

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

**DEBTORS' REPLY TO DVI'S OBJECTION TO MOTION
TO EXTEND THE EXCLUSIVITY PERIODS**

INTRODUCTION

The Debtors have moved for an extension of the time in which Debtors have the exclusive right to file plans of reorganization from August 10, 2004 through December 8, 2004 and the time within which they may obtain acceptances of such plans from October 11, 2004 through February 7, 2005. The Debtors' moving brief established that cause exists to extend the exclusivity periods because of, among other causes, the size and complexity of these cases.

DVI,¹ apparently motivated to accelerate Debtors' cases proceeds towards resolution more by timelines and interests central to its own liquidating Chapter 11 cases than what is best for the creditors of the Debtors' bankruptcy cases, has filed the only objection to the Debtors' Motion. DVI objects to the extension of the exclusivity periods on the grounds that the Motion is inconsistent with the Stipulation² and the fact that Debtors need additional time to formulate plans of reorganization does not constitute cause. To the contrary, an extension of the

¹ DVI includes DVI Business Credit Corporation, DVI Financial Services Inc., DVI Business Credit Receivables Corp III and DVI Receivables XIX, LLC.

² The Stipulation is defined in DVI's objection and as used herein refers to the same agreement by and between certain parties including DVI and the Debtors.

exclusivity periods comports with the Stipulation, which expressly addresses when an external transaction occurs after September 30, 2004. Moreover, Debtors have demonstrated all the pertinent factors, not just more time was needed to formulate plans of reorganization, supported extending the exclusivity periods. Thus, the Court should deny DVI's objection and enter an order granting Debtors the relief sought in Motion.

ARGUMENT

CAUSE EXISTS TO EXTEND THE EXCLUSIVITY PERIODS

A. The Extension Of The Exclusivity Periods Conforms With The Stipulation

DVI asserts that Debtors' Motion should be denied because "debtors are attempting to amend the timing milestones set forth in the Stipulation." DVI's Memorandum at 8. DVI reaches that conclusion by removing certain paragraphs of the Stipulation from the context of the entire agreement. A comprehensive reading of the Stipulation establishes that an extension of the exclusivity periods comports with the Stipulation.³

In the Stipulation, DVI agreed to voluntarily accept a specified sum (defined in the Stipulation as the "Recapitalization Amount") in full and mutual settlement of any and all pre-petition claims and liens under certain conditions. Stipulation ¶18 (Docket Number 153). As noted by DVI, one of those conditions was timing – the payment of the Recapitalization Amount was to occur no later than September 30, 2004. *Id.* DVI asserts that because an extension of the exclusivity periods permits an external transaction and the subsequent payment of the

³ An agreement between the debtor and a lender to extend the exclusivity periods only to certain dates does not bar the Court from extending the exclusivity periods beyond those dates. See In re Farmland Indus., Inc., 286 B.R. 888, 894-95 (Bankr. W.D. Mo. 2002). Thus, even if the Stipulation and the extension of the exclusivity periods are not compatible, the Court is not barred from granting an extension of the exclusivity periods.

Recapitization Amount to occur after September 30, 2004, Debtors are attempting to amend the Stipulation.

However, DVI neglects the plain language of the Stipulation. It expressly addresses the situation when an external transaction occurs after September 30, 2004 and the Recapitalization Amount is not paid on or before that date. In such a factual scenario, the Recapitalization Amount increases by \$1 million per month until it reaches a maximum of \$53 million:

if such payment [Recapitalization Amount] is not made on or before September 30, 2004, then, as of the first day of each month thereafter, the amount that DVI, Rec. III and Rec. XIX are obligated to accept in a Sale Transaction will increase by \$1 million, up to a maximum of \$53 million.

Stipulation ¶ 19.

While these provisions are obviously an incentive for Debtors to complete a transaction and to pay DVI at the earliest possible moment, these provisions do not compel such a transaction to occur by then. Because the Stipulation itself expressly provides that an external transaction does not have to occur and that the Recapitalization Amount does not have to be paid by September 30, 2004, Debtors' present motion to extend the exclusivity periods is not an attempt to amend the Stipulation.

