

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**SpectraScience, Inc.**

**Bky. Case No. 02-42904-NCD**

**Debtor.**

**Chapter 11**

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**NOTICE OF HEARING AND MOTION BY  
TRUSTEE-IN-POSSESSION  
TO CONVERT CHAPTER 11 CASE**

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COMES NOW the Trustee-in-Possession, Timothy D. Moratzka (“TIP”), through his undersigned attorney, moves the Court to convert this Chapter 11 case. In support of his motion, he states the following:

1. The hearing will be held on Wednesday, November 5, 2003 at 10:30 a.m. before Judge Nancy C. Dreher, Courtroom 7 West, U.S. Bankruptcy Court, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

2. Any response to this motion must be filed and delivered not later than October 31, 2003, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than October 27, 2003, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.

3. The TIP has standing to bring this motion pursuant to 11 U.S.C. 1106(a)(5) and 28 U.S.C. 157(b)(2)(A). The bankruptcy court has jurisdiction pursuant to 28 U.S.C. § 1334. This motion is brought pursuant to 11 U.S.C. § 1112(b). Local Bankruptcy Rule 1017-2 provides that a motion to convert may be treated as a motion to dismiss by the Bankruptcy Court if it finds dismissal in the best interest of the creditors and the estate.

4. A Petition under Chapter 7 was filed on September 13, 2002. This case was converted to one under Chapter 11 reorganization on February 5, 2003.

5. Prior to the Petition Date, SpectraScience, Inc. (“the Debtor”) owned exclusive rights to six issued U.S. patents and four pending international patent applications, and manufactured medical devices. In general, these patents were the basis for a minimally-invasive spectroscopic biopsy system that permits physicians to differentiate between normal, pre-cancerous and cancerous tissues in the colon, without removing tissue (the “System”). The System employs laser light to optically scan and analyze tissue during endoscopy of the colon, thus permitting a physician to render instant diagnoses and provide immediate treatment if warranted.

6. Although the Debtor had obtained FDA regulatory approval for the System by the Petition Date, it had not obtained reimbursement approval from any insurance or other medical care providers. Stated differently, doctors who use the System cannot presently seek reimbursement from third party payors for costs and charges associated with their use of the System.

7. GDBA Investments, LLLP (“GDBA”), the potential investor to fund a reorganization of the Debtor has withdrawn its commitment to go forward with the reorganization. (TIP is without funds or another investor to fund a plan of reorganization.)

8. Trustee has received no offers to purchase Debtor’s intellectual property assets as part of a “going concern” purchase. The Debtor has lost \$20 million since 1992 and its accumulated deficit is at least \$54.6 million. In March of 1999, Debtor’s stock was delisted. Liquidation value is unknown and speculative. The Debtor’s personal property, which it values

in its schedules in the aggregate amount of nearly \$5,300,000, consists almost exclusively of various patents and licenses used in connection with the System.

9. The circumstances of this case provide cause to convert this case under 11 U.S.C. § 1112(b)(1) – (3).

10. Conversion is in the best interest of creditors to administer this estate and provide finality to the creditors.

11. If a witness is necessary, the TIP will call Timothy D. Moratzka.

WHEREFORE, the Trustee-in-Possession requests that the Court convert the above named Chapter 11 case to Chapter 7 and appoint Timothy D. Moratzka as Trustee.

Dated: October 2, 2003

MACKALL CROUNSE & MOORE

By /e/ Timothy D. Moratzka  
Timothy D. Moratzka (# 75036)  
Patrick C. Summers (# 028841X)  
Andrew P. Moratzka (# 0322131)  
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Attorneys for Trustee-in-Possession for the  
Bankruptcy Estate of SpectraScience, Inc.

#### VERIFICATION

I, Timothy D. Moratzka, Trustee-in-Possession, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 2, 2003

By /e/ Timothy D. Moratzka  
Timothy D. Moratzka (# 75036)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Spectrascience, Inc.**

**Bky. Case No. 02-42904-NCD**

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**MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO CONVERT CHAPTER 11 CASE**

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Section 1112(b) permits the Bankruptcy Court to dismiss or convert a case for cause. 11 U.S.C. § 112(b). The Bankruptcy Code does not define “cause”, but subsection (b) provides a non-exhaustive list of ten examples of cause. 7 LAWRENCE P. KING, COLLIER ON BANKRUPTCY, ¶ 1113.04[1] (15<sup>TH</sup> ED. 1997). The portions of 11 U.S.C. § 112(b) relevant to the present case includes the following:

Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee..., and after notice and a hearing, the court may convert a case under this chapter to a case under Chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including –

- (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- (2) inability to effectuate a plan;
- (3) unreasonable delay that is prejudicial to creditors; . . .”

11 U.S.C. § 1112(b).

**1. Continuing loss to or diminution of the estate and absence  
of a reasonable likelihood of rehabilitation;**

The requirement under Section 1112(b)(1) is two-fold: (1) there must be a continuing diminution of the estate; and (2) absence of a reasonable likelihood of rehabilitation. 7 Collier, ¶

112.04[5][a], at 1112-30 & n. 34 (citing *In re Citi-Toledo Partners*, 170 B.R. 602, 606 (Bankr. N.D. Ohio 1994) & 124 Cong. Rec. 32,406 (1978)). The first inquiry is satisfied if the debtor incurred continuing losses after the bankruptcy petition was filed. *In re Schriock Const. Inc.*, 167 B.R. 569, 575 (Bankr. D.N.D. 1994). The second inquiry relates to whether the debtor can stop the losses and put the debtor on “solid financial footing within a reasonable amount of time.” 7 Collier, ¶ 1112.04[5][a], at 1112-30.

