IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 11-13511 (KJC)
FILENE'S BASEMENT, LLC, *et al*.,	:	(Jointly Administered)
Debtors.[1]	:	
	:	**Hearing Date: July 9, 2012 at 11:00 a.m. (EDT)**
	:	**Obj. Deadline: July 2, 2012 at 4:00 p.m. (EDT)**

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS 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 Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors"), by its co-counsel, Hahn & Hessen LLP and Richards, Layton & Finger, P.A., hereby moves (the "Motion"), pursuant to sections 105(a) and 1121(d) of title 11 of the United States Code (the "Bankruptcy Code") for an order terminating the periods during which the Debtors have the exclusive right to file a chapter 11 plan and solicit acceptances thereof, and respectfully states as follows:

PRELIMINARY STATEMENT

The above-captioned chapter 11 cases (the "Chapter 11 Cases") were filed on November 2, 2011 and were coordinated so that the Debtors' going-out-of-business sales could take advantage of the holiday shopping period and be completed by the end of December 2011. Since that time, what should have been the sole task of the Debtors is to negotiate a plan that properly

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

1113511120622000000000010

distributes their remaining assets. However, given their bias in favor of the Debtors' majority shareholder and CEO, Marcy Syms, the Debtors have been unable to negotiate the terms of a plan with creditors and have squandered six months and millions of dollars. In the view of the highly experienced members of the Committee and its professionals (as well as the Debtors' own real estate advisor/broker), the Debtors' seventeen (17) parcels of owned real property can be sold for a commercially reasonable price in a time period of not longer than six to eighteen months. Despite this, not a single piece of real property has been sold in more than eight months. Instead, the Debtors and the Equity Committee (as defined herein) have filed a joint plan in which the majority shareholder agrees to sell all of her shares to certain members of the Equity Committee on the effective date of the joint plan, obtains a full release of claims from the Debtors' estates for no consideration, and gives the Equity Committee exclusive control over the Debtors following the confirmation of a plan of reorganization (at which time the Debtors will be referred to as the "Reorganized Debtors"). In the meantime, creditors holding in excess of $110 million in claims are supposed to sit around and wait for up to four years to get paid what they are owed.

The terms of this insider-driven, equity-dominated joint plan are totally unacceptable to the Committee and will be soundly rejected by the creditors it represents. The issue for the Court to decide is whether the Debtors acting as a front for Marcy Syms should be permitted to continue to maintain exclusive control over the plan process in these cases even though Ms. Syms will have no continuing role or stake in the Reorganized Debtors, while the creditors, who have by far the largest economic stake at risk in the Reorganized Debtors, are precluded from putting forth their own plan of reorganization. The Committee respectfully submits that the answer to the question is a resounding: "No". The Debtors have had more than eight months to

try and reach a consensual deal and have failed. It is time to level the playing field and give creditors an opportunity to proceed with their own plan.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for terminating the Debtors' exclusive periods are 11 U.S.C. §§ 105(a) and 1121(d).

BACKGROUND

2. On November 2, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

3. On November 8, 2011, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed five of the Debtors' largest unsecured creditors to the Committee.[2] On the same day, the Committee retained Hahn & Hessen LLP as its counsel and LM+Co as its financial advisors. Richards, Layton & Finger, P.A. was subsequently retained by the Committee to act as its Delaware counsel, and Abacus Advisors Group LLC was subsequently retained by the Committee as its real estate and asset liquidation consultants.

4. On November 15, 2011, the U.S. Trustee formed the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee," and together with the Committee, the "Official Committees").

[2] The current members of the Committee are: (1) PVH Corp., (2) Vornado Realty Trust, (3) Rabina Properties, LLC and (4) Rosenthal & Rosenthal, Inc. Saul Zabar, Stanley Zabar and 2220 Broadway, LLC c/o Lori-Zee Corp. resigned from the Committee, effective as of January 4, 2012.

