

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
BL RESTAURANTS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 20-10156 (MFW)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Objection Deadline: June 17, 2020 at 4:00 p.m.
	)	Hearing Date: June 24, 2020 at 2:00 p.m. EST

**DEBTORS' MOTION FOR ORDER EXTENDING THE EXCLUSIVE
PERIODS TO FILE AND SOLICIT ACCEPTANCES OF A CHAPTER 11 PLAN**

The debtors and debtors-in-possession in the above captioned cases (collectively, the “Debtors”)², hereby move this Court (the “Motion”), pursuant to section 1121(d) of the Bankruptcy Code to extend the exclusive periods within which to file a chapter 11 plan or plans and to solicit acceptances of such plan or plans. In support hereof, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: BL Restaurants Holding, LLC (6665); BL Restaurant Operations, LLC (7062); BL Restaurant Franchises, LLC (6923); and BL Hunt Valley, LLC (9513). The Debtors’ headquarters and mailing address is: 4550 Beltway Drive, Addison, TX 75001.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Howard Meitiner in Support of Debtors’ First Day Motions and Applications* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), on January 27, 2020 (the “Petition Date”).

Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. The statutory predicates for relief herein are sections 105(a) and 1121(d) of the Bankruptcy Code.

BACKGROUND

2. On January 27, 2020 (the “Petition Date”), the Debtors each filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

4. On February 5, 2020, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (“Committee”).

5. Additional information about the Debtors’ business and the events leading to the commencement of these chapter 11 cases can be found in the First Day Declaration, which is incorporated herein by reference.

RELIEF REQUESTED

6. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a plan (the “Exclusive Filing Period”). Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor files a plan within the Exclusive Filing Period, it has an initial period of 180 days after the commencement of the chapter 11 case to obtain acceptance of such plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”). The

Debtors' initial Exclusive Filing Period is due to expire on June 5, 2020 and the Debtors' initial Exclusive Solicitation Period would have expired on August 4, 2020. Section 1121(d) of the Bankruptcy Code permits the Court to extend the Exclusive Periods for "cause." For the reasons set forth herein, the Debtors believe that "cause" exists to extend the Exclusive Periods.

7. By this Motion, the Debtors request, pursuant to sections 105(a) and 1121(d) of the Bankruptcy Code, that (a) the Debtors' Exclusive Filing Period be extended by approximately 90 days through and including September 3, 2020, and (b) the Debtors' Exclusive Solicitation Period be extended by approximately 90 days, through and including November 2, 2020.³ The Debtors further request that such an order be without prejudice to the Debtors' right to seek additional extensions of the Exclusive Periods.

BASIS FOR RELIEF REQUESTED

A. Section 1121(d) of the Bankruptcy Code Permits the Court to Extend the Exclusive Periods "For Cause"

8. The objective of a chapter 11 case is the negotiation, formulation, development, confirmation, and consummation of a plan, and it is the intention of the Debtors to achieve that objective. The Exclusive Periods provided by section 1121(d) afford a debtor the opportunity to propose a plan and to solicit acceptances of such plan without the deterioration and disruption of a debtor's efforts that might be caused by the filing of competing plans of reorganization by non-debtor parties. In circumstances where, as here, the initial 120 and 180-day Exclusive Periods provided for in the Bankruptcy Code prove to be an unrealistic time frame for a debtor to achieve confirmation of a plan, section 1121(d) of the Bankruptcy Code allows the bankruptcy courts to extend the debtor's exclusive periods for "cause."

³ Pursuant to Local Rule 9006-2, a bridge order is not required to extend the exclusive periods until the Motion is heard. That rule provides, in the pertinent part, that the filing of this Motion automatically extends the Exclusive Periods until the hearing on the Motion.

(1) Subject to paragraph (2), on 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 reduce or increase the 120-day period or the 180-day period referred to in this section.

(2) (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.

(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).

9. It is well established that the decision to extend a debtor's exclusive periods is committed to the sound discretion of the bankruptcy court and should be based upon the facts and circumstances of a particular case. *See First Am. Bank of New York v. Southwest Gloves and Safety Equip. Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Reetz*, 61 B.R. 412, 414 (Bankr. W.D. Wisc. 1986). Although the Bankruptcy Code does not define "cause" for an extension, courts have looked to the legislative history of section 1121 (d) for guidance. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996). Congress did not intend that the 120- and 180-day periods be a hard and fast rule. Rather, Congress intended that the exclusive periods be of an adequate length, given the circumstances, for a debtor to formulate, negotiate and draft a viable plan without the disruption that would occur with the filing of competing plans. In fact, Congress recognized that often a 120-day exclusive plan filing period will not afford a debtor sufficient time to formulate and negotiate a plan:

