IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FILENE'S BASEMENT, LLC, et al.,	Case No. 11-13511 (KJC) Jointly Administered
Debtors.[1]	**Hearing Date:** **March 7, 2012 at 1:00 p.m. (ET)** **Objection Deadline:** **February 27, 2012 at 4:00 p.m. (ET)**

MOTION OF THE OFFICIAL COMMITTEE OF SYMS CORP. EQUITY SECURITY HOLDERS FOR AN ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE TERMINATING THE PERIODS DURING WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

The Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee") hereby moves (the "Motion"), pursuant to 11 U.S.C. §§ 105(a) and 1121(d), for the entry of an order terminating the period during which the Debtors have the exclusive right to file a plan of reorganization and terminating the period during which the Debtors have the exclusive right to solicit acceptances thereof. In support of this Motion, the Equity Committee respectfully states as follows:

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

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PRELIMINARY STATEMENT

1. The Equity Committee files this motion to ensure that the value of the Syms estate is maximized and that these cases proceed efficiently. On January 11, 2012, the Equity Committee provided the Debtors and the Creditors Committee a term sheet for a plan that reorganizes Syms as a real estate holding company. The plan presented pays all allowed claims against Syms in full in cash as of the effective date, and reserves sufficient capital to pay the claims of any Filene's Basement creditors that are determined to hold valid claims against Syms. It is financed through a combination of debt, an equity rights offering, or a new real estate investment partner. Put simply, the Equity Committee's plan will achieve a quick exit from bankruptcy for Syms, pay allowed claims against Syms in full, and maximize the recovery to Syms's equity holders.

2. The Equity Committee subsequently met with the Debtors, the Official Committee of Unsecured Creditors (the "Creditors Committee"), and Ms. Marcy Syms to discuss the plan term sheet on January 13, 2012. At the meeting, the Debtors refused to comment or engage on any of the holding company concepts. Nor did they mention their own intentions for a plan. The Equity Committee heard nothing from the Debtors about a plan until, at the January 24 hearing, the Debtors announced that they had "already completed substantial drafts of a plan and disclosure statement." Tr. at 88:6-7. This was the first time the Equity Committee learned that the Debtors had been working on a plan. The Debtors further stated that they expected to file a plan negotiated with the Creditors Committee but not the Equity Committee. *See id.* at

87:1-18. In effect, the Debtors announced that they view the Equity Committee as unnecessary to the plan process. *See id.*; *see also id.* at 88:12-15.

3. The purpose of exclusivity is to provide a debtor with a limited period to negotiate a plan of reorganization with its key stakeholders. Based on the Debtors' statements at the January 24, 2012 hearing, the Equity Committee is concerned that the Debtors are not using exclusivity for that purpose. In particular, the Debtors boasted at that hearing that there have been "numerous discussions in this case from the very beginning" about a plan and have substantially drafted a plan and disclosure statement. *See id.* at 87:21-25; 88:6-7. They have taken these steps without involving the Equity Committee, and without considering the alternative holding company plan advocated by the Equity Committee. As the Syms president and chief operating officer, Jeffrey Feinberg testified, in the six to nine months since engaging Cushman and Rothschild, the Debtors have not asked either firm to evaluate reorganizing Syms as a real estate holding company. *See id.* at 70:18-23.

4. To date, all of the Debtors' actions and statements, both prepetition and in the first ninety days of these cases, suggest that they have considered nothing but the liquidation of the Syms real estate. The Debtors have proceeded in this manner notwithstanding their awareness that the Equity Committee will oppose a liquidation plan because it believes that liquidating Syms will destroy substantial equity value. That is why the Equity Committee crafted, and urged the Debtors to consider, the holding company plan. What the Debtors dismiss as the Equity Committee's "so-called plan," *see id.* at 87:20, is in fact an alternative path forward for Syms that would pay Syms creditors in full sooner and promises substantially more value for

shareholders than a liquidation. At the very least, Syms's shareholders should be given the chance to decide for themselves, which approach—liquidation or reorganization—they prefer.

