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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

IN RE: : CHAPTER 11
: :
St. Mary’s Hospital, Passaic, N.J. : CASE NO.: 09-15619-MS
Debtor. :
: :
:

LIMITED OBJECTION OF SECURED CREDITOR NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY TO THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 1121 (d) EXTENDING DEBTOR’S EXCLUSIVE PERIOD TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO

**TO: THE HONORABLE MORRIS STERN
UNITED STATES BANKRUPTCY JUDGE**

The secured creditor, the New Jersey Health Care Facilities Financing Authority (“NJHCFFA”), by and through its counsel, Capehart & Scatchard, P.A, hereby submits this limited objection (the “Objection”) to the Debtor’s motion for entry of any Order pursuant to 11 U.S.C. § 1121 (d) Extending Debtor’s Exclusive Period Within Which to File a Chapter 11 Plan and Solicit Acceptance Thereof (the “Motion”) for the following reasons:

BACKGROUND

1. On March 9, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manages its properties and assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
2. On March 25, 2009, the United States Trustee for this District constituted and appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in this case.
3. The Debtor is requesting an extension of the Debtor’s exclusivity periods (i) to file a chapter 11 plan for an additional 90 days until October 7, 2009 and (ii) to solicit acceptance of such plan for an additional 90 days until December 7, 2009.
4. Secured Creditor, NJHCFFA joins in the concerns of the Committee that the longer this Debtor remains in a chapter 11 proceeding, the more difficult it will be for a successful reorganization or to maximize the value through a sale.
5. The NJHCFFA believes the Debtor’s request for an extension of the exclusive period to file a chapter 11 plan should be limited to and no longer then 60 days and the extension to solicit acceptance of such plan should also be limited to 60 days for the following reasons:

LIMITED OBJECTION BY NJHCFFA

1. As noted in the limited objection filed by the Committee, Congress intended to give the debtor a limited exclusive period for filing plan under §1121, but also recognized the importance that creditors play in the process and that creditors (whose money is in the enterprise as much as the debtor’s) should be given the opportunity to formulate and propose a reorganization plan. See In Re Timbers of Inwood Forest Associates, Ltd., 808 F.2d 363, 373 (5th Cir. 1987) citing the

relevant House Report, *H.R. Rep. No. 595, 95th Cong. 2nd Sess, 174*. The court in Timbers recognize that the key to avoiding excessive administrative expenses, which is borne by all creditors, is “early and stringent judicial management of the case” if the Chapter 11 process is to survive and if the goals of reorganization on the one hand and creditors protection, on the other, are to be achieved. Timbers, 808 F.2d at 373.

2. The Debtor correctly points out that when considering whether cause exists for an extension of a Debtor’s exclusivity period, the factors the Court should consider include: (a) the size and complexity of the case; (b) the necessity of sufficient time to negotiate and prepare adequate information; (c) the existence of good faith progress toward reorganization; (d) whether the debtor is paying its debts as they come due; (e) whether the debtor has demonstrated reasonable prospect for filing a viable plan; (f) whether the debtor has made progress in negotiating with creditors; (g) the length of time the case has been pending; (h) whether the debtor is seeking the extension to pressure creditors; and whether unresolved contingencies exist. See, In re Central Jersey Airport Services, LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); In re R.G. Pharmacy, Inc., 374 B.R. 484, 487 (Bankr. D. Conn 2007).

3. The size and complexity of the case. Since filing the petition, the Debtor’s points out that the CEO has resigned and a new CEO was appointed only last week. In any chapter 11 case, there exists the possibility that the Debtor may loose other key officers. Such events will have a negative impact on the Debtor’s ability to make progress in assembling a viable plan and/or negotiate with potential third party buyers.

4. The NJHCFFA has been actively communicating with potential third parties expressing an interest in the debtor’s estate. The opportunity for any of these potential third parties or other parties from making a good faith offer should not be discouraged or chilled by granting the

Debtor's request for an additional 90 day exclusive period. An extension of 60 days will result in the Debtor having a total of 180 day exclusive period, which is a fair and reasonable period of time under these circumstances.