[t]he court is given the power, though, to increase ... the 120-day period depending on the circumstances of the case. [T]he bill allows the flexibility for individual cases that is not available today. For example, 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, 95th Congo 1st Sess. 232 (1977) (emphasis added) (footnotes omitted); *See also In re Amko Plastics*, 197 B.R. at 77 (noting that Congress intended courts to have flexibility in dealing with extensions of the exclusive periods); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294,297 (W.D. Tenn. 1987) (“The hallmark of ... [section 1121(d)] is flexibility”).

10. When determining whether cause exists for an extension of a debtor’s exclusive periods, courts have relied on a variety of factors, each of which may provide sufficient grounds for extending the periods. Factors considered by the courts in reaching a determination have included: (1) the size and complexity of the case, (2) the necessity of sufficient time to negotiate and prepare adequate information, (3) the existence of good faith progress toward maximizing value for creditors, (4) whether the debtor is paying its debts as they come due, (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan, (6) whether the debtor has made progress in negotiating with creditors, (7) the length of time the case has been pending, (8) whether the debtor is seeking the extension to pressure creditors, and (9) whether unresolved contingencies exist. *See In re Express One Int’l Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *see also In re Gibson & Cushman Dredging Corp.*, 101 B.R. at 409-10 (listing some of the above-referenced factors); *In re Grand Traverse Dev. Co. Ltd. P’ship*, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992) (same); *In re Southwest Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 451-54 (Bankr. W.D. Tex. 1987) (same).

B. Cause Exists for an Extension of the Exclusive Periods in These Cases

11. Each of the foregoing factors that is relevant to these cases weighs in favor of the relief requested as discussed below:

- (a) The Debtors' cases are large and complex. This factor weighs in favor of allowing the Debtors to extend the Exclusive Periods. Prior to the Petition Date, these gastropubs operated under the "Bar Louie" brand name and offered a wide range of libations and curated food. Bar Louie operated in a variety of locations, including lifestyle centers, traditional shopping malls, event locations, central business districts and other stand-alone specialty sites. Founded in 1991, the gastropub concept grew to 31 locations from 1991 to 2010. As of the Petition Date, there were 110 owned locations and 24 franchised locations operating in 26 states and the District of Columbia. Unfortunately, an increase in competition, a trend away from casual dining and a general decline in customer traffic visiting traditional shopping locations and malls, resulted in sales falling short of forecast. Bar Louie undertook multiple strategies to improve its sales and reduce costs but ultimately decided that a marketing and sale process was in the best interest of creditors and would maximize the value of the estates for creditors.
- (b) The Debtors have not had sufficient time to negotiate and prepare adequate information. The Debtors filed a sale procedures motion and sale motion contemporaneously with the filing of these chapter 11 cases. In order to maximize the value to creditors, the Debtors were required to devote the majority of their energy to the marketing and sale strategies that were undertaken. Now that the sale of substantially all of the Debtors' assets is nearing completion, the Debtors and their professionals have subsequently turned their attention to plan formulation. The Debtors, along with the other constituencies in these cases, have made

significant progress towards resolution of the outstanding issues in these cases and will continue to work together to effectuate a liquidating plan.

- (c) The Debtors have been working in good faith toward maximizing the value of the Debtors' assets. The Debtors have acted in good faith in order to achieve the most value from their assets and will continue those efforts in developing a successful plan of liquidation. To this point, the Debtors' efforts in the sale process have resulted in the successful liquidation of substantially all of their assets and will lead to a liquidating plan to wind down the estate.
- (d) The Debtors continue to pay their postpetition debts as they come due. The Debtors are substantially current on their postpetition expenses.
- (e) The Debtors have demonstrated reasonable prospects of filing a plan. The Debtors are in the process of drafting a liquidating plan. The plan provides a baseline path to conclude these cases. The Debtors will continue to negotiate with their constituents in an effort to improve the plan with respect to all interested parties and seek to address any concerns raised by their constituents, including the Committee. The Debtors thus have satisfied this prong and retaining control over the plan process will provide the most efficient path to maximize recoveries for all constituents and provide a successful conclusion to the cases.
- (f) The Debtors have been successful in negotiations with their creditors. The Debtors have been working closely with their constituents in order to maximize the value of the Debtors' assets. The Debtors have been able to consensually resolve numerous disputes in these cases and will continue to work on such resolutions in

the future. The Debtors will continue to negotiate with their constituencies regarding a plan as they have done thus far.

