

1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam P. Khatiblou (CA Bar No. 178584)
Teddy M. Kapur (CA Bar No. 242486)
3 PACHULSKI STANG ZIEHL & JONES LLP
150 California Street, 15th Floor
4 San Francisco, California 94111-4500
Telephone: 415/263-7000
5 Facsimile: 415/263-7010

6 E-mail: jfiero@pszjlaw.com
kbrown@pszjlaw.com
7 mkhatiblou@pszjlaw.com
tkapur@pszjlaw.com

8
9 Attorneys for Heller Ehrman LLP,
Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**MOTION FOR ORDER EXTENDING
THE PERIOD DURING WHICH THE
DEBTOR HAS THE EXCLUSIVE
RIGHT TO FILE A PLAN AND
SOLICIT ACCEPTANCES**

16
17
18 Date: April 24, 2009
Time: 10:00 a.m.
19 Place: U. S. Bankruptcy Court
20 235 Pine Street, 22nd Floor
San Francisco, CA
21 Judge: Honorable Dennis Montali

22 **TO ALL PARTIES IN INTEREST:**

23 Heller Ehrman LLP, the debtor and debtor in possession herein (the “Debtor”), hereby moves
24 the Court for an order extending the periods during which the Debtor has the exclusive right to file a
25 plan and solicit acceptances pursuant to Bankruptcy Code section 1121(b), (c) and (d) (the
26 “Motion”)for 120 days for “cause” shown.

27 ///

28 ///

1 The Motion is based upon this Motion, the memorandum of points and authorities filed
2 herewith, the declarations of Peter J. Benvenuti and Kyle Everett, and such additional evidence and
3 argument as may be presented at the hearing.

4 WHEREFORE, the Debtor prays for relief as follows:

- 5 1. For an order extending the exclusive 120-day time period provided in Bankruptcy
6 Code section 1121(b) from its current expiration date, which the Debtor understands
7 to be April 27, 2009, for an additional 120 days, through and including August 25,
8 2009.
- 9 2. For an order extension of the exclusive 180-day time period provided in Section
10 1121(c) from its current expiration date, which the Debtor understands to be June 26,
11 2009, for an additional 120 days, through and including October 24, 2009.
- 12 3. For such other and further relief as the Court may deem just and proper.

13 Dated: April 4, 2009

PACHULSKI STANG ZIEHL & JONES LLP

14 By /s/ John D. Fiero

15 John D. Fiero
16 Kenneth H. Brown
17 Miriam P. Khatiblou
18 Teddy M. Kapur
19 Attorneys for Heller Ehrman LLP,
20 Debtor and Debtor in Possession
21
22
23
24
25
26
27
28

1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam P. Khatiblou (CA Bar No. 178584)
Teddy M. Kapur (CA Bar No. 242486)
3 PACHULSKI STANG ZIEHL & JONES LLP
150 California Street, 15th Floor
4 San Francisco, California 94111-4500
Telephone: 415/263-7000
5 Facsimile: 415/263-7010

6 E-mail: jfiero@pszjlaw.com
kbrown@pszjlaw.com
7 mkhatiblou@pszjlaw.com
tkapur@pszjlaw.com

8 Attorneys for Heller Ehrman LLP,
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEBTOR'S MOTION FOR ORDER
EXTENDING THE PERIOD DURING
WHICH THE DEBTOR HAS THE
EXCLUSIVE RIGHT TO FILE A PLAN
AND SOLICIT ACCEPTANCES**

Date: April 24, 2009
Time: 10:00 a.m.
Judge: The Honorable Dennis Montali
Location: 235 Pine Street, 22nd Floor
San Francisco, CA 94104

TABLE OF CONTENTS

1
2
3 I. INTRODUCTION 1
4 II. STATEMENT OF FACTS..... 1
5 A. The Debtor’s Background and the Commencement of the Case. 1
6 B. The Debtor’s Progress..... 2
7 C. The Debtor’s Compromises with the Committee..... 3
8 D. Threshold Issues Remain Unresolved..... 5
9 E. Other Relevant Facts..... 5
10 III. ARGUMENT 6
11 A. The Debtor’s Exclusivity Periods May Be Extended. 6
12 B. The Court Has Discretion Extend the Exclusivity Period For “Cause”..... 6
13 C. “Cause” Exists to Grant the Requested Extension..... 7
14 a. .. Application of the Factors to the Facts of this Case Supports a Finding of “Cause.”
15 7
16 b. Granting the Motion will Facilitate Moving the Case Forward Towards a Fair and
17 Equitable Resolution. 10
18
19
20
21
22
23
24
25
26
27
28 IV. CONCLUSION..... 11

