

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**NOTICE OF HEARING AND MOTION UNDER SECTION 1121(D) TO EXTEND
EXCLUSIVE PERIODS OF DEBTORS TO FILE AND OBTAIN
ACCEPTANCES OF PLANS OF REORGANIZATION**

TO: The Office of the United States Trustee and Other Parties in Interest as Specified in Local Rule 9013.

1. Intrepid U.S.A., Inc. and its affiliated debtor entities (collectively, the “Debtors”) hereby move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 1:30 p.m. on August 26, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 23, 2004, which is three days before the time for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than August 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), and Local

Rule 1070-1. This is a core proceeding. The petitions commencing Debtors' cases were filed on January 29, 2004 and April 12, 2004. These cases are now pending in this Court.

5. This motion arises under 11 U.S.C. § 1121(d) and is filed under Bankruptcy Rule 9014 and Local Rule 9013-1. Debtors request an order of the Court (A) extending the period within which Debtors have the exclusive right to file plans of reorganization until December 8, 2004, (B) extending the period in which Debtors can obtain acceptances of their plans without competing plans being filed until February 7, 2005, and (C) permitting Debtors to serve and file additional motions for extensions of the foregoing periods.

BACKGROUND

6. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Court has ordered, for procedural purposes only, joint administration of the Debtors' Chapter 11 cases.

7. The Intrepid home health care business began in July of 1994, and since that time, it has been based and headquartered in Edina, Minnesota. As of the filing date, the Intrepid umbrella of companies operated in 31 states, out of approximately 196 offices, with approximately 13,000 health care professionals which provide medically-necessary home health care services and therapies to approximately 125,000 patients annually, nearly all of whom are home-bound, incapacitated in some way, handicapped, elderly or otherwise physically disadvantaged to the extent that they have to rely on Intrepid for their health care in their homes. Intrepid also has a division of its business that provides staffing of nurses and health care practitioners in hospitals and extended care facilities. The majority of its revenues are derived from its home health care business operations.

8. Debtors Intrepid U.S.A., Inc., F.C. Acquisition Corporation and Intrepid of Golden Valley, Inc. filed for Chapter 11 protection on January 29, 2004. Pursuant to section 1121, they had the exclusive right to file plans of reorganization through May 28, 2004 and could obtain acceptances of their plans without competing plans being filed through July 27, 2004.

9. On April 5, 2004, a stipulation between Intrepid USA, Intrepid of Golden Valley, F.C. Acquisition, DVI,¹ the Official Committee of Unsecured Creditors (the “Committee”), and certain other parties (the “Stipulation”) was filed on the docket as document no. 153. In the Stipulation, DVI and the Committee agreed “to support and consent to Debtors’ motion for an order extending Debtors’ 120-day and 180-day exclusivity periods to 162 days and 222 days, respectively.” Docket No. 153 at paragraph 18(b). DVI and the Committee also agreed “not to take any steps to file a motion to shorten the exclusivity period.” Id.

10. The sixty-five remaining Chapter 11 cases were commenced on April 12, 2004. Pursuant to section 1121, they have the exclusive right to file plans of reorganization until August 10, 2004 and can obtain acceptances of their plans without competing plans being filed until October 11, 2004.

11. On June 2, 2004, the Court entered an order extending the exclusive periods of Intrepid U.S.A., Inc., F.C. Acquisition Corporation and Intrepid of Golden Valley, Inc. to file plans of reorganization through August 10, 2004 and to obtain acceptances of the plans of reorganization through October 11, 2004.

¹ “DVI” means DVI, Inc., DVI Business Credit, Inc., and DVI Financial Services, Inc.

RELIEF REQUESTED

12. The circumstances described below constitute cause under section 1121(d) to extend the period within which Debtors have the exclusive right to file their plans of reorganization through December 8, 2004 and to extend the period within which Debtors may obtain acceptances of such plans through February 7, 2005.

Debtors' Cases are Large and Complex.

13. These cases are large. There are sixty-eight Debtors; each filed separate petitions and schedules. Collectively, these Debtors have hundreds of creditors. The Debtors generate yearly revenues of approximately \$180,000,000. Thus, the size of these cases alone establishes grounds for extending the exclusivity periods.

