension to pressure creditors; and

j. whether or not unresolved contingencies exist.

See, e.g., In re Express One Int'l, Inc., 194 B.R. at 100 (noting courts rely on the above factors); *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *McLean Indus.*, 87 B.R. at 834; *see also Dow Corning*, 208 B.R. at 664-65; *In re Friedman's Inc.*, 336 B.R. 884,888 (Bankr. D. Ga. 2005); COLLIER ON BANKRUPTCY ¶ 15.04 (16th ed.).

14.

The Debtor submits that sufficient “cause” exists pursuant to section 1121(d) of the Bankruptcy Code to extend the Exclusivity Periods as provided herein. As discussed in more detail below, each of the relevant factors either weighs in favor of an extension of the Exclusivity Periods or is inapplicable in light of the current posture of this individual chapter 11 case.

I. The Debtor’s Chapter 11 Case is Large and Complex.

15.

This chapter 11 case involves the restructuring of over \$13 million in prepetition debt obligations. Altogether, Debtor has approximately 1,363 creditors, equity holders and other parties-in-interest. As has been detailed in prior filings with this Court and testimony elicited in hearings in this Case, many of the Debtor’s managers as of the Petition Date were relatively new to the company. This made an otherwise potentially streamlined process very complex and, at times, arduous. It took several months of review and work for the Debtor to finalize its Amended Schedules and Statement of Financial Affairs (filed on December 18, 2017) (D.E. 134). The Debtor also completed a sale of many of its assets, which sale closed in late November. *See* D.E. 126, Notice of Closing of Sale. Therefore, the size and complexity of this chapter 11 case weighs in favor of extending the Exclusivity Periods.

II. The Debtor Has Made Good-Faith Progress Towards a Chapter 11 Plan of Reorganization or Liquidation.

16.

The Debtor has made good faith progress in this Case. As described above, the Debtor has already completed a sale of many of its assets. The Debtor is proceeding expeditiously toward confirmation of a Plan which would liquidate the remainder of its assets, including certain claims which the Debtor believes it holds. The Debtor is in the process of vetting special counsel, and is in the process of preparing the disclosure statement and plan which will incorporate a litigation trustee to pursue these claims in favor of the Debtor's Estate. The Debtor seeks a brief extension of the Exclusivity Periods to continue its review and analysis of the claims that have been filed and those to be filed and to complete the preparation of the disclosure statement and plan. The Debtor's efforts and the progress thus far in this Case serves as further support for extending the Exclusivity Periods as requested herein.

III. Extending the Exclusivity Periods is Necessary to Provide Sufficient Time to Negotiate and Prepare Adequate Information.

17.

The Debtor needs time to file its anticipated application to employ special counsel to pursue certain claims of the Debtor and to continue its review of the claims which have been and are to be filed. The Bar Date was January 17, 2018, except for Governmental units which is March 28, 2018. Providing the Debtor the time requested herein will permit the Debtor to provide its creditors better information in the Disclosure Statement and Plan. Thus, this factor further supports the requested short extension.

IV. Extending the Exclusivity Periods will not Prejudice Creditors.

18.

There will be little prejudice to Creditors, as the Debtor is operating on a very lean staff and solely for the purpose of preparing and filing this Plan and Disclosure Statement. Further, extending the Exclusivity Periods will actually benefit creditors by avoiding the drain on estate assets attendant to the costs and expense incurred in preparing and serving a Disclosure Statement and Plan that would require modifications. Allowing the Debtor to remain the sole potential plan proponent facilitates this possibility. The relief will benefit the Debtor's estate, its creditors, and other key parties in interest.

V. The Debtor is Paying Its Bills as They Come Due.

19.

The Debtor is no longer operating as a going-concern, thus this factor is primarily neutral. The Debtor has already pursued and been granted authority to reject its real estate leases, cutting off the potential for a continued administrative expense claim in that regard. *See* D.E. 133, *Order on First Omnibus Motion for Entry of an Order (I) Authorizing the Debtor to Reject Certain Unexpired Leases and (II) Granting Certain Related Relief.*

VI. The Debtor has Demonstrated Reasonable Prospects for Filing a Viable Plan.

20.

The Debtor has navigated through several key aspects of its "plan" for this Chapter 11 Case, including the sale which permitted the Debtor to stop the bleeding on its overleveraged obligations and salvage the value of many of its assets through the sale which has already closed. Although not part of "Plan" process, this was a positive and necessary first step, permitting the Debtor to greatly minimize its secured debt and pave the way for a viable Plan. The Debtor's

ability to overcome that first hurdle helps to demonstrate its reasonable prospects for preparing a viable Plan, which it believes can be done in the time requested herein.

VII. The Debtor has Made Progress Negotiating with Creditors.

21.

As briefly described *supra* at paragraph 16, the Debtor negotiated claim treatment with respect to its primary pre-petition secured creditor, Dominion, and negotiated satisfaction of its Debtor-in-Possession financing debt in connection with the sale. Thus, the Debtor has accomplished significant reduction in its pre-petition secured debt.

VIII. The Debtor Has Been in Chapter 11 for Less Than 180 Days.

22.

The Debtor's request for an extension of the Exclusivity Periods is its second such request and comes less than 180 days after the Petition Date. The Debtor has made efforts towards filing a Plan and Disclosure Statement and believes it will be able to confirm the Plan, including the new management's detailed review of and preparation of the Amended Schedules and Statement of Financial Affairs, an important step in the process towards the filing of a Plan and Disclosure Statement. The Debtor has also sought, and received, a claims bar date.

IX. The Debtor is not Pressuring Creditors by Requesting an Extension of the Exclusivity Periods.

23.

The Debtor has no ulterior motive in seeking an extension of the Exclusivity Periods. COPsync is not seeking an extension to pressure creditors.

X. Unresolved Contingencies Remain.

24.

The Debtor is working on the selection and anticipated approval of special counsel by this Court to analyze and, if warranted, prosecute certain claims on behalf of the Debtor's estate. Thus, this factor also weighs in favor of a brief extension of the Exclusivity Periods.

25.

An objective analysis of the relevant factors explored *infra* demonstrates that the Debtor is doing what it can to maximize the potential value for the estate and to achieve a resolution of this Chapter 11 and is not seeking this extension for any improper purpose or delay.

WHEREFORE, the Debtor, COPsync, Inc., prays:

1. For an extension of the exclusive periods of Thirty (30) days from March 30, 2018, through and including April 29, 2018, within which to file the plan of reorganization.; and of Thirty (30) days from May 27, 2018, through and including June 26, 2018, within which to obtain confirmation and acceptance of the plan of reorganization;
2. That the Court enter a bridge order substantially in the form submitted herewith extending the Debtor's exclusive periods to file and solicit acceptances for a plan of reorganization up to and through the hearing on the Second Motion to Extend Exclusivity presently set for hearing on April 18, 2018; and
3. For such other and further relief to which it may be entitled in law and equity.

Respectfully submitted,

ADAMS AND REESE LLP

By: /s/John M. Duck

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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Second Motion of Extension of the Exclusive Periods within which to File the Plan of Reorganization and Solicit Acceptance of the Plan* has been served upon all parties listed via the court's CM/ECF electronic service system and/or on the limited attached mailing matrix by placing a copy in the United States mail, first class, postage prepaid and properly addressed this 27th day of March, 2018.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	§	
	§	
COPSYNC, INC.	§	CASE NO.: 17-12625
	§	
Debtor	§	CHAPTER 11
	§	
	§	SECTION "B"
	§	

LIMITED MASTER SERVICE LIST

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**Request to Receive Notices Pursuant to
Motion to Establish Notice Procedures**

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