TABLE OF AUTHORITIES

Cases

In re Adelfhia Communications Corp.,
336 B.R. 610 (Bankr. S.D.N.Y. 2006) _____ 6, 7

In re Adelfhia Communications Corp.,
352 B.R. 578 (Bankr. S.D.N.Y. 2006) _____ 6, 8

In re Ames Dep't Stores Inc.,
1991 WL 259036, (S.D.N.Y. Nov. 25, 1991) _____ 6

In re Dow Corning Corp.,
208 B.R. 661 (Bankr. E.D. Mich. 1997) _____ 7, 10

In re Henry Mayo Newhall Memorial Hospital,
282 B.R. 444 (9th Cir. BAP 2002) _____ 7, 9, 10

In re McLean Industries, Inc.,
87 B.R. 830 (Bankr. S.D.N.Y. 1987) _____ 8

In re Perkins,
71 B.R. 294 (W.D. Tenn. 1987) _____ 8

In re Texaco Inc.,
81 B.R. 806 (Bankr. S.D.N.Y. 1988) _____ 6

Statutes

11 U.S.C. § 1121 _____ 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

INTRODUCTION

This case has featured progress on many fronts, but the ultimate goal of any chapter 11 case – to begin plan negotiations and subsequently confirm a consensual plan of reorganization – will not be achieved in the first 180 days here. Heller Ehrman LLP (the “Debtor”) makes this motion seeking a first extension of the Bankruptcy Code’s “exclusive periods” because virtually every factor found in the case law to support a showing of “cause” for an extension is present in this case.

Specifically, this case is large and complex, as reflected by the number of creditors, the hundreds of docket entries, pending and soon-to-be filed adversary proceedings, and the size of the claims pool. The Debtor has had many case-advancing motions granted. The Debtor has been cooperating with the Official Committee of Unsecured Creditors (the “Committee”) from the moment it hired counsel, and has compromised with the Committee repeatedly on important matters relating to the handling of this case.

The Debtor is not seeking the extension to unfairly pressure creditors. On the contrary, the purpose of this motion is simply to preserve the status quo until the parties have the information they need to conduct meaningful plan negotiations. The missing information, which the Debtor hopes to receive by the end of July 2009, should prove to be the catalyst for real negotiations toward a fair and equitable resolution for all constituencies.

II.

STATEMENT OF FACTS

A. The Debtor’s Background and the Commencement of the Case.

The Debtor’s law firm began in San Francisco in 1890. Over the following years, the Debtor’s business expanded by adding attorneys and office locations. Ultimately, the Debtor offered the services of more than 730 attorneys, with offices across the United States, and in Europe and Asia.

On August 3, 2007, the Debtor’s secured lender (Bank of America) terminated a UCC-1 financing statement relating to its blanket lien on the Debtor’s assets (the “Termination Statement”). On October 1, 2008, Bank of America filed a UCC correction statement (the “Correction

1 Statement”), which recited that the Termination Statement “was filed in error and as a result of a
2 clerical error” and purported to continue the original financing statement. The very next day, Bank
3 of America and filed a new UCC financing statement (the “New Financing Statement”), which
4 purported to “reaffirm” the original financing statement and set forth the collateral covered by its
5 security interest.

6 88 days later, on December 28, 2008 (the “Petition Date”), the Debtor filed its voluntary
7 petition for relief. The Debtor has continued in possession of its property, operating as a debtor-in-
8 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9 On January 5, 2009, the United States Trustee appointed the Committee.

10 **B. The Debtor’s Progress.**

11 The Debtor is winding down its business and affairs, and is no longer engaged in the active
12 practice of law. Still, a substantial number of tasks remain unperformed that relate to winding down
13 the business, maximizing the value of the Debtor’s assets for the benefit of its creditors and equity
14 interest holders, and discharging the Debtor’s obligations to former clients. As part of its wind down
15 efforts, the Debtor (a) is pursuing the collection of outstanding accounts receivable, (b) coordinating
16 and managing the transition of client and firm business records, (c) negotiating with key creditor
17 constituencies, and (d) performing a number of bookkeeping, office and administrative services.