14. This traditional ground is compounded by the complex nature of these cases. The Debtors' initial days in Chapter 11 were consumed by responding to DVI's motion to dismiss and the United States Trustee's motion to appoint a trustee. After these matters were resolved, the Debtors spent a significant amount of time obtaining an order authorizing use of cash collateral and interim and final orders authorizing Debtors to enter into a DIP loan. Most recently, as contemplated by the Stipulation between Debtors and DVI, Debtors have begun to focus on a recapitalization plan, sale of assets, or similar external transaction. The typical problems encountered in obtaining these orders and conducting such an external transaction are magnified by the Debtors' obligation to the Center for Medicaid and Medicare Services ("CMS"), which will continue to be an over-riding concern for the parties-in-interest.

Debtors Need Additional Time to Negotiate a Joint Plan of Reorganization and Prepare Adequate Information.

15. Because the Debtors have been consumed with initial exigencies that surrounded their cases, Debtors have only recently begun to negotiate with the parties-in-interest in these cases, including DVI and the Committee, regarding the plans of reorganization and to prepare adequate information for the disclosure statements. The Debtors have been negotiating in good faith and believe progress has been made in formulating a joint plan of reorganization. Moreover, the Debtors are confident that they can propose a reorganization plan that will have the active support of the parties-in-interest.

16. Debtors are currently engaged in discussions with the Department of Justice, the local U.S. Attorney's Office and CMS to resolve a pre-petition investigation into Debtors' pre-petition billing practices. CMS is expected to file a claim on or before the hearing on this motion. Resolution of the claims is crucial to any Chapter 11 exit strategy here, because of the nature of CMS's asserted rights. Negotiations concerning the resolution of the claims are ongoing. Litigation may be necessary to obtain a judicial resolution. Such litigation could raise complex evidentiary issues and raises issues of law which are complex and novel in the Eighth Circuit. An extension of exclusivity here will permit such negotiations and litigation to proceed on pace.

Debtors Have to Resolve Certain Contingencies.

17. The Debtors also need additional time to deal with two significant issues that will shape their reorganization effort. The first is time to further evaluate the Debtors' business. The Debtors are exploring how to maximize the value of the estates, including whether to close and/or sell certain offices. The Debtors have begun to act by closing certain unprofitable offices and selling other offices such as Intrepid of Southeast Louisiana, Inc. However, the Debtors

need further time to evaluate the operations of their remaining offices and act on any conclusions reached.

18. Second, Debtors are focused on a recapitalization plan, sale of assets or similar external transaction which should close by year end. CMS's potential claims, which at this time are unascertained, will have a significant impact upon such a transaction. Thus, an extension of the exclusivity periods will allow Debtors to determine the amount of CMS's potential claims and focus on an external transaction.

Only Three of the Sixty-Eight Debtors have Previously been Granted an Extension.

19. As noted above, Intrepid U.S.A., Inc., F.C. Acquisition Corporation, and Intrepid of Golden Valley, Inc. filed for Chapter 11 protection on January 29, 2004, approximately seventy-five days before the remaining Debtors. Because the Debtors will likely file a joint plan of reorganization, these three Debtors sought an extension of their exclusive periods to establish uniform exclusivity periods with the remaining sixty-five Debtors. The Court granted the three Debtors request and extended their exclusive periods to file a plan and obtain acceptances through August 10, 2004 and October 11, 2004. Thus, only three of the sixty-eight debtors have obtained a short extension of the exclusivity periods.

There has been No Breakdown in Negotiations with the Parties-In-Interest and Debtors Can File a Viable Plan.

20. The Debtors have been fully cooperative with parties-in-interest and are currently keeping major constituencies in these cases apprised of Debtors' efforts. However, due to the size and complexity of the cases, and the various unresolved contingencies described in greater detail above, the Debtors need additional time to negotiate and formulate a plan of reorganization. In seeking an extension of the exclusivity periods, the Debtors have no ulterior motives such as obtaining an unfair bargaining position over parties-in-interest. Rather, they

seek only to maintain the status quo until an external transaction has been solidified and ultimately approved by this Court, negotiations with parties-in-interest are finalized, and a consensual plan with creditors may be formulated.

21. Finally, the Debtors' creditors will not be disadvantaged by this delay. The Debtors' business continues to operate and their bills are being paid in the ordinary course. In fact, Debtors' business operates on a positive cash flow basis and Debtors' operations are generally ahead of forecasted plan. The Debtors are confident that they can propose a joint reorganization plan that will have the active support of their creditors including unsecured creditors. Indeed, an extension of the exclusivity periods will enable the Debtors to formulate such a viable plan.