- (g) The Debtors' cases have only been pending for approximately four months. As noted above, the Debtors have devoted substantial time and effort pursuing a marketing and sale process to maximize value for the Debtors' estates. The complexity of negotiating and closing the sale has required a significant amount of time and energy from the Debtors and their advisors. As a result, the Debtors require additional time for the Exclusive Periods to consummate the sale of substantially all of the Debtors' assets. The Debtors have since directed their attention to a plan of liquidation and remain committed to the plan process. Furthermore, the Debtors' governmental bar date is July 27, 2020 and there is the potential for additional claims that will need to be resolved during these cases. The Debtors have accomplished a great deal during the short period since the Petition Date and submit that extensions of the Exclusive Periods are appropriate under the circumstances.
- (h) The Debtors are not seeking an extension to pressure creditors. The Debtors have no ulterior motive in seeking an extension of the Exclusive Periods. The Debtors believe that they have worked diligently over the past few months to maximize the value of their assets to creditors. The Debtors have been in regular communication with the Committee on numerous issues facing the Debtors' estates and are not seeking an extension to pressure their creditors. The Debtors, to the contrary, believe that retaining control over the plan process will provide the efficiency required to successfully conclude these cases. Moreover, allowing the Debtors to

retain control over the plan process may provide the only feasible method to confirm a plan in these cases.

- (i) Unresolved contingencies exist in these cases. While the Debtors have sold substantially all of their assets, they are still working diligently to address issues between creditor constituencies and complete their wind down. The Debtors also continue to diligently pursue the liquidation and resolution of liabilities in these cases. Accordingly, providing the Debtors with additional time to retain control over the plan process will provide the necessary framework and efficiencies that are necessary in this instance.

12. Similar relief has been granted by this Court and by other bankruptcy courts in the District of Delaware. *See e.g., In re Flying J Inc.*, Case No. 08-13384 (MFW) (Bankr. D. Del. Apr. 16, 2009) (extending exclusive filing and solicitation periods by 60 days); *In re Pierre Foods, Inc.*, Case No. 08-11480 (KG) (Bankr. D. Del. Aug. 27, 2008) (same); *In re Tropicana Entm't, LLC*, Case No. 08-10856 (KJC) (Bankr. D. Del. Aug. 8, 2008) (extending exclusive filing and solicitation periods by 130 days); *In re The Flinkote Co. and Flinkote Mines Ltd.*, Case No. 04-11300 (JKF) (Bankr. D. Del. Apr. 30, 2008) (granting the twelfth extension of the debtors exclusivity period); *In re S-Tran Holdings, Inc.*, Case No. 05-11391 (KJC) (Bankr. D. Del. March 26, 2008) (extending exclusivity filing and solicitation periods in a chapter 11 liquidation case); *In re Rogue Indus., Inc.*, Case No. 03-13272 (MFW) (Bankr. D. Del. March 15, 2007) (extending exclusive filing and solicitation periods); *In re Tiro Acquisition, LLC*, Case No. 04-12938 (PJW) (Bankr. D. Del. Nov. 2, 2005) (granting fourth motion to extend the exclusivity period and extending the exclusivity period by an additional 90 days in a chapter 11 liquidation case); *In re SFNB Acquisition Corp.*, Case No. 03-11524 (PJW) (Bankr. D. Del. Aug. 25, 2004) (granting the

fifth motion to extend the exclusivity period and extending the period for an additional 120 days in a chapter 11 liquidation case).

13. In light of the Debtors' substantial and diligent progress toward the wind-down of their estates in order to maximize the value of the assets for their creditors, the Debtors seek an order extending the Exclusive Filing Period by approximately 90 days and the Exclusive Solicitation Period by approximately 90 days. Under applicable law, the exclusive plan filing and solicitation periods can and should be extended where the Debtors have made, and are continuing to make, significant progress toward a successful use of the chapter 11 process.

14. The Debtors respectfully submit that, under the relevant facts and circumstances, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of any creditor and will, in fact, afford the parties the opportunity to pursue to fruition the beneficial objectives of a confirmable plan of liquidation.

15. Based upon the foregoing, the Debtors submit that cause exists in these bankruptcy proceedings to further extend the Debtors' Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

NOTICE

16. No trustee or examiner has been appointed in these cases. This Motion has been provided to the Office of the United States Trustee, counsel to the Committee, and the parties that have filed requests for notices under Bankruptcy Rule 2002 in these cases. The Debtors submit that under the circumstances no further notice is necessary.

