

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
<b>NORRIS, McLAUGHLIN &amp; MARCUS, P.A.</b> Gary N. Marks, Esq. 400 Crossing Boulevard, 8 <sup>th</sup> Floor P.O. Box 5933 Bridgewater, New Jersey 08807 (908) 722-0700 <a href="mailto:gnmarks@nmmlaw.com">gnmarks@nmmlaw.com</a> <i>Counsel for Debtor/Debtor-in-Possession Robert A. Lombard, Jr. and Charlene M. Barnett- Lombard</i>	
In Re:	Administratively Consolidated Under Case No.: 17-24308 (CMG) 17-23949 (CMG)
BULK EXPRESS LOGISTICS, INC. AND ROBERT A. LOMBARD, JR. AND CHARLENE M. BARNETT-LOMBARD,	Chapter: 11
Debtors.	Judge: Hon. Christine M. Gravelle

**MEMORANDUM OF LAW IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF  
AN ORDER EXTENDING THE EXCLUSIVE PERIOD OF TIME WITHIN WHICH  
THE DEBTOR IS PERMITTED TO FILE A CHAPTER 11 PLAN AND SOLICIT  
ACCEPTANCES THEREOF PURSUANT TO 11 U.S.C. § 1121(d)**

Robert A. Lombard, Jr. and Charlene M. Barnett-Lombard, the above-captioned debtor-in-possession (the "Debtor"), by and through their counsel, Norris, McLaughlin & Marcus, P.A., respectfully submits this memorandum of law in support of the Debtor's motion for the entry of an Order Extending the Exclusive Period of Time Within Which the Debtor is Permitted to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to 11 U.S.C. § 1121(d), and for such further relief as the Court deems just and proper (the "Motion").

### **JURISDICTION**

The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief requested in this Motion are 11 U.S.C. § 1121(d).

### **FACTUAL BACKGROUND & PROCEDURAL HISTORY**

The Debtor incorporates herewith by reference the Certification of Charlene M. Barnett-Lombard in support of the Debtor's motion to extend the exclusivity period.

### **RELIEF REQUESTED**

By the within Motion, the Debtor requests that the Court enter an order extending the exclusive period of time within which the Debtor is permitted to file a chapter 11 plan from November 7, 2017 to March 6, 2018 and thereafter solicit acceptances thereof through and including May 7, 2018 pursuant to 11 U.S.C. § 1121(d), and for such further relief as the Court deems just and proper

Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to propose and file a chapter 11 plan during the first 120 days of a chapter 11 case. Section 1121(c)(3) of the Bankruptcy Code extends exclusivity for an additional 60 days (to an initial maximum of 180 days from commencement of a case) to solicit and obtain acceptances of that plan. The purpose of the exclusivity period is "to promote an environment in which the debtor's business may be rehabilitated and a consensual plan may be negotiated." In re Burns and Roe Enters., Inc., 2005 WL 6289213, at \*4 (D.N.J. Nov. 2, 2005).

The Court may extend a debtor's exclusivity periods "for cause" under section 1121(d)(1) of the Bankruptcy Code. 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 this context "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th Cong., 1st Sess. 232 (1997); see also In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("legislative intent . . . [is] to promote maximum flexibility"). It is imperative that a debtor be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate information concerning the ramifications of any proposed plan for disclosure to creditors. See, e.g., In re Texaco, Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

Courts within various jurisdictions, including the Third Circuit, have held that the decision to extend a debtor's exclusivity periods should be based on the totality of the circumstances and is within the sound discretion of the bankruptcy court. See, e.g., In re Burns and Roe Enterprises, Inc., 2005 WL 6289213, at \*3 (Bankr. D.N.J. Nov. 2, 2005); First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip, Inc., 64 B.R. 963, 965 (D. Del. 1986); In re Express One Int'l. Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). The factors courts generally consider when deciding whether a debtor has had adequate opportunity to draft, negotiate, and propose a chapter 11 plan and, thus, whether cause exists to extend a debtor's exclusivity periods include the following:

- (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 In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 183 (Bankr. D.N.J. 2002); McLean Indus., 87 B.R. at 834.

