UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:	CASE NO. 12-51127 (Jointly Administered)
PICCADILLY RESTAURANTS, LLC, *et al.*	CHAPTER 11
DEBTORS.	JUDGE ROBERT SUMMERHAYS

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' THIRD MOTION PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE REQUESTING A THIRD EXTENSION OF THE EXCLUSIVE PERIOD FOR THE FILING OF A CHAPTER 11 PLAN AND SOLICITATION OF ACCEPTANCES THEREOF AND CROSS-MOTION TO TERMINATE EXCLUSIVITY AS TO THE COMMITTEE

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases of Piccadilly Restaurants, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors") files this objection (the "Objection") to *Debtor's Third Motion to Increase the Exclusive Period in Which a Plan Must be Accepted in Order to Maintain the Exclusive Period* [Docket No. 949] (the "Third Exclusivity Motion") and cross-motion to terminate exclusivity as to the Committee and, in support thereof, respectfully states as follows:

I.
PRELIMINARY STATEMENT

1. For the third time in less than eight (8) months, the Debtors again ask the Court to extend the Debtors' exclusive period to solicit acceptances of a plan of reorganization. For the reasons set forth herein, the Court should deny the Debtors' request for an extension and, instead, immediately terminate exclusivity.

2. The Debtors have proposed a plan of reorganization that is patently unconfirmable. The Debtors now request an additional extension through November 12, 2013 to solicit their plan. The Debtors should not be granted additional time to solicit acceptances of a plan that cannot be confirmed as a matter of law. To grant the Debtors' request would only further and unnecessarily delay the plan process and shoulder the estates with additional costs without any prospective corresponding benefit.

3. Absent from the Debtors' request is any factual basis to support a third proposed extension. Instead, the Debtors repeat generic assertions that they have been actively pursuing restructuring efforts and have made significant progress. Although the Debtors contend they have made significant progress with respect to their restructuring efforts, the Debtors do not provide any detail regarding their progress and efforts (other than to state a plan (supported and co-sponsored by existing equity) and disclosure statement have been filed), nor do they offer any meaningful justification for another extension. Accordingly, the Debtors fail to satisfy their burden of demonstrating "cause" to support another extension of exclusivity.

4. The Debtors have had ample time and opportunity to propose a plan of reorganization capable of being confirmed. Because the Debtors have failed to do so, the Committee believes the process should be immediately opened up to allow the Committee to file its own proposed plan of reorganization. Terminating exclusivity would not prevent the Debtors from soliciting their proposed plan, but it would allow creditors to consider the Debtors' plan, including the proposed treatment therein, vis-à-vis a plan proposed by the Committee that is capable of being confirmed and would provide for much better treatment of creditors than proposed by the Debtors and existing equity. Thus, immediately terminating exclusivity as to the Committee and opening up the plan process is in the best interests of the estates and creditors.

5. For these and other reasons set forth herein, the Court should deny the Debtors' Third Exclusivity Motion and grant the Committee's cross-motion to terminate exclusivity forthwith as to the Committee.

II.
BACKGROUND

6. On September 11, 2013 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). The Debtors continue to operate and manage their businesses as debtors-in-possession.

7. On November 30, 2012, the Debtors filed their first motion seeking an extension of the exclusivity period for filing a plan of reorganization and soliciting acceptances thereon [Docket No. 351].

8. On December 19, 2012, the Court entered an order [Docket No. 417] extending the Debtors' exclusivity period for filing a plan and soliciting acceptances thereon through April 9, 2013 and June 10, 2013, respectively.

9. On March 4, 2013, the Debtors filed their second motion seeking a second extension of the exclusivity period for filing a plan of reorganization and soliciting acceptances thereon [Docket No. 526] (the "Second Exclusivity Motion").

10. On March 26, 2013, the Court held a hearing on the Debtors' Second Exclusivity Motion. At the hearing, the Court stated that the Debtors would be on a "short leash" regarding additional extensions to confirm a plan. The Court also informed the Debtors that it was not inclined to grant any further extensions and advised the Debtors to make the best use of the additional time granted.

11. On March 28, 2013, the Court entered an order [Docket No. 683] extending the Debtors' exclusivity period for filing a plan and soliciting acceptances thereon through July 8, 2013 and September 9, 2013, respectively.

