

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

In re	§	
	§	Case No. 08-10249
PROPEX INC.,	§	
PROPEX HOLDINGS INC.,	§	Case No. 08-10250
PROPEX CONCRETE SYSTEMS	§	
CORPORATION,	§	Case No. 08-10252
PROPEX FABRICS INTERNATIONAL	§	
HOLDINGS I INC.,	§	Case No. 08-10253
PROPEX FABRICS INTERNATIONAL	§	
HOLDINGS II INC.,	§	Case No. 08-10254
	§	
Debtors.	§	
	§	Chapter 11
	§	
	§	Jointly Administered Under
	§	Case No. 08-10249

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF PROPEX INC., ET AL. TO THE DEBTORS' EXPEDITED MOTION FOR AN
ORDER EXTENDING THE EXCLUSIVE PERIODS FOR NINE DAYS DURING
WHICH ONLY THE DEBTORS MAY FILE A PLAN OF REORGANIZATION AND
SOLICIT ACCEPTANCES THEREOF AND REQUEST FOR
AN EMERGENCY HEARING**

The Official Committee of Unsecured Creditors (the "Committee") of Propex Inc. ("Propex") and its affiliated debtors and debtors in possession (collectively with Propex, the "Debtors"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the Debtors' Expedited Motion for an Order Extending the Exclusive Periods for Nine Days During Which Only the Debtors May File a Plan of Reorganization and Solicit Acceptances Thereof and Request for an Emergency Hearing (the "Motion").¹ In support of its Objection, the Committee respectfully submits the following:

¹ Unless otherwise defined, each capitalized term used herein shall have the same meaning ascribed to such term in the Motion.

PRELIMINARY STATEMENT

By the Motion, the Debtors seek, on an expedited basis, to extend the Exclusive Periods a third time. The Motion should be denied for the following reasons: (a) the Motion fails, and indeed does not even attempt, to satisfy the Debtors' burden of showing "cause" for an extension of the Exclusive Periods; (b) the Debtors received their second extension of the Exclusive Periods on the basis that such extension would provide more than sufficient time to file a plan of reorganization yet these cases continue to languish in chapter 11; (c) the Debtors have not satisfied the conditions upon which the Court granted the second extension of exclusivity; (d) the Debtors' conduct, and specifically their refusal to engage the Committee in plan discussions, has violated the requirements set forth by the Court for any further extension to exclusivity; (e) the Debtors continue to use exclusivity for improper purposes; and (f) the Debtors have not provided adequate justification for an expedited hearing.

OBJECTION

A. The Debtors Have Failed to Establish that "Cause" Exists to Grant a Further Extension to the Exclusive Periods

1. A debtor's exclusive periods can only be extended upon a showing of "cause." See 11 U.S.C. § 1121(d). As a general matter, "[e]xtensions are not to be granted neither routinely nor cavalierly." In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); accord In re Curry Corp., 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992). Further, it is well-established that a debtor's burden of proof becomes increasingly more difficult to satisfy with each successive motion to extend its exclusive periods. See, e.g., In re Dow Corning Corp., 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997) ("the Debtor's burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts; and a creditor's burden to terminate gets lighter with the passage of time.") accord In re Mirant Corp., 2004 WL 2250986, *2 (Bankr.

N.D. Tex. Sept. 30, 2004) (same). Yet the Motion, which constitutes the Debtors' third request to extend the Exclusive Periods, is the least substantive exclusivity motion filed by the Debtors to date, and it sets forth only one apparent justification for the requested relief -- that the Debtors need additional time "to continue negotiations with their secured lenders."² This one statement, however, does not constitute cause for an extension of the Exclusive Periods. In addition, the fact that the Motion requests only a nine day extension does not in any way eliminate or otherwise reduce the burden set forth in section 1121 of the Bankruptcy Code. The Debtors must satisfy the "cause" standard regardless of whether the extension requested is for one day or three months. Finally, the Motion does not explain why no plan of reorganization has been filed during the nine months of exclusivity the Debtors already have had or why an extension of the Exclusive Periods is in the best interests of the estates and their creditors. The Debtors have simply not met their burden of proof of establishing cause to extend the Exclusive Periods and, accordingly, the Motion must be denied.

B. The Requested Relief Contradicts Prior Statements Made by the Debtors to the Court

2. At the August 20th hearing (the "August Hearing") on the Debtors' Second Motion for an Order Extending the Exclusive Periods During Which Only the Debtors May File a Plan of Reorganization and Solicit Acceptances Thereof (the "Second Exclusivity Motion"), the Debtors avowed that they would file a plan of reorganization within the sixty-day extension granted by the Court. See, e.g., Transcript of August 20, 2008 Hearing at 16 ("We're prepared in the next 60 days to file a plan. In fact, *we want to file it sooner. . . . [R]est assured*, in the next 60 days the debtor does intend to file a plan.") (emphasis added). Despite these "assurances,"

² Motion at 4.

the Debtors have once again come before this Court seeking an extension of the Exclusive Periods without providing any explanation of why these bankruptcy cases are not progressing.

