UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CORUS BANKSHARES, INC.[1]	)	Case No. 10-26881 (PSH)
Debtor.	)	

REPLY TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CORUS BANKSHARES, INC. TO THE DEBTOR'S THIRD MOTION FOR ENTRY OF AN ORDER EXTENDING THE DEBTOR'S EXCLUSIVITY PERIOD 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 Debtor's Third Motion for Entry of an Order Extending the Debtor's Exclusivity Period Pursuant to Section 1121(d) of the Bankruptcy Code* dated May 23, 2011 [Docket No. 460] (the "Objection") filed by the Official Committee of Unsecured Creditors (the "Committee").[2]

Preliminary Statement

1. The Exclusive Period should be extended because: (a) the overwhelming majority of the only actual economic stakeholders who have been active in the Chapter 11 Case—six creditors holding or managing over $152 million in TOPrS (the "Plan Support Parties")—support a reorganization and have executed plan support agreements (the "Plan Support Agreements")

[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 May 10, 2010, the Debtor filed its *Third Motion for Entry of an Order Extending the Debtor's Exclusivity Periods Pursuant to Section 1121(d) of the Bankruptcy Code* [Docket No. 439] (the "Motion"). Any capitalized terms not defined herein have the meaning given to them in the Motion.

that bind them to support a plan of reorganization; (b) the only alternative to a plan of reorganization, a liquidating plan supported by the Committee, has already been thoroughly rejected by the Plan Support Parties and other creditors who voted and does not represent a viable alternative; and (c) the Debtor's cash flows have improved greatly during 2011 and the estate's assets available for distribution has stabilized.

2. Indeed, the facts that the overwhelming majority of active creditors in the Chapter 11 Case: (a) voted to reject the liquidating plan; (b) have endorsed the Reorganization Plan (as defined herein); and (c) support an extension of the Exclusive Period, are exactly the kind of "powerful reasons" to extend the Exclusive Period that were contemplated by the Court to justify further extensions of the Exclusive Period when exclusivity was last contested. During the September 23, 2010 hearing, at which the Debtor's first exclusivity extension motion was heard (and before any true economic stakeholders had appeared in the case), the Court noted that a powerful reason would be necessary for further extensions of exclusivity but that "there is this concept that there are these people out there whose economic interests are really involved beyond just a fiduciary."[3] Those economic stakeholders have now shown up to be heard. Thus now—where the Debtor has made substantial progress towards a confirmable plan after the Committee-supported liquidation plan was soundly rejected by the Debtor's creditors—an additional exclusivity extension is warranted.

3. In spite of its constituents' support of a plan of reorganization and extension of exclusivity, the Committee has objected to the Motion, seeking to pursue a liquidation path already rejected by voting creditors. Specifically, the Committee makes the following arguments to support its position:

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[3] See Transcript of September 23, 2010 Hearing 34:5-34:22.

- The Chapter 11 Case has lasted too long;
- The Chapter 11 Case represents a significant expense to the Debtor's estate; and
- The Debtor's proposed reorganization means that the Chapter 11 Case is essentially starting over from square one.

The *facts underlying* these arguments—the length of the case, the costs incurred, and the change in direction from a liquidation to a reorganization—are not in dispute. It is how these facts are interpreted that is crucial. The Committee's "spin" on the facts is misleading.

4. First, the case has lasted this long due to the initial process of analyzing reorganization vs. liquidation (which process the Committee's counsel and members fully participated in), the rejection of the Committee-advocated liquidation plan, the emergence of the "real" creditors, and those creditors' belief that a reorganization would maximize the value of the Debtor's estate. Further, a significant factor in extending the Chapter 11 Case's duration has primarily been due to the Committee's own actions. The launch and subsequent failure of the Committee-advocated liquidation plan has been the primary driver of the Chapter 11 Case's duration. Then, when Tricadia and other creditors first appeared in the case in January, the Committee was—and continues to be—in denial that Tricadia and the other creditors were real and wanted to take the case in another direction. Once these actual economic stakeholders asked for plan modifications, the Committee's refusal to negotiate over certain provisions, including exclusive control by the Committee's professionals over the liquidation process, further caused significant delays and expense.[4] With the Committee stubbornly refusing to negotiate with

