UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CORUS BANKSHARES, INC.[1]	)	Case No. 10-26881 (PSH)
Debtor.	)	
	)	**Re: Docket Nos. 147 & 159**

REPLY TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER EXTENDING THE DEBTOR'S EXCLUSIVITY PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF PURSUANT TO SECTION 1121(D) OF THE BANKRUPTCY CODE

The above-captioned debtor and debtor in possession (the "Debtor") files this reply (the "Reply") to the *Objection of the Official Committee of Unsecured Creditors of Corus Bankshares, Inc. to the Motion of the Debtor for Entry of an Order Extending the Debtor's Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121(d) of the Bankruptcy Code* dated September 17, 2010 [Docket No. 159] (the "Objection") filed by the Official Committee of Unsecured Creditors (the "Committee").[2]

Preliminary Statement

1. In its Motion to extend exclusivity, the Debtor described, among other things, the complexities and dynamics of this case (against the backdrop of multiple bank holding company chapter 11 cases across the country addressing many issues of first impression), the Debtor's many activities to date to move these cases along in a short period of time, and the Debtor's

[1] The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor's corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

[2] On September 9, 2010, the Debtor filed its *Motion for Entry of an Order Extending the Debtor's Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* [Docket No. 147] (the "Motion"). Any capitalized terms not defined herein have the meaning given to them in the Motion.

exploration of multiple chapter 11 plan alternatives (in proactive consultation with the Committee at every step of the way). The Debtor then explained how it seeks an extension of exclusivity so that any chapter 11 plan can take into account several contingencies that are unknown at this point, but that hopefully will be clarified in the coming months. Among other things, these contingencies include: litigation with the FDIC over $250 million in tax refunds; the status of certain tax laws relating to $600 million in net operating losses (which may change parties' calculus regarding the prospects for a reorganization); whether the FDIC asserts a section 365(o) priority claim or any other claim (which would dramatically change the relative importance of the various stakeholders in this case and their right to have input into any chapter 11 plan); and the rights and ability of the representatives of the beneficial interest holders of the Debtor's unsecured debt to vote for any chapter 11 plan (which the Debtor is currently analyzing, based on information still being provided in response to Bankruptcy Rule 2004 subpoenas). The Debtor sought an extension of exclusivity until shortly after the end of the year, but specifically noted that it hoped that it could file a chapter 11 plan well in advance of that timeframe.

2. Only the Committee has objected to the Debtor's request for an extension of exclusivity. Despite the Debtor's proactive and continued communication and consultation with the Committee members since well before the petition date; the Debtor's and Committee's continual interaction, dialogue, and analysis of the issues and available options (a good amount of the Debtor's analysis being at the Committee's request); and the Debtor's progress to date (including that, even prior to the Committee's objection, the Debtor provided to the Committee a detailed chapter 11 plan term sheet, a fact conveniently omitted by the Committee), the Committee announced that just several weeks ago it finally determined (and communicated to the Debtor) that it desires only a plan of liquidation, and that the failure of the Debtor – itself a

fiduciary to all stakeholders in this case – to immediately accede to the Committee's demand mandates the extremely rare denial of even a single request to extend exclusivity. (Indeed, in every other major bank holding company chapter 11 case the bankruptcy court has extended exclusivity at least once beyond the initial 120-day and 180-day periods.[3])

3. Unfortunately, the Objection pays only lip service to the applicable legal standard, vastly oversimplifies the complexities of this case, grossly misconstrues the Debtor's conduct to date, and ignores the role of the FDIC. For this and other reasons, the Objection should be overruled.

4. First, the Committee's headlong rush to immediate liquidation is premature. Such a course of action irreversibly abandons potential value – based on, among other things, approximately $600 million in tax attributes – which if realized represents multiples of the assets currently in the estate. The Committee's eagerness to immediately liquidate is especially concerning because the entire Committee consists of indenture trustees without an economic stake in this case[4] who are unable to communicate with the ultimate beneficial holders of the TOPrS.[5] Indeed, the Debtor has spent the previous six months – up until three weeks ago – working with the indenture trustees for the TOPrS Trusts (the "TOPrS Indenture Trustees"), and after the Petition Date, with the Committee, to run a marketing process for a chapter 11 plan sponsor to maximize value. The Committee only recently, in late August, indicated its desire to

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[3] See Motion, Exhibit A (detailing extensions of exclusivity in other bank holding company cases).

