

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

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	Hearing Date: September 22, 2009 at 3:00 p.m. (ET)
)	Objection Deadline: August 20, 2009 at 4:00 p.m. (ET)
)	

**DEBTOR’S SECOND MOTION PURSUANT TO 11 U.S.C. §1121(d) FOR ORDER
(i) EXTENDING UNTIL OCTOBER 15, 2009 THE TIME WITHIN WHICH THE
DEBTOR HAS THE EXCLUSIVE RIGHT TO FILE A PLAN OF REORGANIZATION
AND (ii) EXTENDING UNTIL DECEMBER 15, 2009 THE TIME WITHIN WHICH THE
DEBTOR HAS THE EXCLUSIVE RIGHT TO SOLICIT ACCEPTANCES THEREOF**

Forward Foods LLC (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, by and through its undersigned counsel, hereby moves (the “Motion”), pursuant to section 1121(d) of Title 11 (the “Bankruptcy Code”) of the United States Code, for entry of an order extending the 120- and 180-day periods (together, the “Exclusivity Periods”) within which the Debtor has the exclusive right to file a plan of reorganization and solicit acceptances thereof approximately sixty days, through and including October 15, 2009 and December 15, 2009, respectively. A proposed form of Order granting this Motion is attached hereto as Exhibit A. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

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

BACKGROUND

2. On February 17, 2009 (the “Petition Date”), the Debtor filed with this Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property and assets as a debtor in possession.

3. On March 4, 2009, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). The Committee has retained counsel.

4. The Debtor is a manufacturer of high protein, snack, energy and meal replacement bars primarily produced under the Detour brand name. Since the introduction of the original Detour bar in October 2002, Detour has grown into a \$25 million business and is a leading high protein brand in health and fitness stores.

5. On January 29, 2009, the Debtor was notified by Peanut Corporation of America (“PCA”) that all peanut products produced by that company’s Blakely facility were involved in a nationwide voluntary recall with regard to a salmonella poisoning risk. The Debtor had previously contracted with PCA for a proprietary spiced roasted peanut for use in several of the Debtor’s Detour brand products. The sales of Detour products containing the PCA peanut product (the “Affected Product”) made up approximately 80% of all protein bar sales by the Debtor.

6. As a matter of policy, the Debtor has always employed an independent laboratory to test representative samples of its finished products for quality and safety assurance; however, the fact that the proprietary spiced roasted peanut incorporated by the Debtor in its products was purchased from the specific PCA plant subject to the salmonella risk, thereby creating a risk of cross contamination, created a sufficient risk for the Debtor to initiate a voluntary recall (the

“Recall”) with regard to the Affected Product. Notices with regard to Affected Products were delivered on January 29, 2009, to all known customers purchasing any of the Affected Products.

7. The cost of the Recall to the Debtor’s business was material and ultimately forced the Debtor to file the voluntary petition commencing the above-captioned case.

8. Following the commencement of this chapter 11 case, the Debtor has focused its activities on successfully managing the Recall. The efforts included, among other things, the development and implementation of programs: (i) authorizing the setoff and further honoring of prepetition credits relating to the Recall; (ii) outsourcing production and packaging of the Product; (iii) providing bonus payments to employees upon achievement of certain goals; and (iv) rejection of leases of non-residential real property (collectively, the “Recall Motion”).

9. The programs in the Recall Motion were created with the ultimate goal of successfully confirming a plan of reorganization in the above-captioned case; however, the planning and negotiations involved in such development and implementation have left the Debtor without sufficient time for properly drafting a plan of reorganization

RELIEF REQUESTED AND THE REASONS THEREFOR

10. In light of the Debtor’s completion of all the aforementioned tasks in handling the Recall, the Debtor is now proceeding to formulate a chapter 11 plan of reorganization which it anticipates filing with the Court within the next sixty days. Representatives of the Debtor, the Committee and Debtor’s working capital DIP lender, Emigrant Capital Corporation, are actively negotiating the financial terms of an anticipated Plan.

11. Under section 1121 of the Bankruptcy Code, a debtor initially has the exclusive right to file a plan of reorganization until the expiration of the 120-day period immediately following the filing of its petition. If a plan is filed by the debtor within that 120-day period, the debtor automatically retains exclusivity for an additional 60 days, for a total of 180 days from the

filing date, so that it has sufficient time to seek acceptances of its plan. The statute also provides that the bankruptcy court may, for cause shown, extend a debtor's exclusivity periods. *See* 11 U.S.C. § 1121(d).

12. The extended Exclusivity Periods previously afforded to the Debtor under section 1121 of the Bankruptcy Code expire on or about August 16, 2009 and October 15, 2009 absent entry of an order further extending the Exclusivity Periods.