[4] Indeed, during negotiations with Tricadia, the Committee's counsel noted in a letter that "[t]he Committee viewed of great significance the fact that [FTI, Inc.] intended to hire my firm [Kilpatrick Townsend & Stockton LLP], which has been involved with Corus for over a year, as lead counsel" and requested that Tricadia "provide a written explanation of the basis upon which it seeks to replace Mr. Scruton . . . as Plan Administrator." *Notice of Filing* dated March 31, 2011 [Docket No. 399] Exhibit A at p. 3 (the "March 24 Letter").

Tricadia in a meaningful way, Tricadia and the other Plan Support Parties conducted additional analyses and determined that a reorganization would maximize value. Perhaps if the Committee had not acted so intransigently for three months, but had instead worked with its real constituency, the case would be further along. The Committee's complaint that the Chapter 11 Case has gone on for too long ignores the reality of its own actions.

5. Similarly, the Committee's argument that the Chapter 11 Case represents a drain on the Debtor's estate and that the Reorganization Plan requires starting over from scratch is both misleading and ignores reality. Objection ¶¶ 4, 22-25. The liquidation plan was thoroughly rejected by creditors, most of whom have now signed Plan Support Agreements. Further, the Committee has not provided—and cannot provide—any option that would result in a quicker confirmation of a chapter 11 plan than the Debtors' and the Plan Support Parties' proposed plan. To say that the Reorganization Plan requires starting over assumes the liquidation plan is a viable alternative, which even Committee's counsel has recognized is impossible without creditor consent. See Hearing Transcript for the March 15, 2011 Hearing at 13:7-9 ("We weren't going to be able to confirm [the liquidation] plan in the face of those 100 million plus of no votes"). And the fact that since the last status hearing the Debtor has executed the Plan Support Agreements and filed the Reorganization Plan demonstrates that this is not a "do over." With respect to expenses, the Committee itself is the primary cause for the additional delay and expense during 2011: by litigating in favor of a dead plan and against the explicit wishes of its constituents, the Committee further delays the confirmation process and works to the detriment of all parties-in-interest. As stated above, the expenses in the case have been reduced and are now stabilized, due to the general downward curve of professional fees and the Debtor generating income from its loan participations.

6. With respect to "starting over from square one," the Committee makes the disingenuous statement that the Debtor, Committee and Court have spent nine months considering alternatives for the resolution of the case, "including alternatives very similar to what now are being proposed by Tricadia." Objection ¶ 3. The Committee fails to mention that the only constituency that matters—the voting creditors—have never considered, until recently, a reorganization plan. And now that they have, they have executed the Plan Support Agreements in support of that reorganization.

I. The Debtor's Liquidation Plan Was Overwhelmingly Rejected By the Debtor's Creditors, and the Debtor Is Now Poised To Consensually Confirm a Reorganization Plan.

7. Although the Committee—comprised of indenture trustees with no economic stake in the outcome—continues to insist that the proposed liquidation plan represents the best path towards maximizing value for the Debtor's creditors, the actual creditors themselves disagree. Objection ¶¶ 4-5. Indeed, holders of approximately $166 million of the Debtor's TOPrS voted to reject the liquidation plan, and only a singe TOPrS creditor, holding approximately $9 million of TOPrS, voted to accept it.[5] In the face of this overwhelming rejection of the liquidation plan by nearly all of the Debtor's economic stakeholders, the Debtor had no choice but to negotiate with these stakeholders to develop a plan that creditors would support.

