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U.S. DISTRICT &  
BANKRUPTCY COURTS

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case NO. 96-02095

THE TRAVELERS INSURANCE  
COMPANY'S OBJECTION TO  
DEBTORS' MOTION TO EXTEND  
TIME TO FILE PLAN

The Travelers Insurance Company ("Travelers"), by and through its attorneys, Givens Pursley & Huntley, LLP, respectfully submits this Objection to the Motion to Extend Time to File Plan (the "Motion") filed on November 4, 1996, by the Debtor, Terry Hipwell ("Debtor"). Debtor scheduled the Motion for hearing on November 26, 1996. Debtor's plan is due on November 21, 1996. Debtor asks the Court to grant him an additional 90 days to file his plan.

Travelers respectfully submits that the Debtor has not established that he is entitled to an extension under Section 1221 of the Bankruptcy Code and that, even he has, a 90 day extension is unreasonable.

Section 1221 of the Code requires a Debtor to file its Chapter 12 plan within 90 days of filing of the petition (here by November 21, 1996), unless the Court finds that an extension is necessary "due to circumstances for which the debtor should not justly be held accountable."

There is very little case law on Section 1221 as it is presently written. However, commentators point out that Congress amended Section 1221 in 1993 to tighten the standard for debtors in regard to extensions of time. 5 L. King, COLLIER ON BANKRUPTCY ¶ 1221.01 (15th ed. 1994). Section 1221, which is designed to protect creditors from languishing Chapter 12 cases, places a stringent burden on Debtors:

[I]t is appropriate that the debtor should be required to meet a stringent burden if the debtor seeks an extension of the 90 day period. The court should allow an extension only if the debtor clearly demonstrates that the debtor's inability to file a plan is due to circumstances that are beyond the debtor's control.

*Id.*

Thus, the Debtor must clearly show that his inability to file a plan here is due to circumstances beyond his control. The Debtor contends that three circumstances meet this burden:

- 1) The claims bar date for non-governmental entities does not expire until December 26, 1996, and so the Debtor cannot determine the total payments within the plan;
- 2) The Debtor's objections to certain proof of claims cannot be heard until December 11, 1996; and
- 3) The Debtor cannot presently project his income and expenses.

These reasons do not justify an extension of time for the filing of Debtor's plan.

First, allowing Debtor an extension of time because the claims bar date for non-governmental entities has not passed essentially nullifies Section 1221. Rule 3002(c) provides

the time frames for filing a proof of claim in a Chapter 12 proceeding. F.R.B.P. 3002(c). That rule (with certain exceptions) allows non-governmental creditors 90 days after the first meeting to file their claim. Governmental entities are allowed a longer period of time. Section 1221 requires the plan to be filed within 90 days of the petition date. If one adopts the Debtor's reasoning, every Chapter 12 debtor would be entitled to a delay in filing the plan, and Section 1221 would be gutted.

Moreover, the Debtor's request for a ninety day extension would delay plan filing until February 20, 1997, six months until after filing of his petition. The length of the proposed delay is unreasonable and should not be allowed.

Frankly, the Debtor should know or be able to estimate the amount of debt owed by him for purposes of proposing a plan. The Debtor has previously filed schedules which reflect the amounts owed by the Debtor which can be used to formulate a plan. The fact that the claims bar date has not passed does not present an insurmountable obstacle to plan formulation.

Second, Debtor argues that his objection to certain claims cannot be heard until December 11, 1996. Here, Debtor objected to three claims, and filed his objections on or about November 1, 1996. He objected to the proof of claim of Burgess Pump, which was filed on September 5, 1996; Travelers' proof of claim, which was filed on October 2, 1996;<sup>1</sup> and the claim of Amalgamated Sugar Company (TASCO) which was filed on September 24, 1996. Each of these claims was filed well in advance of Debtors' objection — the latest of them being filed a month before the objection was raised. Debtors' delay in filing objections

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<sup>1</sup> Travelers received a letter from the Chapter 12 Trustee, Ron Schoen, requesting explanation of the charges provided on Travelers' proof of claim. Travelers provided a response to the Trustee and a courtesy copy of that response to the Debtor on or about October 18, 1996.

cannot be considered to be a "circumstance for which the debtor should not justly be held accountable." Debtor could have filed his objections earlier, and should have, as he knew of the impending Section 1221 deadline.