13. Therefore, because the Debtor believes sufficient cause exists for extending exclusivity, the Debtor requests the Court enter an order extending the Exclusivity Periods sixty days to October 15, 2009 and December 15, 2009 respectively.

Cause Exists for Extension of the Exclusivity Periods

14. Under section 1121(d) of the Bankruptcy Code, "after notice and a hearing, the court may *for cause* reduce or increase" the period in which a debtor has the exclusive right to file a plan. 11 U.S.C. § 1121(d)(emphasis added).

15. It is within the court's discretion to determine whether cause exists to extend a debtor's exclusivity period. *See In re Mid-State Raceway, Inc.*, 323 B.R. 63, 68 (Bankr. N.D.N.Y.2005); *Geriatrics Nursing Home, Inc. v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home, Inc.)*, 187 B.R. 128, 131 (Bankr. D.N.J. 1995).

16. Although section 1121(d) requires the court to find "cause" for the extension of an exclusivity period, it is clear from the legislative history that courts are given broad flexibility to grant an extension and such determination is based on the facts and circumstances of each case. *See Geriatrics Nursing Home, Inc.*, 187 B.R. at 132; *Teachers Ins. and Annuity Assoc. of Am. v. Lake in the Woods (In re Lake in the Woods)*, 10 B.R. 338, 345 (E.D. Mich. 1981); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (Bankr. W.D. Tenn. 1987) (citing H.R. Rep.

No. 95-545, 92 Cong., 2d Sess. 232, *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191, “the hallmark of . . . section 1121(d) is flexibility.”); *See also First American Bank of New York v. Southwest Gloves, Inc.*, 64 B.R. 963, 965 (Bankr. D. Del. 1986); *In re Texaco*, 76 B.R. 321, 326 (Bankr. S.D.N.Y. 1987).

17. Courts generally examine a number of factors in determining whether an extension of the debtor’s exclusivity period for proposing a plan should be granted. These factors include (i) the debtor’s need for sufficient time to negotiate a plan of reorganization and to prepare the required adequate information; (ii) whether the debtor has, in good faith, made progress towards reorganization; (iii) whether the debtor is current on its bills as they become due; (iv) whether the debtor is able to demonstrate that it is reasonable to expect that a viable plan can be filed; (v) what progress has been made in its negotiations with creditors; (vi) what is the amount of time that has elapsed in the case; (vii) the case’s size and complexity, (viii) whether an extension of the exclusivity period is being sought to pressure creditors into accepting the debtor’s reorganization demands; and (ix) the existence of unresolved contingencies. *See In re Central Jersey Airport Serv., LLC*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997), *citing In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996). The Debtor believes that, based on many of the above listed factors, ample cause exists for granting an extension of the Debtor’s Exclusivity Periods.

18. In the first few months of this case, the Debtor was compelled to focus its efforts on managing the Recall in order to maintain employee and customer relationships and preserve the ongoing value of the company. As a result of this “distraction,” the Debtor currently needs

additional time to negotiate with its creditor constituencies and formalize a plan of reorganization. Such negotiations are actively underway.

19. As stated above, the Recall Motion was intended to both manage the Recall and place the Debtor in a position from which it could successfully confirm a chapter 11 plan of reorganization. The efforts the Debtor placed in constructing and implementing the Recall Motion were clearly good faith efforts towards successful reorganization.

20. The Debtor has remained current with all post-petition obligations since the Petition Date, and further, pursuant to an order entered on May 18, 2009 (Docket No. 153), has begun paying holders of certain administrative expense claims to lessen the burden on the Debtor at confirmation. *See* 11 U.S.C. § 1129(a)(9).

21. As a result of the Recall Motion, the Debtor has successfully lessened its expenses and increased its profitability, thereby leaving the Debtor in a position where it will most likely be able to propose and confirm a viable plan of reorganization within the extensions requested.

22. As stated above, the Debtor has also commenced negotiations with its DIP Lender and the Committee in hopes of reaching a consensual plan and it is hopeful the requested extension will enable the Debtor to propose and confirm such a plan.

23. Approximately five and a half months has passed since the commencement of this case. Although the case is relatively small compared to other chapter 11 cases pending within this district, the case is complex due to the nuances of the Recall and the care required to ensure the Debtor can protect the interests of its creditors while maintaining important employee and customer relationships.

24. The Debtor is not seeking an extension merely to pressure creditors to accept an unfavorable plan and the Debtor has no known unresolved contingencies.

25. The Debtor believes that the requested extensions will afford a reasonable opportunity for confirmation of a plan of reorganization that is supported by the Debtor's DIP Lender. Therefore, the Debtor believes sufficient cause exists for granting the requested extensions.