12. On July 8, 2013, the Debtors filed their disclosure statement [Docket No. 920] (the "Disclosure Statement") and joint plan of reorganization [Docket No. 921] (the "Plan"). The Plan is jointly proposed by the Debtors and their existing equity, including Yucaipa Corporate Initiatives Fund I, L.P.

13. On July 26, 2013, the Debtors filed their Third Exclusivity Motion seeking another extension of the exclusivity period for soliciting acceptances of the Debtors' Plan through November 12, 2013. For the reasons stated herein, the Committee objects to any further extensions of the Debtors' exclusivity period for soliciting acceptances on its Plan and moves for immediate termination of the Debtors' exclusivity as to the Committee.

III.
OBJECTION

A. Legal Standard for Extending Exclusivity

14. Section 1121 of the Bankruptcy Code gives a debtor the exclusive right to file a plan of reorganization during the first 120 days after the order for relief and an additional 60 days to solicit acceptances before any competing plan may be filed. 11 U.S.C. § 1121(b), (c)(3). The court may "for cause," reduce or increase the time periods within which a Debtor has the exclusive right to file a plan of reorganization and solicit acceptances thereof. 11 U.S.C. § 1121(d).

15. "The decision of whether to extend the debtor's period of exclusivity rests with the discretion of the Court" and the debtor-in-possession "bears the burden of establishing "cause" for an extension of its exclusive period." *In re Washington-St. Tammany Elec. Co-op.,*

Inc., 97 B.R. 852, 854 (E.D. La. 1989); *see also In re Mirant Corp.*, 2004 WL 2250986 (Bankr. N.D. Tex. 2004) (quoting *Washington-St. Tammany*, 97 B.R. at 854). "A request to either extend or reduce the period of exclusivity is a serious matter" and "such a motion should 'be granted neither routinely nor cavalierly.'" *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (quoting *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987)).[1]

16. Although section 1121(d) of the Bankruptcy Code does not define "cause," the following factors have been used by courts in determining whether "cause" exists:

> (a) the size and complexity of the case;
>
> (b) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
>
> (c) the existence of good faith progress toward reorganization;
>
> (d) the fact that the debtor is paying its bills as they become due;
>
> (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
>
> (f) whether the debtor has made progress in negotiations with its creditors; and
>
> (h) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands.

In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

17. Moreover, the Fifth Circuit has cautioned:

> any bankruptcy court involved in an assessment of whether 'cause' exists should be mindful of the legislative goal behind §1121. The bankruptcy court must avoid reinstituting the imbalance between the debtor and its creditors that characterized proceedings under the old Chapter XI. Section

[1] S*ee also In re Pine Run Trust, Inc.*, 67 B.R. 432, 434 (Bankr. E.D. Pa. 1986) ("both the language and purpose of [Section 1121(d)] require that an extension not be granted routinely"); *In re Parker St. Florist & Garden Ctr., Inc.*, 31 B.R. 206, 207 (Bankr. D. Mass. 1983) ("the [c]ourt should not routinely grant an extension"); *Southwest Oil*, 84 B.R. at 450 (Bankr. W.D. Tex. 1987) ("[a] court considering a motion to extend the 120-day period … should not routinely grant an extension. It should act only where cause is shown").

> 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.

United States Savs. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.), 808 F.2d 363, 372 (5th Cir. 1987), *aff'd* 484 U.S. 365 (1988). Thus, the purpose of section 1121 is to limit any delay that makes creditors hostages of debtors. *All Seasons Indus.*, 121 B.R. at 1004; *see also Timbers of Inwood Forest*, 808 F.2d at 372 ("Section 1121 represents a congressional acknowledgement that creditors, whose money is invested in the enterprise no less than the debtor's, have a right to a say in the future of the enterprise.").

18. In considering debtors' requests to extend exclusivity, courts have stated that an extension should not be employed as a tactical measure to pressure creditors to accept a plan they consider unsatisfactory. *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (Bankr. E.D.N.Y. 1989) (stating that section 1121 "seeks to cure the prior practice that gave debtors 'undue bargaining leverage' to delay and thereby 'force a settlement out of otherwise unwilling creditors'"); *see also Curry*, 148 B.R. at 756 ("An extension request should not be employed as a tactical devise to put pressure on creditors to yield to a plan that they might consider unsatisfactory."). Furthermore, "in virtually every case where an extension has been granted, the debtor showed substantial progress had been made in negotiations toward reorganization. *Mirant,* 2004 WL 2250986 at *2 (noting a debtor's burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts).