18 The Court has approved the employment of numerous professionals (*see* Docket Nos. 66, 67,
19 69, 70, 94, 110, 137, 193, 198, 199, 200, 201, and 264), and has ruled on a variety of critical issues
20 at the Debtor’s request, including the following:

21 On December 30, 2008, the Court granted the Debtor’s request for authorization to pay and
22 honor (i) certain pre-petition wages and vacation pay to employees, and (ii) certain post-petition
23 obligations to employees as and when such obligations become due. (Docket No. 24).

24 On December 30, 2008, the Court also authorized the Debtor to use cash collateral. (Docket
25 No. 25).

26 On January 28, 2009, the Court approved the Debtor’s motion to reject its lease and sublease
27 of Los Angeles office space, and approved a compromise of controversy with the Los Angeles

28 ///

1 landlord, and authorized the Debtor to sell certain furniture, fixtures and equipment free and clear of
2 liens, claims, encumbrances and other interests. (Docket Nos. 107 and 108).

3 On February 11, 2009, the Court granted the Debtor limited authority to pay certain pre-
4 petition workers compensation obligations. (Docket No. 128).

5 On February 18, 2009, the Court authorized the Debtor to employ expedited procedures for
6 the sale or abandonment of certain *de minimis* assets. (Docket No. 138).

7 On February 25, 2009, the Court authorized the Debtor to reject certain nonresidential real
8 property leases and subleases and abandon personal property at some (but not all) of the leased
9 locations. (Docket No. 176).

10 On March 4, 2009, the Court approved a revised non-insider employee retention and
11 incentive bonus plan. (Docket No. 203). In addition, the Court authorized the form and manner of
12 publication of notice of the claims bar date. (Docket No. 205).

13 On March 4, 2009, the Court also approved a compromise of controversy with a Seattle
14 landlord, and authorized the Debtor to sell certain furniture, fixtures and equipment free and clear of
15 liens, claims, encumbrances and other interests. (Docket Nos. 202 and 204).

16 On March 31, 2009, the Court approved the employment of Clars Auction Gallery as the
17 Debtor's art appraiser. (Docket No. 309).

18 On April 2, 2009, the Court issued a Memorandum Decision authorizing the Committee to
19 pursue the Estate Representative Actions on behalf of the Debtor's estate. (Docket No. 311).

20 **C. The Debtor's Compromises With the Committee.**

21 The Debtor has worked with the Committee on a host of issues. Included among the
22 significant agreements that the Debtor and the Committee have reached are the following:

- 23 a. The Debtor agreed with the Committee that the Committee could serve as
24 estate representative for the estate's avoidance actions against Bank of
25 America and Citibank, and also for the purpose of pursuing the estate's rights
26 under *Jewel v. Boxer*, on or about January 20, 2009;
- 27 b. The Debtor agreed with the Committee to limit the scope of employment of
28 Greenberg Traurig LLP to certain areas for which that firm has special

- 1 expertise and significant background information regarding the Debtor on or
2 about January 20, 2009;
- 3 c. The Debtor agreed with the Committee to jointly employ Development
4 Specialists, Inc. (“DSI”) to perform a series of investigative tasks, including
5 among other things the preparation of a written report identifying the Debtor’s
6 point of insolvency on or about January 22, 2009;
- 7 d. The Debtor agreed with the Committee to restrict the Debtor’s ability to pay
8 worker’s compensation claims on or about February 9, 2009;
- 9 e. The Debtor agreed with the Committee to withdraw its original employee
10 retention bonus plan in favor of a modified one prepared by DSI on about
11 February 20, 2009;
- 12 f. The Debtor agreed with the Committee to jointly retain the Lovitt & Hannan
13 firm to investigate certain pre-petition events that might give rise to litigation
14 claims belonging to the estate on or about March 16, 2009.
- 15 g. The Debtor agreed with the Committee to restrict the use of Clars as its
16 appraiser for the Debtor’s art collection on or about March 25, 2009;
- 17 h. The Debtor acquiesced in the Committee’s insistence that Bank of America
18 not be repaid on account of a draw upon the letter of credit collateralizing the
19 Debtor’s obligation to pay rent to the Los Angeles landlord.

