

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
)	
CORUS BANKSHARES, INC. ¹)	Case No. 10-26881 (PSH)
)	
Debtor.)	
)	Objection Deadline: August 4, 2011 at 4:00 p.m. C.T.
)	Hearing Date: August 11, 2011 at 10:30 a.m. C.T.
)	

**NOTICE OF MOTION FOR ENTRY OF AN ORDER APPROVING THE AMENDED
STIPULATION BETWEEN THE DEBTOR AND THE FEDERAL DEPOSIT
INSURANCE CORPORATION, AS RECEIVER, ESTABLISHING AN ESCROW
ACCOUNT TO HOLD TAX REFUNDS PENDING FINAL ADJUDICATION OF
OWNERSHIP**

PLEASE TAKE NOTICE that on **August 11, 2011 at 10:30 a.m. C.T.** or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and present the attached **Motion for Entry of an Order Approving the Amended Stipulation Between the Debtor and the Federal Deposit Insurance Corporation, as Receiver, Establishing an Escrow Account to Hold Tax Refunds Pending Final Adjudication of Ownership** (the "Motion"), at which time and place you may appear if you so desire.

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Bankruptcy Court by **August 4, 2011 at 4:00 p.m. C.T.** and served by such time on: (a) counsel to the Debtor; (b) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604, Attn: M. Gretchen Silver; (c) counsel to the official committee of unsecured creditors; and (d) those parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 and the Case Management Procedures approved by the Bankruptcy Court in this case.

PLEASE TAKE FURTHER NOTICE that, unless a written objection to the Motion with proof of service is filed with the Bankruptcy Court by **August 4, 2011 at 4:00 p.m. C.T.** there may not be a hearing on the Motion and an order approving the Motion may be signed without further notice.

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.

PLEASE TAKE FURTHER NOTICE that, you may obtain additional information concerning this chapter 11 case at the Debtor's private web site at <http://www.bmcgroup.com/corus>.

Dated: July 27, 2011

Respectfully Submitted,

/s/ Jeffrey W. Gettleman

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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In re:)	Chapter 11
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CORUS BANKSHARES, INC. ¹)	Case No. 10-26881 (PSH)
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Debtor.)	Hearing Date: August 11, 2011 at 10:30 a.m., C.D.T.
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**MOTION FOR ENTRY OF AN ORDER APPROVING THE AMENDED STIPULATION
BETWEEN THE DEBTOR AND THE FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER, ESTABLISHING AN ESCROW ACCOUNT TO
HOLD TAX REFUNDS PENDING FINAL ADJUDICATION OF OWNERSHIP**

The above-captioned debtor and debtor in possession (the “Debtor”), files this motion (the “Motion”) pursuant to sections 105(a), 363(b) and 541 of the Bankruptcy Code seeking entry of an order (the “Order”) approving an amended stipulation between the Debtor and the Federal Deposit Insurance Corporation, as Receiver (“FDIC-R”), establishing an escrow account, substantially in the form attached hereto as Exhibit A, and certain related relief.

In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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.

3. The statutory bases for the relief requested herein are §§ 105(a), 363(b), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rule 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Relief Requested

4. By this Motion, the Debtor respectfully requests the entry of the Order substantially in the form attached hereto as Exhibit A: (i) approving the Debtor’s entry into an amended stipulation by and between the Debtor and the FDIC-R (the “Amended Stipulation”), a copy of which is attached as Attachment 1 to the Order, which would authorize the establishment of an escrow account for tax refund payments received from the Internal Revenue Service (“IRS”); and (ii) granting certain related relief.

Background

5. On June 15, 2010 (the “Petition Date”), the Debtor filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code [Docket No. 1]. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On June 29, 2010, the United States Trustee for the Northern District of Illinois appointed an official committee of unsecured creditors (the “Committee”) [Docket No. 39]. No request for the appointment of a trustee or examiner has been made in this chapter 11 case.

The Tax Refunds & Amended Stipulation

7. The Debtor’s consolidated tax returns for the 2008 and 2009 tax years reported substantial tax losses. As a result of those losses, the 2009 and 2008 tax returns included refund claims for taxes paid in earlier years. Specifically, the IRS released to the Debtor and FDIC-R the sum of \$265,950,895.99, representing the 2008 and 2009 refunds (the “Tax Refunds”).

