

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re: Chapter 7
CLSF III IV, Inc., *et al.*, Lead Case No. 12-30081-BKC-EPK
Debtor. (Jointly Administered)

**TRUSTEE’S EMERGENCY MOTION TO ALLOW CHAPTER 7
ADMINISTRATIVE EXPENSE CLAIM OF SPQI**

Basis for Emergency Hearing

The Trustee respectfully requests the Court conduct an emergency hearing on this Motion on or before August 8, 2013, as the Trustee requires the immediate approval of the terms of the agreement between the Trustee and SPQI as to a Loan (as defined below) to be given to the Trustee by SPQI solely for purposes of making life insurance premium payments. The Trustee learned on July 16, 2013 that MQIC would no longer make any further premium payments.

Deborah C. Menotte (the “Trustee”), hereby moves the Court, pursuant to 11 U.S.C. §§ 364(b) and 503(b)(1)(A), for the entry of an Order allowing SPQI a Chapter 7 administrative expense claim, and in support thereof, states:

I. Background

1. On August 22, 2012 (the “Petition Date”), an involuntary petition for relief under Chapter 7 was filed against the Debtor, CLSF III IV, Inc. (the “Debtor”).

2. Thirty-two affiliates (the “Affiliates”) of the Debtor (together with the Debtor, collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012. Certain other entities have been found to be alter egos of the Debtor (the “Alter Egos”) and also own policies.

3. On December 11, 2012, the Chapter 7 cases of the Debtors were jointly administered pursuant to this Court's *Order of Joint Administration of Related Cases With CLSF III IV, Inc. as Lead Case* [ECF# 120].

4. Some of the Debtors and Alter Egos are the owners of, and beneficiaries under, certain life insurance policies, which are property of certain of the Debtors' estates. Some of the other Debtors and Alter Egos had interests in lapsed or sold policies that the Debtors' are trying to recover.

5. Deborah C. Menotte is the duly appointed and acting Chapter 7 Trustee for the bankruptcy estates of each of the Debtors.

II. Relief Requested

6. Creditor, Stichting Participantenbelangen QI ("SPQI") and the Trustee have recently negotiated an agreement with respect to a loan to be given by SPQI to the Trustee solely for the purpose of making life insurance premium payments on account of the life insurance policies which are property of the Debtors estates or of the Alter Egos.

7. In that regard, SPQI and the Trustee have agreed upon the following terms:

a. SPQI has agreed to loan up to \$1,501,000 (the "Loan") to the Trustee pursuant to 11 U.S.C. § 364(b), which shall be treated as a Chapter 7 administrative expense claim, on par with other Chapter 7 administrative expense claims filed in the Debtors' estate, such as attorneys' fees and costs, and senior to all distributions to foreign investors;

b. The Loan shall be funded at the sole discretion of SPQI, such that SPQI is under no obligation to lend;

c. SPQI may fund the Loan in tranches/installments as SPQI so chooses, in its sole discretion, and subject to availability of funds from SPQI member participants.

- d. The Loan shall be free of interest;
- e. The Trustee shall use the Loan solely for the purpose of making premium payments;
- f. The Trustee shall repay the Loan within twenty (21) days after the Trustee first receives sufficient proceeds to do so from sales of insurance policies owned by the Debtors or Alter Egos;
- g. SPQI shall wire the Loan installment payments directly to Litai Assets, LLC (“Litai”), the Trustee’s Court approved servicing agent, and Litai shall only utilize the funds to make premium payments as directed by the Trustee. Litai shall not be permitted to utilize the funds to pay for Litai’s fees and expenses. Litai shall segregate these funds in an escrow account to be solely for this purpose and the funds shall remain the funds of SPQI except for those funds used to pay premiums. Any funds remaining in the SPQI escrow account that are not needed to make premium payments shall be returned to SPQI once all policies are sold.
- h. The Trustee will promptly repay the loan or, if necessary, seek court approval to do so, following receipt of sufficient proceeds from policy sales to do so.
- i. The Loan shall be contingent upon obtaining an Order from this Court approving the Loan.

8. By this Motion, the Trustee requests the entry of an Order allowing SPQI a Chapter 7 administrative expense claim up to the amount of \$1,501,000 in the respective Debtors estates to extent that SPQI funds the Loan and the proceeds are used to pay premiums by the Trustee.¹

¹ To the extent, if any, that the estate of CLSF III IV, Inc. may ultimately be substantively consolidated with any other bankruptcy estate, all references herein to the “Debtors estates” shall include such consolidated estate.

9. On July 16, 2013, the Trustee learned without any forewarning that MQIC would no longer make any further premium payments because they disagreed with the Trustee's choice of the consultant approved by this Court. As a result, the policies with premium payments due in July 2013 have gone into grace and will lapse in September if premium payments are not made. The premium payments due for July, August and September 2013 are approximately \$1,500,000. The Loan to be paid by SPQI to the Trustee is necessary in order to avoid further policies falling into grace and to avoid the lapsing of insurance policies, and, therefore, provides a benefit to the Debtors estates, and falls within 11 U.S.C. § 503(b)(1)(A).

WHEREFORE, the Trustee respectfully requests that this Court enter an order (i) granting this Motion; (ii) allowing SPQI a Chapter 7 administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) in the amount of up to \$1,501,000 in the Debtors' Chapter 7 estates that own policies for funds advanced under the Loan that are used to pay premiums; and (iii) granting such other and further relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 7th day of August, 2013, by electronic transmission through the Court's CM/ECF system upon all parties listed on the attached CM/ECF Service List, and via first class, U.S. Mail upon all creditors and interested parties on the attached Court Matrix.

Dated: August 7, 2013

Respectfully submitted,

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