

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:) **Chapter 11**
)
ASTROTURF, LLC,) **Case No. 16-41504-PWB**
)
Debtor.)
_____)

**DEBTOR’S SECOND MOTION FOR ENTRY OF AN ORDER
EXTENDING THE EXCLUSIVITY PERIODS DURING WHICH ONLY
THE DEBTOR MAY FILE A PLAN AND SOLICIT ACCEPTANCES
THEREOF**

AstroTurf, LLC (the “Debtor”) files this *Second Motion for Entry of an Order Extending the Exclusivity Periods During Which Only the Debtor May File a Plan and Solicit Acceptances Thereof* (the “Motion”). In support of this Motion, the Debtor respectfully states as follows.

PRELIMINARY STATEMENT

When the Debtor made its initial request for an extension of the exclusivity periods, the Special Purpose Examiner’s report in the proceeding to estimate the claim of FieldTurf (defined below) was due on or before January 3, 2017, and the Debtor’s initial exclusivity extension was based on that deadline. At the request of the Special Purpose Examiner, the parties and the Court agreed that the deadline for the report should be extended through February 1, 2017. In light of that extension, the Debtor now requests a corresponding extension of exclusivity.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.



2. The statutory predicate for the relief requested herein is Section 1121 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

BACKGROUND

3. On June 28, 2016 (the “Petition Date”), the Debtor filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code.

4. The Debtor has continued in possession of its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. On July 7, 2016, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). No request has been made for the appointment of a trustee.

6. Additional information about the Debtor’s business and events leading up to the Petition Date may be found in the *Declaration of Sean M. Harding in Support of First Day Motions and Applications* [Docket No. 14].

7. On September 30, 2016, the Debtor filed a *Motion for Entry of an Order Extending the Exclusivity Periods During Which Only the Debtor May File a Plan and Solicit Acceptances Thereof* [Docket No. 255] (the “First Exclusivity Motion”).

8. On October 24, 2016, the Court entered an *Order Extending the Exclusivity Periods During Which Only the Debtor May File a Plan and Solicit Acceptances Thereof* [Docket No. 275] (the “First Exclusivity Order”).

RELIEF REQUESTED

9. Pursuant to paragraph 2 of the First Exclusivity Order, the period during which only the Debtor may file a chapter 11 plan expires on February 23, 2017. Pursuant to paragraph 3 of the First Exclusivity Order, the time period set forth in Section 1121(c)(3) of the Bankruptcy

Code expires on April 24, 2017. By this Motion, the Debtor respectfully requests the entry of an order, substantially in the form of Exhibit A attached hereto, extending each exclusivity period by six weeks. A six-week extension would extend the periods of time during which only the Debtor may propose and file a plan and solicit acceptances thereof through and including April 6, 2017, and June 5, 2017, respectively.

BASIS FOR RELIEF

10. As noted in the First Exclusivity Motion and detailed below, the Debtor has made substantial progress in this case. However, a substantial contingency remains outstanding in that the Special Purpose Examiner appointed in this case has not yet submitted his report regarding the estimation of the claim held by FieldTurf. The report was initially scheduled to be filed on or before January 3, 2017. However, the Special Purpose Examiner recently requested from the Court and the parties an extension of that deadline to February 1, 2017. The Court and the parties agreed to the extension. In light of that extension and for the additional reasons stated below, the Debtor submits that the extension requested herein is necessary and appropriate.

11. Under Section 1121(d)(1) of the Bankruptcy Code, a bankruptcy court may increase the exclusivity periods for cause:

[o]n 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 . . . increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).¹

¹ Section 1121(d)(2) provides:

(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

12. The decision to grant an extension of the Debtor's exclusivity periods is within the Court's sound discretion. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989). Section 1121(d) provides that such extensions may be granted for "cause." Although it is not defined in the Bankruptcy Code, the cause standard has been interpreted as a "general standard that allows the Bankruptcy Court maximum flexibility to suit various types of reorganization proceedings." *Id.* (internal quotation marks omitted); *see also Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (stating that the hallmark of Section 1121(d) is flexibility).