5. This Court can provide shareholders that choice. Pursuant to § 1121(d) of the Bankruptcy Code, this Court "may reduce for cause" the Debtors' exclusivity period. Courts have held that cause to terminate exclusivity exists where a debtor's negotiations with stakeholders have reached an impasse in negotiation of a consensual plan. Here, negotiations have not reached an impasse so much as they have not begun in earnest during the first ninety days of these cases. Exclusivity serves no purpose in these circumstances other than to give the Debtors additional leverage to impose a plan on shareholders that was negotiated without any input from the shareholders' representative. That turns the rationale for exclusivity on its head: Rather than facilitating the Debtors' negotiations with key stakeholders, keeping exclusivity in place will reward the exclusion of the statutory committee that represents the ultimate risk bearers from the formulation of the Debtors' plan.

6. If the Court terminates exclusivity, the Equity Committee can and will propose their holding company plan, which can be considered in tandem with the Debtors' plan. This will give shareholders the opportunity to decide which plan "best comports with [their] respective economic interests." *In re Mother Hubbard, Inc.*, 152 B.R. 189, 195-96 (Bankr. W.D. Wash. 1993). As the Third Circuit has observed in an analogous context, "the ability of a creditor to compare the debtor's proposals against other possibilities is a powerful tool by which to judge the reasonableness of the proposals. A broad exclusivity provision, holding that only a

debtor's plan may be 'on the table,' takes this tool away from creditors [and, here, shareholders]." *Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 102 (3d Cir. 1988).

7. Undoubtedly, the Debtors will contend that their liquidation plan does reflect shareholders' interests because Marcy Syms—Syms's CEO and controlling shareholder—was involved in negotiating that plan. But Ms. Syms—like Debtors' counsel—is conflicted. She owes duties not only to Syms's shareholders but also to Filene's Basement's creditors, whose interests are not aligned with Syms's shareholders. Moreover, as the Debtors' own motion to appoint an examiner underscores, Ms. Syms's personal interest may diverge from those of shareholders on a number of issues. The Equity Committee is the only party in this case charged solely with representing all of Syms's shareholders. It is fundamentally unfair to deprive Syms's shareholders of the opportunity to consider, as an alternative to the Debtors' plan, a plan that is supported by their representative.

8. Certainly, allowing one more option on the table will not prejudice the Debtors. "[T]he loss of plan exclusivity does not mean that the debtor is foreclosed from promulgating a meaningful plan of reorganization, only that the right to propose a chapter 11 plan will not be exclusively with the debtor." *In re Grossinger's Assoc.*, 116 B.R. 35, 36 (Bankr. S.D.N.Y. 1990). The estate, moreover, will incur relatively little incremental expense from a competing plan and any such costs are far outweighed by the much greater expense of continuing exclusivity. The Equity Committee will oppose any plan that fails to maximize value for shareholders. If the Debtors' anticipated liquidation plan fails to be accepted or confirmed, the estates will be right back where they started, and Syms's bankruptcy will be prolonged by

several months. This approach is needlessly expensive and time wasting where modifying exclusivity will permit stakeholders and the Court to decide whether liquidating or reorganizing the real estate assets is in the best interests of equity holders. The Court should therefore terminate exclusivity in favor of the Equity Committee now.

RELEVANT BACKGROUND

9. Syms was once the leading "off-price" retail store in the United States. After losing tens of millions of dollars following its acquisition of Filene's Basement LLC, another off-price retailer, and spending millions more on outside restructuring advisors to explore strategic alternatives, Syms's management concluded that Syms and its subsidiaries should liquidate. Accordingly, on November 2, 2011, Syms and its subsidiaries filed for relief under Chapter 11 of the Bankruptcy Code. From the outset of these cases, the Debtors made clear that they intended to liquidate all the Syms's assets—not just its retail business but also its valuable real estate holdings.

10. The Syms real estate holdings are the reason that Syms is healthily solvent. It is undisputed that Syms's unencumbered real estate is worth more than all claims, including the claims of Filene's creditors. In recognition of Syms's solvency and the resulting equity value, the U.S. Trustee formed the Equity Committee to represent the interests of Syms's shareholders. The Equity Committee immediately went to work on strategies to preserve and maximize value for the Syms shareholders. Although questioning the Debtors' stated plan to liquidate the Syms real estate, the Equity Committee agreed that the Debtors' merchandise and real estate leases should be liquidated. In November and December, with this Court's approval,

the Debtors conducted GOB sales at all their store locations and sold, terminated, or rejected substantially all of their real estate leases. As of December 31, 2011, the Debtors had liquidated all their retail operations.