8. The FDIC-R contends that all or substantially all of the Tax Refunds belong to Corus Bank and thus are property of the FDIC-R as its receiver. The Debtor contends that all of the Tax Refunds belong to the Debtor and thus are property of the Debtor's bankruptcy estate. No determination has yet been made by any court as to whether the Tax Refunds, in whole or in part, are property of the FDIC-R or the Debtor's estate.²

9. On August 31, 2010, the Debtor and the FDIC-R (each, a "Party" and together, the "Parties") entered into a Stipulation Between the Debtor and the Federal Deposit Insurance Corporation With Respect to (i) the Establishment of an Escrow Account and (ii) the Filing of a 2009 Tax Return on Behalf of Corus Bank (the "Original Stipulation"), which was approved by the Bankruptcy Court on September 24, 2010 [Docket No. 175]. Pursuant to the Original Stipulation, on March 15, 2011, the Tax Refunds were deposited into an escrow account at Deutsche Bank Trust Company Americas ("Deutsche Bank"). The Original Stipulation further provided that notwithstanding the deposit of the Tax Refunds into the escrow account at Deutsche Bank, no presumption or adverse inference would arise that the Tax Refunds, in whole or in part, belong to and/or are property of the FDIC-R as Receiver or the bankruptcy estate of the Debtor.

10. Although the escrow account at Deutsche Bank is nominally an interest-bearing account, due to the terms of the agreement with Deutsche Bank governing the escrow account and the currently-prevailing interest rate environment, the Tax Refunds have not earned any interest since being deposited.

² Litigation over who is entitled to the Tax Refunds remains pending in the U.S. District Court for the Northern District of Illinois under the case styled, *Corus Bankshares, Inc. v. Federal Deposit Insurance Corporation*, Case No. 10-5654 (N.D. Ill.), with discovery expected to conclude by December 15, 2011.

11. The Debtor and the FDIC-R believe that it would be in their best interest that the Tax Refunds earn interest, and that depositing the Tax Refunds into an escrow account that will be part of the National Liquidation Fund (“NLF”) would materially increase the opportunity for the Tax Refunds to begin earning interest.

12. Accordingly, the Debtor and the FDIC-R have entered into the Amended Stipulation, the material terms of which are as follows:³

- a. The Debtor and the FDIC-R shall establish an interest-bearing account as part of the NLF within which the pro rata share of each entity is accounted for separately and which shall be deemed to be separate from any other accounts established, and funds owned, by the Debtor and the FDIC-R (the “NLF Account”).
- b. Promptly after approval of the Amended Stipulation by the Court, the Debtor and the FDIC-R will send the appropriate authorization to Deutsche Bank to obtain release of the Tax Refunds from the Deutsche Bank escrow account, and the Tax Refunds will be deposited into the NLF Account and shall be subject to this Amended Stipulation.
- c. Any interest earned on the NLF Account will be distributed to the party that ultimately receives the Tax Refunds. When monies are released from the NLF Account and distributed, a pro-rata share of the accumulated interest thereon shall be distributed therewith, and each of the parties will be responsible for the payment of any taxes due on interest received.
- d. No funds shall be disbursed or released from the NLF Account except upon (i) an agreement between the Debtor and the FDIC-R to release such funds, or (ii) an order or judgment of the Bankruptcy Court or other court of competent jurisdiction authorizing the release of such funds.
- e. No presumption or adverse inference shall arise that the Tax Refunds, in whole or in part, belong to and are the property of the FDIC-R as Receiver or the bankruptcy estate of the Debtor merely because of the Original Stipulation or the Amended Stipulation or

³ To the extent that there are any discrepancies between this summary of the terms of the Amended Stipulation, and the actual terms of the Amended Stipulation, the latter is controlling.

the involvement of the Debtor, the FDIC-R or the NLF in holding, negotiating or depositing the funds.

- f. The NLF Account shall be maintained in compliance with 11 U.S.C. § 345 until all funds in the NLF Account are disbursed in accordance with this Amended Stipulation. Compliance with 11 U.S.C. § 345, however, does not constitute a waiver or concession that the Tax Refunds are property of the Debtor's bankruptcy estate.

13. The Debtor and the FDIC-R believe that it is in the best interests of all parties in interest to release the Tax Refunds from the Deutsche Bank escrow account and place such funds in the NLF Account, without prejudice to either Party's position. The Tax Refunds constitute a substantial amount of money which are currently earning no interest at Deutsche Bank. Both the Debtor and the FDIC-R believe that depositing the Tax Refunds in the NLF Account will materially increase the opportunity for the Tax Refunds to earn interest. Because such interest will only benefit the Debtor if the Tax Refunds are found to be property of the estate, the Debtor believes that placing the Tax Refunds in the NLF Account is in the best interest of the estate.