13. Courts have developed the following non-exclusive list of factors to consider in determining whether cause exists to extend a debtor's exclusivity periods:

- a. the size and complexity of the case,
- b. the necessity of sufficient time to negotiate and prepare adequate information,
- c. the existence of good faith progress toward reorganization,
- d. whether the debtor is paying its debts as they come due,
- e. whether the debtor has demonstrated reasonable prospects for filing a viable plan,
- f. whether the debtor has made progress negotiating with creditors,
- g. the length of time the case has been pending,
- h. whether the debtor is seeking an extension to pressure creditors, and
- i. whether unresolved contingencies exist.

Sportsman's Link, Inc. v. USPG Portfolio Two, LLC (In re Sportsman's Link), Case No. 07-10454, 2007 Bankr. LEXIS 4739, at *6-*7 (Bankr. S.D. Ga. Dec. 3, 2007); *In re Serv. Merch.*

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d)(2). The requested 32-day extension falls well within the limitations of Section 1121(d)(2); March 27, 2017, is less than nine months after the Petition Date, and May 26, 2017, is less than eleven months after the Petition Date.

Co., Inc., 256 B.R. 744, 751 (M.D. Tenn. 2000). When a court considers the enumerated factors in deciding whether to extend the exclusivity periods, it is not limited to the task of counting factors. *In re Dow Corning Corp.*, 208 B.R. 661, 669 (Bankr. E.D. Mich. 1997). Sometimes certain factors are more relevant, important or persuasive than others, and sometimes one or more factors determine the particular result. *Id.*

14. An evaluation of the factors above supports extending the exclusivity periods in this case.

A. This Case is Large and Complex.

15. Both Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for extension of a debtor's exclusivity period to file a plan and solicit acceptances of such a plan: "if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement" H.R. Rep. No. 95-595, at 232 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

16. This is a large and complex case. As of the Petition Date, the Debtor had over \$50,000,000 in liabilities and was faced with several difficult legal and operational challenges. The size and complexity of this case supports the extension of the exclusivity periods.

B. The Debtor Needs Additional Time to Negotiate and Prepare Adequate Information.

17. The Debtor commenced this case on June 28, 2016, approximately six months ago, and since that time, the Debtor has made significant progress. On the Petition Date, the Debtor sought authorization to sell substantially all of its assets pursuant to a private sale (the "Sale"). The proposed Sale was initially contested by both the Committee and FieldTurf USA, Inc. (together with Tarkett, Inc., "FieldTurf"). As a result and due to the time constraints set

forth in the Asset Purchase Agreement, the Debtor was required to conduct a substantial document review and production in a very short period of time. During that process and prior to the hearing to approve the Sale, the Debtor, the Committee, and certain non-debtor entities affiliated with the Debtor (the “Other Sellers”) conducted a mediation to attempt to resolve the Committee’s objection to the Sale and various claims against the Other Sellers. The mediation was successful and resulted in a settlement among the Debtor, the Committee and the Other Sellers (the “Settlement”), which was subsequently approved by the Court.

18. Notwithstanding the resolution of the Committee’s objection to the Sale, FieldTurf still opposed the Sale and the Court conducted a two-day contested sale hearing. The Court approved the Sale on August 12, 2016, and the Debtor closed the Sale on August 19, 2016. After the closing of the Sale, the Debtor sought and obtained authorization to conduct a claims estimation proceeding for claims held by FieldTurf.

19. Despite significant progress in this case, there is still substantial work to do. The claims estimation proceeding is ongoing. The Special Purpose Examiner’s report in that proceeding was initially due on January 3, 2017. However, the Special Purpose Examiner recently requested and received an extension of the time to file his report, and that report is now due on February 1, 2017. Additional time is needed after the parties receive the Special Purpose Examiner’s report in order for the Debtor to negotiate and prepare a plan and disclosure statement with adequate information.

C. The Debtor Has Made Significant Progress in Resolving the Issues Facing its Estate.

20. As described in the foregoing paragraphs, the Debtor has made significant progress in resolving the issues facing its estate.

D. The Debtor is Paying its Post-Petition Debts as they Become Due.

21. As reflected in the Debtor's monthly operating reports, the Debtor has been paying its post-petition bills as they come due.

E. The Debtor Has Demonstrated Reasonable Prospects for Filing a Viable Plan.

22. The Debtor has already made significant progress in laying the groundwork necessary for a successful plan. The Settlement, which has been agreed to by the Other Sellers, the Debtor and the Committee and approved by the Court, sets forth the basic framework for a plan and the distribution of the proceeds from the Sale. Based on the progress in this case to date, the Debtor believes that its prospects for ultimately proposing and filing a viable plan are favorable.

