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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re :  
METALLURG, INC., and :  
SHIELDALLOY METALLURGICAL :  
CORPORATION :  
Debtors. :  
-----x

Chapter 11 Case Nos.  
93 B 44468 (JLG)  
93 B 44469 (JLG)  
(Jointly Administered)

MEMORANDUM OF LAW IN SUPPORT  
OF MOTION OF DEBTORS PURSUANT  
TO SECTION 1121(d) OF THE BANKRUPTCY  
CODE TO EXTEND DEBTORS' EXCLUSIVE PERIODS IN  
WHICH TO FILE A PLAN OR PLANS OF REORGANIZATION  
AND DISCLOSURE STATEMENT AND SOLICIT ACCEPTANCES

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MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' MOTION  
PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY  
CODE TO EXTEND DEBTORS' EXCLUSIVE PERIODS IN  
WHICH TO FILE A PLAN OR PLANS OF REORGANIZATION AND  
DISCLOSURE STATEMENT AND SOLICIT ACCEPTANCES THERETO

Preliminary Statement

By motion dated December 9, 1993 (the "Motion"), Metallurg, Inc. ("Metallurg"),<sup>1</sup> and its wholly owned subsidiary, Shieldalloy Metallurgical Corporation ("Shieldalloy" and together with Metallurg, the "Debtors"), seek a four month extension of the Debtors' exclusive periods within which to file a plan of reorganization and disclosure statement and to solicit acceptances thereto (the

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1. All capitalized terms not defined herein shall the same meaning as that ascribed thereto in the Motion.

"Exclusive Periods"), to April 30, 1994 and June 29, 1994, respectively.

Ample cause exists for the requested extensions of the Exclusive Periods. The complexity of these chapter 11 cases only constitutes cause for the extension of the Exclusive Periods and courts have routinely extended the exclusive periods in complex chapter 11 cases. Additionally, no party in interest will suffer prejudice if there is a four month extension for filing the plan. Indeed, the Committee has no objection to the extensions requested herein.

#### Statement of Facts

The pertinent facts are set forth in the Motion and are incorporated herein by reference as if fully set forth herein.

#### Argument

##### SUFFICIENT CAUSE EXISTS TO EXTEND THE DEBTORS' EXCLUSIVE PERIODS

Section 1121 of the Bankruptcy Code provides, in pertinent part, as follows:

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security

holder, or any indenture trustee, may file a plan if and only if --

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(b) - (d).

Congress intended that the period during which only the debtor may file a plan of reorganization be of adequate length for the debtor to formulate, negotiate and draft a consensual plan of reorganization and solicit acceptances thereto. As stated in the legislative history of section 1121, section 1121(d) "allows the flexibility in individual cases" to extend the Exclusivity Periods "in order to allow the debtor to reach an agreement." H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977); see In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D. N.H.

1988) ("the legislative intent . . . [is] to promote maximum flexibility"); In re Perkins, 71 B.R. 294, 297 (W.D. Tenn. 1987) ("the hallmark of . . . section [1121(d)] is flexibility"); see also In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (Bankr. E.D.N.Y. 1989). Thus, the initial 120-day exclusive period is by no means a hard-and-fast rule, and when the 120-day period proves to be an inadequate period of time for the debtor to file a plan in the context of a particular case, the bankruptcy court has the discretion to, and routinely does, extend the period. See In re Manville Forest Prod. Corp., 31 B.R. 991 (S.D.N.Y. 1983). In re Texaco Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987); In re Wisconsin Barge Line, Inc., 78 B.R. 946 (Bankr. E.D. Mo. 1987); In re Perkins, *supra*;

A. An Extension of the Exclusive Periods Is Justified By the Complexity of these Cases Alone.

The most common basis for an extension of the exclusive periods under section 1121(d) is the complexity of the chapter 11 case. Specifically, in In re McLean Indus. Inc., 87 B.R. 830, 833-35 (Bankr. S.D.N.Y. 1987), the bankruptcy court extended the exclusive periods because of the complex legal and factual issues that needed to be resolved before the Debtor could negotiate the terms of the plan of reorganization and meaningful disclosure could be

made to creditors. See also, In re Manville Forest Prod. Corp., 31 B.R. 991, 995 (S.D.N.Y. 1983); In re Perkins, 71 B.R. 294, 300 (W.D. Tenn. 1987); In re United Press Int'l, Inc., 60 B.R. 265, 269 (Bankr. D. D.C. 1986); In re Crescent Mfg. Co., 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990); In re Texaco Inc., 76 B.R. 322, 325-27 (Bankr. S.D.N.Y. 1987); In re Pine Run Trust, Inc., 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986).