5. On February 3, 2012, the Equity Committee filed the 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 "EC Motion to Terminate"), pursuant to which it seeks to terminate the Debtors' exclusive periods under section 1121(d) of the Bankruptcy Code. The Equity Committee sought termination of these periods so it can file its own competing chapter 11 plan. As vaguely described in the EC Motion to Terminate, the Equity Committee's plan reorganizes Syms as a real estate holding company which would "pay allowed claims against Syms in full, and maximize the recovery to Syms's equity holders." EC Motion to Terminate ¶ 1.

6. On February 29, 2012, the Debtors filed the Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), Fed. R. Bankr. P. 9006 and 9027, and Del. Bankr. L.R. 9006-2 Extending Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Liquidation or Reorganization (the "Debtors' Motion to Extend"). The Debtors sought to extend the date by which they have the exclusive right to file a chapter 11 plan until and through April 20, 2012, and extend the date by which they have the exclusive right to solicit acceptances thereof until and through June 11, 2012. The Debtors filed their Amended Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), Fed. R. Bankr. P. 9006 and Del. Bankr. L.R. 9006-2 Extending Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Liquidation or Reorganization (the "Debtors' Amended Motion to Extend") on April 4, 2012. The Debtors sought to extend the date by which they have the exclusive right to file a plan until and through May 15, 2012, and extend the date by which they have the exclusive right to solicit acceptances thereof until and through July 31, 2012. On May

9, 2012, the Debtors filed their Second Amended Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), Fed. R. Bankr. P. 9006 and Del. Bankr. L.R. 9006-2 Extending Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Liquidation or Reorganization (the "Debtors' Second Amended Motion to Extend"). The Debtors sought to extend the date by which they have the exclusive right to file a plan until and through June 15, 2012, and extend the date by which they have the exclusive right to solicit acceptances thereof until and through August 31, 2012.

7. On May 24, 2011, the Debtors and Equity Committee jointly filed their Joint Chapter 11 Plan of Reorganization of Syms Corp. and Its Subsidiaries (the "Joint Plan") and related Disclosure Statement.

8. At a telephonic hearing held on June 11, 2012, counsel to the Debtors orally moved (the "Oral Motion") to extend the exclusive period during which the Debtors may file a plan of liquidation or reorganization through and including July 9, 2012. The Court granted the Oral Motion that same day.

9. On June 11, 2012, the Court ordered the parties to mediation before Bankruptcy Judge Peck in an attempt to resolve various disputes among the Debtors and the Official Committees concerning the global resolution of these chapter 11 proceedings.

RELIEF REQUESTED

10. By this Motion, the Committee respectfully requests that this Court enter an order terminating immediately the period during which the Debtors have the exclusive right to file a chapter 11 plan and terminating immediately the period during which the Debtors have the exclusive right to solicit acceptances thereof.

ARGUMENT

11. In the half a year that has passed since the conclusion of the Debtors' going-out-of-business sales, the Committee has consistently engaged in extensive dialogue with the Debtors and the Equity Committee in an attempt to work toward a global resolution of the parties' issues, which it had hoped would culminate in the filing of a consensual joint plan. After four motions to extend their exclusivity, the Debtors have failed to negotiate and file a consensual plan of reorganization. From day one, the Committee has been unwavering in its view that any resolution must provide for recoveries to creditors in a commercially reasonable amount of time and in a manner which is not dominated by the interests of equity holders. However, at every step, the Debtors have frustrated and thwarted the negotiations by injecting the bias of the majority shareholder, Marcy Syms, into their proposals, as is reflected in the Joint Plan the Debtors filed with the Equity Committee. As such, the parties' positions differ markedly with respect to a number of material issues, as a result of the Debtors insistence upon a plan that:

- is predicated upon a "Share Purchase Transaction," the details of which have not been disclosed to the Court, but which will allow Marcy Syms to sell all of her common stock through a rights offering backstopped by certain members of the Equity Committee. Ms. Syms will play no role nor have any investment in the Reorganized Debtors.