NO PRIOR REQUEST

17. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request the entry of an order substantially in the form of the proposed order attached hereto (a) extending the Exclusive Filing Period through and including September 3, 2020, (b) extending the Exclusive Solicitation Period through and including November 2, 2020, and (c) granting such other and further relief as is just and proper.

Dated: June 3, 2020
Wilmington, Delaware

/s/ Michael W. Yurkewicz
Domenic E. Pacitti (DE Bar No. 3989)
Michael W. Yurkewicz (DE Bar No. 4165)
Sally E. Veghte (DE Bar No. 4762)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 North Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193
Email: dpacitti@klehr.com
myurkewicz@klehr.com
sveghte@klehr.com

Counsel to the Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
	)	Chapter 11
)	
BL RESTAURANTS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 20-10156 (MFW)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Objection Deadline: June 17, 2020 at 4:00 p.m.
	)	Hearing Date: June 24, 2020 at 2:00 p.m. EST

**NOTICE OF DEBTORS' MOTION FOR AN ORDER EXTENDING
THEIR EXCLUSIVE PERIODS TO FILE AND SOLICIT ACCEPTANCES
OF A CHAPTER 11 PLAN**

PLEASE TAKE NOTICE that on June 3, 2020, the above-captioned debtors and debtors-in-possession (the "Debtors") filed the *Motion for an Order Extending the Debtors' Exclusive Periods to File and Solicit Acceptances of a Chapter 11 Plan* (the "Motion") with the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon the undersigned, so as to be received **on or before 4:00 p.m. on June 17, 2020.**

PLEASE TAKE FURTHER NOTICE THAT, IF AN OBJECTION IS PROPERLY FILED AND SERVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, A HEARING WILL BE HELD ON JUNE 24, 2020 AT 2:00 P.M. BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, COURT ROOM #4, FIFTH FLOOR, WILMINGTON, DELAWARE 19801. ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED WILL BE CONSIDERED BY THE BANKRUPTCY COURT AT SUCH HEARING.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors' respective federal tax identification numbers, are as follows: BL Restaurants Holding, LLC (6665); BL Restaurant Operations, LLC (7062); BL Restaurant Franchises, LLC (6923); and BL Hunt Valley, LLC (9513). The Debtors' headquarters and mailing address is: 4550 Beltway Drive, Addison, TX 75001.

Dated: June 3, 2020
Wilmington, Delaware

/s/ Michael W. Yurkewicz

Domenic E. Pacitti (DE Bar No. 3989)

Michael W. Yurkewicz (DE Bar No. 4165)

Sally E. Veghte (DE Bar No. 4762)

KLEHR HARRISON HARVEY BRANZBURG LLP

919 North Market Street, Suite 1000

Wilmington, Delaware 19801

Telephone: (302) 426-1189

Facsimile: (302) 426-9193

Email: dpacitti@klehr.com

myurkewicz@klehr.com

sveghte@klehr.com

Counsel to the Debtors

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
	)	Chapter 11
)	
BL RESTAURANTS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 20-10156 (MFW)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. _____

**ORDER EXTENDING DEBTORS' EXCLUSIVE PERIODS
TO FILE AND SOLICIT ACCEPTANCES OF A CHAPTER 11 PLAN**

Upon consideration of the certification of counsel filed by the debtors and debtors-in-possession in the above captioned cases (the "Debtors"), relating to the issuance and entry of an Order under section 1121(d) of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended, extending the Debtors' exclusive periods in which to file a chapter 11 plan or plans and to solicit acceptances of such plan or plans; and after due deliberation; and sufficient cause appearing therefor, it is hereby

ORDERED ADJUDGED AND DECREED that

1. The Exclusive Filing Period of the Debtors to propose a plan or plans in these chapter 11 cases shall be extended through and including September 3, 2020.
2. The Exclusive Solicitation Period of the Debtors' to solicit acceptances of a plan or plans in these chapter 11 cases shall be extended through and including November 2, 2020.
3. Nothing in this order shall prejudice the Debtors' rights to seek additional extensions of the Exclusive Periods from this Court, nor shall it prejudice the right of any party-

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors' respective federal tax identification numbers, are as follows: BL Restaurants Holding, LLC (6665); BL Restaurant Operations, LLC (7062); BL Restaurant Franchises, LLC (6923); and BL Hunt Valley, LLC (9513). The Debtors' headquarters and mailing address is: 4550 Beltway Drive, Addison, TX 75001.

in-interest to oppose any request for a further extension or to seek a reduction of the Exclusive Periods from the Court.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.