5. The necessity of sufficient time to negotiate and prepare adequate information. Limiting the Debtor's request for an extension of the exclusive period does not prevent the debtor from negotiating or preparing adequate information. The Debtor had the benefit of the initial 120 day exclusive period; however, the Debtor has failed to provide the NJHCFFA with any projections past July 13, 2009. The Debtor should be required to assemble and produce such projections shortly. The NJHCFFA and the Committee should be allowed the opportunity to review and consider such projections before commenting or committing to more than a 60 - day extensions for the exclusivity period.

6. The existence of good faith progress toward reorganization. The Debtor acknowledges that its focus on issues related to the temporary modification of the collective bargaining agreement, replacement of the debtor's bankruptcy counsel and replacement of the Debtor's CEO has delayed the progress towards the Debtor's submission of a viable plan. Such events are outside the control of NJHCFFA, the Committee or other creditors. The opportunity for NJHCFFA to file a viable plan (should it elect to do so) should not be chilled because of these events.

7. Whether the debtor is paying its debts as they come due. As conditions for granting the Debtor's request for extension of the exclusive period to file a plan of reorganization and solicit acceptance thereto, NJHCFFA requests that the following two bench marks be made express conditions for the continuation of the exclusivity periods:

- i. Earnings. Debtor's exclusivity period shall automatically terminate if a change in the net assets of the Debtor divided by the total operating revenue of the Debtor (calculated on a calendar monthly basis) is below a negative two percent (2%).
- ii. Liquidity. Debtor's exclusivity period shall automatically terminate in the event the Debtor's cash and cash equivalent (calculated on a calendar monthly basis) falls below \$500,000.

The basis for these bench marks includes the following:

1. The Debtor reported as of June 12, 2009, the DIP loan has been increased to a total of \$9,175,010. This increase in the line of credit gives concern for the NJHCFFA, since it (i) raises questions about the viability of Debtor's operations post-petition and (ii) decreases the adequate protection and security interest of the NJHCFFA in the Debtor's Accounts Receivable, which are currently pledged as a senior lien to secure the DIP financing.
8. The Debtor's level of admissions for patients for May 2009 were below the Debtor's level of admission for patients for May 2008 and below budget.
9. Since the date of filing the Petition, the Debtor has failed to make any interest or principal payments due to the NJHCFFA under the note and mortgage held by the NJHCFFA. Because the NJHCFFA issued bonds on behalf of the debtor to purchase its current facility and which bonds were backed by the state ("HATP Bonds") such failure to make payments by the Debtor to the NJHCFFA imposes an unfunded liability for the Treasury of the State of New

Jersey to make the interest and principal payments on the HATP bonds. . The next interest payment under the HATP bonds are due on September 1, 2009.

10. Since April 17, 2009, the Debtor reports that its cash and cash equivalents have averaged \$900,000. The proposed liquidity bench mark gives the Debtor sufficient latitude, but without limiting the NJHCFFA from presenting a viable plan in the event the Debtor's liquidity drops below the \$500,000 benchmark.

11. Such bench marks will allow this Court to fairly and reasonably balance the debtor's interest in maintaining an exclusive period, while also recognizing the legitimate interest of the largest secured creditor, NJHCFFA, to present a viable plan.

12. Whether the debtor has demonstrated reasonable prospect for filing a viable plan. To date, the debtor has not demonstrated to NJHCFFA a reasonable prospect for filing a viable plan

13. Whether the debtor has made progress in negotiating with creditors. To date, the debtor has not demonstrated to NJHCFFA that it has made progress in negotiating with creditors

14. The length of time the case has been pending. In the event debtor's request to extend the exclusive period is limited to 60 days, the debtor will be afforded a total of 180 days of exclusivity, a reasonable period under the circumstances.