11. Upon the Debtors' completion of the liquidation of their retail operations, the Equity Committee promptly attempted to reach agreement on the terms of a consensual plan with the Debtors and the Creditors Committee. The Equity Committee believes that value for Syms's shareholders will be maximized over the longer term by a plan that reorganizes Syms as a real estate holding company and the Equity Committee presented the outline of such a plan to the Debtors, who gave the proposal a decidedly cold reception. It is not clear why.

12. At the January 24 hearing to consider the Debtors' applications to retain various professionals, the Debtors disclosed that they "have already completed substantial drafts of a plan and disclosure statement documents for purpose of carrying a plan transaction when it gets agreed to." Tr. at 88:5-8. This was the first time the Equity Committee had learned of a draft plan by the Debtors. The Debtors also stated that there have been "numerous discussions in this case from the very beginning" about plan terms. *Id.* at 87:21-25. This too was news to the Equity Committee. The Debtors never informed the Equity Committee of any such plan negotiations, let alone invited the Equity Committee to participate.

13. Because the Debtors made clear that they anticipated leaving the Equity Committee "out of the mix" of further plan negotiations, *see id.* at 87:6, the Equity Committee concluded that it had no choice but to seek termination of exclusivity so that the Equity

Committee can propose a reorganization plan that preserves the value of the real estate holdings as an alternative to the Debtors' expected plan of liquidation.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

15. The statutory predicates for terminating the Debtors' exclusivity are 11 U.S.C. §§ 105(a) and 1121(d).

RELIEF REQUESTED

16. This Motion seeks limited termination of the Debtors' exclusive period to file a plan and solicit acceptances to permit the Equity Committee to file and solicit a competing chapter 11 plan that pays allowed claims against Syms in full and maximizes value for equity holders.

ARGUMENT

I. Cause Exists to Terminate Exclusivity

17. Section 1121(d) of the Bankruptcy Code provides that the Court "may for cause reduce" the Debtor's exclusive period. 11 U.S.C. § 1121(d)(1). Section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause.'" *In re Geriatrics Nursing Home, Inc*.,

187 B.R. 128, 132 (D.N.J. 1995). Although courts may generally consider several discretionary factors in deciding whether to terminate exclusivity,[2] "the primary consideration in determining whether to terminate a debtor's exclusivity is whether termination will move the case forward." *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 590 (Bankr. S.D.N.Y. 2006). "[T]his is a practical call that can override a mere toting up of the factors." *Id.*

A. Terminating Exclusivity Will Move the Cases Forward By Allowing the Equity Committee to Propose a Competing Plan

18. Terminating exclusivity to allow the Equity Committee to propose a competing reorganization plan will move these cases forward materially. Now that Syms has liquidated its merchandise, sold or rejected its leases, and closed its retail operations, its options for a chapter 11 plan are essentially binary: liquidate its real estate or reorganize around it. Based on their statements at the January 24 hearing, it appears that the Debtors have determined to pursue liquidation following a plan negotiation process that deliberately excludes the Equity Committee—which is the only official representative of the constituency with a financial stake in the choice between liquidation and reorganization.

19. As explained above, the Equity Committee is prepared to offer Syms shareholders an alternative plan. Courts in the Third Circuit have held that cause exists to terminate exclusivity where there is an alternative to the debtor's plan that may offer more value to creditors (or, here, shareholders). *See In re Seitel, Inc.*, Case No. 03-12227 (Bankr. D. Del.

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[2] These factors are discussed below at section B of this Argument.

2003) (relevant transcript excerpt attached as **Exhibit B**) (approving motion to terminate exclusivity in order to provide equity holders with information regarding alternative plan with potentially higher recovery). Although the Debtors may dispute that reorganization provides more value than liquidation, shareholders deserve the chance to judge for themselves which approach they prefer. *See, e.g.*, *In re Mother Hubbard, Inc*., 152 B.R. at 195-96 (noting that allowing creditors to submit ballots for multiple plans allows "each individual creditor to decide which plan best comports with its respective economic interests"); *In re Rook Broad. of Idaho, Inc*., 154 B.R. 970, 976 (Bankr. D. Idaho 1993) ("[I]t is in the interests of creditors that they have a choice between competing plans.").