19. Regardless of whether a chapter 11 case is large and complex, a court may deny an extension of the debtor's exclusivity period where the debtor has delayed an agreement on a chapter 11 plan or is attempting to pressure creditors to accept a plan which they may view as sub-optimal. *See, e.g., In re Sharon Steel Corp.*, 78 B.R. 762, 765 (Bankr. W.D. Pa. 1987).

Courts may also shorten exclusivity periods where "a debtor is wasting its opportunity, or is incapable of formulating a plan." *McLean Indus.*, 87 B.R. at 834.

B. Debtors Fail to Demonstrate "Cause" for Extension of Exclusivity

20. The Debtors fail to meet their burden of demonstrating "cause" to extend exclusivity. Rather than demonstrate why the facts and circumstances of *these* chapter 11 cases require an extension of exclusivity, the Debtors simply provide boiler plate recitations as support for an extension of exclusivity. However, mere recitations do not constitute "cause" for an extension of exclusivity. *In re Ravenna Indus., Inc.*, 20 B.R. 886, 889 (Bankr. N.D. Ohio 1982). Despite their contention to the contrary, the Debtors are not entitled to a "routine" extension of exclusivity; rather, the Debtors must demonstrate "cause" for such extension.

21. The Debtors base their request for an additional sixty (60) day extension to gain acceptance of the Plan on general statements that the *Express One* factors, outlined above, "weigh in favor of granting an extension" and that the Debtors "have been actively pursuing restructuring efforts" since the Petition Date and have made significant progress. Third Exclusivity Motion ¶ 14. However, the Debtors do not attempt to analyze and apply the *Express One* factors to the facts and circumstances of these chapter 11 cases. This lack of analysis is *prima facie* evidence that the Debtors have not and cannot demonstrate "cause" for an extension of exclusivity.

22. In support of their request to extend the exclusive period, the Debtors state that during a status conference related to an adversary proceeding in these cases, all parties acknowledged that a confirmation hearing on the Plan could not be held until at least mid-October. Third Exclusivity Motion ¶ 15. This statement does not address any of the *Express One* factors and therefore is not relevant to an analysis of "cause". Furthermore, the Debtors could

have filed their Plan one (1) day earlier, and if so, would have been able to schedule the confirmation hearing during the current exclusive period. Third Exclusivity Motion ¶ 16. The Debtors had full knowledge of the 28-day notice requirement set forth in the Bankruptcy Rules and were in complete control with respect to the timing of the filing of their Plan and Disclosure Statement. *See* Fed. R. Bankr. P. 2002(b). Creditors should not be held hostage and prevented from proposing viable alternatives to the Debtors' proposed Plan for another three (3) months, *i.e.*, through November 12, 2013, due to the Debtors' poor planning and lack of foresight.

23. In support of a third extension of exclusivity, the Debtors claim that prior opposition by the Debtors' secured lender to an extension of exclusivity are moot now that a Plan has been filed. Third Exclusivity Motion ¶ 18. The fact that the secured creditor's concern may be moot is of no consequence since the Committee objects to any further extension of the Debtors' exclusivity. Moreover, the Debtors' conclusory and self-serving statements that "significant negotiations with creditors are continuing and that significant progress has been made" entitles the Debtors to another short extension of exclusivity do not provide a scintilla of support for another extension. Third Exclusivity Motion ¶ 19. The Debtors are not "entitled" to anything and, once again, the Debtors fail to support their boiler plate assertions with any evidence that would demonstrate "cause". As such, the Debtors have not and cannot meet their burden of proof and their request should be denied.