- fully releases Marcy Syms, for no consideration, of the substantial estate claims against her relating to, among other things, recoveries from certain family split-dollar insurance policies paid for by the Debtors;

- gives the Equity Committee control over the Reorganized Debtors with no restrictions or limitations on operations, budgets or even incurring additional debt, other than the obligation to pay off creditors within four (4) years;

- unreasonably delays distributions to creditors for up to four (4) years with no interest in an attempt to create upside for equity holders;

- freezes Filene's creditors out of recoveries, if any, on non-real estate property of the Debtors' estates;

- extinguishes Filene's claims against Syms that could result in tens of millions of dollars relating to, among other claims, royalties owed for the licensing of certain trademarks.[3]

12. Given the Debtors' continued unwillingness to shed their bias toward their majority equity holder, further negotiations between the parties at this point are simply an exercise in futility.

13. The Debtors have exhausted whatever solvency exists in these estates to the detriment of the creditor body. These cases must not be held hostage any longer, and these estates must not continue to languish in chapter 11 unnecessarily. The Court should grant the Motion and immediately terminate the Debtors' exclusivity so that the Committee may now proceed to file its own plan (the "Committee Plan"), which it is confident will have the overwhelming support of all creditors and lead to an expedient resolution of these Chapter 11 Cases.

14. To be clear, the Joint Plan is not a consensual plan, and is not supported by the Committee. Rather, the Joint Plan is premised on a back-door deal the Debtors negotiated with the Equity Committee, underscoring the Debtors' bad faith in plan negotiations. The Committee will simply never agree to a plan that impermissibly favors Marcy Syms and equity holders to the detriment of creditors. The Debtors unwavering insistence on protecting Marcy Syms' interests instead of focusing on the interests of all stakeholders has needlessly cost their estates substantial amounts of money in administrative expenses and delay.

15. For the foregoing reasons, the Committee seeks to file promptly the Committee Plan. The Committee Plan, which is premised on a non-distressed sale of the Debtors' owned

[3] For the avoidance of doubt, the Committee will only pursue recoveries on account of Filene's claims against Syms to the extent that both Filene's and Syms' creditors will be paid in full.

real estate and the orderly distribution of the proceeds thereof, is intended to provide for the maximization of recoveries to all stakeholders in a reasonable period of time. It provides two alternative paths for reorganization: (1) Plan Alternative A is premised on the substantive consolidation of the Debtors' estates, and (2) Plan Alternative B contemplates that, in the event the Debtors' estates are not fully substantively consolidated for whatever reason, the characterization and amount of the intercompany claims, including chapter 5 claims, between the estates of Syms and Filene's shall first be determined by the Court, and then Syms and Filene's will be reorganized as separate debtors with their respective intercompany claims being treated as determined by the Court. Based on its analysis, the Committee believes that under either alternative treatment in the Committee's Plan, all unsecured creditors will be paid in full, plus interest. Such a process will not only maximize value and recoveries for all stakeholders, but also provides the Debtors with an expeditious emergence from chapter 11, thereby saving the Debtors' estates significant costs from reduced professional and litigation-related fees.

16. Chapter 11 is designed to create a fair and equitable process for the benefit of the estates and all of its creditors. Here, only the Committee Plan accomplishes this goal. The Committee respectfully requests that the Court immediately terminate the Debtors' exclusive periods and permit both plans to move forward concurrently toward confirmation. The Court and creditors should be permitted to evaluate these competing plans in tandem to make an informed decision. After the votes are in, the Court can decide which plan to confirm based upon creditor preferences, the standards under section 1129 of the Bankruptcy Code and which plan offers the greatest value to all stakeholders in these cases.