[4] The Committee is comprised entirely of indenture trustees, who do not hold an economic interest in the TOPrS and act purely in an administrative capacity. Objection at ¶9 n.4 ("The Committee Members have the power and authority to file and advocate claims **but not cast ballots on a plan.**") (emphasis added).

[5] Although the Committee claims to have communicated with certain "voting members of its constituency," on information and belief, those parties are the collateral managers for a minority in principal amount of the CDOs (the "Collateral Managers"), who have claimed that they have extremely limited discretion to act. Objection at ¶24. The Debtor has repeatedly contacted the Collateral Managers, who have to date been unwilling to take a firm position on any chapter 11 plan construct.

liquidate immediately. In response to the Committee's position – although not agreeing with the propriety of an immediate liquidation – the Debtor froze virtually all work on a sponsored chapter 11 plan process and, instead on September 8, 2010, provided to the Committee a comprehensive draft plan term sheet containing all the material terms of a plan.[6] Further, prior to the hearing on the Motion, in response to the Committee's request, the Debtor will have provided the Committee with a draft chapter 11 plan and looks forward to the opportunity to negotiate the terms of that plan. However, as discussed in the Motion, there are contingencies and unknowns that may clarify themselves in the coming months and could change a party's calculus of the relative merits of a reorganization and a liquidation. Indeed, potential plan sponsors continue to express interest, particularly if certain tax laws that are currently scheduled to lapse at the end of this year are extended. Such uncertainties, if clarified in the estate's favor, could represent significant additional value to creditors.

5. Second, the plan process is not an impediment to distributions, because even if a liquidation plan were confirmed tomorrow, distributions would not occur for months (and potentially years). The FDIC's claims, including a potential section 365(o) claim, do not have to be filed until December 13, 2010. Although the Debtor believes that the FDIC does not have a valid section 365(o) claim, the reality is the FDIC has frequently asserted such claims in bank holding company cases.[7] A section 365(o) claim, if asserted, likely will seek an amount in excess of all possible distributions to creditors, must be resolved prior to any distributions being made to unsecured creditors – a fact acknowledged by the Committee and will require significant

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6 Thus the Committee's assertion that the Debtor has not shared a draft plan of liquidation (Objection at ¶29) is disingenuous at best.

7 See e.g., In re AmFin Financial Corp., Case No. 09-21323 (Bankr. N.D. Oh. April 1, 2010) [Docket No. 371]; In re The Colonial Bankgroup, Inc., Case No. 09-32303 (Bankr. M.D. Ala. November 5, 2009) [Docket No. 257].

discovery and a fact-intensive trial that, together with appeals, likely will take years to resolve. Objection at ¶21. Given this reality, if the FDIC asserts a section 365(o) claim, it likely will change the negotiating dynamics of any proposed chapter 11 plan and this case overall (considering that the Debtor's other primary asset, over $250 million in tax refund claims, is the subject of pending litigation with the FDIC.) As a result, an immediate and precipitous liquidation plan likely will not speed recoveries to unsecured creditors – which likely will not occur for years – but will only forever preclude the utilization of hundreds of millions of dollars of tax attributes.