15. In short, the Debtor will not be precluded from filing an plan of reorganization if the exclusivity period expires. There is no negative effective upon the Debtor in the event that NJHCFFA is afforded the opportunity, in the public interest, to also file a viable plan.

CONCLUSION

The secured creditor, NJHCFFA does not oppose the Debtor's motion to extend the exclusive period within which to file a chapter 11 plan and to solicit acceptance thereto. Rather, the

NJHCFFA seeks to reasonably limit the extension to 60 days and to condition such bench mark with the following conditions:

1. Earnings. Debtor's exclusivity period shall automatically terminate if a change in the net assets of the Debtor divided by the total operating revenue of the Debtor (calculated on a calendar monthly basis) is below a negative two percent (2%).
2. Liquidity. Debtor's exclusivity period shall automatically terminate in the event the Debtor's cash and cash equivalents (calculated on a calendar monthly basis) falls below \$500,000.

The 60 day extension, together with the bench marks listed above, allows this court to fairly and reasonably balance the debtor's interest in maintaining an exclusive period, while also recognizing the legitimate interest of the largest secured creditor, NJHCFFA, to present a viable plan.

Respectfully Submitted,

CAPEHART & SCATCHARD, P.A.
A Professional Corporation
Attorneys for Secured Creditor
**New Jersey Health Care Facilities
Financing Authority**

By: /s/Alan P. Fox
Alan P. Fox

Dated : June 29, 2009

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**AFFIDAVIT OF MARK HOPKINS IN SUPPORT OF LIMITED OBJECTION OF
SECURED CREDITOR NEW JERSEY HEALTH CARE FACILITIES FINANCING
AUTHORITY TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER
PURSUANT TO 11 U.S.C. § 1121 (d) EXTENDING DEBTOR'S EXCLUSIVE PERIOD
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO.**

STATE OF NEW JERSEY)
)
) SS.
COUNTY OF MERCER)

I, Mark Hopkins, of full age, being duly sworn according to law, upon his oath, does certify as follow:

1. I am the Executive Director of the secured creditor, the New Jersey Health Care Facilities Financing Authority ("NJHCFFA"). I am authorized to make this affidavit in support of

the limited objection (the "Objection") by NJHCFFA to the Debtor's motion for entry of any Order pursuant to 11 U.S.C. § 1121 (d) Extending Debtor's Exclusive Period Within Which to File a Chapter 11 Plan and Solicit Acceptance Thereof (the "Motion").

GENERAL BACKGROUND

2. On March 9, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manages its properties and assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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5. Secured Creditor, NJHCFFA joins in the concerns of the Creditor's Committee that the longer this Debtor remains in a chapter 11 proceeding, the more difficult it will be for a successful reorganization or to maximize the value through a sale.

6. The NJHCFFA believes the Debtor's request for an extension of the exclusive period to file a chapter 11 plan should be limited to 60 days and the extension to solicit acceptance of such plan should also be limited to 60 days for the following reasons:

LIMITED OBJECTION BY NJHCFFA

7. Since filing the petition, the Debtor points out that the CEO has resigned and a new CEO was appointed only last week. In any chapter 11 case, there exists the possibility that the Debtor may lose other key officers. Such events will have a negative impact on the Debtor's ability to make progress in assembling a viable plan and/or negotiate with potential third party buyers.

8. The NJHCFFA has been actively communicating with potential third parties expressing an interest in the debtor's estate. The opportunity for any of these potential third parties or other parties from making a good faith offer may be chilled if the Debtor is unable to commit its full time and resources to negotiating with such third parties. An extension of 60 days will result in the Debtor having a total of 180 day exclusive period, which is a fair and reasonable period of time under these circumstances.

9. Limiting the Debtor's request for an extension of the exclusive period does not prevent the Debtor from negotiating or preparing adequate information. The Debtor had the benefit of the initial 120 day exclusive period; however, the Debtor has failed to provide the NJHCFFA with any projections past July 13, 2009. The Debtor should be required to assemble and produce such projections shortly. NJHCFFA should be allowed adequate time to review and consider such projections before commenting or committing to more than a 60-day extension for the exclusivity period.

