

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

In re:

HMI Liquidating Inc.,¹

Debtor.

Chapter 11

Case No. 17-10810 (LSS)

Hearing Date: February 28, 2018 at 10:00 a.m. (ET)

Objection Deadline: February 21, 2018 at 4:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on February 6, 2018, the above captioned debtor and debtor in possession (“*Debtor*”) filed the **Debtor’s Motion For An Order Further Extending The Exclusive Periods During Which Debtor May File And Solicit Acceptances Of A Plan Pursuant To 11 U.S.C. § 1121(d)** (the “*Motion*”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for the Debtor at or before **4:00 p.m. (Eastern Time) on February 21, 2018**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held on **10:00 a.m. (Eastern Time) on February 28, 2018** before the Honorable Laurie Selber Silverstein in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

¹ The last four digits of the Debtor’s federal tax identification number are 8422.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 6, 2018
Wilmington, Delaware

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

/s/ Steven K. Kortanek _____

Steven K. Kortanek (Del. Bar No. 3106)
Patrick A. Jackson (Del. Bar No. 4976)
Joseph N. Argentina, Jr. (Del. Bar No. 5453)
222 Delaware Ave., Suite 1410
Wilmington, DE 19801-1621
Telephone: (302) 467-4200
Facsimile: (302) 467-4201
Steven.Kortanek@dbr.com
Patrick.Jackson@dbr.com
Joseph.Argentina@dbr.com

*Counsel for the Debtor
and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

HMI Liquidating Inc.,¹

Debtor.

Chapter 11

Case No. 17-10810 (LSS)

Hearing Date: February 28, 2018 at 10:00 a.m. (ET)
Objection Deadline: February 21, 2018 at 4:00 p.m. (ET)

**DEBTOR’S MOTION FOR AN ORDER FURTHER EXTENDING
THE EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE AND
SOLICIT ACCEPTANCES OF A PLAN PURSUANT TO 11 U.S.C. § 1121(d)**

The above-captioned debtor and debtor in possession (“*Debtor*”), by and through its undersigned counsel, hereby files this motion (the “*Motion*”) for entry of an order further extending the exclusive periods during which Debtor may file and solicit acceptances of a plan pursuant to 11 U.S.C. § 1121(d) (the “*Motion*”). In support of the Motion, the Debtor respectfully states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The statutory basis for the relief requested herein is Bankruptcy Code section 1121(d).

II. BACKGROUND

A. General Background of the Debtor and Chapter 11 Case

4. Prior to the closing of the successful sale of its business assets in this case, the Debtor was a medical device company focused on establishing a superior standard of care for

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women with symptomatic uterine fibroids. A more complete description of the Debtor's business, capital structure, and the circumstances leading to this chapter 11 case ("**Chapter 11 Case**") may be found in the *Declaration of Kimberly Bridges-Rodriguez* [D.I. 15] (the "**First Day Declaration**") filed on April 12, 2017 (the "**Petition Date**").

5. On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Case. Since the Petition Date, the Debtor continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, subject to the closing on its asset sale described below. As of the date hereof, an official committee of unsecured creditors has not been appointed in the Chapter 11 Case.

6. By order entered on June 8, 2017, the Court approved the sale of substantially all of the Debtor's assets [D.I. 61]. The sale closed on June 23, 2017. With the sale process completed, the Debtor has been conducting wind-down activities with a view to concluding its Chapter 11 Case promptly.

7. The Debtor is preparing a chapter 11 plan and intends to file its plan in the coming weeks.

III. RELIEF REQUESTED

8. Bankruptcy Code section 1121(b) provides for an initial 120-day period after the Petition Date (the "**Plan Period**") within which a debtor has the exclusive right to file a plan. Bankruptcy Code section 1121(c) further provides for an initial 180-day period after the Petition Date (the "**Solicitation Period**" and, together with the Plan Period, the "**Exclusive Periods**") within which a debtor has the exclusive right to solicit and obtain acceptances of a plan filed by such debtor during the Plan Period. Pursuant to a prior order entered by this Court on December

28, 2017 (D.I. 222), the Plan Period for the Debtor is currently set to expire on February 6, 2017, and the Solicitation Period is set to expire on April 9, 2018.

9. The Debtor is in the final stages of preparing a chapter 11 plan to wind down the Debtor's case. Some additional time is required in that process in order for the key constituents to have an opportunity to provide input as appropriate. The Debtor respectfully submits that a reasonable further extension of the Exclusive Periods is well-warranted. The extensions requested herein will foster an efficient plan process, allowing the Debtor to complete its plan and negotiate with key stakeholders without upsetting the balance intended by the plan exclusivity accorded to a debtor under the Bankruptcy Code.

10. For the reasons set forth herein, the Debtor respectfully requests that the Court (a) extend the Plan Period a further sixty (60) days through and including April 9, 2018, and the Solicitation Period through and including June 8, 2018; and (b) prohibit any party, other than the Debtor, from filing a competing plan and/or soliciting acceptances of any such competing plan during the extended Exclusive Periods.

IV. APPLICABLE AUTHORITY

11. Under Bankruptcy Code section 1121(d), the Court may extend the Exclusive Periods for cause. Specifically, Bankruptcy Code section 1121(d) provides:

[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).

12. Courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following:

(a) The size and complexity of a debtor's case;

- (b) The amount of time that has elapsed since the debtor filed its bankruptcy case;
- (c) Whether unresolved contingencies exist that affect the debtor's ability to reorganize;
- (d) The debtor's progress in resolving issues facing its estate; and
- (e) Whether an extension of time will harm the debtor's creditors or other interested parties.

