

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

In re:

TRIAD GUARANTY, INC.,

Debtor.

Chapter 11

Case No. 13-11452 (MFW)

Re: Docket No. 463

**STATEMENT OF JENNIFER HAMMER, DIRECTOR OF INSURANCE OF THE
STATE OF ILLINOIS, IN HER ROLE AS STATUTORY AND COURT-AFFIRMED
REHABILITATOR FOR TRIAD GUARANTY INSURANCE CORPORATION AND
TRIAD GUARANTY ASSURANCE CORPORATION, WITH REGARD TO UNITED
STATES TRUSTEE'S MOTION FOR ENTRY OF AN ORDER, *INTER ALIA*,
CONVERTING OR DISMISSING DEBTOR'S CHAPTER 11 CASE
AND IN SUPPORT OF DISMISSAL**

Jennifer Hammer¹, Director of Insurance of the State of Illinois, not individually, but solely as the statutory and court-affirmed rehabilitator (the "**Rehabilitator**") of Triad Guaranty Insurance Corporation ("**TGIC**") and Triad Guaranty Assurance Corporation ("**TGAC**" and, together with TGIC, the "**Subsidiaries**"), hereby submits the following statement with regard 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* [D.I. 463] (the "**Motion**").²

A. If the Court finds that "cause" exists under 11 U.S.C. §1112(b), the Court should choose dismissal over conversion.

Section 1112(b) requires the Court to undertake a two-step process. First, the Court "determines whether there is 'cause' to convert *or* dismiss, and next chooses between conversion and dismissal based on 'the best interest of creditors and the estate.'" *In re American Capital*

¹ Jennifer Hammer has replaced Andrew Boron as the Director of Insurance of the State of Illinois, and, by operation of Illinois law, has thereby become the Rehabilitator for TGIC and TGAC.

² Counsel for the United States Trustee agreed to extend the Rehabilitator's deadline for responding to the Motion to July 7, 2017.

Equipment, LLC, 688 F.3d 145, 161 (3d Cir. 2012) (emphasis added); *see also* Code §1112(b)(1). As to the first step, the Rehabilitator agrees with the UST that "cause" exists within the meaning of Section 1112(b), for reasons that include (but are not necessarily limited to) those described in the Motion: continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation. Motion, ¶¶10-11.

This month, Debtor entered its *fifth* year in chapter 11. Apart from obtaining its dismissal from a securities class action during the first three months of the Bankruptcy Case, Debtor has nothing to show for its more than four years in bankruptcy court, other than: (a) a judgment from this Court that blocked Debtor's attempt to usurp hundreds of millions of dollars' worth of consolidated net operating losses ("**NOLs**") generated by the Subsidiaries, to the detriment of the insurance policyholders of those Subsidiaries; (b) a failed appeal of that judgment; (c) hundreds of thousands of dollars of unpaid administrative expenses (to which it now seeks to add another \$400,000³), and (d) a bank account containing a mere \$1,951.67 as of May 31, 2017.

Debtor's response to the Motion [D.I. 472] ("**Debtor's Response**") promises a confirmable plan and asks for more time. (Debtor's Resp., ¶ 1.) This promise is no different from Debtor's many similar promises over the years. But the only "significant recent progress" toward a plan that Debtor can point to is the hiring of new counsel and a request that it be allowed to incur yet more postpetition debt. (*Id.*, ¶¶ 7, 9-10.) Debtor gives no specifics to justify its statement, after four years of promises, that it is now "at the brink of a successful exit from this case through a plan of reorganization." (*Id.*, ¶ 1.)

Moreover, Debtor has not explained why a plan is even necessary in this case. Debtor stresses the harm that would come to "unsecured creditors" and "administrative claimants"

³ See *Debtor's Third Motion for a Final Order Authorizing Debtor to Incur Additional Postpetition Debt*, D.I. 469 (the "**Third Debt Motion**"). The Rehabilitator has objected to the Third Debt Motion [D.I. 473].

should the Bankruptcy Case be converted or dismissed, but, Debtor has no prepetition creditors, no operating assets, no employees, no trade counter-parties who depend upon doing business with Debtor – indeed, it has no business to reorganize. This case has been run, from its first day, for the benefit of its controlling shareholder and sole director and officer, William Ratliff, and has focused almost exclusively on Debtor's efforts to wrest control of hundreds of millions of dollars' worth of jointly-owned NOLs that the Rehabilitator must herself utilize to reduce the tax liabilities of TGIC and TGAC as she runs off their businesses for the benefit of their policyholders. Debtor does not need the protection of chapter 11 to combine with another entity or change its ownership; it can do so outside of bankruptcy, after dismissal.

With no assets to administer and no prepetition creditors to pay, conversion would serve no purpose. Conversion would not eliminate the existing administrative expenses incurred under chapter 11, but, rather, would only add additional layers of statutory trustee fees and the trustee's professional fees on top of the chapter 11 expenses, while burdening a trustee with an estate that has no funds for its own administration. Because cause exists under 11 U.S.C. §1112(b) and conversion would be futile, the Court should dismiss the Bankruptcy Case.

B. If the Court does not dismiss the Bankruptcy Case, it should impose a firm deadline for the filing of a plan and disclosure statement.

If the Court does not dismiss the Bankruptcy Case, then the Rehabilitator agrees with the UST and with Debtor: the Court should set a firm deadline by which Debtor must file a plan of reorganization and disclosure statement. (*See* Mot., ¶ 13; Debtor's Response, ¶ 15.) However, Debtor has forfeited the benefit of the doubt regarding its need for, and chances of obtaining, a confirmed plan. The parties in interest, including the Rehabilitator and the UST, should not be burdened with further monitoring of the Bankruptcy Case and responding to further motions (like the Third Debt Motion) aimed at keeping Debtor on life support. Any order setting a

deadline for filing a plan should provide for dismissal of the Bankruptcy Case if Debtor does not file, by the deadline, a plan that has a reasonable likelihood of being confirmed. *See* 11 U.S.C. §§1112(b)(4)(A) (cause to dismiss includes "substantial or continuing loss to or diminution of the estate and the absence of a reasonable *likelihood* of rehabilitation" (emphasis added); 1112(b)(4)(J) (cause includes failure to file a disclosure statement or file or confirm a plan within time ordered by court).

WHEREFORE, the Rehabilitator respectfully requests that this Court enter an order (a) granting the Motion to the extent it seeks an order dismissing Debtor's Bankruptcy Case or, in the alternative, (b) enter an order setting deadlines as set forth above.

Dated: July 7, 2017

Wilmington, Delaware

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