8. These negotiations have proved fruitful. On May 25, 2011, the Debtor filed the *Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 463] (the "Reorganization Plan"), which provides for the Debtor's reorganization and emergence from chapter 11 as a going concern. Importantly, the Reorganization Plan provides a cash out option

[5] In addition, only one non-insider general unsecured creditor with a claim of $100,000 voted to accept the plan.

for the creditors that so elect. Further, the Plan Support Parties have signed Plan Support Agreements to support the Reorganization Plan. Importantly, five of the Plan Support Parties—holding approximately $137 million in TOPrS—originally voted to reject the liquidation. But more important than that, three of the Plan Support Parties are CDO managers who serve as fiduciaries for the benefit of the holders of TOPrS debt, and thus are in a much better position to ascertain the interests of creditors than the indenture trustees on the Committee. Indeed, these CDO managers are original holders of the TOPrS debt who became active in the case once it became clear than a liquidation solely controlled by the Committee and their professionals was being pursued. Accordingly, the Debtor is now well on the way to confirming the Reorganization Plan with the support of a majority of creditors, in both number and amount.

9. Additionally, as shown by execution of the Plan Support Agreements and filing of the Reorganization Plan, the Debtor has already made extensive progress towards confirming the Reorganization Plan. In the next several weeks, the Debtor anticipates filing a complete disclosure statement for the Reorganization Plan and discussing the Reorganization Plan with additional stakeholders. Solicitation will follow thereafter. In light of the creditors' rejection of the liquidation plan, the speediest and most economic path to resolving the Chapter 11 Case is to move forward with confirmation of the Reorganization Plan. The Committee's suggestion that a liquidation plan is even remotely possible and that the Exclusive Period should be terminated to allow for the filing of a liquidation plan is nothing more than a recipe for additional delays and costs. Objection ¶ 4. There is simply no reason to repeat a process that has already been tried and has failed.

II. None of the Committee's Arguments Warrant Denying the Debtor an Extension of Its Exclusivity Period.

A. Proceeding with the Reorganization Plan Represents the Fastest and Best Way for the Debtor to Emerge from Bankruptcy.

10. The Committee's argument that an exclusivity extension should be denied because the Chapter 11 Case has lasted too long ignores both the history of this Chapter 11 Case and the current circumstances surrounding the Plan. Objection at ¶¶ 9-14. The Debtor has conducted this Chapter 11 Case in good faith, and any and all "delays" have been the direct result of either working with creditors and the Committee to develop a consensual chapter 11 plan or the Committee's own actions.[6] Moreover, the Reorganization Plan has substantial creditor support which will facilitate a swift exit from bankruptcy and represents the best and speediest option for the Chapter 11 Case's conclusion.

11. The Debtor commenced its Chapter 11 Case on June 15, 2010, and, immediately after transitioning into chapter 11, began working with the Committee and its advisors on possible restructuring scenarios. The Committee, however, has never represented any of the Debtor's true economic stakeholders. As this Court is aware, the Committee comprises only the indenture trustees for the thirteen TOPrS trusts, not the actual beneficial holders of the TOPrS debt.[7] Thus, for the first seven months of this Chapter 11 Case, the Debtor was unable to negotiate with its economic stakeholders to develop a chapter 11 plan, and instead simply

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[6] The Committee makes much of the fact that Corus did not file its bankruptcy petition until nine months after Corus Bank, N.A. was closed by its regulators. Objection at ¶ 9. The Committee conveniently forgets their own members did not object to the extended prepetition efforts—including face-to-face-meetings, document exchanges, and telephone conferences—to analyze the merits of a reorganization vs. a liquidation. Indeed, this prepetition dialogue involved the indenture trustees (later the Committee members) and their counsel, which included Kilpatrick, Townsend & Stockton LLP, as counsel to Wilmington Trust. Those members did not immediately insist on a chapter 11 filing, so their argument that such time weighs against an extension of the Exclusive Period is misplaced, since they fully participated in this process.