B. Debtors Have Demonstrated All The Pertinent Factors Support Extension Of The Exclusivity Periods, Not Just That More Time Is Needed To Formulate Plans Of Reorganization

DVI asserts that the sole ground presented as cause is "the Debtors need more time to formulate a plan." DVI's Memorandum at 8. This is simply untrue. As set forth in greater detail in Debtors' moving brief, Debtors established that cause exists because:

- there are sixty-eight Debtors, which generate yearly revenues of approximately \$180 million and collectively have hundreds of creditors;

- only three of the sixty-eight Debtors have been granted a previous extension of the exclusivity periods;
- Debtors need additional time to resolve certain contingencies such as evaluating their businesses to determine whether to close and/or sell certain offices; to focus on a recapitalization plan, sale of assets or similar external transaction; and to resolve CMS's potential claims;
- Debtors have been fully cooperative with parties-in-interest and are currently keeping major constituencies in these cases apprised of Debtors' efforts;
- Debtors' creditors will not be disadvantaged by the delay; and
- Debtors' need additional time to negotiate a joint plan of reorganization and prepare adequate information.

In fact, all of the pertinent factors demonstrate cause exists to extend the Debtors' exclusivity periods. See Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.), 292 B.R. 639, 643-44 (B.A.P. 8th Cir. 2003).

Indeed, the Debtors' showing far exceeds that made by DVI in obtaining its third extension of the exclusivity periods in its own Chapter 11 cases. DVI demonstrated cause by stating it will continue to "(a) extend the debtor-in-possession financing facility, (b) further stabilize its business, (c) maximize the value of their assets through orderly liquidation and collection, and (d) negotiate a plan of liquidation." Unsworn Declaration of Ryan T. Murphy ¶ 2; Exh. A. Moreover, although DVI takes a contrary position here, DVI recognized in its own case that "[t]o prematurely force the Debtors to promulgate a plan would substantially prejudice their ability to maximize the benefit of their estates for the benefit of their creditors." Id.

Thus, Debtors have shown that cause exists under section 1121(d) to extend the exclusivity periods.

C. The Extension Of The Exclusivity Periods Does Not Endanger The Value Of Debtors' Estates

DVI asserts that extending the exclusivity periods “risks erosion” of the value of Debtors’ assets because “[m]arket conditions could change and other external factors may develop that could detract from the value of the Debtors’ estates.” DVI’s Memorandum at 8. As recognized by DVI, the Debtors have substantially improved their financial performance. Since obtaining the DIP loan, Debtors have turned around their operations from a negative EBITDA to a substantially positive EBITDA. Unsworn Declaration of John Walters ¶2. This turnaround has actually led to substantial increases in the value of their businesses. Id. Moreover, Debtor’s financial performance has allowed them to pay down the DIP loan to approximately \$11.8 million as of September 3, 2004, from a high of over \$15.8 million on May 7, 2004. Id. This pay down has been in DVI’s interest, because DVI is subordinated to the DIP lender. Finally, Debtors have not abandoned or delayed activities leading to an external transaction such as a sale or recapitalization. Id. at ¶3. Debtors believe that given their improved financial prospects, it is incumbent on them to explore alternative financial transactions to maximize payments to creditors and equity holders. Id.

Moreover, DVI’s assertion that market conditions could change, which would detract from the value of the Debtors’ estates, is mere conjecture. DVI has offered no objective evidence of a reasonably foreseeable change in market conditions. Nor has DVI attempted to show that market conditions could change so drastically that it would actually impact their position as a creditor. On the evidence before the Court, these asserted market conditions could

just as likely positively impact the value of the estates, which supports extending the exclusivity periods.

CONCLUSION

Debtors believe all constituencies other than DVI either support or do not oppose the motion. DVI's objection is based upon an incomplete analysis of the Stipulation and an assertion of a legal standard which DVI itself did not meet in its own cases when DVI sought extension of the exclusivity periods. There is ample cause for the extension. Therefore, Debtors respectfully request that the Court enter an order extending the time in which the Debtors have the exclusive right to file plans of reorganization through December 8, 2004 and to obtain acceptances of such plans through February 7, 2005.

Dated: September 8, 2004

/s/ Ryan T. Murphy
Clinton C. Cutler (#158094)
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ATTORNEYS FOR DEBTORS

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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

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Debtors

Case Nos. 04-41924 – 04-41988-NCD

UNSWORN DECLARATION OF RYAN T. MURPHY

Ryan T. Murphy makes the following declaration in support of Debtors' Reply to DVI's
Objection To Motion To Extend The Exclusivity Periods:

1. I am an attorney with Fredrikson & Byron P.A. and am one of the attorneys
representing Debtors in their above-referenced Chapter 11 cases.

2. Attached as Exhibit A is a true and correct copy of DVI's third motion to extend
the exclusivity periods.

3. I declare under penalty of perjury that the foregoing is true and correct according
to the best of my knowledge, information, and belief.

