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15 **UNITED STATES BANKRUPTCY COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**  
17

18  
19 In re )

**CASE NO. 06-00510-LA11**

20 SERACARE LIFE SCIENCES, INC., )  
21 A California Corporation )

Chapter 11 Proceedings

22 Debtor and Debtor-in- )  
23 Possession )

**OBJECTION OF AD HOC COMMITTEE OF  
EQUITYHOLDERS TO DEBTOR'S MOTION  
FOR EXTENSION OF EXCLUSIVE PERIODS  
TO FILE A PLAN AND TO SOLICIT  
ACCEPTANCES THERETO; DECLARATION  
OF SCOTT M. TILLMAN**

24 **Date: July 20, 2006**

25 **Time: 2:00 p.m.**

26 **Dept: 2**

**Judge: Hon. Louise DeCarl Adler**  
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1 directors have failed to stand for reelection, as required by California state law. This highly  
2 unusual governance arrangement was instituted prior to the Debtor's chapter 11 filing.

3 3. This chapter 11 case was filed on March 22, 2006, with the Debtor's period of  
4 exclusivity to file a plan set to expire on July 20, 2006. In early May, the Ad Hoc Committee  
5 made a financing proposal to the Debtor. In response to requests by the Debtor, the proposal has  
6 been revised several times by the Ad Hoc Committee. The adjustments proposed additional  
7 funding, removed various covenants and clarified certain provisions. The financing proposed by  
8 the Ad Hoc Committee would virtually ensure that all secured and unsecured creditors would be  
9 paid in full upon the confirmation of a plan of reorganization, and the Ad Hoc Committee, in  
10 fact, put forward to the Debtor such a proposal for a plan of reorganization. *See* Tillman Decl.  
11 ¶¶6 – 7, 10.  
12

13 4. The Ad Hoc Committee has repeatedly tried to engage the Debtor regarding the  
14 proposed financing and the proposed plan, but has been met with repeated delays and avoidance.  
15 Weeks pass before calls are returned and only one actual counterproposal has been made by the  
16 Debtor to the many proposals or suggestions put forth by the Ad Hoc Committee. *See* Tillman  
17 Decl. ¶¶8 – 10, 12 – 13.  
18

19 5. Even the single written response to the Ad Hoc Committee's financing proposal  
20 was sketchy and barely over a page long. *See* Tillman Decl. ¶12.  
21

22 6. In sum, the Debtor has evidenced no urgency in exiting from bankruptcy and has  
23 proffered no credible reason for further delay.

## 24 II.

### 25 ARGUMENT

26 7. The Ad Hoc Committee believes that the facts stated above undermine the  
27 Debtor's claim that the Debtor has been diligent in the administration of this Chapter 11 case.  
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1 Through the date of the Debtor's Motion to Extend Exclusivity, the Debtor utterly failed to  
2 engage in meaningful discussion with the Ad Hoc Committee regarding a plan of reorganization  
3 or the financing proposal that would ensure a full recovery for almost all of the Debtor's creditor  
4 constituencies. *See* Tillman Decl. ¶13. Moreover, there is no evidence that the Debtor has made  
5 substantial progress with respect to drafting its own plan proposal, nor has the Debtor indicated,  
6 thus far, that it has secured debtor-in-possession or exit financing from any party. Similarly,  
7 there is no evidence that the Debtor has engaged the Official Committee of Unsecured Creditors  
8 in substantive plan of reorganization discussions.  
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10 8. The Ad Hoc Committee desires to move this case forward as rapidly as possible.  
11 Allowing the Debtor to languish in bankruptcy is imposing a significant drain on the Debtor's  
12 financial and human resources, a drain that can be easily avoided in light of the Ad Hoc  
13 Committee's offer of financing, designed to facilitate a rapid exit from chapter 11. Further, the  
14 Ad Hoc Committee stands ready to propose a plan forthwith (with accompanying disclosure  
15 statement), along the lines of the plan term sheet attached hereto as Exhibit E.  
16

17 9. The Debtor correctly notes that the Bankruptcy Code's period of exclusivity was  
18 introduced to allow a debtor (managed by its actual board of directors) the unqualified  
19 opportunity to negotiate a settlement and propose a plan of reorganization without interference  
20 from creditors and other interests. *See e.g. In re Texaco, Inc.*, 81 B.R. 806, 809 (Bankr.  
21 S.D.N.Y. 1988), citing H.R.Rep. No. 595, 95th Cong., 2d Sess. 221-222 (1978), U.S. Code  
22 Cong. & Admin. News 1978, p. 5787. The current status of the Debtor's corporate governance,  
23 however, undermines the traditional justification for preserving the period of exclusivity. The  
24 special committee of the Board can no longer be treated as representative; in fact, the Board  
25 itself is a holdover Board that has illegitimately failed to put itself up for reelection, in violation  
26 of applicable state corporate law. The out-of-the-ordinary "fully-empowered special committee"  
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1 only further removes this situation from the norm. This depleted holdover Board special  
2 committee should not, in the equity of a bankruptcy court, be given the full exclusive right to  
3 dominate the corporate reorganization process until a proper election of the Debtor's Board is  
4 conducted.