20 *See* Declaration of Peter J. Benvenuti in Support of Debtor’s Motion For Order Extending the
21 Period During Which the Debtor has the Exclusive Right to File a Plan and Solicit Acceptances
22 (“Benvenuti Declaration”), ¶3.

23 Through each of the foregoing compromises, the Debtor has shown its good faith intention to
24 administer the bankruptcy estate for the mutual benefit of all. The Debtor intends to continue on this
25 path when the time is ripe for the negotiation of a plan. However, that time is not here yet, as
26 significant future events necessary to meaningful plan negotiations have not yet occurred. *See*
27 Benvenuti Declaration, ¶4.

28 ///

1 **D. Threshold Issues Remain Unresolved.**

2 The Debtor looks forward to DSI's issuance of a written report which will attempt, among
3 other things, to identify (a) when the Debtor became insolvent and/or when any of its related entities
4 or partners became insolvent; and (b) the extent to which individual shareholders of the Debtor's
5 partners (or the Debtor's partners) might be liable to the estate on any theory the Debtor or
6 Committee might posit. It is the Debtor's hope that DSI's report will serve as a common reference
7 point for negotiation regarding the appropriate contribution, if any, to be made by the shareholders
8 of the Debtor's partners to a consensual liquidating plan. *See* Benvenuti Declaration, ¶5.

9 At this early point in the Debtor's bankruptcy case, the press of business relating to the
10 liquidation (including the development of a bankruptcy wind-down plan, staff retention bonus plan,
11 office furniture and furnishings liquidation plan, and other wind-down activities) has been such that
12 DSI's work has focused primarily on matters other than the DSI report. As a result, it is unlikely
13 that the DSI report will be completed before the end of July 2009. *See* Declaration of Kyle Everett
14 in Support of Debtor's Motion For Order Extending the Period During Which the Debtor has the
15 Exclusive Right to File a Plan and Solicit Acceptances ("Everett Declaration"), ¶5.

16 **E. Other Relevant Facts.**

17 The Debtor is paying its bills as they come due post-petition. *See* Benvenuti Declaration, ¶6.

18 The Debtor has not proposed this extension of time in an effort to pressure its creditors or
19 obtain an untoward advantage over any other constituency. Instead, the Motion is designed to
20 maintain the status quo pending the time when it makes logical sense for plan negotiations to begin.
21 *See* Benvenuti Declaration, ¶7.

22 The Debtor believes that it is in general agreement with the Committee that, in order for a
23 negotiated resolution in this case to occur, all constituencies will need more information than they
24 have now. That negotiation cannot go forward until after DSI's report is completed. The Debtor
25 seeks an additional 120 days of exclusivity because it seems reasonable to expect that, when such
26 time has passed, the DSI report will have been made available and shared as necessary, and plan
27 negotiations will have been commenced. If this expectation proves unwarranted, the Debtor may
28 seek an additional extension. *See* Benvenuti Declaration, ¶8.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

ARGUMENT

A. The Debtor's Exclusivity Periods May Be Extended.

Bankruptcy Code Section 1121 establishes two exclusivity periods relating to plan submission and approval. Pursuant to Section 1121(b), a debtor-in-possession is granted a 120-day exclusive period after the entry of the order for relief in which to file a plan. If the debtor files a plan during this 120-day period, the debtor is provided a further 60-day period (i.e., until 180 days after the commencement of the case) within which to solicit acceptances of its plan, during which time period competing plans may not be filed by any party in interest. 11 U.S.C. § 1121(c).

Section 1121(d)(1) affords the debtor an opportunity to request an extension of both periods. Such extension may be granted by the Bankruptcy Court for "cause" after notice and a hearing. *Id.*

The exclusive periods under Section 1121 are intended to afford a debtor a meaningful opportunity to develop and confirm a consensual plan under chapter 11. *See In re Ames Dep't Stores Inc.*, 1991 WL 259036, at *3 (S.D.N.Y. Nov. 25, 1991) ("The purpose of the Bankruptcy Code's exclusivity period is to allow the debtor flexibility to negotiate with its creditors"). The exclusivity provisions provided by Section 1121 contemplate the "negotiation of a plan of reorganization that may be acceptable to creditors and other interested parties." *In re Adelpia Communications Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006), quoting *In re Texaco Inc.*, 81 B.R. 806, 810 (Bankr. S.D.N.Y. 1988). Thus, it is not uncommon for courts to grant one or more extensions of the exclusivity periods to allow a debtor a reasonable opportunity to fulfill the aims of the Bankruptcy Code and propose a plan acceptable to creditors and other parties in interest.