24. Where, as here, a debtor has received a prior extension of its exclusivity periods and has not yet made significant progress towards reorganization, further extension is not appropriate. *See In re Acceptance Ins. Cos., Inc.*, 2008 WL 3992799, at *1 (Bankr. D. Neb. Aug. 20, 2008) (denying debtor's motion to extend its exclusive periods because, in addition to debtor's lack of meaningful progress, holder of large claim against debtor wished for opportunity

to attempt to locate buyer, propose plan and pursue approval thereof). The Committee contends that the Debtor has not made substantial progress toward a successful reorganization. Rather, the Debtors have simply filed a Plan that, as a matter, cannot be confirmed. This is not progress, let alone substantial progress. Furthermore, any suggestion that meaningful negotiations are taking place is simply not true. The Debtors are using their exclusivity to exert leverage over creditors and force them into a plan of reorganization that they deem unacceptable and as not in the best interests of the estates and creditors. The Debtors should not be given any additional time to solicit acceptances of a Plan that is both unconfirmable and unacceptable to creditors and parties in interest.

25. As stated herein, the Debtors fail to satisfy their burden of demonstrating "cause" and have provided no basis for the Court to approve their request for a ***third*** extension of time to gain acceptance of their Plan. The Debtors have had ample time to propose and file a viable plan of reorganization and have failed to do so. In short, the Debtors are not entitled to an extension of time to gain acceptance of their Plan when they have squandered two (2) prior extensions. Continual extensions, coupled with no meaningful progress made as a result thereof, only serve to delay the plan process, increase administrative costs borne by the estates and threaten the Debtors' ability to successfully reorganize and emerge from bankruptcy. Recognizing this, the Court warned the Debtors at the last exclusivity hearing to make the best use of their time as the Court would not be inclined to grant any further extensions of exclusivity. As the Debtors did not heed the Court's cautionary advice, no further extensions of exclusivity should be granted.

26. Even if the Debtors could demonstrate "cause" to further extend exclusivity, the Debtors must also show there is a reasonable likelihood of achieving a successful reorganization within a reasonable amount of time:

> the debtor in a Chapter 11 case is also required to demonstrate that there is a reasonable probability that it will be able to propose a plan that will result in a successful reorganization within a reasonable time. Some promise of probable success in formulating such a plan of reorganization is an element of cause for an extension of the exclusivity period. A reasonable probability cannot be grounded solely on speculation. The Code requires the debtor to prove that an effective reorganization is possible.

Southwest Oil, 84 B.R. at 448. Here, the Debtors have not and cannot make such showing. Although the Debtors filed their Plan, they fail to demonstrate that their Plan will result in a successful reorganization within a reasonable time. Nor can the Debtors since the Plan they propose is unconfirmable as a matter of law. The proposed Plan would, among other things, immediately release the Debtors' existing equity holders, management and other insiders from avoidance actions and other potential claims and causes of action irrespective of whether creditors are ever paid in full under the Plan. *See* Plan §§ 11.6, 11.7. The Plan would also allow the Debtors' existing equity holders to retain their interests in the Debtors in exchange for a loan made by equity to the Debtors and despite there being any assurances that creditors will ever be paid in full under the Plan. Moreover, the Disclosure Statement and Plan fail to adequately evaluate the value of such retained equity and wholly fail to disclose any efforts made by the Debtors to attract new or additional investors, including efforts to market equity interests to third party investors. In addition to the foregoing, there are numerous other deficiencies with respect to the Plan that render it unconfirmable as a matter of law. Simply put, there cannot be a successful reorganization where, as here, there is not a confirmable proposed plan of reorganization.

27. "[I]n virtually every case where an extension has been granted, the debtor has shown substantial progress has been made in formulating a plan during the first 120 days" and courts have concluded that a "debtor's motion to extend the **exclusivity** period should be denied

because the debtor had not made a showing that it could successfully reorganize if the **exclusivity** period were extended" *Id.* at 451 (emphasis in original). Here, the Debtors are well outside the first 120 days of these cases and fail to make any showing that a further extension of exclusivity is justified. Accordingly, the Debtors' request should be denied.

28. The only way to assure that the value of the Debtors' estates are maximized for the benefit of all the Debtors' stakeholders is to open up the plan process and allow parties in interest to propose their own plans of reorganization. As recognized by the *Mid-State Raceway* court:

> Some or all of those opposing the Debtors' motion, including the Committee, have suggested on several occasions that there are other interested parties willing to file competing plans. Under those circumstances, any further delay in the confirmation process resulting from extension of the Debtors' exclusivity period could well damage the prospects of realizing the intrinsic economic value of [the debtors' assets].

In re Mid-State Raceway, Inc., 323 B.R. 63, 69 (Bankr. N.D.N.Y. 2005). The Committee is ready and willing to file a competing plan of reorganization. Foreclosing the Committee from the opportunity to do so would not be in the best interests of the Debtors, their estates or their creditors since the Committee's proposed plan would undoubtedly provide for more favorable treatment of creditors and, in turn, increase the prospects of a successful reorganization. This is especially true, where, as here, the current (and only) proposed Plan was drafted by the Debtors' existing equity for the benefit of equity and to the exclusion of the Debtors' creditors and other parties in interest.

29. Denying the Debtors' requested extension of time to gain acceptance of their Plan would not prevent the Debtors from continuing to solicit their Plan. However, it would afford other parties, including the Committee, an opportunity to propose alternative plans that would

give creditors viable and valuable alternatives to the Debtors' current proposed Plan. Nor would the denial of exclusivity extinguish the Debtors' concurrent right to either amend or file another plan if their current Plan is not accepted. *See Parker St. Florist,* 31 B.R. at 207 (noting that denying the debtors' motion to extend time to file a plan has "no negative affect upon the debtor's coexisting right to file its plan"). The expiration of exclusivity will help assure a level playing field. As has been recognized by other courts, denying a debtor's request for an extension of exclusivity:

> does not affect the debtors' ongoing right to file a plan. The fact that the debtors no longer have the ***exclusive*** right to file a plan does not affect their concurrent right to file a plan. By denying the extension, the Court does not prejudice the debtors' co-existent right, nor dilute the debtors' duty to file a plan. The other parties are simply allowed to protect their interests by coming forward with alternative plans or motions to dismiss.

Southwest Oil, 84 B.R. at 454 (emphasis in original and internal citations omitted). The same is true in these cases. Where, as here, the Debtors have proposed a plan of reorganization that is neither confirmable nor acceptable to creditors, parties in interest should be allowed to protect their interests and propose competing plans providing for more favorable treatment.

30. Denying the Debtors' requested extension of exclusivity is the only way to ensure confirmation of a plan acceptable to all stakeholders (and not merely existing equity) and the successful reorganization of the Debtors. Accordingly, the Debtors' Third Exclusivity Motion should be denied.

IV.
CROSS-MOTION TO IMMEDIATELY TERMINATE DEBTORS' EXCLUSIVITY AS TO THE COMMITTEE

31. In addition to opposing any further extension of the Debtors' exclusivity, the Committee hereby moves to immediately terminate the Debtors' exclusivity as to the Committee. The Committee submits that "cause" exists to immediately terminate Debtors' exclusivity as to

the Committee so that it may propose its own plan of reorganization—one that is actually capable of being confirmed.

32. As set forth herein, the Debtors' Plan cannot be confirmed under section 1129 of the Bankruptcy Code. For instance, the Plan violates the absolute priority rule codified in section 1129(b)(2)(B)(ii) of the Bankruptcy Code by allowing existing equity holders to receive or retain property "on account" of their prior interests in violation of the absolute priority rule. 11 U.S.C. §1129(b)(2)(B)(ii); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 LaSalle Street P'ship*, 526 U.S. 434, 440 (1999) (holding debtor's plan, which provided for existing equity holders to contribute new capital to reorganized debtor in exchange for retention of their equity interests, could not be confirmed because it failed to extend to anyone else opportunity to compete for equity or propose competing plan).

33. One way in which new value may be market tested is by terminating a debtor's exclusivity. *In re Union Financial Services Group, Inc.*, 303 B.R. 390, 424 (Bankr. E.D. Mo. 2003); *see also In re Global Ocean Carriers Ltd.*, 251 B.R. 31, 49 (Bankr. D. Del. 2000) (holding debtors must subject ownership interests in reorganized debtor to market place test, which requires either termination of exclusivity and allowing other parties to file competing plan or allowing other parties to bid for equity) (citing *LaSalle*, 526 U.S. at 457-58). Here, the Debtors' Plan would allow existing equity to retain their ownership interests in exchange for an undisclosed amount of money to be loaned by existing equity to the Debtors. *See* Plan § 7.1. The "new value" proposed by the Debtors and existing equity is not in the form of an injection of new equity but rather is in the form of a loan that must be repaid by the Debtors, along with interest. Not only has there been no market test performed in these cases, but creditors and other parties in interest do not even know the amount of the "new capital" to be loaned by existing

equity. Exclusivity should be used as a shield to benefit existing equity when the Plan, as proposed, fails to comport with the absolute priority rule and cannot be confirmed. Accordingly, the Committee requests that the Court immediately terminate exclusivity as to the Committee so that it may be afforded an opportunity to propose an alternative, competing plan of reorganization that is actually capable of being confirmed.