CAUSE EXISTS TO TERMINATE EXCLUSIVITY

17. Section 1121 of the Bankruptcy Code governs who may file a chapter 11 plan. 11 U.S.C. § 1121 (2006). Pursuant to section 1121(b), a debtor is given the exclusive right to file a

plan until the expiration of 120 days following the date of the order for relief (the "Exclusive Filing Period"), unless the Exclusive Filing Period is reduced or extended by order of the court. 11 U.S.C. § 1121(b). Section 1121(c)(3) of the Bankruptcy Code provides that a debtor is given the exclusive right to solicit acceptances of its plan for 180 days following the date of the order for relief (the "Solicitation Period," and together with the Exclusive Filing Period, the "Exclusive Periods"), unless the Solicitation Period is reduced or extended by order of the court. 11 U.S.C. § 1121(c)(3). In these cases, the initial Exclusive Filing Period expired on March 1, 2012, and the initial Solicitation Period expired on April 30, 2012.

18. Section 1121(d) provides that the Court may reduce or increase the Debtors' exclusivity periods "for cause." 11 U.S.C. § 1121(d); *see also First Am. Bank of New York v. Southwest Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986) (section 1121(d) allows the bankruptcy court flexibility to reduce or extend the exclusivity period). The decision to alter the exclusivity periods falls within the Court's discretion. *See, e.g.*, *In re Adelphia Commcn's Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006); *see also In re Lehigh Valley Prof'l Sports Club, Inc.*, Case No. 00-11296DWS, 2000 Bankr. LEXIS 237, at *10 (Bankr. E.D. Pa. Mar. 14, 2000) (relief under section 1121(d) is committed to the sound discretion of the bankruptcy judge). Section 1121(d) "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.'" *Geriatrics Nursing Home, Inc. v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home, Inc.)*, 187 B.R. 128, 132 (D. N.J. 1995). Courts have held that "cause" is determined by the facts and circumstances of each individual case. *See, e.g.*, *In re Adelphia Commcn's Corp.*, 352 B.R. at 586 (determination to terminate for cause is "fact-specific").

19. The Bankruptcy Code neglects to define "cause," but courts typically consider nine enumerated factors when determining whether "cause" exists to reduce or increase the Debtors' exclusivity periods:

(i) the size and complexity of the case;

(ii) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;

(iii) the existence of good faith progress toward reorganization;

(iv) the fact that the debtor is paying its bills as they become due;

(v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

(vi) whether the debtor has made progress in negotiations with its creditors;

(vii) the amount of time which has elapsed in the case;

(viii) whether the debtor is seeking an extension of exclusivity to pressure creditors to submit to the debtor's reorganization demands; and

(ix) whether an unresolved contingency exists.

In re Adelphia Commcn's Corp., 352 B.R. at 587; *see also In re Dow Corning Corp.*, 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997) (adopting the nine factors which courts consider when determining whether to reduce the period of exclusivity). However, when a court is deciding whether to terminate a debtor's exclusivity, the court should not mechanically tote up the factors. Instead, the court's primary consideration should be "whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case." *In re Adelphia Commcn's Corp.*, 352 B.R. at 590; *see also In re Borders Grp., Inc.*, Case No. 11-10614, 2011 Bankr. LEXIS 2150, at *21–23 (Bankr. S.D.N.Y. June 2, 2011) (noting that practical considerations, in addition to the nine enumerated factors, can affect a court's decision to terminate or extend exclusivity).

20. An analysis of these nine factors conclusively indicates that cause exists to terminate exclusivity in these cases.

- Size and Complexity. The Debtors' retail businesses have been liquidated and wound down. Accordingly, the Debtors' estates are liquidating estates whose sole purpose is to distribute proceeds from the sale of any remaining assets in an expeditious manner which maximizes their value.

- Need for Additional Time. The parties have now been in plan negotiations for over six months, and yet despite the numerous meetings and discussions held in an effort to reach a resolution, a number of material issues remain which have prevented full consensus. No amount of additional time will allow these Debtors, who insist on creating value for Marcy Syms and other equity holders at the expense of creditors, to reach a deal with the Committee.