See *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

13. In determining whether to grant a requested extension of exclusivity, courts also consider whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. See *McLean*, 87 B.R. at 833–34; *In re Texaco, Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

14. In evaluating whether an extension under Bankruptcy Code section 1121(d) is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. See *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension.”); *In re Pub. Serv. Co.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent [is] to promote maximum flexibility.”); H.R. Rep. No. 95-595, at 232 (1978) (“[T]he bill allows the flexibility for individual cases that is unavailable today.”), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

15. Turning to the *Dow Corning* factors, the first is case size and complexity. The Debtor's case involved a large and complex business operation. The Debtor's operations took place in regulated markets in the United States, European Union, Canada, Mexico, and Israel. Its funded prepetition debt is substantial, exceeding \$155 million in prepetition secured debt.

16. The second *Dow Corning* factor – time elapsed in chapter 11 – also favors an exclusivity extension. The case is still in a position to exit chapter 11 promptly.

17. With respect to the third *Dow Corning* factor, the Debtor had several unresolved contingencies during much of its initial Exclusive Periods. The sale process and the DIP motion, among other things, were all contingencies that required resolution. Although most of the Debtor's contingencies are behind it, certain additional matters still need to be addressed with the Debtor's stakeholders. Therefore, this factor also favors the requested exclusivity extension.

18. The fourth *Dow Corning* factor also supports the exclusivity extension, in view of the major progress made by the Debtor in case to date. The Debtor set ambitious goals for the initial months of its case, and essentially met or exceeded those goals, particularly with respect to the event timeline for its sale process.

19. Finally, the fifth *Dow Corning* factor supports the requested extension. The extension will not prejudice creditors or other stakeholders of the Debtor's estate. Indeed, expiration of either of the Exclusive Periods at this juncture gives rise to the risk of competing chapter 11 plans, which inevitably would involve substantially increased administrative expenses and litigation. In this case, such an exercise would almost certainly end up decreasing net recoveries to the Debtor's creditors, and may significantly delay the Debtor's ability to confirm any plan in this bankruptcy case.

20. As set forth below, the proposed extension of the Exclusive Periods is warranted here because, among other things, an extension of the Exclusive Periods will give the Debtor a reasonable opportunity to complete the formulation and prosecution of a chapter 11 plan. Maintaining exclusivity for the extended period will benefit the Debtor and its estate stakeholders as a whole.

21. If the Exclusive Periods were to expire at this point, the risk (albeit perhaps a small risk in this case) is that the careful balancing fostered by exclusivity would vanish, potentially undercutting the Debtor's ability to lead an organized and cost-effective plan process. Exclusivity serves several important purposes, embodying the policy that in most circumstances, a debtor in possession is best suited to lead the plan process, of course with the benefit of fulsome participation by all case stakeholders. The Debtor submits that its substantial progress in the case to date warrants affording it a reasonable amount of additional time to have exclusive plan filing and solicitation rights – in effect to finish out the administration of this case in the manner in which chapter 11 of the Bankruptcy Code is designed.

22. In sum, the requested extension of the Exclusive Periods will benefit the Debtor and its estate by providing the Debtor with a full and fair opportunity to seek approval of a chapter 11 plan. It is in the best interests of the Debtor, its estate, and all creditors to obtain an extension of the Exclusive Periods to ensure that the Debtor is afforded a reasonable and sufficient time to solicit, confirm, and consummate a plan without the costly and counter-productive prospect of competing plans. Accordingly, the Debtor believes that the requested extension is warranted and, indeed, appropriate under the circumstances.

V. NOTICE

23. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the parties listed on the

Debtor's list of twenty largest unsecured creditors; and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

VI. CONCLUSION

WHEREFORE, the Debtor requests the Court enter an order substantially in the form attached hereto: (i) extending the Plan Period sixty (60) days through and including April 9, 2018, and the Solicitation Period through and including June 8, 2018; and (ii) granting such other and further relief as is just and proper.

Dated: February 6, 2017
Wilmington, Delaware

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

/s/ Steven K. Kortanek

Steven K. Kortanek (Del. Bar No. 3106)
Patrick A. Jackson (Del. Bar No. 4976)
Joseph N. Argentina, Jr. (Del. Bar No. 5453)
222 Delaware Ave., Suite 1410
Wilmington, DE 19801-1621
Telephone: (302) 467-4200
Facsimile: (302) 467-4201
Steven.Kortanek@dbr.com
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Joseph.Argentina@dbr.com

*Counsel for the Debtor
and Debtor in Possession*

Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

HMI Liquidating Inc.,¹

Debtor.

Chapter 11

Case No. 17-10810 (LSS)

Re. Docket No. ____

**ORDER GRANTING DEBTOR'S MOTION FOR AN ORDER FURTHER EXTENDING
THE EXCLUSIVE PERIODS DURING WHICH DEBTOR MAY FILE AND SOLICIT
ACCEPTANCES OF A PLAN PURSUANT TO 11 U.S.C. § 1121(d)**

Upon the Debtor's Motion for an Order Extending the Exclusive Periods During Which Debtor May File and Solicit Acceptances of a Plan Pursuant to 11 U.S.C. § 1121(d) (the "Motion");² and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors and all parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted.
2. The Plan Period is hereby extended through and including April 9, 2018, and the

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² Capitalized terms not herein defined shall have the same meaning ascribed to them in the Motion.

Solicitation Period is hereby extended through and including June 8, 2018.

3. Nothing herein shall be construed to limit the Debtor's right to seek further extensions of time under 11 U.S.C. § 1121.

4. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: _____, 2018

THE HONORABLE
LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE