

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

In re:

TRIAD GUARANTY INC.,

Debtor.

Chapter 11

Case No. 13-11452 (MFW)

**Objections Due: extended through and including July 5,
2017 for the Debtor**

Hearing Date: July 12, 2017 at 2:00 pm (ET)

Re: D.I. 463

**DEBTOR'S RESPONSE TO UNITED STATES TRUSTEE'S MOTION
FOR ENTRY OF AN ORDER CONVERTING OR DISMISSING THE
CHAPTER 11 CASE, OR IN THE ALTERNATIVE, SETTING A DEADLINE
TO FILE A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT**

Triad Guaranty Inc., the above-captioned debtor and debtor in possession (the "Debtor"), by and through its undersigned proposed counsel, hereby objects (the "Objection") to the United States Trustee's Motion for Entry of an Order Converting or Dismissing the Chapter 11 Case, or in the Alternative, Setting a Deadline to File a Chapter 11 Plan and Disclosure Statement (the "Motion") [D.I. 463], filed by the United States Trustee (the "U.S. Trustee"). In support of this Objection, the Debtor respectfully states as follows:

INTRODUCTION

1. As the Debtor will show in this Objection and at the hearing on the Motion, it is at the brink of a successful exit from this case through a plan of reorganization. It is essential that the Debtor be permitted additional time to implement its strategy of confirming a plan. To that end, the Debtor already has sought approval of (i) further debtor-in-possession financing and (ii) the retention of new counsel. If this case is converted or dismissed, it is virtually certain that all value locked up in the Debtor

will be wiped out in an instant. Therefore, that portion of the relief sought in the Motion should be denied.

2. The Debtor does not, however, object to the alternative relief that the U.S. Trustee seeks – a deadline to file a plan and disclosure statement. In fact, the Debtor anticipates that by the time the Motion is heard, the Debtor already will have filed a proposed plan of reorganization. All that will be left will be to set a schedule for solicitation and approval of the proposed plan. After four difficult years in bankruptcy, the Debtor has negotiated a path forward with a joint plan proponent, compromised the professional fee claims that effectively were blocking the Debtor from confirming a plan, and is poised to exit from bankruptcy on terms that are beneficial to its stakeholders.

BACKGROUND

3. On June 3, 2013, the Debtor filed a petition with this Court under chapter 11 of title 11 of the United State Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”). The Debtor is operating its business as debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no committee has been appointed.

4. A description of the Debtor’s business and the reasons for commencing this chapter 11 case are set forth in the Declaration of William T. Ratliff, III in Support of Debtor’s Chapter 11 Petition and First Day Motions [D.I. 3].

5. The Debtor is current in its monthly reporting obligations and payment of fees to the U.S. Trustee, and has maintained director and officer insurance coverage.

ARGUMENT

6. Bankruptcy Code section 1112(b)(1) permits a party in interest to move to dismiss or convert a bankruptcy case for “cause” and provides as follows:

Except as provided in paragraph (2) of this subsection, subsection (c) of this section and section 1104(a)(3), on request of a party in interest, and after notice and hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1). The burden is on the moving party to establish “cause.” In re Reserves Resort, Spa & Country Club LLC, No. 12-13316(KG), 2013 WL 3523289, at *2 (Bankr. D. Del. July 12, 2013).

7. The Debtor has made significant recent progress that makes likely reorganization through a plan. Specifically, on June 21, 2017, the Debtor sought authorization to employ new counsel to, among other things, negotiate and seek approval of a plan of reorganization and otherwise guide this case through its final stage. See Debtor’s Application for Entry of an Order Under Bankruptcy Code Sections 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 2016, and Del. Bankr. L.R. 2014-1 and 2016-1 Authorizing and Approving the Employment and Retention of Shaw Fishman Glantz & Towbin LLC (“Shaw Fishman”) as Counsel Nunc Pro Tunc to June 5, 2017 [D.I. 468]. The Debtor also has sought approval of much needed financing that will permit the Debtor to meet its financial obligations as it moves towards what the Debtor expects will be a successful reorganization through a plan. See Third Motion for a Final Order Authorizing Debtor to Incur Additional Postpetition Debt (the “DIP Motion”) [D.I. 469].

8. The Debtor is planning to file, in the coming days, its proposed plan of reorganization in conjunction with a plan proponent group led by Wolfgang Holdings, LLC (“Wolfgang”). Working with Wolfgang, the Debtor has negotiated and compromised its potential liability for professional fees incurred in this case from a figure in the millions of dollars to less than \$200,000. Because of, among other things, the willingness of the Debtor’s former professionals to compromise their fees to clear the path for the Debtor to reorganize, the Debtor’s successful exit from this case is now in sight. In addition, the proposed infusion of financing through the DIP Motion, if approved, will permit the Debtor to secure the services of its professionals, meet ongoing administrative costs, and propose a plan of reorganization in the coming weeks.