14. Moreover, by entering into the Amended Stipulation and transferring the Tax Refunds, neither the Debtor nor the FDIC-R waives any of their respective rights and, as such, each Party understands that neither is admitting nor recognizing that all or any part of the Tax Refunds are property of the other Party. Accordingly, the Debtor submits that entering into the Amended Stipulation is in the best interest of the estate and should be approved by this Court.

Basis for Relief

15. Section 363(b)(1) of the Bankruptcy Code provides that the debtor in possession "may use, sell, or lease, other than in the ordinary course of business, property of the estate," after notice and a hearing. 11 U.S.C. § 363. Bankruptcy Courts have held that if a debtor's proposed use of the property under Section 363(b) represents a reasonable business judgment on the part of the debtor, such use can and should be approved. See e.g., Fulton State Bank v.

Schipper (In re Schipper), 933 F.2d 513, 5145 (7th Cir. 1983); Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel), 722 F.2d 1063, 1070 (2d Cir. 1983); Comm. of Asbestos-Related Litigants v. Johns Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to debtor’s conduct.”).

16. The Debtor believes that the Amended Stipulation is a reasonable use of its interest in the Tax Refunds. By virtue of the Amended Stipulation, the Tax Refunds will be released from the escrow account at Deutsche Bank and deposited in the NLF Account, which will materially increase the opportunity for the Tax Refunds to begin earning interest. The deposit in the NLF Account will occur in a timely manner without prejudice to any rights of the Debtor or the FDIC-R, and will provide the Debtor and the FDIC-R an opportunity to engage in an appropriate process to resolve their competing claims, while interest accrues on those sums. Accordingly, approval of this use of the Debtor’s interest in the Tax Refunds is a reasonable exercise of the Debtor’s business judgment and should be approved.

17. Section 541(a) of the Bankruptcy Code provides that the bankruptcy estate “is comprised of all of the following property, wherever located and by whomever held: (1)...all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541. If the Debtor is ultimately determined to be the owner of some or all of the Tax Refunds, approval of the Amended Stipulation will enable the prompt turnover of those amounts to the Debtor’s estate. Approval of the Amended Stipulation is appropriate to carry out section 541 of the Bankruptcy Code, to ensure that the Debtor’s interests in the Tax Refunds are preserved pending resolution of the Debtor’s and the FDIC-R’s disputes concerning ownership.

18. The Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A court’s section 105(a) equitable powers may be used to authorize a debtor to establish escrow accounts where necessary to effectuate an objective of the Bankruptcy Code, such as protecting estate assets for the benefit of creditors. See In re Commercial Mortg. and Fin., Co., 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009). See also In re Andreas, 373 B.R. 864, 873 (Bankr. N.D. Ill. 2007) (“section 105 grants broad powers to bankruptcy courts to implement the provisions of Title 11 and to prevent abuse of the bankruptcy process”). Preservation of the Tax Refunds is vital to ensure that any recovery from the Tax Refunds will be preserved for the benefit of the estate. In addition, if the Debtor is determined to be the owner of all or part of the Tax Refunds, it is to the Debtor’s benefit that the Tax Refunds earn interest. Accordingly, because the Debtor believes that the Amended Stipulation will facilitate resolution of any dispute over the Tax Refunds and will allow the Tax Refunds to earn interest until such resolution is met, it is consistent with the Court’s equitable power under § 105(a) and is necessary and appropriate to approve the Amended Stipulation proposed by this Motion.

19. The Debtor submits that the establishment of the NLF Account will provide the Parties time to attempt to consensually resolve their disputes regarding the Tax Refunds, or for a judicial determination, while the Tax Refunds earn interest. The Debtor and FDIC-R can continue to resolve their disputes with the added security that the Tax Refunds are earning interest, thereby minimizing costs to the estate and preserving funds for ultimate distribution to creditors.

Notice

20. The Debtor has provided notice of this Motion to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) the Counsel to the Committee; (c) counsel to the indenture trustee for each of the Debtor's subordinated debentures; (d) any persons who has filed a requested for notice in this chapter 11 case pursuant to the Order Establishing Certain Notice, Case Management, and Administrative Procedures [Docket No. 20] and Bankruptcy Rule 2002; and (e) the FDIC-R. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

21. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the order, substantially in the form attached hereto as Exhibit A, approving the Amended Stipulation, substantially in the form of Attachment 1 of Exhibit A, and (b) granting such other and further relief as the Court deems appropriate.

Dated: July 27, 2011

KIRKLAND & ELLIS LLP

/s/ Jeffrey W. Gettleman

James H.M. Sprayregen, P.C. (IL Bar No. 6190206)

David R. Seligman, P.C. (IL Bar No. 6238064)

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