- Existence of Good Faith Progress. As the Joint Plan demonstrates, it is impossible to say that the Debtors have negotiated in good faith. Consensus would have been reached long ago if the Debtors did not insist on putting the interests of Marcy Syms ahead of the interests of creditors. After months of negotiations, nothing has changed. At this point, the parties are at an impasse with little hope of reconciling their fundamentally differing views of these cases.

- Debtors are Paying Their Bills. The bills in these cases are primarily administrative obligations due to estate professionals. Every day of wasted negotiations continues to cost the Debtors' estates a substantial amount of money that inures to the detriment of all stakeholders and hinders recoveries to all creditors.

- Prospects for a Viable Plan. As the Debtors acknowledge in their Second Amended Motion to Extend, they need creditor support to confirm any proposed plan. Second Amended Motion to Extend ¶ 40. Unfortunately, as the Joint Plan underscores, the Debtors have consistently and impermissibly favored Marcy Syms and equity holders over creditors; they have shown no inclination to waiver from such a position. The Committee will never be in a position to agree to such a plan, and accordingly the only recourse is to terminate exclusivity so that the Committee can file the Committee Plan, which will have the overwhelming support of creditors and will allow the Debtors to emerge expeditiously and cost-effectively from bankruptcy.

- Progress with Creditors. Given the Debtors' pervasive bias towards equity holders, as explicitly demonstrated by the Joint Plan, no progress is possible so long as exclusivity remains in place. The numerous meetings and negotiations conducted thus far have failed to produce a consensus. There is no indication that further negotiations will change the parties' respective postures.

- Short Time Elapsed in Case. The going-out-of-business sales were completed over six months ago. The parties have spent almost half a year negotiating and remain at an impasse with respect to a number of material issues. Given the simplistic nature of the dispute between the parties—the distribution of proceeds from the sale of remaining assets and control with respect thereto—there is no need for the Debtors to languish in chapter 11 any longer.

- Extension Not Being Sought to Pressure Stakeholders. Allowing the Debtors to retain exclusivity will only serve to give the Debtors further control over the timing of the plan process. It is in the interest of all stakeholders to quickly resolve these cases to preserve the value of the remaining assets for distribution. Accordingly, exclusivity should be immediately terminated to prevent the Debtors from leveraging a longer exclusivity period to pressure creditors to consent to a plan that provides impermissible advantages to Marcy Syms and equity holders, in contravention of the Bankruptcy Code.

- Existence of Unresolved Contingency. The parties are well aware of potential claims and causes of action. Exclusivity should be terminated so that the Committee can file its plan and all viable claims and causes of action against insiders such as Marcy Syms will be fully preserved and pursued.

21. The Committee's negotiations over the last few months leave it little hope that its current impasse with the Debtors and the Equity Committee regarding the corporate governance of the post-confirmation Debtors and the timing of distributions will be broken in the near future. The current obstacles seem insurmountable and make the success of further negotiations unlikely. This current impasse in negotiations impacts the "cause" analysis under *Adelphia*. *See, e.g.*, *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) (noting that the "breakdown of negotiations between the debtor and the objecting creditors affects a number of the factors"). Allowing the debtor to continue to enjoy the benefits of exclusivity must rest upon

"some promise of probable success" by the debtor in confirming a chapter 11 plan, and such exclusivity "should not be employed as a tactical device to put pressure on parties to yield to a plan they consider unsatisfactory." *In re Geriatrics Nursing Home, Inc.*, 187 B.R. at 132 (quoting *In re Texaco, Inc.*, 81 B.R. 806, 812 (Bankr. S.D.N.Y. 1988)). As evidenced by the filing of the Joint Plan, the continued inability of the Debtors to reach consensus leaves little hope that a deal will ever be reached. Thus, the *Adelphia* factors overwhelmingly support terminating the Debtors' exclusivity, and the Committee should be granted a concomitant right to file a plan and solicit acceptances thereof.