20. Syms's shareholders should have the opportunity to make this choice concurrently, which is possible only if the Court terminates exclusivity and opens the door for competing plans to be filed. The alternative to this approach—maintaining exclusivity—likely will only prolong the Syms bankruptcy, at a significant cost to shareholders. As this Court has observed, this is a "too much money" case in the sense that Syms's substantial equity value invites litigation. *See* Tr. of Hrg. held Dec. 14, 2011 at 77:17. Costly litigation over valuation and other issues is likely inevitable in the absence of a consensual plan. If there is no consensual plan, the best way to minimize the associated costs of such litigation is to allow shareholders to consider reorganization at the same time that they consider liquidation. That way, if shareholders reject liquidation, Syms will not be back to square one, but instead will emerge from bankruptcy pursuant to a plan of reorganization presented in tandem.

21. Finally, the Equity Committee remains open to further negotiations with the Debtors. Indeed, as several courts have noted, terminating exclusivity may motivate the Debtors "to more earnestly negotiate an acceptable consensual plan." *In re Mother Hubbard, Inc*., 152 B.R. at 195; *see also In re Pub. Serv. Co. of N.H*., 99 B.R. 155, 176 (Bankr. D.N.H. 1989) (noting that terminating debtor's exclusivity created a "level playing field" and fostered the negotiation of a consensual plan of reorganization). Thus, far from sounding the death knell for further negotiations, terminating exclusivity may encourage the parties to agree on a consensual plan.

B. The *Dow Corning* Factors Also Support Terminating Exclusivity

22. The bankruptcy court in the *Dow Corning* case enumerated the following factors that bankruptcy courts may consider when deciding whether to terminate a debtor's exclusivity:

> (1) the size and complexity of the case;
>
> (2) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information to allow a creditor to determine whether to accept such plan;
>
> (3) the existence of good faith progress toward reorganization;
>
> (4) the fact that the debtor is paying its bills 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 negotiations with its creditors;
>
> (7) the amount of time that has elapsed in the case;
>
> (8) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and

(9) whether an unresolved contingency exists.

In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

23. The *Dow Corning* factors, to the extent that they apply, reinforce the analysis above. Factors 1, 2, and 5-7 focus on whether the debtor has had sufficient time to prepare a plan in light of the size and complexity of the case. These cases are not particularly large and, while they raise some issues (*e.g.*, inter-debtor claims), the formulation of a plan is relatively straightforward. For this reason, the first factor weighs in favor of terminating exclusivity. The Debtors' stated expectation that the Equity Committee will be "out of the mix" in plan formulation raises significant doubt that there will be meaningful progress toward a consensual plan that reorganizes Syms as a real estate holding company. For this reason, factors 2, 3, 5, 6, and 9—which all involve permitting the debtor more time to negotiate and formulate aspects of a plan—also weigh in favor of terminating exclusivity. *See In re R.G. Pharmacy, Inc.*, 374 B.R. 484 (Bankr. D. Conn. 2007).

24. Although the Debtors have not yet asked for an extension of exclusivity, allowing the exclusive period to remain in place will have the same practical effect as granting an extension: Syms's shareholders will have no meaningful choice over the future of the company they own. If exclusivity is terminated, shareholders then will have the opportunity to simultaneously weigh liquidation against reorganization and vote for the plan that provides the best outcome in these cases. Accordingly, the eighth factor weighs in favor of terminating exclusivity.

25. The fourth and seventh factors (the amount of time that has elapsed and whether Debtors are paying their bills as they come due) are the only factors that arguably support preserving exclusivity. But even assuming these factors alone could outweigh the remaining factors supporting termination, when evaluated in the context of this case, they offer no support for preserving exclusivity. The Bankruptcy Code clearly contemplates that in some cases; cause will exist to terminate exclusivity relatively early, even before a debtor's initial period has expired. The Equity Committee submits that this is just such a case. Syms is able to exit bankruptcy, and any delay in exit will result in nothing more than added expense. The only question is whether it will do so pursuant to a plan that liquidates or reorganizes its real estate. There may be more than one confirmable plan in these cases and the stakeholders and this Court should be able to consider both options side-by-side. If the Court terminates exclusivity, Syms's shareholders will have the chance to choose between these alternatives. Whatever choice they make, Syms will be able to emerge from bankruptcy quickly. But if the Court leaves exclusivity in place, shareholders will be left with two equally unattractive options: a value-destroying liquidation or remaining in bankruptcy until a value-maximizing reorganization plan is proposed. Shareholders should not be put to that Hobson's choice. The Court should terminate exclusivity.