F. The Debtor Has Made Progress Negotiating with Creditors.

23. During this case, the Debtor has made significant progress negotiating with its creditors. As discussed above, the Debtor successfully negotiated the Settlement with the Committee and the Other Sellers in order to complete the Sale and resolve potential litigation with the Other Sellers. The Debtor has negotiated and continues to negotiate in good faith with all of its major constituencies.

G. This Case Has Not Been Pending for a Substantial Length of Time.

24. This is the Debtor's second request for an extension of the exclusivity periods, and it comes approximately six months after the Petition Date. Considering the issues facing the Debtor at the start of this case, the Debtor believes it has made considerable progress to date in developing critical components necessary for a successful chapter 11 case. The Debtor submits that based on the issues involved in this case, and given the status of the claims estimation proceeding, the current exclusivity period is not enough time within which to negotiate, draft, and propose a consensual chapter 11 plan.

H. The Debtor is not Seeking an Extension in Order to Pressure Creditors.

25. The Debtor is not seeking to “hide-out” in chapter 11 for the purpose of pressuring its creditors. To the contrary, the Debtor is diligently working with all constituencies to reach a consensual resolution of the case.

26. Moreover, an extension of the exclusivity periods will not prejudice any of the Debtor’s creditors. Any party-in-interest can move this Court, on appropriate notice, to reduce the exclusivity periods for cause shown. *See* 11 U.S.C. § 1121(d). This statutory remedy should be more than sufficient to protect the claims of any creditors from any undue delay on the part of the Debtor.

I. There are Unresolved Contingencies.

27. As discussed above, the claims estimation proceeding is ongoing. Once the Special Purpose Examiner has completed his report on the claims estimation proceeding, the Debtor will be able to focus on negotiating and preparing a plan and disclosure statement. In light of this substantial unresolved contingency, an extension of the exclusivity periods is warranted.

28. For the reasons set forth above, the Debtor submits that the relevant factors weigh in favor of extending exclusivity in the case.

NOTICE

29. Notice of this Motion has been provided to the parties on the Master Service List. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court:

- (a) enter an order in the form attached hereto as Exhibit A extending the periods of time during which only the Debtor may propose and file a plan and solicit acceptances thereof through and including April 6, 2017, and June 5, 2017, respectively; and
- (b) grant the Debtor such other and further relief as is just and proper.

Dated: January 9, 2017

Respectfully submitted,
KING & SPALDING LLP

/s/ Paul K. Ferdinands

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*COUNSEL FOR THE
DEBTOR-IN-POSSESSION*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:)	Chapter 11
)	
ASTROTURF, LLC,)	Case No. 16-41504-PWB
)	
Debtor.)	
<hr/>)	

ORDER EXTENDING THE EXCLUSIVITY PERIODS DURING WHICH ONLY THE DEBTOR MAY FILE A PLAN AND SOLICIT ACCEPTANCES THEREOF

This matter is before the Court on the *Debtor's Second Motion for Entry of an Order Extending the Exclusivity Periods During Which Only the Debtor May File a Plan and Solicit Acceptances Thereof* (the "Motion") of AstroTurf, LLC (the "Debtor"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion on [_____], 2017. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to the parties on the Master Service List established in this case; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtor, its estates, and its stakeholders; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion [Docket No. ____] is GRANTED.
2. The time period set forth in Section 1121(b) and (c)(2) of the Bankruptcy Code during which only the Debtor may file a chapter 11 plan is extended through and including April 6, 2017.

3. The time period set forth in Section 1121(c)(3) of the Bankruptcy Code during which the Debtor's exclusive right to file a plan continues in effect in order to permit the Debtor to obtain acceptances for a plan is extended through and including June 5, 2017.

4. Nothing in this Order shall prejudice the Debtor's right to seek further extensions of the exclusivity periods pursuant to Section 1121(d) of the Bankruptcy Code.

5. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

6. Counsel for the Debtor is directed to serve a copy of this Order on all parties on the Master Service List within three (3) days of the entry of this Order and file a certificate of service with the Clerk of the Court.

[END OF DOCUMENT]

Prepared and presented by:

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