THE DEBTORS' JOINT PLAN DOES NOT PROVIDE THE GREATEST RETURN TO CREDITORS

22. The Committee respectfully submits that the Joint Plan does not represent the highest and best alternative for all parties in interest. In contrast, the Committee Plan is highly feasible and will garner the overwhelming support of all creditors. It is premised on maximizing the full value of all the Debtors' assets and will provide for recoveries to unsecured creditors and other stakeholders in a commercially reasonable amount of time and in a manner not dominated solely by the interests of equity holders.

23. A debtor's fiduciary duty is to maximize the value of the estates for distribution to all parties in interest. *See Toibb v. Radloff*, 501 U.S. 157, 163 (1991) (recognizing that "Chapter 11 embodies the general [Bankruptcy] Code policy of maximizing the value of the bankruptcy estate"); *In re Northwest Airlines Corp.*, 349 B.R. 338, 369 (S.D.N.Y. 2006), *aff'd* 483 F.3d 160 (2d Cir. 2007) (noting that a debtor is a fiduciary obligated to maximize the value of the estate and treat all parties in the case fairly); *Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (finding the debtor owes a fiduciary duty to unsecured creditors and other parties in interest and

should ensure that estate resources are used to benefit them). Further, "[t]he Bankruptcy Code 'recognizes the legitimate interests of creditors, whose money is in the enterprise as much as the debtor's, to have a say in the future of the company.'" *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 160 (Bankr. D. Me. 1982).

24. The Debtors, therefore, have an obligation to pursue a plan which maximizes value and considers the best interests of all constituencies. The Committee Plan does exactly that. Conversely, the Joint Plan seeks to maximize value for equity holders, including the largest equity holder, Marcy Syms, at the expense of all creditors—both Syms creditors and Filene's creditors. It releases Marcy Syms from any liability with respect to substantial, bona fide claims and seeks to eviscerate substantial claims of Filene's creditors while directing that value to equity holders. The Debtors' misguided and unconfirmable plan will drag out the liquidation of the Debtors' real estate assets, with no targets or timetable in place to ensure a reasonably prompt recovery to all creditors.

25. Indeed, the Debtors' track record during the first eight months of these cases demonstrates the folly in the Joint Plan. As of the date of this pleading, none of the Debtors' real owned properties have been sold, notwithstanding the fact that unsolicited offers in excess of $100 million (gross values) have been received for a majority of the properties.[4] The carrying costs for the Debtors' properties approximate $556,000 per month, yet no real efforts have been made to mitigate this expense.[5] The Joint Plan simply proposes to perpetuate this long-term hold strategy in the misguided hope that it will ultimately benefit Marcy Syms and the other equity holders years from now. The Debtors and Equity Committee are unconcerned with satisfying

[4] This is despite the Committee's insistence that the Debtors should begin the marketing process from day one.

[5] In fact, the Debtors recently filed a motion to approve a settlement with respect to the landlord for the ground lease for its Fairfield, Connecticut property which, if approved, would significantly increase the Debtors' monthly carrying costs.

creditors' claims within any reasonable timeframe; they care solely about improving value for the benefit of equity holders. While the Debtors may be content to let all of the estates' chips ride on the craps table for another roll of the dice, the Committee is not; it is the creditors' money that they are gambling with and creditors bear all of the downside risk in these cases.

26. Unlike the Joint Plan, the Committee Plan will provide for a recovery to unsecured creditors in a timely manner and, if projections are correct, may still provide a recovery for equity holders. Thus, the Debtors' Exclusive Periods should be immediately terminated to allow creditors to choose between these competing plans.