Because each case is unique, not all of these factors are relevant in each case and courts will only consider those factors that are relevant in the case at hand. See, e.g., Express One, 194 B.R. at 100 (identifying only four of the factors as relevant to its analysis as to whether cause existed to extend the exclusivity periods); see also Pine Run Trust, Inc., 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (relying on only two of the factors in deciding to extend the exclusivity periods).

In this case, the Debtor submits that sufficient “cause” exists to extend the exclusive periods under section 1121(d) of the Bankruptcy Code because the relevant aforementioned factors weigh in favor of such an extension.

As set forth in the Barnett-Lombard certification, the chapter 11 case was precipitated by the pendency of a partial summary judgment motion in a federal district court action against

Bulk and the Lombards brought by Liberty Insurance Corporation and LM Insurance Corporation (“Liberty”). Liberty alleged in the district court action that Bulk underpaid its workers’ compensation insurance premiums for the period commencing November 2004 through and including June 2012 causing it to sustain damages in excess of \$1.3 million. The defendants have emphatically denied the allegations and were vigorously defending the action at the time of the Petition Date.

Liberty’s claim is unliquidated and disputed. Liberty has filed a motion for relief from the automatic stay to pursue the district court litigation, returnable on October 31, 2017. The Debtors are objecting to that motion. Liberty’s claim, if any, will eventually be liquidated and, once liquidated, the Debtor and Bulk would hope to engage Liberty in discussions over the terms pursuant to which it would support the Debtor’s plan. Treatment of Liberty’s claim will be an integral part of any plan of reorganization. Until Liberty’s claim is resolved, however, it is simply premature to be filing a plan.

Moreover, the Debtor’s case is integrally tied to the success of Bulk’s chapter 11 case. Bulk is presently taking advantage of the automatic stay to stabilize its own finances and business operations. Its lender is supportive of Bulk’s efforts to reorganize.

At the present time all post-petition obligations in both the Lombard and Bulk’s chapter 11 cases are current so that there will be no prejudice to creditors if the exclusivity period were to be extended.

In sum, the Lombards are making good faith progress since filing for chapter 11 and hope to be in a position to file a confirmable plan in several months.

Relief similar to that requested by the Debtor herein has been granted by other courts in this District and Circuit. See, e.g., In re Cinram Group, Inc., No. 17-15258 (VFP) (Bankr. D.N.J.

July 27, 2017) (granting initial 90-day extension of exclusivity periods without prejudice to seek additional extensions); In re East Orange General Hospital, Inc., No. 15-31232 (Bankr. D.N.J. Mar. 7, 2016) (granting 61-day extension of exclusivity periods); In re G-I Holdings, Inc., No. 01-30135 (RG) (Bankr. D.N.J. June 8, 2001) (granting an initial extension of the exclusivity periods of approximately seven months); In re Molycorp, Inc., No. 15-11537 (CSS) (Bankr. D. Del. Jan. 14, 2016) (granting an initial extension of the exclusivity periods of approximately six months); In re Energy Future Holdings Corp., No. 14-10979 (CSS) (Bankr. D. Del. Sept. 16, 2014) (granting an initial extension of the exclusivity periods of 180 days).

In sum, an objective analysis of the relevant factors discussed above demonstrates that the Lombards seek to facilitate a successful conclusion to their Chapter 11 Case and that “cause” exists for extending the exclusive periods.

### **CONCLUSION**

For the foregoing reasons, the Court should enter an Order extending the exclusive period for Robert A. Lombard, Jr. and Charlene M. Barnett-Lombard to file a chapter 11 plan through and including March 6, 2018 and to further extend the Debtor’s exclusive period to solicit acceptances for the chapter 11 plan through and including May 7, 2018, and for such further relief as the Court deems just and proper.

NORRIS McLAUGHLIN & MARCUS, P.A.  
Counsel for Debtor/Debtor-in-Possession  
Robert A. Lombard, Jr. and Charlene M. Barnett-  
Lombard

Dated: October 24, 2017

By: /s/ Gary N. Marks  
Gary N. Marks, Esq.