

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Chapter 11

CROSIER FATHERS AND BROTHERS
PROVINCE, INC., a Minnesota non-profit
corporation,

Case No. 17-41681

Debtor.

In re:

Case No. 17-41682

CROSIER FATHERS OF ONAMIA, a
Minnesota non-profit corporation,

Debtor.

In re:

Case No. 17-41683

THE CROSIER COMMUNITY OF
PHOENIX, an Arizona non-profit corporation,

Debtor.

**NOTICE OF HEARING AND SECOND MOTION FOR AN ORDER EXTENDING
DEBTORS' EXCLUSIVITY PERIODS**

TO: The United States Bankruptcy Judge, the United States Trustee, and other parties-in-interest as specified in Local Rule 9013-3(a)(2).

Crosier Fathers and Brothers Province, Inc., Crosier Fathers of Onamia, and The Crosier Community of Phoenix, debtors in the above-captioned reorganization cases, hereby respectfully move the court for the relief requested below and give notice of hearing:

1. The court will hold a hearing on this motion before the Honorable Robert J. Kressel on **February 8, 2018 at 10:30 a.m. in Courtroom 8 West, at the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.**

2. Any response to this motion must be filed and served no later than **February 2, 2018**, which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rules 1070-1 and 9013-2(g). This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. This motion arises under 11 U.S.C. § 1121. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rule 9013-1 through 3.

RELIEF REQUESTED

5. Section 1121 of the Bankruptcy Code provides that during the first 120 days after commencement of the case, only the debtor may file a plan. The debtor has an additional 60 days within which it alone may solicit acceptance to a filed plan. 11 U.S.C. § 1121(b) and (c).

6. The debtors requested once before that the court enter an order, which the court did, under 11 U.S.C. § 1121(b), extending the period within which the debtors had the exclusive right to file a plan of reorganization to December 31, 2017 and, under 11 U.S.C. § 1121(c)(3), extending the period within which the debtors have the exclusive right to solicit acceptances of a plan of reorganization to March 1, 2018.

7. The debtors now again respectfully request that the court enter an order, under 11 U.S.C. § 1121(b), extending the period within which the debtors have the exclusive right to file a plan of reorganization to March 31, 2018, and, under 11 U.S.C. § 1121(c)(3), extending the period

within which the debtors have the exclusive right to solicit acceptances of a plan of reorganization to June 30, 2018.

8. Counsel for the Official Committee of Unsecured Creditors (the “Committee”) has been made aware of the filing of this motion and no objections are anticipated.

BASIS FOR RELIEF

9. Shortly before the filing of the reorganizations cases, the debtors and their insurance carrier, Twin City Fire Insurance Company and Hartford Accident and Indemnity Company (“Hartford”) participated in extensive negotiations. Through those negotiations, the debtors and Hartford have been able to settle the declaratory judgment action with an agreement with Hartford for a substantial contribution to a plan of reorganization in exchange for releases and policy buybacks.

10. The debtors have worked cooperatively with Hartford, the Committee, and primary plaintiffs’ counsel in an effort to propose a plan of reorganization that they believe fairly and equitably compensates creditors.

11. The debtors and Committee will jointly propound a plan, and filed that plan with the court on December 22, 2017 (but have not solicited it to creditors and will not until the accompanying disclosure statement is approved). The debtors and Committee filed a disclosure statement to accompany the plan, which must be approved by the court, on December 27, 2017.

12. Given that the disclosure statement must still be approved, and the plan solicited thereafter, the debtors are requesting further extension of their exclusive periods out of an abundance of caution. In the event the filed plan might not be confirmed for some reason that the debtors cannot now foresee, the debtors must retain the exclusive right to file and solicit a new plan.

13. The Bankruptcy Code provides that the Court may “for cause reduce or increase the 120 day period or the 180 day period.” 11 U.S.C. § 1121(d). The debtors respectfully submit that the requisite cause exists under Section 1121(d) for an extension of the exclusivity periods through March 31, 2018 (with respect to the exclusive period for filing a plan) and June 30, 2018 (with respect to the deadline for confirmation). The debtors have worked diligently to file a cooperative plan, are current on their post-petition obligations, and believe that the relief requested in this motion will not prejudice the interest of any creditors.

