

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re:

MICHAEL D. COHEN, M.D., P.A.,¹
MICHAEL COHEN and SHARI COHEN

Debtors.

Case No.: 16-22231-DER
Case No.: 16-21513-DER
(Chapter 11)
Jointly Administered under
Case No.: 16-22231 (DER)

**JOINT MOTION OF DEBTOR MICHAEL D. COHEN, M.D., P.A. AND
DEBTORS MICHAEL AND SHARI COHEN FOR FURTHER
EXTENSION OF EXCLUSIVE PERIODS FOR FILING AND OBTAINING
ACCEPTANCES OF A CHAPTER 11 PLAN**

The Debtors and Debtors-in-Possession, Michael D. Cohen, M.D., P.A. (the “P.A.”) and Michael David Cohen and Shari Lee Cohen (the “Individual Debtors” and, together with the P.A., the “Debtors”), by their respective undersigned counsel, hereby move pursuant to Section 1121(d) of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an Order: (i) extending through February 26, 2018 the time period during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”); and (ii) extending through April 26, 2018 the time period during which the Debtors have the exclusive right to obtain acceptances of a chapter 11 plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”). In support of this Motion, the Debtors state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(M) and (O).

¹ The last four digits of the Michael D. Cohen, M.D., P.A.’s tax identification number are 5175.

2. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for relief for the relief requested herein is § 1121(d) of the Bankruptcy Code.

General Background

4. On August 26, 2016 (the “Individual Petition Date”), the Individual Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On September 12, 2016 (the “P.A. Petition Date”), the P.A. filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. On September 16, 2016, the Court entered the *Order Directing Joint Administration of the Debtors’ Chapter 11 Cases* [Docket No. 32].

6. The Debtors continue to manage and operate their affairs and businesses as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

7. No official committee of unsecured creditors has been appointed in these cases.

8. On December 21, 2016, the Individual Debtors filed their *Motion for Order Extending Exclusive Periods to File Plan of Reorganization and Obtain Acceptances Thereto* (the “Individual Debtors First Exclusivity Motion”).

9. On January 11, 2017, the Court entered the *Order Granting Michael and Shari Cohen’s Motion for Order Extending Exclusive Periods to File Plan of Reorganization And Obtain Acceptances Thereto by 120 Days* (the “First Exclusivity Order”) [Docket No. 127].

10. On December 29, 2016, the P.A. filed its *Motion to Extend Exclusive Periods for Filing and Obtaining Acceptances of a Chapter 11 Plan* (the “P.A.’s First Exclusivity Motion”) [Docket No. 122]. The deadline for objecting to the P.A.’s First Exclusivity Motion passed on January 19, 2017 without any objection having been filed.

11. On April 26, 2017, the Debtors filed their *Joint Motion of Debtor Michael D. Cohen, M.D., P.A. and Debtors Michael and Shari Cohen to Extend Exclusive Periods for Filing and Obtaining Acceptances of a Chapter 11 Plan* (the “Debtors’ Second Exclusivity Motion”) [Docket No. 152].

12. On May 16, 2017, the Court entered the *Order Extending Exclusive Periods During Which Debtors May File and Obtain Acceptances of a Chapter 11 Plan* (the “Second Exclusivity Order”) [Docket No. 157].

13. Pursuant to the Second Exclusivity Order, the Debtors’ Exclusive Filing Period is set to expire on January 31, 2018, and the Exclusive Solicitation Period is set to expire on February 26, 2018.

Relief Requested

14. By this Motion, the Debtors seek to extend the Exclusive Filing Period through February 26, 2018, and to extend the Exclusive Solicitation Period through April 26, 2018.

15. This is the Debtors’ third and final request to extend their Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

Legal Standard

16. Section 1121(d) grants the Court authority to extend the Exclusive Periods “for cause” after notice and a hearing. Specifically, section 1121(d) provides:

[O]n 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 . . . increase the 120-day period or the 180-day period referred to in this section.

See 11 U.S.C. § 1121(d)(1).