B. The Court Has Discretion Extend the Exclusivity Period For "Cause".

The decision to terminate or extend exclusivity rests within the Court's discretion. *In re Adelpia Communications Corp.*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006), aff'd 342 B.R. 122 (S.D.N.Y. 2006). A variety of factors are typically considered when determining whether "cause" exists under Section 1121(d) to extend the exclusivity periods, including:

- 1) the size and complexity of the case;

///

1 1987) (noting that “complex nature and the size and volume of proceedings” surrounding the chapter
2 11 cases “can constitute cause for the extension of exclusivity”); *In re Perkins*, 71 B.R. 294, 297-300
3 (W.D. Tenn. 1987) (court granted extensions of more than two and a half years, where the estate was
4 valued at \$13 million and there were just 100 creditors, holding 225 claims totaling \$10 million).

5 (2) The Debtor Deserves a Reasonable Time in Which to Negotiate a Plan
6 and Assemble Adequate Information.

7 The Debtor has shown why the time it has had thus far is not sufficient time in which to
8 negotiate a plan and prepare a disclosure statement. The time for serious plan negotiations simply
9 has not arrived. Thus, this inquiry, too, favors granting the requested extension.

10 (3) The Debtor Has Made Good Faith Progress Toward a Plan.

11 To the extent that progress toward a plan is exclusively in the control of the Debtor,
12 significant progress has been made. The litany of docket events set forth above makes clear that the
13 Debtor is taking the necessary steps that can be taken now to close this estate. Many issues that
14 might otherwise require further litigation (such as the resolution of the situations with the landlords
15 in Los Angeles and Seattle) have been resolved. The agreements necessary for DSI to conduct its
16 investigation and prepare its report are complete.

17 (4) The Debtor is Paying Its Bills as They Become Due.

18 The Debtor is paying its post-Petition Date bills as such bills become due.

19 (5) The Debtor Has Shown a Reasonable Prospect for Confirmation of a
20 Viable Plan.

21 This inquiry focuses principally on whether the Debtor has shown a reasonable prospect that
22 the Debtor will achieve some viable plan. As stated by the *Adelphia* court, the analysis “requires
23 only that a debtor be able to attain confirmation of at least some viable plan . . .” *Adelphia*, 352 B.R.
24 at 588. Here, with the progress to date and the groundwork laid for future plan negotiations, the
25 Debtor has clearly shown that a reasonable prospect exists that the Debtor will achieve some viable
26 plan.

27 ///

28 ///

1 (6) The Debtor is Making Substantial Progress Negotiating with Key
2 Creditors.

3 The Debtor has shown a genuine willingness to compromise with the Committee, and that
4 willingness can only be interpreted by the Court as a desire to have good relations with creditors
5 when meaningful plan negotiations begin. At this stage and on these facts, this is the most progress
6 that can be reasonably expected.

7 (7) Relatively Little Time Has Elapsed in This Case.

8 The Debtor filed this case less than four months ago. The proof of claims bar date for all
9 entities except governmental units will not pass until after the hearing on the Motion. The deadline
10 for governmental units to file a proof of claim has not yet expired, and will not expire until more
11 than 60 days after the hearing on the Motion. This is the Debtor's first motion to extend exclusivity,
12 and it seeks an extension of just 120 days. This factor clearly supports the extension requested.

13 (8) The Debtor has Not Made the Motion to Pressure Creditors.

14 The Debtor has not made the Motion to pressure creditors, or for any improper purpose. The
15 relief sought in the Motion is very limited, and merely designed to provide the Debtor with the
16 opportunity to negotiate in good faith with creditors and other interested parties after the information
17 being prepared by DSI is available.

18 (9) An Unresolved Contingency Supports the Requested Extension.