[7] Because the Corus TOPrS were sold into as many as thirty collateralized debt obligation vehicles ("CDOs"), the TOPrS trustees are only in privity with the trustees of the CDOs. It is the CDO trustees who are in privity with the beneficial holders, and no CDO trustees have a seat on the Committee.

worked with the only party available to enter into such discussions: the Committee. In August 2010, the Debtor presented the two options for concluding the Chapter 11 Case to the Committee in a detailed presentation: reorganization through an equitization of the unsecured claims, or liquidation. The Committee insisted on liquidation. Given the lack of input by actual economic stakeholders, the Debtor agreed to a liquidation based on the feedback of the Committee.

12. The Debtor proceeded with soliciting the liquidation plan blessed by the Committee near the end of 2010. Indeed, the Debtor prosecuted the liquidation plan in good faith, going so far as to conduct a lengthy meeting in January 2011 with the Committee and the liquidation plan's proposed plan administrator to discuss the process of transitioning control of the Debtor's estate to the plan administrator after the liquidation plan became effective.

13. In that same month, however, while the Debtor was soliciting votes on the liquidation plan, Tricadia purchased $109 million of the TOPrS. Subsequently, Tricadia and five other creditors holding an aggregate of $166 million of TOPrS voted to reject the liquidation plan. The Debtor immediately engaged Tricadia to discover what changes could be made to the liquidation plan that would lead to creditor acceptance. Tracadia expressed an interest in pursuing a reorganization plan; however, Tricadia conveyed to the Debtor that it was willing to support a liquidation plan as a compromise in order to obtain a consensual resolution to the Chapter 11 Case. Tricadia felt strongly that, among other things, the identity of the plan administrator and trading restrictions on the TOPrS needed to change in order to garner sufficient creditor support. The Debtors worked quickly to modify the liquidation plan in accordance with

Tricadia's comments, despite initial resistance from the Committee—resistance that remained baffling to the Debtor.[8]

14. As early as February 2011, the Debtor worked with both Tricadia and the Committee to try to develop consensus around the corporate governance provisions of the liquidation plan. Despite several attempts by the Debtor and Tricadia to arrange a meeting between the Committee and Mr. Tepper, Tricadia's proposed plan administrator, to discuss Mr. Tepper's qualifications, the Committee ignored each request. Instead, the Committee, through counsel, sent the March 24 Letter insisting that FTI, Inc. remain as plan administrator and that Kilpatrick, Townsend & Stockton LLP be retained to liquidate the estate after confirmation of a plan. The Committee also filed pleadings characterizing the request to replace FTI, Inc. with Mr. Tepper (who was an independent third party with no connection to Tricadia) as a "game changer." *See Response of the Official Committee of Unsecured Creditors of Corus Bankshares, Inc. to the Debtor's Amended Second Motion for Entry of an Order Extending the Debtor's Exclusivity Period Pursuant to Section 1121(d) of the Bankruptcy Code* dated March 24, 2011 [Docket No. 383] (supporting a delay in the plan confirmation process and twice referring to Tricadia's proposed changes to the liquidation plan as a "game changer").[9]

15. As the Debtor worked to amend the liquidation plan, and as it became increasingly clear that the Committee's professionals desired to have total control over the post-chapter 11 Debtor, Tricadia continued to investigate the possibility of a reorganization plan, including discussions with other creditors. Tricadia informed the Debtor in late April 2011 that,

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[8] See March 24 Letter pgs. 2-4 (letter from Committee to Tricadia outlining objections of the Committee to Tricadia's proposed modifications to the liquidating plan).

[9] The Committee refers to the statement of Debtor's counsel at the March 15, 2011 hearing that the remaining issues raised by Tricadia's proposed changes to the plan would be "minimal." The Committee took these "minimal" issues and managed to delay the case for another month while it disputed Tricadia's ownership of its claims and the identity of a plan administrator.

after performing additional due diligence and conferring with other creditors (including those who are now Plan Support Parties), that a majority of other creditors believed that a plan of reorganization would maximize value for the Debtor's estate. Believing that working with Tricadia and the Plan Support Parties—the Debtor's true economic stakeholders—represented the best way to develop a plan that creditors would support, the Debtor and its professionals engaged in extensive discussions regarding a potential plan of reorganization. On May 3 and May 4, 2011, the Plan Support Parties delivered letters informing the Debtor that they would support a reorganization plan.[10]

16. Now, after extensive negotiations with Tricadia and the other Plan Support Parties, the Debtor has filed the Reorganization Plan and has entered into the Plan Support Agreements. Given that the Reorganization Plan has the support of the Plan Support Parties, it likely will be consensually confirmed. And yet the Committee still tilts at the windmill, arguing for a dead liquidation plan and criticizing the Reorganization Plan rather than working with stakeholders to try to develop a consensual plan. It is telling that although the Committee twice asserts the Reorganization Plan is "unconfirmable" the Committee fails to mention any grounds for this assertion.[11] Objection ¶¶ 2, 5. Indeed, Fremont General Corporation, a bank holding company in a situation very similar to the Debtor's (i.e., a bank holding company whose subsidiary bank was seized by the Federal Deposit Insurance Corporation with primarily cash

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[10] These were not formal plan support agreements, but preliminary indications of support. The Plan Support Parties also requested at that time that their identities be kept confidential. That is understandable, seeing how the Committee has treated Tricadia—its single largest constituent—with hostility since day one. Now the Plan Support Parties have executed formal Plan Support Agreements and their identities are public.

[11] Although the Committee implies the Debtor will be unable to terminate the Debtor's pension plan, the Committee has not submitted any evidence that such termination would be impossible or even contested. Objection ¶ 13. The Debtor has provided the Pension Benefit Guaranty Corporation with extensive due diligence and engaged in extensive discussions regarding termination of the pension plan. As of the date of this filing, those discussions continue and the Debtor is hopeful those negotiations will bear fruit in short order.

assets) recently confirmed a plan of reorganization and reorganized around an investment business. See *In re Fremont General Corporation*, Case No. 08-13421 [Docket Nos. 1450, 2113] (disclosure statement and confirmed plan for Fremont General Corporation).

17. In light of the foregoing, the Debtor believes that the Plan represents the fastest and best way to conclude this Chapter 11 Case. The Committee's complaint that the case has lasted too long rings especially hollow since the delay is substantially a result of the Committee's own negotiating tactics and intransigence. The Debtor now has a confirmable Plan and is ready to proceed expeditiously with solicitation and confirmation. Further, the Committee has completely failed to articulate any viable alternative to the Reorganization Plan, much less one that would result in confirmation of a plan in a shorter time frame than the Reorganization Plan.

18. As discussed above, the Plan Support Parties have contractually agreed not to support any alternative to the Reorganization Plan and, even without a contractual obligation, have rejected a liquidation. This simple fact makes clear that terminating the Exclusive Period would only delay the Chapter 11 Case and waste the Debtor's resources. Allowing competing plans, such as another liquidation plan, would result in a substantial increase in professional fees as it would require drafting, negotiation and litigation over two separate plans, disclosure statements and solicitation procedures motions. Given the clear creditor support for the Reorganization Plan and the futility of pursuing a rejected liquidation path, common sense suggests that the Committee should support the Debtor's efforts to prosecute and confirm the Reorganization Plan, not object to extension of the Debtor's exclusivity period. Indeed the Exclusive Period should be extended to allow the Debtor to solicit votes on the Reorganization Plan without the futile and wasteful distraction of other chapter 11 plans that have no possibility of creditor support or confirmation.

B. The Debtor's Expenses Have Decreased and Revenues Have Increased Over the Life of the Chapter 11 Case.

19. Contrary to the Committee's assertion that the Debtor is quickly exhausting its available liquidity, the Debtor's cash flows have increased substantially during the Chapter 11 Case. Objection ¶¶ 22-25. Specifically, the Debtor's loan participation in the Ardid-Mint development loan (a Miami condominium development currently managed by Corus Construction Ventures LLC) has substantially increased in value during the Chapter 11 Case and has so far produced $3.6 million in revenue for the Debtor. As a result, the Debtor's cash burn has been substantially reduced during 2011. Indeed, the Debtor has largely been cash flow neutral during 2011.

20. Additionally, the Debtor has worked with the Committee both prior to and throughout the Chapter 11 Case to cut expenses. Indeed, since June 2010, the Debtor's workforce has been reduced from five full time employees to two full-time employees and one part-time employee, saving approximately $67,000 per month. The Debtor has also relocated its business to three smaller, inexpensive offices, saving an additional $3,300 per month.

21. The total professional fees in the Chapter 11 Case have also dwindled during the course of the Chapter 11 Case, from a high of $796,137 in August of 2010 to $375,846 in March 2011. The Debtor's professionals' fees are primarily related to communicating with creditors and attempts to obtain a consensual plan of reorganization. Indeed, since January 1, 2011, approximately 70% of Kirkland & Ellis LLP's time has been related to communication with creditors and efforts to obtain a confirmed plan of reorganization. The remaining time has been split between: (a) approximately 15% related to litigation matters, including with the Federal Deposit Insurance Corporation, which are constant no matter what path is chosen; and (b) approximately 15% related to other tasks necessary to the orderly administration of the

Debtor's estate. Likewise, virtually 100% of Kinetic Advisors LLC's time has been devoted to confirmation of a chapter 11 plan.

22. Reflecting these savings and improved cash flow, since January 1, 2011, the Debtor's cash on hand has remained stable; on January 1, 2011, the Debtor had $27.237 million in available cash and as of May 1, 2011, the Debtor had $27.148 million, reflecting a net reduction of only $89,000. Further, it is important to note that approximately 85% of the professional fees in this Chapter 11 Case have been unavoidable: the litigation would be ongoing both inside and outside of the chapter 11 process and efforts related to confirmation of a plan were either supported by the Committee or are related to implementing the Plan Support Parties' Reorganization Plan. Given the rejection of the liquidation plan, the Committee would be hard pressed to argue that the Debtor should simply give up all efforts to obtain a consensual plan and instead pursue the failed liquidation plan (which, of course, was endorsed and driven exclusively by the Committee).

23. Despite the Committee's assertions to the contrary, the 203 North LaSalle factors weigh heavily in favor of extending the Exclusivity Period. The barriers to communicating with economic stakeholders (which the Debtor has now surmounted), the Debtor's demonstrated good-faith progress towards confirming the Reorganization Plan, the consensus that the Debtor has fostered among the majority of its economic stakeholders, and the Debtor's cash-flow neutral balance sheet each support the Debtor's request under 203 North LaSalle. See 203 North LaSalle Street P'ship v. Bank of Am. Nat'l Ass'n (In re 203 North LaSalle Street P'ship), Nos. 99 C 7110 and 99 C 7108, 1999 WL 1206619 at *4 (N.D. Ill. Dec. 13, 1999); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (identifying four of the factors as relevant in determining whether "cause" exists to extend exclusivity); In re United Press Int'l, Inc., 60

B.R. 265, 269 (Bankr. D.D.C. 1986) (finding that the debtor showed "cause" to extend exclusivity based upon three of the factors). In light of the foregoing, and considering the totality of the circumstances, the Debtor respectfully requests the Court to exercise its sound discretion and grant the Debtor its requested extension of the Exclusivity Period. See id. ("[T]he Code commits decisions on extending the exclusivity period to the discretion of the bankruptcy court.").

Conclusion

24. The Debtor has shown more than sufficient cause to extend exclusivity. The economic stakeholders support moving forward with the Reorganization Plan and the Committee has presented no viable alternative. Further, the costs and expenses the Committee complains of with respect to the Reorganization Plan are present in any scenario, given the rejection of the liquidation plan. The Objection misconstrues the Debtor's actions and fails to refute the Debtor's satisfaction of the legal standard to extend exclusivity. As a result, the Motion should be granted and the Objection overruled.

[*Concluded on Following Page*]

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: May 25, 2011

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