Dated: September 8, 2004

/s/ Ryan T. Murphy

Ryan T. Murphy

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
DVI, INC., et al.,) Case No. 03-12656 (MFW)
) Jointly Administered
Debtors.) Hearing: July 2, 2004 at 9:30 a.m.
	Objection Deadline: June 25, 2004 at 4:00 p.m.

**MOTION OF DEBTORS AND DEBTORS-IN-POSSESSION FURTHER
EXTENDING THE DEBTORS' EXCLUSIVE PERIOD WITHIN WHICH TO
FILE AND SOLICIT ACCEPTANCES OF A PLAN (OR PLANS) OF REORGANIZATION**

DVI, Inc. ("DVI") and the other debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") hereby move (the "Motion") the Court for the entry of an order, pursuant to 11 U.S.C. § 1121(d), further extending for a period of approximately 99 days the Debtors' exclusive periods within which to file and solicit acceptances of a plan or plans of reorganization. In support of this Motion, the Debtors respectfully represent as follows:

Introduction

1. On August 25, 2003 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). On September 4, 2003, the United States Trustee appointed the official committee of unsecured creditors (the "Creditors' Committee") in these cases. The Debtors are continuing in possession of their respective properties and are operating their respective businesses, as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief sought herein is section 1121(d) of the Bankruptcy Code.

Background

3. The Debtors primarily operated as independent specialty finance companies that extend loans or leases to various healthcare providers to fund such providers' operations and facilitate the purchase of diagnostic medical equipment (the "Business"). DVI, Inc. is the parent company of Debtors DVI Financial Services, Inc. and DVI Business Credit Corporation. Debtor DVI Financial Services, Inc. provided lease or loan financing to healthcare providers for the acquisition or lease of sophisticated medical equipment such as MRI units, CT scanners and other diagnostic equipment. DVI Business Credit Corporation extended revolving lines of credit to healthcare providers based upon accounts receivable generated by such providers to provide them with, among other things, working capital. Debtor DVI, Inc. owns 100% of the equity in Debtors DVI Financial Services, Inc. and DVI Business Credit Corporation in addition to equity interests that it holds in other non-debtor subsidiaries.

4. As of the Petition Date, the Debtors collectively employed approximately 221 people in their domestic and foreign operations. As of June 30, 2003, the Debtors' consolidated, unaudited financial statements reflected assets of approximately \$1.9 billion and liabilities of approximately \$1.6 billion.

Request to Further Extend the Debtors' Exclusive Period Within Which to File and Solicit Acceptances of a Plan (or Plans) of Reorganization

5. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive

right to file a plan or plans of reorganization. Section 1121(c) of the Bankruptcy Code provides that if the debtor files a plan or plans within the 120 day exclusive period, it has the balance of 180 days after the commencement of the chapter 11 case to solicit and obtain acceptances of such plan or plans. The 90-day extension granted by the Court of the original 120-day period under section 1121(c) of the Bankruptcy Code expired on December 25, 2003 (the "Extended Exclusive Period"). The Extended Exclusive Period was extended by the Court for an additional 90-day period and the Debtors' current exclusive period to file a plan or plans expires on June 23, 2004, and the attendant solicitation period expires on August 23, 2004 (collectively, the "Exclusive Periods").

6. By this Motion, and pursuant to section 1121(d) of the Bankruptcy Code, the Debtors seek the entry of an order further extending, for a period of approximately 99 days, the Debtors' Exclusive Periods. In the event the Motion is granted, the Debtors' Exclusive Periods to file and solicit acceptances of the Plan will be extended through and including September 30, 2004, and, November 30, 2004, respectively.

7. While the Debtors have already circulated an initial draft of a plan of liquidation to the Creditors' Committee and the Debtors' post-petition financing lenders, Ableco Finance, LLC and Goldman Sachs Credit Partners (the "DIP Lenders"), ample cause exists for the brief extension of the Exclusive Periods the Debtors seek in this motion. The Debtors' jointly-administered cases are both large and complex. Further, in the next 99 days, the Debtors will continue to work with the Creditors' Committee and the DIP Lenders to (a) extend the debtor-in-possession financing facility, (b) further stabilize the business, (c) maximize the value of their assets through orderly liquidation and collection, and (d) negotiate a plan of liquidation.

8. It is clear that the Debtors' plan process will largely depend on their orderly liquidation and collection efforts. To prematurely force the Debtors to promulgate a plan would substantially prejudice their ability to maximize the benefit of their estates for the benefit of their creditors.