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6 10. The factors that the Debtor, as well as a number of courts, has identified as  
7 relevant to the decision regarding an extension of exclusivity also weigh in favor of denial of the  
8 Debtor's Motion to Extend Exclusivity. The nine factors listed by the court in *In re Dow*  
9 *Corning Corp.*, factors the Debtors cites in its Motion to Extend Exclusivity, are: 1) the size and  
10 complexity of the case; 2) the necessity of sufficient time to permit the debtor to negotiate a plan  
11 of reorganization and prepare adequate information; 3) the existence of good faith progress  
12 toward reorganization; 4) the fact that the debtor is paying its bills as they become due; 5)  
13 whether the debtor has demonstrated reasonable prospects for filing a viable plan; 6) whether the  
14 debtor has made progress in negotiations with its creditors; 7) the amount of time which has  
15 elapsed in the case; 8) whether the debtor is seeking an extension of exclusivity in order to  
16 pressure creditors to submit to the debtor's reorganization demands; and 9) whether an  
17 unresolved contingency exists. *See In re Dow Corning Corp.*, 208 B.R. 661, 664 - 665 (Bankr.  
18 E.D. Mich. 1997).

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21 11. In presenting these factors, the Debtor argues that its chapter 11 case is relatively  
22 large and complex.<sup>1</sup> Interestingly, this same Debtor strenuously argued just the opposite in its  
23 Opposition to Motion of Ad Hoc Committee of Equityholders for Appointment of an Official  
24 Committee of Equityholders ("Debtor's Opposition"). The Debtor described the number of its  
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26 <sup>1</sup> While the Debtor assumes that complexity weighs in favor of extending exclusivity, the court in *In re Henry Mayo*  
27 *Newhall Mem'l Hosp.* argued instead that "affirmative answers to a number of the inquires listed in Dow  
28 *Corning...do not necessarily favor extending exclusivity[;] Professors Epstein, Nickles, and White have cogently  
debunked the propositions that complex cases require extended exclusivity, negotiations are facilitated by extended  
exclusivity, and pending litigation warrants extended exclusivity." See e.g. In re Henry Mayo Newhall Mem'l  
Hosp., 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002).*

1 employees, and its annual revenues as "*miniscule*" in comparison to those involved in reported  
2 decisions evaluating the appointment of an equity committee. Debtor's Opposition, at 2  
3 (emphasis in original). The Debtor argued that, "[s]imilarly, the Debtor's capital structure is  
4 exceedingly simple, as there is only one class of equity – common stock." Debtor's Opposition,  
5 at 2. The Debtor summarized its argument regarding the complexity of this chapter 11 case:

7 "...the Debtor submits that the 'number of shareholders' and 'complexity of the case'  
8 weigh strongly against the appointment of an equity committee. Here, the Motion [of the  
9 Ad Hoc Committee of Equityholders for Appointment of an Official Committee of  
10 Equityholders] effectively concedes this case is neither large nor complex, by its  
11 acknowledgement of only a *single class of equity* and only 235 record holders of shares."

12 Debtor's Opposition, at 13 (emphasis in original). The Debtor's own admission of the simplicity  
13 of this chapter 11 case undermines both the Debtor's claim that this case is complex and the  
14 Debtor's assertion that an extension of exclusivity is mandated by the difficulty of negotiating  
15 with such a large number of parties.

16 12. While the Debtor asserts its intention to file a plan by the hearing on the Motion  
17 to Extend Exclusivity, the Ad Hoc Committee is skeptical of the Debtor's good faith progress  
18 toward reorganization. The Debtor has repeatedly delayed discussions with the Ad Hoc  
19 Committee regarding the Ad Hoc Committee's proposed plan of reorganization, the Debtor has  
20 not advanced its own plan to the Ad Hoc Committee, and there is no evidence that the Debtor  
21 has discussed a plan of reorganization with the Official Committee of Unsecured Creditors  
22 either. *See* Tillman Decl. ¶¶10, 13. The Ad Hoc Committee realizes that the circumstances of  
23 this case are conducive to the filing of a viable plan (the Ad Hoc Committee, itself, has proposed  
24 terms of such a plan), but believes that this Debtor may not have the ability to formulate such a  
25 plan with the rapidity necessary to preserve the value of the Debtor's operations.  
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1           13.     While the Debtor may generally be paying its bills as they become due, the  
2 Debtor's ability to maximize its cash flow may ultimately suffer if the Debtor continues to  
3 maintain its status as a chapter 11 debtor.