Additionally, if an extension of plan filing is allowed for the purpose of hearing Debtor's objections to these claims, the same logic would dictate that the Debtor could seek an extension of time after the governmental claims bar date to object to those claims. This obviously defeats a central purpose of Chapter 12 — to hold a Chapter 12 debtor to strict time frames in reorganization. Debtor's illogic should not be endorsed.

Third, Debtor indicates that he cannot sufficiently project his income and expenses for the future and so, apparently, lacks the information necessary to formulate a plan. The Debtor's responsibility for projecting income and expenses in order to formulate a plan is at the heart of the Code's reorganization provisions. It is a task, duty and obligation the Debtor must shoulder immediately upon filing his petition for relief, if not before.

Here, Travelers filed a complaint seeking foreclosure of its lien on March 1, 1996. On June 11, 1996, the Debtor and Travelers consummated an agreement wherein Travelers agreed to stay its foreclosure proceeding until October 1, 1996 to give the Debtor sufficient time to harvest his crop and be in a position to bring Travelers' debt current. At the time of these negotiations, the Debtor represented that he was negotiating contracts for the upcoming year.

Thus, even as early as June 1996, the Debtor knew that continued operation of his business required negotiation and execution of contracts for the 1997 crop year and appeared to be taking the steps necessary to acquire those contracts. Debtor has had ample time both before and after this bankruptcy proceeding (over six months) to negotiate and execute the contracts which would allow him to project his income and expenses. Travelers respectfully

submits that the Debtor's failure to acquire such contracts is not a factor sufficiently beyond his control so as to justify an extension of time to file his plan. Debtor's delay is inexcusable. *See, In Re: Braxton*, 121 BR. 632 (N.D. Fla. 1990) (debtor's delay in valuing property was not sufficiently beyond his control to warrant an extension of time).

Additionally, the Debtor has had resources available to him to assist him in the estimation of his future income and expenses. A meeting was held on October 16, at which the Debtor, the Debtor's counsel, the Trustee, a representative for Landview Fertilizer and Land Fertilizer's Counsel, as well as a representative from Reed Grain & Bean. At that meeting, Landview Fertilizer indicated to the Debtor that it make its computer program regarding projection of income and expenses available to the Debtor. Thus, the Debtor had nearly two weeks before the filing of his motion and over a month before his plan was due to avail himself of Landview Fertilizer's offer.

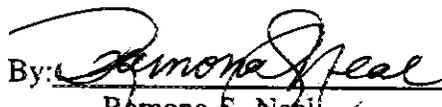
All Chapter 12 Debtors face precisely the same burden and time frames regarding projecting their income and expenses and formulating a Chapter 12 Plan. Congress apparently did not believe this to be sufficient reason to alter the 90 day requirement. Indeed, in 1993, Congress' amendments made it more difficult to extend the filing requirement.

Even if Debtor's delay in filing a plan is due to circumstances for which he should not be held accountable, the amount of time which the Debtor seeks is unreasonable. Considering the weak basis upon which the Debtor seeks an extension, Travelers respectfully submits that the Debtor should be granted no more time than is absolutely necessary to file his plan. Travelers suggests that three weeks from the date of hearing is sufficient time for the Debtor to formulate a plan. By that time, the Debtor's objections to the three claims will have been heard. Additionally, a three week extension should provide the Debtor with adequate time to

finish projecting his costs and expenses in order to formulate a plan.

WHEREFORE, Travelers respectfully requests that the Debtor's Motion for Extension of Time be denied, or in the alternative, that this Court limit the extension of time granted to the Debtor to no more than three weeks from the date of hearing.

Dated this 20<sup>th</sup> day of November, 1996.

By:   
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Ramona S. Neal  
Givens Pursley & Huntley, LLP  
Counsel for The Travelers Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 1996 I caused to be served a true and correct copy of the foregoing to each of the persons named below by U.S. Mail, postage prepaid:

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