Initial extensions far lengthier than the four month period requested by the Debtors are typically granted in complex chapter 11 cases. For example, in In re Revco D.S., Inc., Case Nos. 588-1308-1321, 1305, 1761-1812 & 1820 (Bankr. N.D. Ohio) the court extended the exclusivity periods for more than two years. In In re Carter Hawley Hale Stores Corp., No. LA 91-64140-JD (Bankr. C.D. Cal.), the debtor was granted an initial extension of nine months. In In re Best Prod. Co., Inc., et al., Jointly Administered Case No. 91 B 10048-53 (TLB) (Bankr. S.D.N.Y.) and In re Hills Stores Co., (Case No. 91 B 10488 (TLB) (Bankr. S.D.N.Y.) the debtors, each retained exclusivity for over two years.

The complexity of the Debtors' chapter 11 cases alone constitutes more than a sufficient basis for an extension of the Exclusive Periods. Indeed, the Debtors have

twenty three foreign subsidiaries and/or affiliates. Consequently, any business plan or plan of reorganization will have to consider the various foreign corporate governance laws and accounting rules. Additionally, particular attention will be given to the Debtors' foreign suppliers and customers, many of whom do not understand chapter 11 in the first instance, to assure them that the Debtors will be able to meet their postpetition business commitments and to explain to them the consequences of a chapter 11 reorganization.

Moreover, Shieldalloy, in respect of its manufacturing facilities in New Jersey and Ohio, has significant potential environmental claims that present very complex legal and financial issues all as more fully described in the Motion.

As noted in the Motion, the resolution of the potential environmental claims will be a long, arduous and extremely complicated process which only recently has commenced and in which the Committee has appropriately expressed a strong interest in participating. Shieldalloy's meetings with the relevant state and federal agencies and discussions, in conjunction with consultations with the Committee, will continue over the next few months.

The formulation of a chapter 11 plan without an assessment of the magnitude and likely priority of any environmental claims would be a meaningless exercise. Shieldalloy believes that it is in the best interest of Shieldalloy's creditors that Shieldalloy and the Committee be afforded adequate time to assess Shieldalloy's potential environmental liability and formulate a strategy for dealing with the federal and state environmental authorities without the time pressures associated with the end of the Exclusive Periods.

B. The Debtors' Efforts During The First 100 Days of These Cases Have Been Successfully Focused on Stabilization and Corporate Reorganization

The maintenance of the highest value of Metallurg's assets and the viability of the operating businesses require continuing the stabilization process instituted by the Debtors immediately subsequent to the commencement of their chapter 11 cases. Indeed, during the first 100 days of these cases, the Debtors have attended to the multitude of critical matters regarding the administration of these cases and the reorganization of their corporate structure. As more particularly described in the Motion, since the Petition Date, the Debtors have taken numerous actions to stabilize their business operations (including the stabilization of the MIR trading

operations) and allay the concerns of their creditors, suppliers and employees.

In view of what the Debtors have managed to achieve to date in terms of their stabilization efforts, failure to extend the Exclusive Periods to April 30, 1994 and June 29, 1994, respectively, would be devastating to all parties in interest.

C. Extending the Debtors' Exclusive Periods Will Enable Creditors to Assess The Impact of the Debtors' Business Plan

One of the fundamental purposes of chapter 11 of the Bankruptcy Code is the formulation by the debtor, and the negotiation with its creditors, of a consensual plan of reorganization. Although the court's ability to adjust the exclusive periods "was designed to prevent debtors from having undue leverage against creditors[,] . . . the court must give the debtor a reasonable opportunity to negotiate with creditors." 5 Collier on Bankruptcy ¶ 1121.04, at 1121-13 (L. King 15th ed. 1986).

In the Debtors' request for the extension of the Exclusive Periods, the Debtors are mindful of congressional intent and the need for both good faith negotiations and progress therein:

Since, the debtor has an exclusive privilege for 6 months during which others may not file a plan, the granted extension should be based on a showing

of some promise of probable success. An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory.