9. Accordingly, the Debtors respectfully request that the Court grant an order, pursuant to 11 U.S.C. § 1121(d), extending for a period of 99 days the Debtors' exclusive periods in which to file and solicit acceptances of a plan or plans of reorganization.

Applicable Authority

10. Pursuant to Section 1121(d) of the Bankruptcy Code, the Court may extend a debtor's exclusive periods:

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 a 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). Whether "cause" exists to extend a debtor's exclusive periods to file and solicit acceptances of a plan is a decision committed to the sound discretion of the bankruptcy court based upon the facts and circumstances of each particular case. See First American Bank v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986); In re Texaco, Inc., 76 B.R. 322, 325 (Bankr. S.D.N.Y. 1987). The bankruptcy court is given flexibility in making such a determination. See H.R. Rep. No. 95-595, at 232 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6191; See also In re Public Serv. Co., 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("[T]he legislative intent . . . [is] to promote maximum flexibility. . .").

11. In determining whether cause exists to extend a debtor's exclusive periods, courts examine several factors, including the following:

- a. The size and complexity of the case;
- b. The existence of good faith progress towards reorganization;
- c. Whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands;
- d. The existence of an unresolved contingency and the need to resolve claims that may have a substantial effect on a plan; and
- e. Whether the debtor is paying its bills as they come due.

In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); In re Texaco, 76 B.R. at 326-27. When evaluating these factors, the goal is to determine whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. See, e.g., In re McLean, 87 B.R. at 833-34; In re Texaco, 76 B.R. at 326.

12. Based on those factors set forth above, cause exists to further extend the Exclusive Periods until after the Debtors' collections and orderly liquidation efforts are complete and the Debtors and their various secured and unsecured creditor constituencies have had the opportunity to negotiate a plan.

Notice

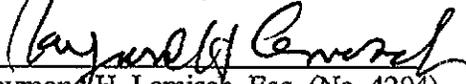
13. No trustee has been appointed in the Debtors' chapter 11 cases. Notice of the hearing on this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the DIP Lenders, (iii) secured lenders or their respective counsel, (iv) counsel to the Creditors' Committee, and (v) parties requesting notices in these chapter 11 cases. The Debtors submit that under the circumstances no further notice is necessary.

WHEREFORE, the Debtors respectfully request that this Court enter an order extending the Debtors' Exclusive Periods to file and solicit acceptances of a plan or plans of reorganization for a period of approximately 99 days through and including September 30, 2004, and November 30, 2004, respectively, and granting the Debtors such other and further relief as the Court deems just.

Dated: Wilmington, Delaware
June 4, 2004

Respectfully submitted,

ADELMAN LAVINE GOLD AND LEVIN,
A Professional Corporation


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Attorneys for Debtors and Debtors-in-
Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
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Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

UNSWORN DECLARATION OF JOHN WALTERS

John Walters makes the following declaration in support of Debtors' Reply to DVI's Objection To Motion To Extend The Exclusivity Periods:

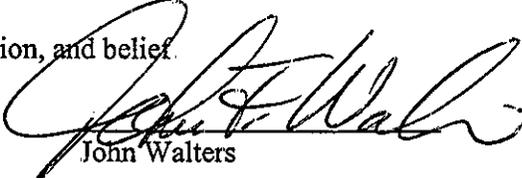
1. I am a Managing Director with XRoads Solution Group, LLC, and am currently assigned to the Intrepid U.S.A. engagement.

2. Since obtaining the DIP loans, Debtors have turned around their operations from a negative EBITDA to a substantially positive EBITDA. This turnaround has actually led to substantial increases in the value of their businesses. Moreover, Debtor's financial performance has allowed them to pay down the DIP loan to approximately \$11.8 million as of September 3, 2004, from a high of over \$15.8 million on May 7, 2004.

3. Debtors have not abandoned or delayed activities leading to an external transaction such as a sale or recapitalization. Debtors believe that given their improved financial prospects, it is incumbent on them to explore alternative financial transactions to maximize payments to creditors and equity holders.

4. I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: September 8, 2004


John Walters

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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

Debtor

Chapter 11 Bankruptcy

Case No. 04-40416-NCD

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 September 8, 2004 he caused to be served the following:

1. Debtors' Reply To DVI's Objection To Motion To Extend Exclusivity Periods;
2. Unsworn Declaration of Ryan T. Murphy;
3. Unsworn Declaration of John Walters; and
4. Certificate of Service.

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

Dated: September 8, 2004

/e/Ryan T. Murphy

Ryan T. Murphy

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