26. The Debtor also requests that extension of the 120- and 180-day Exclusivity Periods be without prejudice to the Debtor's rights to seek further extensions, reductions or terminations thereof, as the best interests of the estate and its creditors may necessitate.

NOTICE

27. This Motion has been served upon the United States Trustee, counsel to the Committee and those other parties who have appeared and requested service of papers in this chapter 11 case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice or service is necessary.

WHEREFORE, the Debtor requests that the Court enter an Order, substantially in the form of Exhibit A hereto, (i) extending the time within which the Debtor shall have the exclusive right to file a plan of reorganization through and including October 15, 2009; (ii) extending the time within which the Debtor shall have the exclusive right to solicit acceptances of a plan of reorganization through and including December 15, 2009, provided that such extensions shall be without prejudice to the Debtor's rights to seek further extensions, reductions or terminations thereof; and (iii) granting such other and further relief as is just and proper.

Dated: July 30, 2009
Wilmington, DE

Respectfully submitted,

/s/ Bradford J. Sandler

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Debtor and Debtor in Possession

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

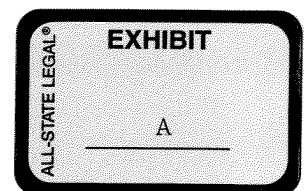
In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	Re: Docket No. _____
)	
)	

**ORDER (i) EXTENDING UNTIL OCTOBER 15, 2009 THE TIME WITHIN WHICH
THE DEBTOR HAS THE EXCLUSIVE RIGHT TO FILE A PLAN OF
REORGANIZATION AND (ii) EXTENDING UNTIL DECEMBER 15, 2009 THE TIME
WITHIN WHICH THE DEBTOR HAS THE EXCLUSIVE RIGHT TO SOLICIT
ACCEPTANCES THEREOF**

This matter came before the Court upon the motion (the “Motion”) of Forward Foods, LLC (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, for an order, pursuant to section 1121(d) of Title 11 (the “Bankruptcy Code”) of the United States Code, extending the 120-day and 180-day periods (together, the “Exclusivity Periods”) within which the Debtor has the exclusive right to file a plan of reorganization and solicit acceptances thereof, through and including October 15, 2009 and December 15, 2009, respectively, without prejudice to the Debtor’s rights to seek further extensions, reductions or terminations of the Exclusivity Periods as the facts and circumstances warrant. (All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.)

Upon review of the Motion, the Court finds that:

- A. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334.
- C. Due and sufficient notice of the Motion has been given to requisite parties in interest.



D. The legal and factual bases set forth in the Motion establish just cause for granting the relief requested.

E. The granting of the Motion is in the best interest of the Debtor, its estate and creditors.

Accordingly, it is therefore ORDERED that:

1. The Motion is granted;
2. The time within which the Debtor shall have the exclusive right to file a plan of reorganization is hereby extended through and including October 15, 2009;
3. The time within which the Debtor shall have the exclusive right to solicit acceptances of a plan of reorganization is hereby extended through and including December 15, 2009; and
4. Such extensions of time are granted without prejudice to the Debtor's rights to seek further extensions, reductions, or terminations of the Exclusivity Periods as the facts and circumstances warrant.

Dated: Wilmington, Delaware
August ____, 2009

HONORABLE KEVIN J. CAREY
Chief United States Bankruptcy Judge

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

In re:)	Chapter 11
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Forward Foods LLC,)	Case No. 09-10545 (KJC)
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Debtor.)	Hearing Date: September 22, 2009 at 3:00 p.m. (ET)
)	Objection Deadline: August 20, 2009 at 4:00 p.m. (ET)
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NOTICE OF HEARING

PLEASE TAKE NOTICE that on July 30, 2009, Forward Foods LLC (the “Debtor”) filed a Motion Pursuant to 11 U.S.C. § 1121(d) for an Order (i) Extending Until October 15, 2009 the Time Within Which the Debtor Has the Exclusive Right to File a Plan of Reorganization and (ii) Extending Until December 15, 2009 the Time Within Which the Debtor Has the Exclusive Right to Solicit Acceptances Thereof (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Clerk of Court at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 and simultaneously served on counsel for the Debtor, William I. Kohn, Esq., Benesch Friedlander Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, Ohio 44114 **so as to be filed and served no later than August 20, 2009;**

PLEASE TAKE FURTHER NOTICE that, if no objection to the Motion is timely filed and served, **the Court may grant the relief requested in the Motion without further notice or hearing thereon;** and

PLEASE TAKE FURTHER NOTICE that a **HEARING** will be held on the Motion before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, in the Judge’s usual courtroom, 824 North Market Street, Wilmington, Delaware 19801 on **September 22, 2009 at 3:00 p.m. eastern time.**

Dated: July 30, 2009
Wilmington, DE

Respectfully submitted,

/s/ Bradford J. Sandler

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