22. Pursuant to Local Rule 9013-2(a), this motion is verified and is accompanied by a memorandum of law, proposed order, and proof of service.

23. Pursuant to Local Rule 9013-2(c), Debtors give notice that, if necessary, they may call Dennis I. Simon, CEO, or Greg Von Arx, CFO, of the Debtors to testify at the hearing on this Motion. Their business addresses are Intrepid U.S.A., Inc., 6600 France Avenue South, Suite 510, Edina, MN 55425.

WHEREFORE, Debtors respectfully request that the Court enter an order (A) extending the time in which Debtors have the exclusive right to file plans of reorganization through December 8, 2004; (B) extending the time within which Debtors may obtain acceptances of such plans through February 7, 2005; (C) permitting Debtors to seek such other and further extensions of the period specified in Bankruptcy Code section 1121 on motion filed and served prior to December 8, 2004; and (D) granting such other and further relief as the Court may deem just and equitable.

Dated: August 10, 2004

/s/ Clinton E. Cutler
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Ryan Murphy (#311972)
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Suite 4000
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Attorneys for Debtors

VERIFICATION

I, Greg Von Arx, am the Chief Financial Officer of each of the Debtors in the above-captioned cases. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: August 10, 2004

Signed:



Greg Von Arx

#29937461

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Case Nos. 04-41924 – 04-41988-NCD

**MEMORANDUM IN SUPPORT OF MOTION UNDER SECTION 1121(D) TO EXTEND
EXCLUSIVE PERIODS OF DEBTORS TO FILE AND OBTAIN
ACCEPTANCES OF PLANS OF REORGANIZATION**

Intrepid U.S.A., Inc. and its affiliated debtor entities (“Debtors”) submit this memorandum in support of their motion to extend the exclusive periods within which they may file plans of reorganization in these cases and obtain acceptances thereof. Because of, among other things, the size and complexity of these cases, cause exists to extend the exclusive period to file plans through December 8, 2004 and the exclusive time to obtain acceptances of these plans through February 7, 2005.

BACKGROUND

The facts recited herein are drawn from and verified in the Motion and all capitalized terms are defined therein.

ANALYSIS

I. THE EXCLUSIVE PERIODS TO FILE A PLAN AND OBTAIN ACCEPTANCE CAN BE EXTENDED FOR CAUSE.

The Bankruptcy Code provides a debtor a limited time to propose a plan of reorganization and obtain acceptance without interference from a competing plan. The exclusive period to file a plan extends through the first 120 days of the case. 11 U.S.C. § 1121(b). If the debtor files a plan within the 120-day period, the Bankruptcy Code affords the debtor an additional 60 days (up to 180 days after the filing date) to obtain acceptance of the plan before any other party-in-interest may file a competing plan. 11 U.S.C. § 1121(c).

Bankruptcy Code section 1121(d) allows the exclusive periods to file a plan and obtain acceptances to be extended for cause:

On request of a party-in-interest made within the respective periods specified in subsections (b) and (c) of this section, and after notice and hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d). In recognition of this provision, courts have held that certain situations require longer exclusivity periods. See, e.g., Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.), 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003).

Extensions of the exclusive periods are routinely granted when the circumstances of the case indicate that it would be beneficial to the reorganization process. In re Hoffinger Indus., Inc., 292 B.R. at 644; In re Dow-Corning Corp., B.R. 661, 662, 670 (Bankr. E.D. Mich. 1997); In re Express One Intern, Inc., 194 B.R. 98, 99 (Bankr. E.D. Tex. 1996). Indeed, courts have granted repeated extensions of these periods. In re Wisconsin Barge Line, Inc., 78 B.R. 946, 948 (Bankr. E.D. Mo. 1977) (Court granted debtor a fifth extension of exclusivity periods.).

When determining whether to extend the exclusive periods courts consider a number of factors including:

- the size of the debtor and the consequent difficulty in formulating a plan of reorganization for a large debtor with a complex financial structure,
- the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information,
- the existence of good faith progress toward reorganization,
- the existence of an unresolved contingency,
- the fact that the debtor is paying its bills as they come due,
- the length of previous extensions of exclusivity,
- breakdowns in plan negotiations, such that the continuation of the debtor's exclusivity periods would result in the debtor having an unfair bargaining position over creditors, and
- the debtor's failure to resolve fundamental reorganization matters essential to its survival.