S. Rep. No. 95-989, 95th Cong., 2d Sess. 118 (1978).

As was agreed between the Debtors and the Committee, the Debtors' will deliver to the Committee in January 1994, a draft of the Debtors' business plan, of which a crucial section, the analysis and discussion of Shieldalloy's potential environmental liabilities, will not be completed.

The Debtor's plan of reorganization will be based, in large part, on the conclusions of the business plan that has been discussed by the Committee and the Debtors. The Debtors, the Committee and their respective attorneys and financial advisors plan to spend a significant period of time analyzing and discussing the business plan before commencing negotiations of the plan of reorganization.

The formulation and analysis of the business plan will require a considerable amount of time and energy for both the Debtors' and the Committee's advisors. Specifically, the business plan will require an analysis or discussion of the Debtors' twenty-three foreign subsidiaries and/or affiliates, as well as the applicable corporate governance laws. Moreover, in analyzing the business plan,

both parties will have to assess the concerns and reactions of the Debtors' foreign customers and suppliers. This assessment will require particular scrutiny and may create more complex issues that need some discussion or resolution.

Additionally, given the instability and fluctuations in the prices of metals in the world market, in order to review accurately the projections contained in the Debtors' business plan, the assumptions must be assessed in the context of the real market over a reasonable period of time after the Debtors' operations have stabilized. An extension of the Exclusive Periods, as requested herein, will afford the Debtors, the Committee and all other parties in interest, an adequate opportunity to evaluate economic conditions so that an appropriate and reasonable business plan and plan or plans or reorganization can be formulated.

If an extension of the Exclusive Periods is not granted, the Debtors will be unable to identify, analyze and reconcile those claims. Accordingly, based solely on the issues raised by fixing the bar date and its attendant impact on the reconciliation process, an extension of the Exclusive Periods is warranted.

Case law uniformly supports further extension under these facts. The need to allow a debtor to develop a comprehensive long-term business plan before proposing a

plan of reorganization has been recognized as a significant factor in favor of granting an exclusivity extension under section 1121. For example, in In re McLean Indus., Inc., 87 B.R. 830 (Bankr. S.D.N.Y. 1987), the court identified the necessity of resolving "complex legal and factual issues" such as claims liquidation and estimation, asset valuation, and net operating loss quantification, preservation, and utilization, as a condition precedent to plan negotiations, meaningful disclosure to creditors, and the ability of creditors to assess the distributions to be received under a proposed plan. Id. at 833. The court stated:

[T]he case is nevertheless complex and requires considerably further study before a plan of reorganization could be proposed and intelligently communicated to creditors for their acceptance. . . . If there is anything that falls under the rubric of "adequate information" required by § 1125(a) of the Bankruptcy Code to be contained in a disclosure statement, it is an approximation of the dividend payable to each unsecured creditor.

Id. at 834-35. In In re Texaco, Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987), the court again set forth the need for developing adequate financial information as a significant component of cause to extend the debtor's exclusive periods:

An extension of 120 days to formulate a plan will . . . allow the debtors additional time to resolve the many administration matters that understandably confronted them at the outset of these

cases. Moreover, substantial financial information with respect to the ramifications of any proposed plan will have to be provided to, and digested by, the creditors and other parties in interest in order to arrive at an informed decision concerning the acceptance or rejection of a proposed plan. An additional extension of the 120-day and 180-day exclusivity periods should satisfy some of these needs . . . .

Id. at 327. As these cases make clear, it is inappropriate to allow the exclusive periods to expire before the debtor and the various constituencies have the information needed to negotiate a viable plan of reorganization. Under the facts and circumstances of this case, a four month extension of the Exclusive Periods is necessary and appropriate to enable the Debtors to develop a meaningful business plan, reconcile creditors' claims, and negotiate, and propose and solicit acceptances of a chapter 11 plan. Affording the parties the extensions requested herein will facilitate the confirmation of a consensual plan of reorganization in accordance with the intent and purpose of chapter 11 of the Bankruptcy Code.

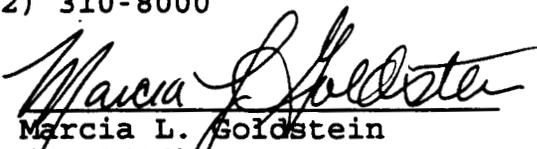
Conclusion

The Debtors' Motion to extend the Exclusive Periods to April 30, 1994 and June 29, 1994 should be granted in all respects.

Dated: New York, New York  
December 9, 1993

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