In this case GDBA Investments, LLLP (“GDBA”) has withdrawn its offer to effect a plan of reorganization.

## **2. Inability to Effectuate a Plan of Reorganization**

GDBA has withdrawn its commitment to finance a plan of reorganization. TIP does not have funds to effect a reorganization. No other investors have expressed an interest.

## **3. Unreasonable Delay that is Prejudicial to Creditors**

Section 1112(b)(3) provides that cause exists when there is “unreasonable delay by the debtor that is prejudicial to creditors.” The prejudice must be actual. *In re Economy Cab & Tool Co., Inc.* 44 B.R. 721, 725 (Bankr. D. Minn. 1984). The estate will diminish in value to the prejudice of creditors.

## Conclusion

A bankruptcy court has broad discretion in deciding whether to dismiss or convert a Chapter 11 case. *Lumber Exchange Bldg., Ltd. V. Mutual Life Ins. Co. (In re Lumber Exchange Bldg., Ltd.)*, 968 F.2d 647, 648 (8<sup>th</sup> Cir. 1992). The TIP requests that the Bankruptcy Court convert this case for cause pursuant to 11 U.S.C. § 1112(b).

Dated: October 2, 2003

MACKALL CROUNSE & MOORE

By: /e/ Timothy D. Moratzka  
Timothy D. Moratzka (# 75036)  
Patrick C. Summers (# 028841X)  
Andrew P. Moratzka (# 0322131)  
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Attorneys for Trustee-in-Possession for the  
Bankruptcy Estate of SpectraScience, Inc.

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

SpectraScience, Inc.

Bankruptcy No. 02-42904-NCD

Debtor(s)

**UNSWORN DECLARATION**  
**FOR PROOF OF SERVICE**

Cheryl DeBettignies, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing an Motion By Trustee-in-Possession to Convert Chapter 11 Case, Memorandum in Support of Motion and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

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See Attached List  
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And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 8, 2003

Signed: /e/Cheryl DeBettignies

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

CHAPTER 11

SpectraScience, Inc.

Bankruptcy No. 02-42904-NCD

CHAPTER 11  
SERVICE LIST

UNITED STATES TRUSTEE 1015 U. S. COURTHOUSE 300 SOUTH 4 <sup>TH</sup> STREET MINNEAPOLIS, MN 55415	MICHAEL MEYER ATTORNEY FOR DEBTOR 80 SOUTH 8 <sup>TH</sup> STREET SUITE 4545 MINNEAPOLIS, MN 55402
DANIEL BECK ATTORNEY FOR DOUGHERTY FINANCIAL GROUP 60 SOUTH 6 <sup>TH</sup> STREET MINNEAPOLIS, MN 55402	GEOFFREY J. PETERSON WELTMAN, WEINBERG, & REIS ATTORNEY FOR CIT TECHNOLOGY FINANCING 175 SOUTH THIRD STREET COLUMBUS, OH 43215
GEORGE SINGER 4200 IDS CENTER 80 SOUTH 8 <sup>TH</sup> STREET MINNEAPOLIS, MN 55402	JEFF ANDERSON PERFORMANCE CAPITAL GROUP 14 WALL STREET 27 <sup>TH</sup> FLOOR NEW YORK, NY 10005
MS. MONICA CLARK DORSEY & WHITNEY SUITE 1500 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402	WILLIAM KAMPF, ESQ. KAMPF & ASSOCIATES, P.A. 821 MARQUETTE AVENUE SUITE 901 MINNEAPOLIS, MN 55402
US ATTORNEY 600 US COURTHOUSE 300 SOUTH FOURTH STREET MINNEAPOLIS MN 55415	MN DEPT OF REVENUE COLLECTION ENFORCEMENT 551 BANKRUPTCY SECTION PO BOX 64447 ST PAUL MN 55164
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LARRY D. KRANING 21077 FOOTHILL TRAIL AKELEY, MN 56433	R. JOSEPH GARRY 1960 QUANT AVENUE SO. AFTON, MN 55001

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**SpectraScience, Inc.**

**Bky. Case No. 02-42904-NCD**

**Debtor.**

**Chapter 11**

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**ORDER**

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At Minneapolis, Minnesota this 5th day of November, 2003, the Trustee-in-Possession's Motion to Dismiss to Convert the above named Chapter 11 Case to Chapter 7 came before the Bankruptcy Court. Appearances were as noted in the record.

Based on the pleadings, findings of fact, conclusions of law, and arguments of parties on the record:

IT IS HEREBY ORDERED that the Trustee's-in-Possession Motion to Convert is granted pursuant to 11 U.S.C. § 1112(b). This Chapter 11 case is converted to a Chapter 7 case. Timothy D. Moratzka is appointed as Chapter 7 Trustee.

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The Honorable Nancy C. Dreher  
United States Bankruptcy Court.