I. The Debtor has a reasonable likelihood of rehabilitation. The company anticipates emerging from bankruptcy in the coming months.

9. The U.S. Trustee asks the Court to dismiss or convert this case for “cause” on the grounds that the Debtor has no “reasonable likelihood of rehabilitation.” Motion at 3. In fact, the Debtor recently has made significant progress and is on its way to confirming a chapter 11 plan and exiting bankruptcy. The Debtor has resolved several large professional fee claims, hired new proposed counsel, and received a commitment for new financing that will permit the company to confirm a chapter 11 plan and emerge from bankruptcy. As such, the Debtor has a “reasonable likelihood of rehabilitation” for purposes of Bankruptcy Code section 1112. The Court should deny the Motion insofar as it seeks conversion or dismissal of this case.

A. The Debtor has retained new counsel to advise the Debtor through plan confirmation.

10. The Debtor has determined that it is in its best interest and the best interest of its stakeholders to proceed to plan confirmation with new counsel. To that end, the Debtor has chosen Shaw Fishman as its proposed replacement counsel. Shaw Fishman's rate structure and significant chapter 11 experience make the firm well-suited to perform the services that are required for the debtor to emerge from bankruptcy, namely, among other things, working with the Debtor's constituents and those parties with an interest in the outcome of this case, obtaining approval of debtor in possession financing, preparing a chapter 11 plan and disclosure statement, and seeking confirmation of the plan. The Debtor also chose Shaw Fishman because one of its members, Thomas M. Horan, is a former partner at the Debtor's former counsel, Womble Carlyle Sandridge & Rice, LLP and is intimately familiar with the Debtor and this chapter 11 case. Mr. Horan will be the attorney with primary responsibility for the case in this final phase.

B. The Debtor has obtained proposed new financing and is prepared to emerge from chapter 11.

11. The Debtor has obtained proposed debtor-in-possession financing and is poised to propose a plan of reorganization. For financing, the Debtor received a commitment from a newly-formed entity, Triad DIP Lenders, LLC (the "DIP Lender"), to provide \$400,000 in new financing (the "DIP Facility"). In return, the DIP Lender will receive a warrant to acquire 10% of the fully diluted common stock of the reorganized Debtor. Up to \$150,000 of the DIP Facility will be immediately available to the Debtor, and the remainder may be drawn as necessary to fund the chapter 11 case and plan.

12. The DIP Facility will pay direct costs of managing this case, implementing the chapter 11 plan, facilitating the Debtor's exit from chapter 11, as well as other expenses. The chapter 11 plan will satisfy the requirements of the Bankruptcy Code for plan confirmation, including, for the avoidance of any doubt, Bankruptcy Code section 1129(a)(9)(A).

13. The parties are thus in the advanced stages of developing a chapter 11 plan and anticipate that the plan will be on file before the hearing on the Motion or very shortly thereafter.

II. Converting or dismissing this case will result in zero recovery by unsecured creditors and administrative claimants.

14. If this case is converted to chapter 7 or dismissed, administrative, priority, and unsecured creditors likely will receive no distributions on behalf of their claims, and the value of equity interests may well be wiped out. That is because the primary asset of the bankruptcy estate is certain tax attributes that may only be utilized by the Debtor and the other members of its consolidated tax group – its non-debtor subsidiaries, Triad Guaranty Insurance Corporation and Triad Guaranty Assurance Corporation. The bankruptcy estate has no hard assets for a chapter 7 trustee to liquidate. In addition, it is unclear what the effect of conversion to chapter 7 may have on the Debtor's tax attributes, and therefore what effect it may have on Triad Guaranty Insurance Corporation and Triad Guaranty Assurance Corporation. It is therefore in the best interest of the Debtor and its stakeholders for the Court to deny the U.S. Trustee's request to convert or dismiss this case.

15. However, the Debtor does not object to the U.S. Trustee's request that the Court set a deadline for the Debtor to file a plan and disclosure statement. The Debtor

requests the opportunity at the hearing on the Motion to discuss with the Court a schedule for solicitation and confirmation of the Debtor's proposed plan, including scheduling a plan confirmation hearing.

CONCLUSION

For all of these reasons, the Debtor respectfully requests that the Court deny the Motion insofar as it seeks conversion or dismissal. Instead, the Debtor requests that, at the hearing on the Motion, the Court establish a schedule for the Debtor to solicit and seek confirmation of a plan of reorganization.

Dated: July 5, 2017

**SHAW FISHMAN GLANTZ
& TOWBIN LLC**

/s/ Thomas M. Horan

Thomas M. Horan (Del. Bar No. 4641)
300 Delaware Ave., Suite 1370
Wilmington, DE 19801
Telephone: (302) 480-9412
E-mail: thoran@shawfishman.com

-and-

David R. Doyle
321 North Clark Street, Suite 800
Chicago, IL 60654
Telephone: (312) 541-0151
E-mail: ddoyle@shawfishman.com

*Proposed Counsel to the Debtor and
Debtor-in-Possession*