6. Third, the currently pending tax refund litigation with the FDIC is still in its initial stages, and the potential fact-intensive litigation over the FDIC's potential section 365(o) claim is months away from even starting. A precipitous, uncoordinated liquidation may result in disruption in personnel, and additional transition costs, with respect to issues where there is institutional, historical knowledge.[8]

7. Fourth, the Committee does not address, and fundamentally misunderstands, the need for the Debtor to develop appropriate solicitation procedures for any chapter 11 plan. The Objection mischaracterizes the Debtor's position as seeking an extension of exclusivity in order to "survey" the creditor body. Objection at ¶23. This is simply incorrect. The Debtor is under an obligation to develop solicitation procedures that maximize the chance that the relevant creditors have an opportunity to vote – and do vote – on whatever plan is proposed. As discussed extensively in the Motion, the capital structure and the voting mechanics for soliciting the appropriate parties and obtaining votes are complicated and may take substantial amounts of

[8] Third party discovery is already costing certain other bank holding companies additional funds where the employees and directors are no longer with the debtor. See In re AmFin Financial Corp., Case No. 09-21323 (Bankr. N.D. Oh. September 14, 2010) [Docket No. 680] (motion seeking approval to pay third party discovery costs of, among others, certain former directors and officers).

time. Motion at ¶¶17-19. Filing a plan without properly understanding voting mechanics would be wasteful.[9] The Debtor's ongoing development of appropriate solicitation procedures is reason alone is sufficient to justify an extension of the Exclusivity Periods.[10]

8. As a result, the requested extensions of the Exclusivity Periods are justified under applicable law and should be granted, and the Objection should be overruled.

Argument

I. The Objection Fails to Articulate Grounds to Deny the Motion

9. The Objection cites the multi-factor test set forth in In re R.G. Pharm, Inc., 374 B.R. 484, 487 (Bankr. D. Conn. 2007) as the basis this Court should use in determining whether to extend exclusivity. However, the Objection then fails to apply the test. These factors 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; (d) whether the debtor is paying its debts as they become due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress negotiating with creditors; (g) the length of time a case had been pending; (h) whether the debtor is seeking an extension to pressure creditors; and (i) whether or not unresolved contingencies exist. See R.G. Pharm, Inc., 374 B.R. at 487.

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[9] Indeed, in In re CIB Marine Bankshares, Inc., Case No. 09-33318 (Bankr. E.D. Wis. September 16, 2009) [Docket No. 19] (detailing repeated extensions of the solicitation period), solicitation had to be extended several times to obtain votes from the holders of trust preferred securities due to a poorly designed solicitation process. These voters are the Committee's constituents. To launch a premature, poorly-conceived, solicitation process would literally disenfranchise them, a result that surely the Committee cannot advocate. As the Committee's counsel well knows, a poorly designed solicitation process can lead to none of the TOPrS voting at all. See In re Vineyard Nat'l Bancorp, Case No. 10-21661 (Bankr. C.D. Cal. July 15, 2010) [Docket No. 216] (pleading noting that none of the creditors in the TOPrS class had voted).

[10] Typically indenture trustees take no responsibility or role in soliciting a chapter 11 plan, leaving it to the plan proponent to design and implement appropriate solicitation procedures.

10. The only factor the Objection even attempts to apply is the "reasonable prospects of filing a viable plan" factor. Objection at ¶¶26-28. The Objection ignores the various other factors, virtually all of which weigh heavily for extending the Exclusivity Periods, including: (a) the size and complexity of the chapter 11 case; (b) the necessity of sufficient time to prepare adequate information, especially with regard to solicitation of any plan (whether for a liquidating or reorganizing plan); (c) the existence of good faith progress in this chapter 11 case; (d) the fact that the Debtor is paying its debts as they come due; (e) the extensive negotiations the Debtor has conducted with the Committee; (f) the short time the chapter 11 case has been pending (only a little over three months); (g) the fact that the Debtor is seeking an extension of the Exclusivity Periods to explore maximizing value for all creditors and not to pressure the creditors; and (h) the unresolved contingencies regarding the FDIC's claims in this chapter 11 case.

11. Instead of applying the appropriate legal test, the Objection simply cites to a large number of cases where the court refused to extend or terminated exclusivity, without explaining why those cases are relevant or even comparable to this case. Objection at ¶¶13-15.[11] Notably, only one of the cases cited by the Committee where a court denied an exclusivity objection did the court deny a request to extend exclusivity beyond the initial 120-day and 180-day periods. Even in that case the debtor ultimately obtained an additional five months of exclusivity from the appellate court.[12] Also notably, all the cases cited by the Committee where a court terminated

[11] The Debtor does not dispute that this Bankruptcy Court can refuse to extend, or upon a properly noticed motion, terminate the Exclusivity Periods. But the fact that other courts have refused to extend or terminated exclusivity in other cases with unrelated fact patterns, without more, should carry no weight here. The Debtor could have, of course, cited many unrelated cases where a court has extended exclusivity.

[12] In In re Geriatrics Nursing Home, 187 B.R. 128 (D.N.J. 1995), the district court technically upheld the lower court's decision not to extend exclusivity. However, the district court reversed the bankruptcy court's order terminating exclusivity and retroactively provided exclusivity to the debtor for the entire time period the decision was on appeal, which resulted in an extension of exclusivity for five additional months beyond the initial 180 day period. Id. at 134.

exclusivity within the initial 120-day and 180-day periods involved substantially different factual and legal issues, primarily where seemingly aggressive "new value" plans already had been filed or where competing plan sponsors wished to propose competing plans of reorganization, not where a creditors' committee wished to force an immediate liquidation.[13]

12. Contrary to the Committee's assertions, all the bankruptcy courts addressing exclusivity – including this Court[14] – unanimously have recognized that the complicated nature of bank holding company cases warrant multiple extensions of exclusivity.[15] Indeed, the Objection fails to cite a single bank holding company case (which presumeably the Committee believes should all be liquidations) where exclusivity has been terminated or where a bankruptcy court has refused to extend exclusivity. Further, the Committee's argument that time that elapsed prior to the Petition Date should somehow count against the Debtor in determining whether to extend exclusivity is wholly unsupported by case law and, unsurprisingly, the Committee does not cite any authority for this astonishing proposition. Objection at ¶32. Such an argument only penalizes a company who in good faith takes the time to analyze and develop restructuring alternatives with its stakeholders prior to a bankruptcy filing in an attempt to shorten and streamline a chapter 11 case.

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[13] See In re Situation Mgmt. Sys., Inc., 252 B.R. 859, 865-66 (Bankr. D. Mass. 2000) (terminating exclusivity to market test "new value" plan of reorganization); In re Bosque Power Co., LLC, Case No. 10-60348 (Bankr. W.D. Tex. July 22, 2010) ("fast track" plan requiring consideration of the new value exception); In re FX Luxury Las Vegas I, LLC, Case No. 10-17015 (Bankr. D. Nev. June 22, 2010) (prepackaged plan of reorganization on a "fast track" where the first lien lenders and not the debtors were in physical control of the property); In re Rubicon US REIT, Inc., Case No. 10-10160 [Docket No. 161] (Bankr. D. Del. February 25, 2010) (debtor entered into a prepetition agreement regarding terms of a plan of reorganization that was the subject of heavy litigation from day one of the chapter 11 case); In re TCI2 Holdings LLC, Case No. 09-13654 (Bankr. D.N.J. September 1, 2009) [Docket No. 621] (exclusivity terminated after initial extension of the exclusive periods due to consideration of a new value plan); In re Seitel, Case No. 03-12227 (Bankr. D. Del. November 12, 2003) [Docket No. 449] (termination of exclusivity in a prepackaged chapter 11 case).

[14] See In re I.S.B. Financial Corp., Case No. 09-37225 (Bankr. N.D. Ill. July 23, 2010) [Docket No. 102] (order extending exclusivity for the second time).

[15] See Motion, Exhibit A (listing bank holding companies and extensions of exclusivity).

II. The Debtor Has Made Good Faith Progress Towards a Chapter 11 Plan.

A. The Plan Sponsor Process

13. The Debtor has made substantial good faith progress towards a chapter 11 plan. The Committee's assertions to the contrary in the Objection are simply an attempt to rewrite history. The Debtor has at all times involved, engaged and discussed its actions with the Committee (or its predecessors, the TOPrS Indenture Trustees), and taken their views into account. Until a few short weeks ago, the Committee was with the Debtor every step of the way.

14. Prior to the seizure of Corus Bank, N.A. (the "Bank") on September 11, 2009, the Debtor and its board of directors successfully developed and executed a plan to separate the assets, including its cash, and records of the Debtor from the Bank.[16] Immediately after the seizure of the Bank, the Debtor and its board of directors carefully considered their options, including whether to commence a chapter 11 proceeding. The Debtor determined that immediately and unthinkingly filing for a "free fall" chapter 11 proceeding – as suggested by the Committee – without first analyzing all options and reaching out to its creditor constituencies would not maximize value for its stakeholders and would instead waste assets and generate litigation. (Indeed, there are other holding company cases where the entire board resigned immediately after the bank's seizure, which caused severe disruption and immediate, uncontrolled bankruptcies. In contrast, the Debtor's board and management did not abandon the company but instead helped steward the company as it analyzed its alternatives). After further analyzing the situation, and determining that there were a number of potential plan sponsors that might be willing to invest in the Debtor through a plan of reorganization, the Debtor decided to

[16] Not all bank holding companies were successful in separating their assets from the bank and were forced to immediately commence chapter 11 due to a lack of funds. For example, in In re The Colonial BancGroup, Inc., Case No. 09-32303 (DHW) (Bankr. M.D. Al. September 18, 2009) [Docket No. 87] the debtor had to file a cash collateral order and engage in lengthy litigation with the FDIC to obtain access to the bank holding company's cash.

pursue a plan sponsor process in order to maximize the value of its assets and recoveries to its creditors.[17]

15. The plan sponsor process was initially very robust. Kinetic Advisors LLC, the Debtor's financial advisor, contacted 42 separate potential plan sponsors. Several potential sponsors entered into confidentiality agreements and expressed significant interest. Some potential sponsors indicated that given the passive holdings by, and the difficulties of communication with, the beneficial holders of the CDOs holding the TOPrS, a sponsored plan agreement could only be reached within the construct of a chapter 11 case. One potential sponsor indicated that while it was very interested (and recently confirmed it remains interested) in a transaction, it could not proceed until there was greater clarity regarding certain tax laws that are set to expire at the end of 2010. Although it is impossible to predict what Congress may do, there should be clarity on this point before the end of the year.

B. Discussions with the TOPrS Indenture Trustees and Collateral Managers

16. Simultaneously with the plan sponsor process, the Debtor and its advisors proactively reached out to the TOPrS Indenture Trustees and Collateral Managers to solicit their views on a possible prearranged or prepackaged plan of reorganization. Indeed, prior to the Petition Date, the Debtor met in person with the TOPrS Indenture Trustees on March 24, 2010, and June 1, 2010, to discuss, among other things, the structure for a chapter 11 plan.[18] Further, the Debtor's professionals kept in constant contact with the TOPrS Indenture Trustees' various

[17] In preparation for the plan sponsor process, the Debtor retained Deloitte & Touche LLP to extensively evaluate the Debtor's tax attributes and the potential options for maximizing value.

[18] Certain of the Collateral Managers participated by phone.

advisors, including Kilpatrick Stockton LLP ("Kilpatrick"), who now represents the Committee, and solicited input on how to structure a plan of reorganization.[19]

17. In late April, the Debtor approached the TOPrS Indenture Trustees and the Collateral Managers for their input on moving forward with a restructuring. Thereafter, in May 2010, the TOPrS Indenture Trustees indicated that they desired the Debtor to commence chapter 11 proceedings while continuing the plan sponsor process. Shortly after that, on June 15, 2010, the Debtor commenced the chapter 11 case. After the Petition Date, the Debtor continued to keep Kilpatrick and the Committee's other advisors abreast of the plan sponsor process and discussed with the Committee and its professionals potential terms of a plan of reorganization and plan sponsor agreement.

18. In early August, the Committee requested that the Debtor and its advisors prepare multiple presentations comparing potential plan alternatives. The Committee also requested that the Debtor work on the "parallel tracks" of both reorganization and liquidation.[20] At the Committee's request, the Debtor and its advisors presented these alternatives to the Committee and its advisors on August 16, 2010. On August 23, 2010, the Committee's advisors informed the Debtor that the Committee desired to pursue only a plan of liquidation. The Debtor, as a fiduciary, expressed concern that an immediate liquidation forever abandons almost $600 million in tax attributes. Nevertheless, the Debtor decided to temporarily stop work on the sponsored

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19 As part of these discussions, the TOPrS Indenture Trustees and the Collateral Managers informed the Debtor that they had little if any communication with the ultimate beneficial holders of the TOPrS, which was extremely difficult given the nature of the CDO structures holding the TOPrS debt, and which would make it very difficult to obtain support for a sponsored plan prior to commencing a chapter 11 case.

20 Indeed, these parallel tracks, together with the various meetings with and presentations to the Committee, have been the source of a significant portion of the professional and other fees about which the Committee complains.

plan process until there was greater clarity over certain unresolved issues and in the interim work only on the terms of a plan of liquidation.

19. The Debtor provided the Committee with a comprehensive draft plan term sheet on September 8, 2010. On that same day, the Committee demanded that the Debtor provide to the Committee and fully negotiate and file a plan of liquidation prior to the September 23, 2010, exclusivity hearing – a 15-day deadline. This unrealistic timeframe was obviously meant as a litigation tactic, especially given the complex legal and regulatory issues at play. Nevertheless, the Debtor did promise (and as of the hearing, will have delivered on that promise) to deliver a draft plan to the Committee prior to September 23. The Debtor looks forward to negotiating that draft with the Committee and other constituents, including the FDIC.

C. The Debtor Has Shown Reasonable Prospects for a Confirmable Chapter 11 Plan

20. As discussed above, the Debtor has had success to date in identifying and negotiating with potential plan sponsors, who have indicated a willingness to sponsor a plan depending on how certain unresolved issues play themselves out. Thus it is misleading and disingenuous for the Committee to assert at this juncture that the Debtor has no "reasonable prospects for filing a viable plan of reorganization," while at the same time objecting to any further efforts at exploring reorganization alternatives.[21] Further, the Debtor has demonstrated extensive good faith in working with the Committee on developing a chapter 11 liquidation plan. Based on this progress, there is simply no reason at this early juncture to terminate exclusivity.

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[21] The Committee offers no support for the assertion that a plan of reorganization "is far more expensive to pursue and has a high probability of being unconfirmable, and even if confirmable, ultimately unsuccessful in yielding greater recoveries to creditors." Objection at ¶26. Indeed, Fremont General Corporation, another bank holding company, successfully reorganized through chapter 11 earlier this year after certain constituents pushed for termination of exclusivity to file a liquidating plan, but ultimately a reorganization plan was confirmed. See In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. May 25, 2010) [Docket No. 2114] (confirming plan of reorganization).

III. Unresolved Issues With the FDIC Weigh In Favor of Extending Exclusivity.

21. The Objection breezily asserts that the Committee's preferred approach of a liquidating plan can be achieved without regard to any potential FDIC section 365(o) or other FDIC claim. Objection at ¶ 21. Although the Debtor would contest any section 365(o) claim, if such a claim were allowed, all estate assets would be for the benefit of the FDIC and alter the landscape of this case. Thus, if the FDIC asserts a section 365(o) claim, then even in the context of a liquidation, the value to estate creditors will derive primarily from the intersection between the tax refund litigation and any section 365(o) claim litigation between the Debtor and the FDIC. Moreover, in the tax refund litigation, the Debtor has argued that while it owns approximately $250 million in tax refunds, any FDIC claim to those refunds merely give rise to a general unsecured claim against the estate. Thus, even if the Court denies a potential FDIC 365(o) claim and rules in the Debtor's favor in the tax refund litigation, the FDIC will have approximately $250 million general unsecured claim against the estate, making it the single largest creditor in this case. Given that the FDIC's bar date is only two months after the current plan filing exclusivity deadline, it does not make sense to force a plan process before parties can determine whether a section 365(o) claim is asserted and parties thus have a chance to assess a plan process with that FDIC claim (in addition to a potential $250 million general unsecured claim) in mind.

IV. Failure to Extend Exclusivity Periods Can Cause Harm to the Estate.

22. Terminating exclusivity prematurely also can harm the estate. As discussed above, forcing a premature liquidation plan filing could result in an incorrect solicitation process, a plan not properly accounting for FDIC-related issues, and the abandonment of valuable tax attributes, each of which could result in additional fees and expenses and further delays.

23. But it also can unnecessarily create an unstable environment over the next several months that can lead to unintended consequences and further delay. A cautionary tale is the Freemont General case, another bank holding company case. In that case, starting approximately four months into the case, the creditors' committee repeatedly opposed extensions of exclusivity and claimed that it sought to file a liquidating plan. Not until after three orders extending exclusivity, did the court side with the committee and terminate exclusivity.[22] The creditors' committee then filed a liquidating plan, but because of the early termination of exclusivity, other parties also filed competing plans, resulting in a total of **six** separate plans and disclosure statements being filed, and **five** plans being simultaneously solicited.[23] This resulted in substantial litigation over the confirmation of competing plans, consuming months of time, fees, and expenses. Ultimately, however, it was not the committee's liquidating plan, but a reorganization plan with a plan sponsor, that ultimately was confirmed. See In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. May 25, 2010) [Docket No. 2114] (confirming plan of reorganization). The Fremont case teaches that premature expiration of exclusivity may potentially create an unstable environment for the major parties in interest to negotiate the terms of a plan, instead resulting in unintended consequences and ultimately greater delay, and fees.

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[22] In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. July 16, 2009) [Docket No. 827] (order terminating exclusivity)

[23] See In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. July 17, 2009) [Docket No. 824] (committee of equity holders' plan of reorganization); In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. August 12, 2009) [Docket No. 870] (official committee of unsecured creditors' plan of liquidation); In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. October 13, 2009) [Docket No. 1113] (New World Acquisition LLC plan of reorganization); In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. December 3, 2009) [Docket No. 1288] (Ranch Capital, LLC plan of reorganization); In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. December 3, 2009) [Docket No. 1300] (Signature Group Holdings LLC plan of reorganization); In re Fremont General Corp., Case No. 08-13421 (Bankr. C.D. Cal. December 3, 2009) [Docket No. 1302] (M&M plan of reorganization).

24. In a final note, the Committee asserts that "troubling" professional fees mandate no further exclusivity extension. The Debtor respectfully disagrees. The Debtor should not be criticized for moving quickly in the early stages of the case to explore various alternatives to maximize as much of approximately $850 million in potential tax attributes and refunds as possible (and consult with the Committee regarding those alternatives) rather than moving at a slower pace. Nor should the Debtor be criticized for incurring significant fees to consult and interact with the Committee and conduct follow up analysis and diligence in response to Committee inquiries and feedback.[24] And, finally, the Debtor should not be criticized for not immediately acquiescing to the Committee's demands, where a significant portion of its total fees would be incurred in either the reorganization or liquidation context (for example, in the tax refund litigation, various regulatory compliance matters, etc.).

Conclusion

25. The Debtor has shown more than sufficient "cause" to extend exclusivity. In contrast, the Objection misconstrues the Debtor's actions and fails to refute the Debtor's satisfaction of the legal standard to extend exclusivity.

[24] Further, the Objection conveniently fails mention that the Debtor made significant cost reductions, including management payroll, both prior to and continuing after the Petition Date in response to requests by the TOPrS Indenture Trustees.

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (a) granting the Motion; (b) overruling the Objection; and (c) granting such other and further relief as the Court deems appropriate.

Dated: September 22, 2010

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