COMPETING PLANS SHOULD BE PERMITTED WHEN ONE PROPOSED PLAN MAY OFFER MORE VALUE TO CREDITORS

27. Third Circuit case law holds that termination of a debtor's exclusivity is also justified in a situation, such as here, where there exists a viable alternative plan to the debtor's that could provide a greater recovery to creditors. In such situations, courts frequently find that exclusivity should be terminated to permit a fair process where the preferences of creditors are paramount. *See, e.g.*, *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 130 (Bankr. D. N.J. 2010) (court granted motion of certain holders of secured notes to terminate exclusive periods and file a plan of reorganization and solicit acceptances thereof); *In re Pliant Corp.*, Case No. 09-10443 (MFW) (Bankr. D. Del. July 2, 2009) (Order Pursuant to 11 U.S.C. §§ 105(a) and 1121(d) Terminating the Debtors' Exclusive Periods) (granting the creditors' committee's motion to terminate exclusivity where its plan proposal provided for a vastly better treatment of the debtors' stakeholders); *see also In re Fremont Gen. Corp.*, Case No. 08-13421 (ES) (Order Granting Motion of Official Committee of Unsecured Creditors for Order Terminating the Exclusive Periods in Which Only the Debtor May File a Plan and Solicit Acceptances Thereto) (Bankr. C.D. Cal. July 16, 2009) (terminating exclusivity period where debtor's stand-alone plan was

filed on exclusivity expiration date and provided for retention of interests of equity holders without providing full recovery to unsecured creditors).

28. The Joint Plan unreasonably delays distributions to creditors in an attempt to create upside for equity holders and allows equity to control the Reorganized Debtors. In stark contrast, the Committee Plan seeks to maximize value for creditors by providing for a commercially reasonable period of time in which the Debtors' remaining assets can be sold and distributions to creditors and other stakeholders can be made. As with the courts in *Pliant* and *Fremont*, the Court here should terminate the Debtors' Exclusive Periods and allow the Committee to file a plan that provides an appropriate and expedient recovery to all creditors.

FAIRNESS TO CREDITORS AND THE LACK OF PREJUDICE TO THE DEBTORS STRONGLY SUPPORTS TERMINATION OF EXCLUSIVITY

29. Even setting aside the legal infirmities of the Debtors' Joint Plan, fairness to creditors supports terminating exclusivity immediately. As the Court of Appeals for the Third Circuit has noted, "[t]he 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 the debtor's plan may be 'on the table,' takes this tool from creditors." *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 102 (3d Cir. 1988).

30. Allowing creditors to submit ballots for multiple plans "encourages a chapter 11 policy of 'creditor democracy'" and allows "each individual creditor to decide which plan best comports with its respective economic interests." *In re Mother Hubbard, Inc.*, 152 B.R. 189, 195–96 (Bankr. W.D. Mich. 1993). If anything, the existence of competing plans commonly results in a higher and more expeditious recovery for the parties. *See, e.g., Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999) (explaining that

allowing competing plans is one method of ensuring that property is exposed to the marketplace and tends to increase creditor dividends); *In re Sound Radio, Inc.*, 93 B.R. 849, 856–59 (Bankr. D. N.J. 1988) (after court modified exclusivity to authorize filing of three competing plans, plan ultimately confirmed paid more per share to equity, paid creditors in full and allowed debtor to go forward as reorganized company). Permitting the Committee Plan to be solicited on equal footing and at marginal incremental expense to the estates affords creditors the opportunity to vote for a superior, feasible alternative and fosters progress in these cases.

31. Additionally, the Debtors will not be prejudiced by the termination of the Exclusive Periods. The termination of the Exclusive Periods in no way "foreclose[s] [the debtor] from promulgating a meaningful plan of reorganization" but merely grants others the right to file a chapter 11 plan alongside the Debtors. *In re Grossinger's Assocs.*, 116 B.R. 34, 36 (Bankr. S.D.N.Y. 1990); *see also In re Southwest Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 454 (Bankr. W.D. Tex. 1987) ("By denying the extension, the Court does not prejudice the debtors' co-existent right, nor dilute the debtors' duty to a file a plan."). The two plans could be solicited simultaneously, at minimal expense, together with court-approved disclosure statements to provide creditors with the opportunity to make an informed decision as to which plan they prefer. In contrast, allowing the Debtors to exploit exclusivity to favor Syms equity holders to the detriment of creditors will lead to a highly contested confirmation process and severely prejudice parties in interest. Failure to confirm the Joint Plan would then require the parties to start the entire plan confirmation process all over again, significantly prolonging these cases and wasting valuable estate assets and resources. If anything, termination of the Exclusive Periods will move these cases toward a fair and equitable resolution for all parties in interest—something the Debtors have failed to achieve thus far.