17. Although the term “cause” is not defined by the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly “in order to allow the debtor to reach an

agreement.” H.R. Rep. No. 95-595, at 232 (1977); *accord In re Public Serv. Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility”); *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987). This flexibility is intended to give a debtor an adequate opportunity to stabilize its business operations at the outset of the case and to then negotiate a plan with its creditors. *See In re Ames Dep’t Stores Inc.*, No. M-47(PKL), 1991 WL 259036, at *3 (S.D.N.Y. Nov. 25, 1991) (“The purpose of the Bankruptcy Code’s exclusivity period is to allow the debtor flexibility to negotiate with its creditors.”).

18. The decision to extend a debtor’s exclusive periods to file a plan and solicit acceptances thereto is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. *See, e.g., Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003); *First Am. Bank of N.Y. v. Southwest Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension.”).

19. Courts have identified a variety of factors as relevant in determining whether “cause” exists to extend a debtor’s exclusive periods: (1) the size and complexity of the case; (2) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the fact that the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time which has elapsed in the case;

(8) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the Debtor's reorganization demands; and (9) whether an unresolved contingency exists. *See, e.g., In re Adelphia Comm'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Texaco*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

20. Not all factors are relevant to every chapter 11 case and courts may find cause to extend exclusivity based on one or more factors. *See, e.g., In re Express One Int'l*, 194 B.R. at 100 (identifying four of the factors as relevant in determining whether "cause" exists to extend exclusivity); *In re Interco Inc.*, 137 B.R. 999, 1001 (Bankr. E.D. Mo. 1992) (denying motion to terminate exclusivity on the basis of four supporting factors); *In re Texaco*, 76 B.R. at 327 (holding that size and complexity of the chapter 11 case provided sufficient cause to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 264, 269 (Bankr. D.D.C. 1986) (finding that debtor showed "cause" to extend exclusivity based upon three of the factors); *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (relying on two factors in holding that cause existed to extend exclusivity). Indeed, it has been held that the primary consideration for the court in determining whether to extend or terminate a debtor's exclusivity is "whether or not doing so would facilitate moving the case forward. And that is a practical call that can override a mere toting up of the factors." *In re Dow Corning Corp.*, 208 B.R. at 670; *accord Adelphia Comm'ns Corp.*, 352 B.R. at 590.

Basis for Relief

21. In the present cases, the requested extension is supported by the following relevant factors: (i) the Debtors' Chapter 11 cases are complex, (ii) the Debtors have made good faith progress to date in this case; (iii) additional time is necessary to formulate a plan, due to the

pendency of the Debtors' appeal from the judgment obtained by Dawn Richardson which led to the need to commence these cases, and continuing efforts to improve the financial performance of the medical practice; (iv) the Debtors are paying their bills as they come due; and (v) the requested extensions will advance these cases and will not pressure creditors or harm any party-in-interest.

A. The Debtors' Chapter 11 Cases are Complex

22. The complexity of the Debtors' Chapter 11 cases constitutes cause to extend the Exclusive Filing and Acceptance Periods. *See Express One*, 194 B.R. at 100 ("The traditional ground for cause is the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization."); *see also In re Hoffinger Indus.*, 292 B.R. at 644 (affirming extension of exclusivity period to over eighteen months because of the complexity of the debtor's case); *In re Highland Park Assoc. L.P.I.*, 130 B.R. 55, 60 (Bankr. N.D. Ill. 1991) (finding that "the complexities of this case warrant an extension").

23. Although the Debtors' Chapter 11 cases are not large cases, they are complex due to the following facts:

(a) The cases of the Individual Debtors and the P.A. are inextricably intertwined. The main creditors of the Individual Debtors also are creditors of the P.A., and the Individual Debtors cannot reorganize their financial affairs without Dr. Cohen's income from the P.A. The Debtors therefore anticipate filing a joint Chapter 11 plan of reorganization at the appropriate time.

(b) The need for bankruptcy relief arose from enforcement of a judgment obtained in a suit filed in 2012 against the P.A. and the Individual Debtors in the Circuit Court for Baltimore County, by Dawn Richardson, a former non-physician employee, Ms. Richardson

claimed ownership and lost profits in a company known as Skin, Inc. In May 2016, after a jury trial, the Circuit Court entered a judgment against the P.A. and the Individual Debtors for \$1,275,000. On September 9, 2016, the P.A. and the Individual Debtors filed a notice of appeal (the “Appeal”). Relief from the automatic stay was granted by this Court [D.I. 27] for the limited purpose of permitting the prosecution of the Appeal to proceed in the Maryland Court of Special Appeals.