C. The Debtors Have Not Satisfied the Conditions Upon Which the Court Granted the Last Extension

3. At the August Hearing, the Debtors premised their request for an extension of the Exclusive Periods on a promise to involve all parties in interest, including the Committee, in plan negotiations. See, e.g., Transcript of August 20, 2008 Hearing at 24 (“We’re standing here ready today to negotiate with the Committee We are an honest broker to all of the creditors, to all of the parties in the case . . . and we’re trying to attend to our duties to every constituency. And that’s what we’re seeking to do.”). The Court proceeded to grant an extension of the Exclusive Periods expressly on such grounds. See id. (“The Court will grant the motion and give the debtors 60 additional days *to negotiate.*”) (emphasis added). In the two months since the Court granted the Second Exclusivity Motion, the Debtors have (i) not filed a plan of reorganization, circulated a draft plan of reorganization or even a put forth a plan term sheet and (ii) refused to respond to the Committee’s repeated requests to be included in plan negotiations and/or discussions. Indeed, only once in the past two months have the Debtors even informed the Committee of potential plan terms being discussed with their secured lenders, and that was at the close of business on Monday, October 13, the same day the Debtors informed the Committee that they were requesting an extension of the Exclusive Periods. Rewarding the Debtors for refusing to engage the Committee in plan negotiations by further extending the Exclusive Periods will only serve to encourage the Debtors to continue to freeze out the Committee and further jeopardize any near-term prospects of an efficient and consensual resolution to these chapter 11 cases.

D. The Debtors Have Failed to Satisfy the Court’s Requirement for a Further Extension

4. At the August Hearing, the Court conditioned any future extension of the Exclusive Periods on the fulfillment of the Debtors’ promise to negotiate with all parties, including the Committee, asserting: “. . . hopefully, in the next 60 days there will be meaningful negotiation. If not, the Court *certainly does not intend to extend the exclusivity period any further.*” Id. at 24-25. (emphasis added). Despite the Court’s warnings that it would not further extend the Exclusive Periods in the absence of meaningful negotiations with all parties, including the Committee, the Debtors have refused to engage in plan discussions with the Committee. The Motion is telling -- the Debtors are only “seeking a[n] . . . extension . . . to continue their negotiations with their secured lenders.”³ The Motion does not reference any plan negotiations with the Committee because the Debtors have not negotiated with the Committee and apparently do not intend to do so. As such, the Court, as indicated at the August Hearing, should deny the Motion.

E. The Debtors Continue to Use Exclusivity for Improper Purposes.

5. It is well-established that debtors are not permitted to use exclusivity as a tactical device to pressure parties to consent to a plan they consider unsatisfactory. See, e.g., Century Glove, Inc. v. First American Bank, 860 F.2d 94, 102 (3d Cir. 1988); In re Hoffinger Industries, Inc., 292 B.R. 639, 643 (8th Cir. BAP 2003) (citations omitted); In re General Bearing Corp., 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992); In re Texaco Inc., 81 B.R. 806, 812 (Bankr. S.D.N.Y. 1988). In fact, this Court has previously denied a debtor’s request to extend exclusivity in order to prevent the debtor from employing such tactics. See In re Media Center, Inc., 89 B.R. 685, 687 (Bankr. E.D. Tenn. 1988) (Hon. J. Cook) (“The Court announced it would not further extend

³ Motion at 4.

the exclusivity period for purposes of allowing [the debtor and its affiliates] to cram down major creditors who had not accepted the debtors' plans.'").

6. It is clear that the Debtors are attempting to use exclusivity for the improper purposes described above. If the Motion is granted, other parties in interest will effectively be forced to continue to sit on the sidelines while the Debtors secretly formulate a plan of reorganization with their secured lenders that provides little if any recovery to unsecured creditors. It is precisely this kind of leverage, and the ability to hold creditors hostage, that Congress and courts have condemned. Thus, to prevent the Debtors from continuing to improperly use their exclusivity to cram down unsecured creditors, the Court should deny the Motion and thereby allow the Debtors and their creditor constituencies to negotiate from equal positions.

F. The Debtors' Request to Hear the Motion on an Expedited Basis is Unjustified

7. Rule 2002 of the Federal Rules of Bankruptcy Procedure, as well as applicable local rules, require twenty days notice of any substantive motion. See Fed. Bankr. R. 2002; see also E.D. Tenn. L.R. 9013-1(f)(2)(ii). The Debtors, however, filed the Motion after the close of business on Monday, October 13, (a holiday no less) requesting that it be heard on an expedited basis on Wednesday, October 15. Thus, the Debtors intended to give parties in interest only one days notice. Although the Court has since rescheduled the hearing for Friday, October 17, this rescheduling still only provides a mere three days for parties in interest to respond to the Motion. The Debtors have known, since August 20, 2008, that the Exclusive Periods were set to expire on October 20, 2008. To the extent the Debtors wanted to extend the Exclusive Periods, it was incumbent upon them to file a motion seeking such relief on proper notice. The Debtors' failure to adequately plan for extending the Exclusive Periods does not constitute grounds on which to obtain emergency relief and does not avoid their obligation to provide proper notice of the

Motion to creditors as mandated by Congress. In sum, the Debtors are the sole responsible party for the “emergency”, and the Motion should therefore be denied.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Motion in its entirety and (ii) grant the Committee such other relief as is just, proper and equitable.

Respectfully submitted this 16th day of October 2008.

By: /s/ Ira S. Dizengoff
Ira S. Dizengoff (ID-9980) (admitted *pro hac vice*)
James R. Savin (JS-9220) (admitted *pro hac vice*)
Abid Qureshi (AQ-4882) (admitted *pro hac vice*)

AKIN GUMP STRAUSS HAUER & FELD LLP
590 Madison Avenue
New York, New York 10022-2524
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)

By: /s/ Richard B. Gossett
Richard B. Gossett (TN #001686)

**BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC**
633 Chestnut Street
Chattanooga, Tennessee 37450-1800
(423) 756-2010 (Telephone)
(423) 756-3447 (Facsimile)

Attorneys for the Official Committee of Unsecured Creditors of Propex Inc., et al.