32. Nor would the submission of competing plans result in significant incremental expense to the estates. Appropriate procedures may be implemented such that the vote-solicitation process is carried out at a minimal cost, for example by sharing mailings and the creation of shared ballots. The end goal is for the plans to move forward on parallel tracks and ultimately be presented for consideration by parties in interest on an equal basis. The Committee believes this would be the most cost effective way to proceed.

33. Accordingly, for the reasons stated herein, the Committee respectfully requests this Court enter an order immediately terminating the Debtors' Exclusive Periods to allow the Committee to propose and solicit votes on the Committee Plan.

NOTICE

34. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) the Debtors; (ii) counsel to the Debtors; (iii) counsel to the Equity Committee; and (iv) all parties who have filed requests for service of papers pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

35. No prior request for the relief requested herein has been made to this Court or any other court.

CONCLUSION

36. This Court should not permit the Debtors to exploit exclusivity and the bankruptcy process to favor equity holders to the detriment of the interests of creditors. Permitting the Committee to file a competing plan, which will have the overwhelming support of creditors, will benefit all stakeholders in these cases and provide for an expeditious and cost-effective wind-down of the Debtors' estates. Further, as described above, no prejudice would befall the Debtors should the Court consent to a dual-track process by which two competing

plans are presented for approval. What matters is that the plans are submitted to voting parties for consideration on an equal footing. By terminating the Exclusive Periods now, the Court ensures that voting parties are able to make a meaningful and informed decision while materially moving these cases forward and potentially saving the Debtors' estates millions of dollars in litigation-related fees, professional fees and other expenses.

WHEREFORE, the Committee respectfully requests that this Court enter an order terminating the Debtors' Exclusive Periods to permit the Committee to file a competing plan and disclosure statement and granting such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 22, 2012

Respectfully submitted,

/s/ Marisa A. Terranova
Michael J. Merchant, Esq. (No. 3854)
Paul N. Heath, Esq. (No. 3704)
Marisa Terranova, Esq. (No. 5396)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

- and -

Mark S. Indelicato, Esq.
Mark T. Power, Esq.
Janine M. Cerbone, Esq.
HAHN & HESSEN LLP
488 Madison Avenue
15th Floor
New York, New York 10022
Telephone: (212) 478-7200
Facsimile: (212) 478-7400

Co-Counsel to The Official Committee of Unsecured Creditors of Filene's Basement, LLC, et al.

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: July 9, 2012 at 11:00 a.m. (EDT)**
	:	**Objection Deadline: July 2, 2012 at 4:00 p.m. (EDT)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on June 22, 2012, the Official Committee of Unsecured Creditors (the "Committee") of Filene's Basement, LLC, *et al.*, filed its **Motion of the Official Committee of Unsecured Creditors 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 "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned attorneys for the Official Committee of Unsecured Creditors on or before **July 2, 2012 at 4:00 p.m. (EDT).**

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received, and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the Bankruptcy

[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.

Court, 824 North Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **July 9, 2012 at 11:00 a.m. (EDT).**

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 22, 2012
Wilmington, Delaware

Michael J. Merchant, Esq. (No. 3854)
Paul N. Heath, Esq. (No. 3704)
Marisa Terranova, Esq. (No. 5396)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

- and -

Mark S. Indelicato, Esq.
Mark T. Power, Esq.
Janine M. Cerbone, Esq.
HAHN & HESSEN LLP
488 Madison Avenue
15th Floor
New York, New York 10022
Telephone: (212) 478-7200
Facsimile: (212) 478-7400

Co-Counsel to The Official Committee of Unsecured Creditors of Filene's Basement, LLC, et al.