CONCLUSION

26. For the reasons stated above, the Equity Committee respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) terminating the exclusive period in which the Debtors may file a Chapter 11 Plan and solicit acceptances thereof to allow the Equity Committee to file and solicit acceptances of a plan of

reorganization and (ii) grant the Equity Committee such other and further relief as the Court deems just, fair and proper.

Dated: February 3, 2012
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew B. Harvey

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5225054

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FILENE'S BASEMENT, LLC, et al.,	Case No. 11-13511 (KJC)
Debtors.[1]	Jointly Administered
	Hearing Date: **March 7, 2012, at 1:00 p.m. (ET)** **Objection Deadline:** **February 27, 2012, at 4:00 p.m. (ET)**

NOTICE OF MOTION OF THE OFFICIAL COMMITTEE OF SYMS CORP. EQUITY SECURITY HOLDERS FOR AN ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE TERMINATING THE PERIODS DURING WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

PLEASE TAKE NOTICE that, the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee") filed and served the attached **Motion Of The Official Committee Of Syms Corp. Equity Security Holders For An Order Pursuant To Section 1121(d) Of The Bankruptcy Code Terminating The Periods During Which The Exclusive Right To File A Chapter 11 Plan And Solicit Acceptances Thereof** (the "Motion") in the above-captioned bankruptcy cases.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **February 27, 2012 at 4:00 p.m. (ET)** (the "Objection Deadline"). At the same time, you must serve such objection on the undersigned counsel so as to be received by the Objection Deadline.

A HEARING ON THE MOTION WILL BE HELD ON **MARCH 7, 2012 AT 1:00 P.M. (ET)** BEFORE THE HONORABLE KEVIN J. CAREY, JUDGE AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY OBJECTION WILL BE HEARD AT THE HEARING.

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[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

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

Dated: February 3, 2012
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew B. Harvey

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Counsel to the Official Committee of Syms Corp. Equity Security Holders

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FILENE'S BASEMENT, LLC, et al.,	Case No. 11-13511 (KJC)
	Jointly Administered
Debtors.[1]	**Re: D.I. _____**

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF SYMS CORP. EQUITY SECURITY HOLDERS FOR AN ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE TERMINATING THE PERIODS DURING WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

Upon the motion (the "Motion") of the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee") for entry of an order pursuant to 11 U.S.C. §§ 105(a) and 1121(d) terminating the period during which the Debtors have the exclusive right to file a plan of reorganization and similarly terminating the period during which the Debtors have the exclusive right to solicit acceptances thereof; and sufficient notice of the Motion having been given; and the Court having found that good cause exists to grant the relief requested in the Motion,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Debtors' exclusive periods to file a plan and solicit acceptances thereof are terminated to the limited extent necessary to allow the Equity Committee to file and solicit acceptances of a plan.

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[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094

3. The Court retains exclusive jurisdiction over any matters related to or arising from this Order.

4. This Order is effective immediately.

Dated: _____

_____
THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

5225054

Exhibit B

Seitel Transcript Excerpt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Case No. 03-12227(PJW)
	)	
SEITEL, INC., et al.,	)	
	)	Courtroom No. 2
	)	824 Market Street
Debtors.	)	Wilmington, Delaware 19801
	)	
	)	
	)	November 3, 2003
	)	1:31 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE PETER J. WALSH
UNITED STATES CHIEF BANKRUPTCY JUDGE

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For Erich Riesenberg:	ERICH RIESENBERG, Pro Se

equity that did not put up any new money at all would retain 20 percent of the company.

Our financial advisors believe that 20 percent of the company that is left for old equity is worth anywhere between 24 and $36 million. And they get that value plus they have the upside as anyone would have of holding the stock.

To refresh your recollection on the debtors' plan, Berkshire Ranch's plan, that plan says to old equity, vote for the plan and you get a piece of $10 million. Vote against the plan and you get nothing. Their plan -- their disclosure statement says that, in fact, equity has no value. That's their position, equity has no value. And the $10 million they're giving to old equity is a gift.