10. The Debtor acknowledges that its focus on issues related to the temporary modification of the collective bargaining agreement, replacement of the debtor's bankruptcy counsel and replacement of the Debtor's CEO has delayed the progress towards the Debtor's submission of a

viable plan. Such events are outside the control of NJHCFFA. The opportunity for NJHCFFA to file a viable plan (should it elect to do so) should not be chilled because of these events outside the control of the NJHCFFA.

11. As reasonable conditions for granting the Debtor's request for extension of the exclusive period to file a plan of reorganization and solicit acceptance thereto, NJHCFFA requests that the following two bench marks be made express conditions for the continuation of the exclusivity periods:

- i. Earnings. The Debtor's exclusivity period shall automatically terminate in the event a change in the net assets of the Debtor divided by the total operating revenue of the Debtor (calculated on a calendar monthly basis) falls below a negative two (2%) percent.
- ii. Liquidity. The Debtor's exclusivity period shall automatically terminate in the event the Debtor's cash and cash equivalents (calculated on a calendar monthly basis) falls below \$500,000.00.

12. The basis for these bench marks includes the following:

- a. The Debtor reported as of June 12, 2009, the DIP loan has been increased to a total of \$9,175,010. This increase in the line of credit gives concern for the NJHCFFA, since it (i) raises questions about the viability of the Debtor's operations post-petition and (ii) decreases the adequate protection and security interest of the NJHCFFA in the Debtor Accounts Receivable, which are currently pledged as a senior lien to secure the DIP financing.


- b. The Debtor's level of admissions for patients for May 2009 were below the Debtor's level of admission for patients for May 2008 and also below Debtor's budgeted admissions for May 2009.
- c. Since the date of filing the Petition, the Debtor has failed to make any interest or principal payments due to the NJHCFFA under the note and mortgage held by the NJHCFFA. Because the NJHCFFA issued bonds on behalf of the Debtor to purchase its current facility and which bonds were backed by the State ("HATP Bonds"), such failure to make payments by the Debtor to the NJHCFFA imposes an unfunded liability for the Treasury of the State of New Jersey to make interest and principal payments on the HATP bonds. The next interest payment under the HATP bonds are due on September 1, 2009.
- d. Since April 17, 2009, the Debtor reports that its cash and cash equivalents have averaged \$900,000. The proposed liquidity bench mark gives the Debtor sufficient latitude, but without punishing the NJHCFFA from presenting a viable plan in the event the Debtor's liquidity drops below the \$500,000 benchmark.

13. Such bench marks will allow this Court to fairly and reasonably balance the debtor's interest in maintaining an exclusive period, while also recognizing the legitimate interest of the largest secured creditor, NJHCFFA, to present a viable plan.

14. To date, the debtor has not demonstrated to NJHCFFA a reasonable prospect for filing a viable plan.

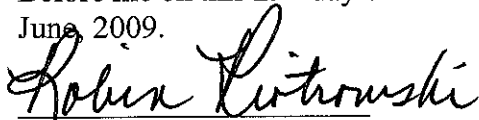
15. To date, the debtor has not demonstrated to NJHCFFA that it has made progress in negotiating with creditors.

16. In short, the Debtor will not be precluded from filing a plan of reorganization if the exclusivity period expires. There is no negative effective upon the Debtor in the event that NJHCFFA is afforded the opportunity, in the public interest, to also file a viable plan.

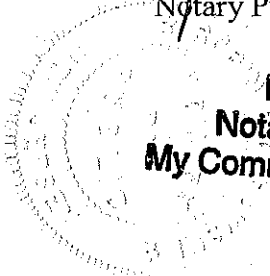


Mark Hopkins, Executive Director,
New Jersey Health Care Facilities Financing Authority

Sworn and subscribe to
Before me on this 29th day of
June, 2009.



Notary Public



ROBIN PIOTROWSKI
Notary Public of New Jersey
My Commission Expires Oct 14, 2013