14. Pursuant to Local Rule 9013-2, this motion is verified and accompanied by a memorandum of law, proposed order, and proof of service.

WHEREFORE, the debtors request entry of an order:

A. Extending the deadline under 11 U.S.C. § 1121(b) within which the debtors have the exclusive right to file a plan of reorganization to March 31, 2018;

B. Extending the deadline under 11 U.S.C. § 1121(c) within which the debtors have an exclusive right to solicit acceptances of a plan of reorganization to June 30, 2018, and

C. Granting such other and further relief as the court deems just and equitable under the circumstances.

Dated: December 28, 2017.

QUARLES & BRADY LLP

/s/ Elizabeth S. Fella

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

CROSIER FATHERS AND BROTHERS
PROVINCE, INC., a Minnesota non-profit
corporation,

Debtor.

Chapter 11

Case No. 17-41681

In re:

CROSIER FATHERS OF ONAMIA, a
Minnesota non-profit corporation,

Debtor.

Case No. 17-41682

In re:

THE CROSIER COMMUNITY OF
PHOENIX, an Arizona non-profit corporation,

Debtor.

Case No. 17-41683

VERIFICATION OF THOMAS ENNEKING, OSC

I, Thomas Enneking, President of the Crosier Fathers and Brothers Province, Inc., declare under penalty of perjury that the facts contained in the motion and memorandum are true and correct to the best of my knowledge, information and belief.

Executed on: December 28, 2017

/s/ Thomas Enneking, osc
THOMAS ENNEKING, osc

**UNITED STATES BANKRUPTCY COURT
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THE CROSIER COMMUNITY OF
PHOENIX, an Arizona non-profit corporation,

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SECOND
MOTION FOR AN ORDER EXTENDING DEBTORS' EXCLUSIVITY PERIODS**

The Crosier Fathers and Brothers Province, Inc., Crosier Fathers of Onamia, and The Crosier Community of Phoenix respectfully submit this memorandum in support of their Motion for an Order Extending Debtors' Exclusivity Periods.

I. FACTS.

On June 1, 2017, the debtors commenced the above-captioned reorganization cases by filing voluntary Chapter 11 petitions. The debtors remain debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

For a description of the debtors and their operations, the debtors refer the court and parties-in-interest to the “Declaration of Thomas A. Enneking, osc in Support of Chapter 11 Petition” [Dkt. No. 9].

The factual basis for this memorandum is set forth in the motion and is incorporated as though fully set forth herein.

II. LEGAL ARGUMENT.

A. Legal Standard.

In pertinent part, Section 1121 of the Bankruptcy Code states:

Who may file a plan.

(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if –

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d) (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.

(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.

Section 1121 of the Bankruptcy Code gives the debtors the exclusive right to file a plan during the first 120 days after the order for relief. 11 U.S.C. § 1121(b). This 120-day period may be increased or reduced “for cause.” 11 U.S.C. § 1121(d). The term “cause” is not defined in Section 1121. The Bankruptcy Appellate Panel for the Eighth Circuit Court of Appeals has emphasized that the burden of establishing good cause is on the moving party, and that “the granting of an extension [should] be based ‘on a showing of some promise or probable success for reorganization’ and ‘an extension should not be employed as a tactical measure to put pressure on parties in interest to yield to a plan they consider unsatisfactory.’” *In re Hoffinger Industries, Inc.*, 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003). The legislative history of Section 1121 indicates that “cause” is to be viewed flexibly so as to promote the orderly, consensual and successful reorganization of the debtor’s affairs. *See* H.R. Rep. No. 595, 95th Cong., 2d Sess. 231, 232, reprinted in 1978 U.S.C.C.A.N., 5963, 6190. Congress has recognized that, depending upon the circumstances, the 120-day exclusivity period often will not afford the debtor sufficient time to formulate a plan. *See* H.R. Rep. No. 595, 95th Cong., 2d Sess. 231, 232.