19 This is perhaps the most significant factor in support of granting the extension. The Debtor
20 and the Committee agree that, in order for a negotiated resolution in this case to occur, all
21 constituencies need more information than they have now. Based on the posture of the case today,
22 that negotiation cannot go forward until after DSI's report is completed. The requested 120 day
23 extension is keyed to the estimate given by DSI of when its report will likely be complete, and to
24 build in some time for its conclusions to be shared and discussed by the parties in interest.

25 (10) The Enumerated Factors, as Well as Other Relevant Factors, Establish
26 the Requisite Cause.

27 In the *Henry Mayo* case, the Ninth Circuit Bankruptcy Appellate Panel affirmed a bankruptcy
28 court's grant of an extension under factors roughly equivalent to those present in this case. In that

1 decision, the BAP affirmed a bankruptcy court’s finding of “cause” justifying the debtor’s requested
2 extension in the following situation:

3 (1) a first extension; (2) in a complicated case; (3) that had not been
4 pending for a long time, relative to its size and complexity; (4) in
5 which the debtor did not appear to be proceeding in bad faith; (5) had
6 improved operating revenues so that it was paying current expenses;
7 (6) had shown a reasonable prospect for filing a viable plan; (7) was
8 making satisfactory progress negotiating with key creditors; (8) did not
9 appear to be seeking an extension of exclusivity to pressure creditors;
10 and (9) was not depriving the Committee of material or relevant
11 information.

12 *Henry Mayo*, 282 B.R. at 452.

13 As discussed above, application of the factors to the facts of this case clearly constitute
14 sufficient cause to grant the extension requested in the Motion. In addition to the reasons set forth
15 above regarding each factor, this Motion, like the debtor’s motion in the *Henry Mayo* case, is the
16 Debtor’s first requested extension. Like the debtor in the *Henry Mayo* case, the Debtor has
17 consistently supplied the Committee with material and relevant information, having worked jointly
18 with DSI since shortly after the Committee’s formation. The Debtor has also solicited the
19 Committee’s input before taking major steps. More than sufficient cause exists to grant the Debtor’s
20 requested extension.

21 **b. Granting the Motion will Facilitate Moving the Case Forward Towards a Fair
22 and Equitable Resolution.**

23 In addition to considering the foregoing factors, the BAP also stated that “we agree with the
24 Dow Corning court that a transcendent consideration is whether adjustment of exclusivity will
25 facilitate moving the case toward a fair and equitable resolution.” *Henry Mayo*, 282 B.R. at 453,
26 citing *Dow Corning*, 208 B.R. at 670. Consideration of this factor also weighs strongly in favor of
27 granting the requested extension.

28 Numerous competing interests exist in this case, including those of priority claimants, the
banks who will soon be sued, unsecured creditors, the shareholders of the Debtor’s partners, and the
Debtor’s partners. It is the Debtor who is in the best position to attempt to resolve these numerous
competing interests because only the Debtor has a fiduciary duty to act in the best interests of the
bankruptcy estate and all of its various stakeholders.

1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam P. Khatiblou (CA Bar No. 178584)
Teddy M. Kapur (CA Bar No. 242486)
3 PACHULSKI STANG ZIEHL & JONES LLP
150 California Street, 15th Floor
4 San Francisco, California 94111-4500
Telephone: 415/263-7000
5 Facsimile: 415/263-7010

6 E-mail: jfiero@pszjlaw.com
kbrown@pszjlaw.com
7 mkhatiblou@pszjlaw.com
tkapur@pszjlaw.com

8 Attorneys for Heller Ehrman LLP,
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**DECLARATION OF KYLE EVERETT
IN SUPPORT OF DEBTOR'S MOTION
FOR ORDER EXTENDING THE
PERIOD DURING WHICH THE
DEBTOR HAS THE EXCLUSIVE
RIGHT TO FILE A PLAN AND
SOLICIT ACCEPTANCES**

16 Date: April 24, 2009
17 Time: 10:00 a.m.
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

20
21
22
23
24 I, Kyle Everett, declare:

25 1. I am a Vice-President at Development Specialists, Inc. ("DSI"), which has been
26 retained by Heller Ehrman LLP, the debtor and debtor-in-possession in the above-captioned case
27 (the "Debtor"), to serve as a financial advisor. Except where indicated otherwise, I have personal
28 knowledge of the facts set forth below, and if called to testify, I would testify competently thereto.