In re Hoffinger Indus., Inc., 292 B.R. at 643-44; see also In re Dow-Corning Corp., 208 B.R. at 664-665.

II. CAUSE EXISTS TO EXTEND THE DEBTORS' EXCLUSIVE PERIOD TO FILE PLANS THROUGH DECEMBER 28, 2004 AND TO OBTAIN ACCEPTANCES THROUGH FEBRUARY 7, 2005.

As described in greater detail below, application of these factors here demonstrates cause exists to extend the periods in which Debtors have the exclusive right to file plans of reorganization and seek acceptances thereof. In fact, extending these periods will assist in moving the cases forward in an orderly and efficient manner because Debtors will be afforded

the opportunity to propose viable plans before competing plans are submitted. Moreover, this may prevent parties-in-interest from spending needless time and money on formulating competing plans before having full view of Debtors' proposals.

A. The Debtors' Cases Are Large And Complex.

The size of a case, in light of the difficulty that it causes in formulating a plan, stands as the "traditional ground for cause" in extending the exclusivity periods. In re Express One Intern, Inc., 194 B.R. at 100. These cases are large. There are sixty-eight Debtors; each filed separate petitions and schedules. Collectively, these Debtors have hundreds of creditors. The Debtors generate yearly revenues of approximately \$180,000,000. Thus, the size of these cases alone establishes grounds for extending the exclusivity periods.

This traditional ground is compounded by the complex nature of these cases. The Debtors' initial days in Chapter 11 were consumed by responding to DVI's motion to dismiss and the United States Trustee's motion to appoint a trustee. After these matters were resolved, the Debtors spent a significant amount of time obtaining an order authorizing use of cash collateral and interim and final orders authorizing Debtors to enter into a DIP loan. Most recently, as contemplated by the Stipulation between Debtors, DVI and the Committee, Debtors have begun to focus on a recapitalization plan, sale of assets, or similar external transaction. The typical problems encountered in obtaining these orders and conducting such an external transaction are magnified by the Debtors' obligation to CMS, which will continue to be an over-riding concern for the parties-in-interest.

B. The Debtors Need Additional Time To Negotiate A Joint Plan Of Reorganization And Prepare Adequate Information.

Because the Debtors have been consumed with initial exigencies that surrounded their cases, Debtors have only recently begun to negotiate with the parties-in-interest in these cases, including DVI and the Committee, regarding the plans of reorganization and to prepare adequate information for the disclosure statements. The Debtors have been negotiating in good faith and believe progress has been made in formulating a joint plan of reorganization. Moreover, the Debtors are confident that they can propose a reorganization plan that will have the active support of the parties-in-interest.

Debtors are currently engaged in discussions with the Department of Justice, the local U.S. Attorney's Office and CMS to resolve a pre-petition investigation into Debtors' pre-petition billing practices. CMS is expected to file a claim on or before the hearing on this motion. Resolution of the claims is crucial to any Chapter 11 exit strategy here, because of the nature of CMS's asserted rights. Negotiations concerning the resolution of the claims are ongoing. Litigation may be necessary to obtain a judicial resolution. Such litigation could raise complex evidentiary issues and raises issues of law which are complex and novel in the Eighth Circuit. An extension of exclusivity here will permit such negotiations and litigation to proceed on pace.

C. The Debtors Have To Resolve Certain Contingencies.

The Debtors also need additional time to deal with two significant issues that will shape their reorganization effort. The first is time to further evaluate the Debtors' business. The Debtors are exploring how to maximize the value of the estates, including whether to close and/or sell certain offices. The Debtors have begun to act by closing certain unprofitable offices and selling other offices such as Intrepid of Southeast Louisiana, Inc. However, the Debtors

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Second, Debtors are focused on a recapitalization plan, sale of assets, or similar external transaction which should close by year end. CMS's potential claims, which at this time are unascertained, will have a significant impact upon such a transaction. Thus, an extension of the exclusivity periods will allow Debtors to determine the amount of CMS's potential claims and focus on an external transaction.