The *Hoffinger* court listed the following factors to be balanced in deciding whether to extend or shorten the 120 and 180 periods of exclusivity.

- (1) the large size of the debtor and the consequent difficulty in formulating plan of reorganization for a huge debtor with a complex financial structure;
- (2) the need of the creditors’ committee to negotiate with the debtor and the ability to prepare adequate information;
- (3) the existence of good faith progress towards reorganization;
- (4) the existence of an unresolved contingency;

- (5) the fact that the debtor is paying bills as they become due;
- (6) the length of previous extensions of exclusivity;
- (7) breakdowns in plan negotiations, such that the continuation of the debtor's exclusivity period would result in the debtor having an unfair bargaining position over creditors;
- (8) the debtor's failure to resolve fundamental reorganization matters essential to its survival; and
- (9) the gross mismanagement of the debtor.

Id. at 633-34. "It is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate weight to each." *Id.* at 634.

B. Cause Exists for this Court to Extend the Exclusivity Periods.

The concept of "exclusivity" was incorporated into the Bankruptcy Code to provide a debtor with a full and fair opportunity to prepare a plan, and to solicit acceptances to such plan, without the dislocation and disruption of a debtor's business that would be caused by the filing of competing proposed plans by other parties-in-interest. One of the objectives of a chapter 11 case is the development, formulation, confirmation and consummation of a consensual plan. Typically, that process requires negotiations with key parties, and is aided by the claims deadline having passed, such that the debtor and other parties in interest understand the universe of asserted claims.

The status of these cases and the factors identified above support the conclusion that an extension of the exclusivity period and solicitation period is warranted in the debtors' reorganization cases, including because (i) the debtors and Committee have already filed a consensual plan of reorganization, evidencing the debtors' good faith efforts to get a consensual plan on file; (ii) it has been just over six months since the debtors filed for relief under Chapter 11 and the debtors are still well in advance of the full 18-month deadline allowable for extensions of the exclusive periods under the Bankruptcy Code; (iii) the debtors have managed the reorganization cases in good faith; (iv) the extension is not being sought in order to pressure

creditors but is rather to preserve the debtors' exclusive periods during solicitation of the currently-filed consensual plan, in the unlikely event that a different or amended plan must be filed; and (v) the debtors have complied with their post-petition obligations.

III. CONCLUSION.

The debtors respectfully request that the court grant the motion and grant the debtors such other and further relief it deems just and equitable under the circumstances.

Dated: December 28, 2017.

QUARLES & BRADY LLP

/s/ Elizabeth S. Fella
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PHOENIX, an Arizona non-profit corporation,

Debtor.

**ORDER GRANTING SECOND MOTION FOR AN ORDER EXTENDING
DEBTORS' EXCLUSIVITY PERIODS**

This matter came before the court on the motion of the Crosier Fathers and Brothers Province, Inc., Crosier Fathers of Onamia, and The Crosier Community of Phoenix to extend the exclusive time in which the debtors have to file a plan of reorganization and disclosure statement and in which to obtain confirmation of such plan pursuant to 11 U.S.C. § 1121.

Based on the motion and file,

IT IS ORDERED:

1. The time allowed under 11 U.S.C. § 1121(b) within which the debtors have the exclusive right to file a plan of reorganization is hereby extended through March 31, 2018; and

2. The time allowed under 11 U.S.C. § 1121(c) within which the debtors have the exclusive right to obtain acceptances of a plan of reorganization is hereby extended through June 30, 2018.

DATED:

ROBERT J. KRESSEL
UNITED BANKRUPTCY COURT JUDGE

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PHOENIX, an Arizona non-profit corporation,

Debtor.

Case No. 17-41683

CERTIFICATE OF SERVICE

I, Elizabeth S. Fella, declare under penalty of perjury that on December 28, 2017 I caused to be served the foregoing “Notice of Hearing and Second Motion for an Order Extending Debtors’ Exclusivity Periods” to each entity named below at the e-mail address or mailing address stated for each entity:

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Dated: December 28, 2017

/s/ Elizabeth S. Fella