1 2. I submit this Declaration in connection with the *Debtor's Motion for Order Extending*
2 *The Period During Which The Debtor Has The Exclusive Right To File A Plan and Solicit*
3 *Acceptances* (the "Motion"), filed and served herewith. Unless otherwise defined herein, capitalized
4 terms have the meanings ascribed to them in the Motion.

5 3. Although the Debtor and the Official Committee of Unsecured Creditors (the
6 "Committee") agreed to hire DSI to serve as a joint financial advisor on or about January 22, 2009, it
7 was not until March 9, 2009 that the Court entered its Order Authorizing Employment of
8 Development Specialists, Inc. as Consultants to the Debtor and Official Committee of Unsecured
9 Creditors (the "DSI Employment Order"). Among other things, the DSI Employment Order states
10 that DSI shall provide the following services to both the Debtor and the Committee:

- 11 a. Preparation of a written report on the point when Heller Ehrman LLP became
- 12 insolvent and/or when any of its related entities or partners became insolvent;
- 13 b. Preparation of a liquidation analysis;
- 14 c. Preparation of a written report detailing the extent to which individual
- 15 shareholders of the Debtor's partners (or the Debtor's partners) might be
- 16 liable to the estate on any theory the Debtor or Committee might posit;

17 In this Declaration, items a through c above shall collectively be referred to as the "Historical
18 Accounting Services."

19 4. I am informed and believe that one intended purpose for the Historical Accounting
20 Services is to have DSI's written report serve as a common reference point for a future negotiation
21 regarding the appropriate contribution, if any, of the shareholders of the Debtor's partners (or the
22 Debtor's partners) to a consensual liquidating plan.

23 5. At this early point in the Debtor's bankruptcy case, the press of business relating to
24 the liquidation (including the development of a bankruptcy wind-down plan, staff retention bonus
25 plan, office furniture and furnishings liquidation plan, and other wind-down activities) has been such
26 that DSI's work has focused primarily on matters other than the Historical Accounting Services. As
27 a result, it is unlikely that the Historical Accounting Services will be completed before the end of
28 July 2009 and, even then, not all aspect of the project may be complete if DSI does not receive

1 complete information from all affected parties. I will be able to update this estimate for the Court at
2 the time of the April 24 hearing on the Debtor's Motion.

3 I declare under penalty of perjury that the foregoing is true and correct and that this
4 Declaration was executed in San Francisco, California on April 3, 2009.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/Kyle Everett
Kyle Everett

1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam P. Khatiblou (CA Bar No. 178584)
Teddy M. Kapur (CA Bar No. 242486)
3 PACHULSKI STANG ZIEHL & JONES LLP
150 California Street, 15th Floor
4 San Francisco, California 94111-4500
Telephone: 415/263-7000
5 Facsimile: 415/263-7010

6 E-mail: jfiero@pszjlaw.com
kbrown@pszjlaw.com
7 mkhatiblou@pszjlaw.com
tkapur@pszjlaw.com
8

9 Attorneys for Heller Ehrman LLP,
Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**DECLARATION OF PETER J.
BENVENUTTI IN SUPPORT OF
DEBTOR'S MOTION FOR ORDER
EXTENDING THE PERIOD DURING
WHICH THE DEBTOR HAS THE
EXCLUSIVE RIGHT TO FILE A PLAN
AND SOLICIT ACCEPTANCES**

16 Date: April 24, 2009
17 Time: 10:00 a.m.
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

20
21
22
23 I, Peter J. Benvenuti, declare:

24 1. I am a member of the Dissolution Committee created by the Plan of Dissolution
25 adopted as of September 26, 2008 by Heller Ehrman LLP, the debtor and debtor-in-possession in the
26 above-captioned case (the "Debtor"). I also am the designated "responsible individual" for the
27 Debtor pursuant to B.L.R. 4002-1. I am authorized to submit this declaration on behalf of the

28 ///

1 Debtor. I have personal knowledge of the facts set forth below, and if called to testify, I would
2 testify competently thereto.