Now, Your Honor, that equals 40 cents a share. And, of course, we had great debate last time that old equity, unless there's a new development that I haven't heard as of right now, that old equity is not necessarily getting the $10 million, even if they vote in favor of the plan. Because if you recall, the old equity also shares as a matter of law under 510(b) with the class claimants, who have a class action lawsuit for the purchase and sale of securities.

They also share in that $10 million. The interesting point is that if the debtor says that old equity has no value and the class claimants have value. I don't know if we get -- if old equity gets anything for that matter. But the truth of

prevent anyone from doing anything, that no one would be able to do the due diligence and come up with the type of money and to do a plan that protected equity. And I would say in 99 percent of the cases, they would have been successful.

For some reason, there were people out there who had latched onto this company for whatever reason. One of the reasons probably is because Warren Buffett was there trying to buy it for zero to $10 million. And we were here miraculously with something. I'm, frankly, a little surprised. I know when we were here the last time we were talking to Your Honor about it, but to actually get the commitment letters, to get a plan done, to get all of that done in time, which is why we're here on an emergency basis, was difficult, but we did it. They're surprised. They don't want the equity to know that it's an alternative. They know if equity knows it's an alternative, they're going to lose. If equity doesn't know that it's an alternative, they may vote for the plan because they may as well take their zero to 40 cents as opposed to nothing and then we don't have a chance to beat them at confirmation. If the equity class votes in favor of it, I don't get that chance, and they know that. And that's what they're banking on.

And they've misused the exclusivity period. It's not a long case where the debtor held on to exclusivity, it's the inverse. The debtor used the exclusivity to prevent anyone from negotiating. The debtor and the Board never negotiated

with us.

The -- Berkshire and Ranch never talked to us about a plan. When we told them we had a plan, they never sat down with us to see if it was something better for the other side. They knew it, that was their plan from the beginning, that's what they're saying to Your Honor today, look, Your Honor, let's have a vote and then we'll see what happens. And they're banking on that vote being positive because equity doesn't know.

We have a plan that's confirmable. We have some impaired classes that will vote for the plan. And we think we can proceed. And all we're asking is a dual track. I don't even know the delay is that long. The dual track, let the equity vote, we'll have a valuation hearing at confirmation and it's resolved and it's fair. And ultimately, I would think that's where Your Honor would want to be.

THE COURT: I think it's important for the equity holders to know what the alternative is. And so I'm going to terminate the exclusivity.

However, we're going to stay on the same schedule so that we will have the debtors' plan up for confirmation hearing -- and I suspect that the November 17 hearing is not going to do much if this is going to be contested until the real hearing will spill over to December 3. And we'll determine on December 3 whether the debtors' plan is confirmable. And if it's not,

then obviously the Equity Committee can then tee up its plan.

But I think in the interest of giving to the equity holders a full picture of all that is in the cards here, that they should be able to see what the Equity Committee is offering.

And, quite frankly, the numbers that Mr. Gottlieb has thrown out, it's pretty obvious that the parties are polls apart in terms of the enterprise value here and we'll see at confirmation hearing on the debtors' plan who's right in that regard.

MR. GOTTLIEB: Your Honor, may I ask you -- one technical problem. We can file our plan and disclosure statement right away. The problem we have is that the ballots actually have to be received by November 7th, which is this Friday.

The other motion we filed may be slightly -- may be no help, but it may be slightly helpful. We ask for another week. That would enable some shareholders out there to have at least a chance to have heard about our plan before they send back the ballot. Otherwise, anyone who hears about it tomorrow probably doesn't have a chance to get a ballot and get it back.

So, if we could have an extra week, Your Honor, and if Your Honor could ask that the balloting agent make sure that if people called and asked for ballots, that they could get a ballot, it would be slightly helpful, I think.

CERTIFICATE OF SERVICE

I, Matthew B. Harvey, certify that I am not less than 18 years of age, and that service of the foregoing **Motion Of The Official Committee Of Syms Corp. Equity Security Holders For An Order Pursuant To Section 1121(d) Of The Bankruptcy Code Terminating The Periods During Which The Exclusive Right To File A Chapter 11 Plan And Solicit Acceptances Thereof** was caused to be made on February 3, 2012, in the manner indicated upon the parties identified on the attached service list.

Dated: February 3, 2012

/s/ Matthew B. Harvey
Matthew B. Harvey (No. 5186)

5131596.2

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