(c) Oral argument for the Appeal occurred on October 10, 2017. Appellate counsel cannot say with any degree of certainty when the appellate court will rule. Because the outcome of the Appeal will significantly impact the requirements of a Chapter 11 plan, the Debtors seek to have the Exclusive Periods extended one last time, to the maximum extent permitted by section 1121(d) of the Bankruptcy Code, so that the confirmation process is as efficient as possible.

B. The Debtors have Made Good Faith Progress

24. The Debtors have made progress throughout these Chapter 11 cases. Initially, the Individual Debtors and the P.A.’s management, employees and professionals focused on stabilizing the P.A.’s business and responding to the many time-consuming demands that accompany Chapter 11 filings. The Debtors also have filed monthly operating reports since the beginning of this Chapter 11 case and generally have fulfilled their obligations as debtors in possession.

25. The Debtors have generally demonstrated an ability to negotiate with their creditors so that these Chapter 11 cases may be administered and conducted with only limited disputes.

C. Additional Time may make the confirmation process more efficient.

26. Since the final extension of the Exclusive Periods is relatively short, the Debtors may well not know the outcome of the Appeal before the expiration of the requested extension of the Exclusive Periods. Nevertheless, the additional time requested will contribute to the possible efficiency of the confirmation process, as the outcome of the Appeal may occur before the conclusion of the confirmation process.

D. The P.A. is Paying Its Bills as They Come Due

27. Since the Petition Date, the P.A. has kept its operating and administrative expenses current. In addition, the P.A. is making substantial payments on account of its obligations to its secured lender, M&T Bank, as part of their consensual arrangement for the continued use of cash collateral.

E. The Extension Will Advance the Cases and Will Not Harm or Pressure Creditors

28. Granting the requested short extensions of the Exclusive Periods will not adversely affect the Debtors' creditors.

29. The requested extension of the Exclusive Periods will not prejudice the legitimate interests of any party in interest in these Chapter 11 cases and is not requested to unduly pressure the Debtors' creditors. Instead, the requested extension requested may facilitate the Debtors' efforts to preserve value and avoid unnecessary litigation by providing the Debtors with a full and fair opportunity to formulate a plan of reorganization, and at the appropriate time, to negotiate, propose and seek acceptances of a Chapter 11 plan. *See In re Public Serv.*, 88 B.R. at 536-37 (delay is justified when attempting to realize the maximum value of the debtor's estates).

30. These circumstances constitute good cause to grant the requested extension of the Exclusive Periods.

Notice

31. Notice of this Motion has been given to the following parties or to their counsel, if known: (i) the Office of the United States Trustee, (ii) the Debtors' prepetition secured lenders and (iii) all parties that have requested service of pleadings pursuant to Bankruptcy Rule 2002 or Local Bankruptcy Rule 2002-1. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

Statement Pursuant to Local Bankruptcy Rule 9013-2

32. Pursuant to Local Rule 9013-2, the Debtors state that, in lieu of submitting a memorandum in support of this Motion, they will rely solely upon the grounds and authorities set forth herein.

WHEREFORE, the Debtors request that the Court enter an Order: (i) extending the Exclusive Filing Period through February 26, 2018; (ii) extending the Exclusive Solicitation Period through April 26, 2018; and (iii) granting such other and further relief as is just and appropriate.

Dated: January 18, 2017

/s/ John C. Schropp

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January 2018, a copy of the foregoing *Joint Motion of Debtor Michael D. Cohen, M.D., P.A. and Debtors Michael and Shari Cohen for further Extension of Exclusive Periods for Filing and Obtaining Acceptances of a Chapter 11 Plan*, with the notice of motion and proposed order, was served by first-class mail, postage prepaid, to the parties on the attached Service List, unless such parties have consented to electronic service via the CM/ECF system as indicated.

/s/ Irving E. Walker
Irving E. Walker

SERVICE LIST

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