3 2. I submit this Declaration in connection with the Debtor's Motion for Order Extending
4 The Period During Which The Debtor Has The Exclusive Right To File A Plan and Solicit
5 Acceptances (the "Motion"), filed and served herewith. Unless otherwise defined herein, capitalized
6 terms have the meanings ascribed to them in the Motion.

7 3. The Debtor has worked with the Official Committee of Unsecured Creditors (the
8 "Committee") on a host of issues since the Committee was appointed on or about January 5, 2009.
9 Included among the significant agreements that the Debtor and the Committee have reached are the
10 following:

- 11 a. The Debtor agreed with the Committee that the Committee could serve as
12 estate representative for the estate's avoidance actions against Bank of
13 America and Citibank, and also for the purpose of pursuing the estate's rights
14 under *Jewel v. Boxer*, on or about January 20, 2009;
- 15 b. The Debtor agreed with the Committee to limit the scope of employment of
16 Greenberg Traurig LLP to certain areas for which that firm has special
17 expertise and significant background information regarding the Debtor on or
18 about January 20, 2009;
- 19 c. The Debtor agreed with the Committee to jointly employ Development
20 Specialists, Inc. ("DSI") to perform a series of investigative tasks, including
21 among other things the preparation of a written report identifying the Debtor's
22 point of insolvency on or about January 22, 2009;
- 23 d. The Debtor agreed with the Committee to restrict the Debtor's ability to pay
24 worker's compensation claims beyond what the Court had ordered on or about
25 February 9, 2009;
- 26 e. The Debtor agreed with the Committee to withdraw its original employee
27 retention bonus plan in favor of a modified one prepared by DSI on about
28 February 20, 2009;

1 f. The Debtor agreed with the Committee to jointly retain the Lovitt & Hannan
2 firm to investigate certain pre-petition events that might give rise to litigation
3 claims belonging to the estate on or about March 16, 2009.

4 g. The Debtor agreed with the Committee to restrict the use of Clars as its
5 appraiser for the Debtor's art collection on or about March 25, 2009;

6 h. The Debtor acquiesced in the Committee's insistence that Bank of America
7 not be repaid on account of a draw upon the letter of credit collateralizing the
8 Debtor's obligation to pay rent to the Los Angeles landlord.

9 4. Through each of the foregoing compromises, I believe the Debtor showed its good
10 faith intention to work with the Committee in administering this bankruptcy estate for the mutual
11 benefit of all parties in interest. The Debtor intends to continue on this path when the time is ripe for
12 the negotiation of a plan. However, that time is not here yet, as significant future events necessary to
13 meaningful plan negotiations have not yet occurred.

14 5. Specifically, the Debtor looks forward to DSI's issuance of a written report which
15 will attempt, among other things, to identify (a) when the Debtor became insolvent and/or when any
16 of its related entities or partners became insolvent; and (b) the extent to which individual
17 shareholders of the Debtor's partners (or the Debtor's partners) might be liable to the estate on any
18 theory the Debtor or Committee might posit. It is the Debtor's hope that DSI's report will serve as a
19 common reference point for negotiation regarding the appropriate contribution, if any, to be made by
20 the shareholders of the Debtor's partners to a consensual liquidating plan.

21 6. I am informed and believe that the Debtor is paying its bills as they come due post-
22 petition.

23 7. The Debtor has not proposed this extension of time in an effort to pressure its
24 creditors or obtain an untoward advantage over any other constituency. Instead, the Motion is
25 designed to maintain the status quo pending the time when it makes logical sense for plan
26 negotiations to begin.

27 8. I am informed and believe that the Debtor and the Creditors Committee generally
28 agree that, in order for a negotiated resolution in this case to occur, all constituencies will need more

1 information than they have now. Based on the posture of the case today, I believe that negotiation
2 cannot go forward until after DSI's report is completed. At this time, the Debtor seeks an additional
3 120 days of exclusivity because it seems reasonable to expect that, when such time has passed, the
4 DSI report will have been made available and shared as necessary, and plan negotiations will have
5 been commenced. If this expectation proves to be unwarranted, the Debtor reserves the right to seek
6 an additional time extension.

7 I declare under penalty of perjury that the foregoing is true and correct and that this
8 Declaration was executed in San Francisco, California on April 3, 2009.

9
10 /s/ Peter J. Benvenuti
11 Peter J. Benvenuti