D. Only Three Of The Sixty-Eight Debtors Have Previously Been Granted An Extension.

Intrepid U.S.A., Inc., F.C. Acquisition Corporation, and Intrepid of Golden Valley, Inc. filed for Chapter 11 protection on January 29, 2004. The remaining sixty-five cases were filed on April 12, 2004. Pursuant to section 1121, the three initial Debtors had the exclusive right to file plans of reorganization through May 28, 2004 and could obtain acceptances of the plans without competing plans being filed through July 27, 2004.

Because the Debtors will likely file a joint plan of reorganization, these three Debtors sought an approximately seventy-five day extension of the exclusive periods to establish uniform exclusivity periods with the remaining sixty-five Debtors. The Court granted the three Debtors request and extended the exclusive periods to file a plan and obtain acceptances through August 10, 2004 and October 11, 2004. Thus, only three of the sixty-eight debtors have obtained a short extension of the exclusivity periods.

E. There Has Been No Breakdown In Negotiations With Parties-In-Interest And Debtors Can File A Viable Plan.

The Debtors have been fully cooperative with parties-in-interest and are currently keeping major constituencies in these cases apprised of Debtors' efforts. However, due to the

size and complexity of the cases, and the various unresolved contingencies described in greater detail above, the Debtors need additional time to negotiate and formulate a plan of reorganization. In seeking an extension of the exclusivity periods, the Debtors have no ulterior motives such as obtaining an unfair bargaining position over parties-in-interest. Rather, they seek only to maintain the status quo until an external transaction has been solidified and ultimately approved by this Court, negotiations with parties-in-interest are finalized, and a consensual plan with creditors may be formulated.

Finally, the Debtors' creditors will not be disadvantaged by this delay. The Debtors' business continues to operate and their bills are being paid in the ordinary course. In fact, Debtors' business operates on a positive cash flow basis and Debtors' operations are generally ahead of forecasted plan. The Debtors are confident that they can propose a joint reorganization plan that will have the active support of their creditors including unsecured creditors. Indeed, an extension of the exclusivity periods will enable the Debtors to formulate such a viable plan.

CONCLUSION

For the reasons stated above, Debtors respectfully request that the Court enter an order granting Debtors the relief sought in their motion.

Dated: August 10, 2004

/s/ Clinton E. Cutler
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ATTORNEYS FOR DEBTORS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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and Jointly Administered Cases,

Debtor

Chapter 11 Bankruptcy

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Case No. 04-40462-NCD

Case No. 04-40418-NCD

Case Nos. 04-41924 - 04-41988

CERTIFICATE OF SERVICE

Ryan T. Murphy, under penalty of perjury, states that on August 10, 2004 he caused to be served the following:

1. Notice of Hearing and Motion Under Section 1121(d) to Extend Exclusive Periods of Debtors to File and Obtain Acceptances of Plans of Reorganization;
2. Memorandum in Support of Motion Under Section 1121(d) to Extend Exclusive Periods of Debtors to File and Obtain Acceptances of Plans of Reorganization;
3. Proposed Order Extending Exclusive Periods of Debtors to File and Obtain Acceptances of Plans of Reorganization; and
4. Certificate of Service

by sending true and correct copies via United States Mail to all parties on the attached service list.

Dated: August 10, 2004

/e/Ryan T. Murphy

Ryan T. Murphy

#3002200\1

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

**ORDER EXTENDING EXCLUSIVE PERIODS OF DEBTORS TO FILE AND
OBTAIN ACCEPTANCES OF PLANS OF REORGANIZATION**

Intrepid U.S.A., Inc. and its affiliated debtor entities' (collectively, the "Debtors") motion for an order extending Debtors' exclusive periods to file and obtain acceptances of plans of reorganization came on for hearing before the undersigned on _____, 2004. Appearances, if any, were noted on the record.

Based on the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised on the premises, and the Court's findings of fact and conclusions of law, if any, having been stated orally and recorded in open court following the close of evidence.

IT IS HEREBY ORDERED:

1. The period in which Debtors have the exclusive right to file plans of reorganization is hereby extended through December 8, 2004.
2. The period in which Debtors have the exclusive right to obtain acceptances of such plans is hereby extended through February 7, 2005.
3. Debtors may seek further extensions of time pursuant to 11 U.S.C. § 1121(d) by motion served and filed on or before December 8, 2004.

Date: _____, 2004

The Honorable _____
United States Bankruptcy Judge