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Effect of BAPCPA Amendments

Only a debtor may file within the initial 120 day period after the petition date (or within an extended period).
If it meets that deadline, the Debtor has an additional 60 ays to obtain acceptance from each impaired class

Someone other than the Debtor may file a competing plan iif the Debtor has not filed a plan within 120 days or the Debtor has not filed a plan that has been accepted by each impaired class before 180 days after the filing date.

S 1121(d)(2) limits extensions for cause to a maximum plan filing exclusivity of 18 months and solution exclusivity to 20 months

Reducing the Exclusivity Period

On request of any party in interest, notwithstanding S. 1121(b), the court may "for cause" reduce the Debtors' Exclusive Periods per Section 1121(d)(1).

> Geriatrics Nursing Home v. First Fidelity Bank N.A. (In re Geriatrics Nursing Home), 187 B.R. 128, 132 (D. NJ 1995)
> "[Section 1121] grants great latitute to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause'."

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List of Factors

Courts generally rely on a non-exclusive list of factors, including:

The size and complexity of the case
The necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information
The existence of good faith progress toward reorganization
Whether the debtor is paying its bills as they become due
Whether the debtor has demonstrated reasonable prospects for filing a viable plan
Whether the debtor has made progress in negotiations with its creditors
The amount of time which has elapsed in the case
Whether the debtor is using exclusivity in order to pressure creditors to submit to the debtor's reorganization demands
Whether an unresolved contingency exists

See In re Dow Corning Corp., 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997)
See In re McLean Indus., Inc., 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987)
See In re Crescent Beach Inn, Inc., 22 B.R. 155, 160-161 (Bankr. D. Maine 1982)
Shortening of the debtor's exclusive period in order to permit parties with a more objective view to file a POR where principal parties had acrimonious relations
See In re: Teachers Ins. & Annuity Association of Am. V. Lake in the Woods (in re Lake in the Woods), 10 B.R. 338, 34t (E.D. Mich. 1981)
Denying debotr's request to etend exclusivity where the debtor refused to file a plnan until a creditor would concede a key issue

Will Termination of Debtor Exclusivity move the case forward?

From In re Adelphia Communications Corp., 352 B.R. 578, 590 (Bankr. S.D.N.Y. 1006):

"… the primary consideration in determining whether to terminate the debtor's exclusivity is whether its termination will move the case forward, and that this 'is a practical call that can override a mere toting up of the factors.'"
Quoting Dow Corning, 208 B.R. at 670

"… the test iis better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that otherwise wouldn't be the case. Certainly practical considerations, or other considerations in the interest of justice, could override, in certain cases, the result after analysis of the nine factors."

The Debtors act as debtors-in-possession for each estates, in a multi-estate case

Where not all of the Debtors' assets are subject to the claims and liens of the Debtors' various creditor constituencies, the

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proper administration of these Chapter 11 cases requires the Debtors to do more than just determine the enterprise value of all Debtors on a consolidated basis:

> See In re Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343, 355 (1985):
>
> > "Debtors' directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession.
>
> See Cf. Union Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F. 2nd 515, 520 (2d Cir. 1988):
>
> > "Where … creditors … knowingly made loans to separate entities and no irremediable commingling of assets has occurred, a creditor cannot be made to sacrifice the priority of its claims against its debtor by fiat based on the bankruptcy court's speculation that it knows the creditors' interests better than does the creditor itself."

Each Debtor and its board has independent fiduciary duties owing to its own estate and its own creditors
See Section 1106 and 1107 of the Bankruptcy Code (Cf. Weintraub, 471 U.S. at 355)

See also the Third Circuit In re Owens Corning, 419 F. 3d 195, 211 (3d Cir. 2005):

> "Limiting the cross-creep of liability by respecting entity separateness is a "fundamental ground rule." As a result, the general expectation of state law and of the Bankruptcy Code, and thus of commercial markets, is that courts respect entity separateness absent compelling circumstances calling equity (and even then only possibly substantive consolidation) into play."

See also In re Adelphia Communications Corp., 336 B.R. 610, 671 (Bankr. S.D.N.Y. 2006)

> Directs the debtors to recuse themselves from certain inter-debtor disputes to give creditors comfort that the debtors would maintain their neutrality and not act to the detriment of particular estates