4           14.     The Debtor claims to have made progress in negotiating with creditors regarding  
5 reorganization, pointing to the cash collateral stipulation recently approved by this Court as  
6 evidence thereof. The Ad Hoc Committee's experience with the Debtor, however, regarding both  
7 the proposed financing and the terms of a plan, casts doubt on the accuracy of the Debtor's claim.  
8 The Ad Hoc Committee first approached the Debtor with a financing proposal in early May and  
9 still has yet to receive a serious counterproposal from the Debtor. *See* Tillman Decl. ¶¶7 – 10, 12.  
10 As large shareholders in a solvent case, the members of the Ad Hoc Committee represent a  
11 critical constituency of this estate, with which the Debtor has made no progress in negotiating.  
12

13           15.     In support of its motion for an extension of exclusivity, the Debtor notes that this  
14 Motion to Extend Exclusivity is the first such motion and that the case is only approximately  
15 three months old. The Debtor, however, explicitly requests that its motion be granted without  
16 prejudice to its right to seek further such extensions, suggesting that the Debtor recognizes that,  
17 in light of its lack of progress with respect to a plan, the Debtor already anticipates needing more  
18 than the next three months to draft a viable plan.  
19

20           16.     The court in *Dow Corning* noted that, in determining whether to extend or to  
21 terminate exclusivity, "the primary consideration should be whether or not doing so would  
22 facilitate moving the case forward [a]nd that can be a practical call that can override a mere  
23 toting up of the factors." *Dow Corning*, at 670. *See also Henry Mayo Newhall*, at 453 (agreeing  
24 with *Dow Corning* that "a transcendent consideration is whether adjustment of exclusivity will  
25 facilitate moving the case forward toward a fair and equitable resolution"). Clearly, denial of an  
26 extension of exclusivity would dramatically hasten the progress of this case. The Ad Hoc  
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1 Committee has already expended considerable time and effort in crafting a confirmable and  
2 viable plan of reorganization. Even if the Ad Hoc Committee's plan is not ultimately confirmed,  
3 the court in *Henry Mayo Newhall* noted that, in the event that exclusivity is terminated, it is  
4 likely that the Debtor may still be the party that comes forward with the plan that is ultimately  
5 confirmed, but the threat that other parties can also file plans will encourage the Debtor to  
6 progress more quickly with its drafting and negotiations. The court refers to the bankruptcy  
7 involving the Public Service of New Hampshire, in which one extension of exclusivity was  
8 granted, a second denied as a result of apparent deadlock, and a consensual plan achieved  
9 thereafter. *Henry Mayo Newhall* 282 B.R., at 453, referring to *In re Pub. Serv. Co. of New*  
10 *Hampshire*, 88 B.R. 521 (Bankr. D.N.H. 1988).

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12 III.

13 CONCLUSION

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15 17. The Ad Hoc Committee objects to the Debtor's Motion to Extend Exclusivity.  
16 For the reasons discussed above, the Debtor has failed to make a compelling case that extension  
17 of exclusivity will be beneficial to the reorganization process or to the Debtor's constituencies.  
18 The Debtor's lack of progress with respect to plan negotiations or securing financing, despite an  
19 unsolicited offer by the Debtor's own shareholders, indicates a failure by the Debtor to appreciate  
20 the urgency of exiting chapter 11. Denial of this Motion will allow other interested parties to  
21 become involved in the plan of reorganization process or, at the very least, spur the Debtor to  
22 action, both of which would be beneficial to the Debtor and to the estate.  
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25 AD HOC COMMITTEE OF EQUITYHOLDERS

26 By its Attorneys

27 /s/ Thomas E. Patterson

28 Thomas E. Patterson, Esq. (SBN 130723)

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1 **DECLARATION OF SCOTT M. TILLMAN**

2 I, Scott M. Tillman, declare:

3 1. I am a Vice President and Director of Investments of Harbinger Capital Partners  
4 Master Fund I, Ltd. and I am resident in Harbinger Capital Partners Master Fund I, Ltd.'s office  
5 located at 555 Madison Avenue, 16th Floor, New York, New York.

6 2. Harbinger Capital Partners Master Fund I, Ltd. currently holds 2,626,300 shares  
7 of SeraCare Life Sciences, Inc. (the "Debtor"), or approximately 18.6% of the outstanding  
8 shares.

