

available date on the Court's calendar following the completion of briefing on December 1, 2008. As grounds for this motion, the Committee state as follows:

I. FACTUAL BACKGROUND

1. On August 21, 2008, the United States Bankruptcy Court for the Eastern District of Tennessee, Southern Division (the "Bankruptcy Court") entered an order granting Debtors' Motion for An Order Authorizing and Approving the Debtors' Amendment to Security Agreement and Extension and Confirming Grant of Lien on the Stock of the Debtors' Foreign Subsidiaries [Bankruptcy Docket No. 564] (the "Order"). The Committee timely filed a notice of appeal from the Order [Bankruptcy Docket No. 580].

2. In accordance with applicable rules, the Committee filed its opening brief on appeal on October 21, 2008 [Docket No. 13]. The Appellee submitted a responsive brief on November 5, 2008 [Docket No. 30]. The Committee filed its reply brief on November 17, 2008 [Docket No. 40]. The Appellee's reply brief is scheduled to be filed on or before December 1, 2008, at which time the appeal will have been fully briefed.

3. On October 28, 2008, the Court entered a notice scheduling oral argument on the appeal for January 14, 2009. [Docket No. 21].

4. On October 29, 2008, the Debtors filed a chapter 11 plan of reorganization (the "Proposed Plan") in the Bankruptcy Court [Bankruptcy Docket No. 666].

II. ARGUMENT

5. By this motion, the Committee requests that the Court move forward the date for oral argument on this appeal from January 14, 2009 to the first available date on the Court's calendar following the completion of briefing on December 1, 2008. Although briefing has proceeded on a non-expedited schedule, the Committee files this motion now as a result of the Debtors' recently filed Proposed Plan.

6. Under Rule 16(b)(4) of the Federal Rules of Civil Procedure, a district court is permitted to modify its case schedule upon a showing of “good cause” by the movant. Fed. R. Civ. P. 16(b)(4); see also Speck v. City of Memphis, Civil No. 07-2019-A/P, 2008 WL 4186184 at *1 (W.D. Tenn. Sept. 5, 2008); Williams v. Wilkinson, 122 F. Supp. 2d 894, 902 (S.D. Ohio 2000). A movant seeking to demonstrate good cause under Rule 16(b)(4) is not required to show that “extraordinary circumstances” exist. See Speck at *1. In addition, a court adjudicating a motion under Rule 16(b)(4) is required to consider “whether the opposing party will suffer prejudice by virtue of the amendment.” Leary v. Daeschner, 349 F.3d 888, 906 (6th Cir.2003).

7. Here, there is “good cause” to expedite the hearing of oral argument on the present appeal. The Proposed Plan contemplates distributions to creditors premised upon the Order that is the subject of this appeal. In the event this Court reverses the Order, the Proposed Plan would cease to comply with the relevant provisions of the Bankruptcy Code and could not be confirmed. Therefore, in order to avoid expending significant judicial and economic resources on Bankruptcy Court proceedings with respect to the Proposed Plan, the hearing of oral argument on the present appeal should be expedited. Moreover, the Appellee will not suffer any prejudice by moving forward the date for oral argument, given that briefing on the appeal will have been completed pursuant to a non-expedited, statutorily prescribed schedule. Indeed, all parties in interest in the Debtors’ bankruptcy proceedings will benefit from a prompt conclusion to the present appeal.

8. Prior to filing the present motion, the Committee sought the Appellee’s consent to the relief requested, but such consent was refused.

WHEREFORE, the Committee respectfully requests that the Court schedule oral argument on the appeal for the first available date following the completion of briefing on December 1, 2008.

Respectfully submitted this 21st day of November 2008.

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