34. Although courts may consider a list of factors when determining whether "cause" exists to terminate exclusivity, those factors are not determinative and courts routinely take into account other considerations. *In re Adelphia Commc'ns.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006).[2] *See, e.g., In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997) ("When the Court is determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward."); *see also In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (BAP 9th Cir. 2002) ("We also agree with the *Dow Corning* court that a transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution."); *Adelphia*, 352 B.R. at 590 (finding that practicality and the ability to move a case forward to a degree not otherwise possible can override a mechanical application of factors). As the Fifth Circuit observed in *Timbers of Inwood Forest*, "the Bankruptcy Code affords several avenues for relief to all creditors, secured as well as unsecured." 808 F.2d at 370. One of those avenues is the termination of a debtor's plan exclusivity. *Id*.

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[2] Factors the Court may consider include (a) the size and complexity of the case; (b) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (c) the existence of good faith progress toward reorganization; (d) the fact that the debtor is paying its bills as they become due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress in negotiations with its creditors; (g) the amount of time which has elapsed in the case; (h) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and (i) whether an unresolved contingency exists. *Id.*

35. In determining whether to terminate exclusivity, the Court should consider not only the ability of the Debtors to spearhead a consensual plan (which they cannot) but also whether the creditors have lost faith in the ability of the Debtors to develop and obtain approval of a consensual plan of reorganization. *See, e.g., In the Matter of All Seasons Indus.*, 121 B.R. at 1006 ("While the [C]ourt makes no finding as to whether or not this loss of faith is justified . . . for the purpose of the present motion [to extend exclusivity], it is only necessary to realize that a loss of confidence exists. This is a factor the [C]ourt should and must consider in its determination.").

36. Here, it is uncontroverted that the Committee and other parties have lost faith the Debtors' ability to confirm a consensual plan. The Debtors' proposed Plan is far from consensual, let alone confirmable. The Plan was designed and is jointly proposed by the Debtors' existing equity for the benefit of equity and to the exclusion of creditors. The Plan would allow the Debtors' existing equity to obtain broad releases and retain their interests in the Debtors regardless of whether the Debtors' secured and unsecured creditors are ever paid in full. The Plan contains numerous other glaring deficiencies that render it patently unconfirmable and far from consensual. Based on the Plan itself, which is unconfirmable as a matter of law, and negotiations that have taken place among the Debtors, the Debtors' existing equity and the Committee, the Committee does not believe that the Debtors are capable of putting forth a consensual, confirmable plan of reorganization that is beneficial to all stakeholders (and not just existing equity).

37. Immediately terminating exclusivity as to the Committee will allow these cases to not only move forward but also increase the likelihood of a successful reorganization and the Debtors' emergence from chapter 11. This Court has stated that it will do what is best for these

cases, including putting the Debtors on a "short lease" with respect to exclusivity. The Committee submits that terminating the Debtors' exclusivity as to the Committee effective immediately would substantially help advance these cases. It would allow the Committee to immediately propose a competing plan of reorganization providing creditors and other parties in interest viable alternatives to the Debtors' proposed Plan, including allowing other parties the opportunity to bid for ownership of the reorganized debtors. Until such time as the Debtors' exclusivity is terminated, they will only continue to exert exclusivity as leverage in hopes of forcing creditors into submission and acceptance of a plan that is designed to only benefit equity and not creditors. This is unacceptable.

V.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Committee respectfully requests that the Court enter an order (i) denying the Third Exclusivity Motion and sustaining the Committee's Objection; (ii) immediately terminating the Debtors' exclusivity period to solicit acceptance of the Plan as to the Committee; and (iii) granting such other and further relief as is just, proper or equitable.

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Dated: August 13, 2013

Respectfully submitted,

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