9 3. I am a member of an ad hoc committee of shareholders of the Debtor (the "Ad  
10 Hoc Committee"). Based upon my conversations with the other members, together the Ad Hoc  
11 Committee represents approximately 28.5% of the outstanding shares of the Debtor.  
12

13 4. To the best of my knowledge, members comprising the Ad Hoc Committee do not  
14 include any present or former insiders of the Debtor.  
15

16 5. The Debtor held its last annual meeting of shareholders on February 10, 2005,  
17 according to the Debtor's Form 10-Q attached hereto as Exhibit A.

18 6. On May 5, 2005, the Ad Hoc Committee sent a term sheet for a proposed  
19 financing agreement between certain members of the Ad Hoc Committee and the Debtor (the  
20 "Term Sheet"), attached hereto as Exhibit B, to Debtor's counsel. Debtor's counsel provided a  
21 few oral observations, and on May 12, 2006, Robert J. Cresci met with myself and two other  
22 members of the Ad Hoc Committee to discuss the proposed financing and the Debtor's business  
23 generally. This meeting only lasted approximately one hour.  
24

25 7. The Ad Hoc Committee repeatedly revised the Term Sheet to make the proposal  
26 more attractive to the Debtor and other constituencies. For example, the Ad Hoc Committee  
27 added additional funding, removed various covenants and clarified certain provisions in later  
28 drafts of the Term Sheet. From the outset the Ad Hoc Committee has proposed a financing that

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1 would be junior to all other secured creditors and to general unsecured creditors. The most  
2 recent term sheet sent to the Debtor is attached as Exhibit C.

3 8. Despite requests, the Debtor repeatedly refused to have the Board meet in person  
4 with members of the Ad Hoc Committee, and has refused to have any discussions with both  
5 business people and advisors participating. In my experience this is highly unusual in  
6 bankruptcy proceedings, where business issues and legal requirements are intertwined, and the  
7 input of experienced insolvency advisors is essential to structuring a transaction.  
8

9 9. On May 24, 2006 I directly requested a meeting with the Board, and Mr. Cresci  
10 accepted. However, this meeting did not take place until June 8, 2006 (which was the earliest  
11 date the Debtor proposed), and then only with a special committee of the board. That meeting  
12 only lasted one half-hour and the Debtor did not counter with any terms or propose any  
13 alternatives. Also, the Debtor and its special committee did not discuss any plan of  
14 reorganization at all.  
15

16 10. On May 25, 2006, and thus well in advance of that meeting with the "special  
17 committee," the Ad Hoc Committee had sent its most recent financing term sheet to the Debtor.  
18 The Ad Hoc Committee also sent a term sheet for a proposed plan of reorganization. The Debtor  
19 has not discussed these terms with the Ad Hoc Committee, with the exception of a one-hour  
20 conversation between counsel. The Debtor has not had any discussions with the Ad Hoc  
21 Committee about any plan of reorganization the Debtor intends to propose. The Board did not  
22 want to discuss the plan issues at the June 8 meeting.  
23

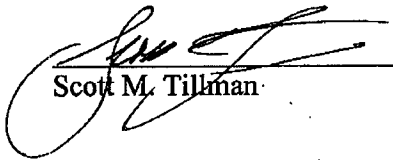
24 11. I was informed by a letter from Robert J. Cresci, attached hereto as Exhibit D, that  
25 the Board had formed a Committee of Independent Directors (the "Committee") and had  
26 delegated the full authority of the Board to this Committee.  
27

28 12. On Friday, June 16, 2006, more than a week after the June 8 meeting and three weeks  
after the May 25 financing term sheet, the Debtor finally responded in writing to the Term Sheet.

1 This response consisted of a very brief (just over one page in length) term sheet that failed to  
2 address a number of salient issues that had been brought to the Debtor's attention. The Debtor's  
3 response is attached hereto as Exhibit G. In addition, the Debtor proposed that the financing be  
4 senior to the existing general unsecured creditors, a materially disadvantageous change for one of  
5 the major constituencies in the case.  
6

7 13. Despite the repeated attempts of the Ad Hoc Committee to discuss the Plan Term Sheet  
8 with the Debtor, none of the Board, the Committee or Debtor's counsel has made any substantial  
9 outreach to the Ad Hoc Committee to engage in these discussions or any other plan discussions.  
10 The Ad Hoc Committee stands ready, willing and able to negotiate a plan immediately, and to  
11 propose a plan forthwith, within the normal period for expiration of exclusivity, to keep this case  
12 on track for confirmation. To evidence such willingness a proposed plan term sheet is set forth  
13 on Exhibit E.  
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15 14. I declare under penalty of perjury that the foregoing is true and correct, to the best of my  
16 knowledge, and that this declaration was executed in New York, New York on June 26, 2006.  
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Scott M. Tillman