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**IT IS SO ORDERED.**



  
Guy R. Humphrey  
United States Bankruptcy Judge

**Dated: May 30, 2012**

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

In re: THE VISICON SHAREHOLDERS TRUST, AN  
OHIO TRUST U/A/D NOVEMBER 11,  
2002 DBA THE HOPE HOTEL AND  
CONFERENCE CENTER,

*Debtor in Possession,*

Case No. 10-33736

Judge Humphrey  
Chapter 11

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**Order Denying Motion to Shorten Notice and for Expedited Hearing (doc. 166),  
Fixing Date for Responses to Applications to Employ Professionals (docs. 164 & 165)  
and Ordering Other Matters**

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This matter is before the court on the *Application for Authority to Employ Denise Duplinski and Birnbrey, Minsk, Minsk & Perling as Accountants for Debtor in Possession Nunc Pro Tunc to June 8, 2010* (doc. 164) and *Application for Authority to Employ Alan C. Duvall and Duvall & Associates, Inc. as Expert Witnesses for Debtor in Possession* (doc. 165) (collectively, the “Applications”) filed by the Debtor-in-Possession, The Visicon Shareholders Trust, an Ohio Trust U/A/D November 11, 2002 (the “Debtor”) on May 25, 2012. The Applications are accompanied by a motion seeking to expedite the hearing and to shorten the noticing period to no more than 24 hours prior to the requested hearing date (doc. 166) (the “Motion to Expedite”). The Application to employ Denise Duplinski and Birnbrey, Minsk, Minsk & Perling as accountants seeks an order approving retention of the Ms. Duplinski and her firm retroactive to the date of the filing of this case, June 8, 2010.

Upon review of the foregoing filings, and for the reasons discussed below, the court **denies** the Motion to Expedite.

### **Procedural Background and Facts**

This case was filed as a voluntary Chapter 11 case on June 8, 2010. The Debtor has operated its principal asset, a hotel on the grounds of Wright Patterson Air Force Base (the “Hope Hotel”), as a debtor-in-possession since the inception of the case. The Debtor and its principal creditor, GCCFC 2002-C1 Dayton Hotel and Conference Center, LLC (the “Creditor”), which holds a lien on the Debtor’s assets, have engaged in significant litigation and discovery.<sup>1</sup> This court has held several conferences concerning discovery disputes between the Debtor and Creditor.

On February 3, 2011 the Debtor filed a Chapter 11 Plan, accompanied by a Disclosure Statement (docs. 66 & 67). On July 8, 2011 the court issued an *Order Setting Hearing on Approval of Disclosure Statement* (doc. 91). On September 2, 2011 the court entered an *Agreed Order Continuing Hearing on Approval of Disclosure Statement*, rescheduling that hearing to February 23, 2012 (doc. 103).

On November 10, 2011 the Creditor filed a motion to dismiss this case (doc. 109; the “Motion to Dismiss”) and on November 15, 2011 the court issued an order scheduling a hearing on the Motion to Dismiss for January 18, 2012 (doc. 111). The Debtor filed an objection to the Motion to Dismiss on December 5, 2011 (doc. 114). The parties agreed to continue the January 18, 2012 hearing to February 23, 2012 and the disclosure statement hearing to May 1, 2012 (See docket entry on January 17, 2012 and doc. 125). The court held a status conference on the Motion to Dismiss on February 16, 2012 during which it cancelled all of these dates, with the parties to supply the court with new dates based upon their discovery needs and schedule (See docket entry on February 16, 2012 and doc. 131). The court did not receive orders from the parties containing new dates for the hearing on the Motion to Dismiss and on the Disclosure Statement, so the court scheduled and held another status conference with the parties on May 8, 2012 (See doc. 144 and docket entry on May 8, 2012). During the May 8th conference the court scheduled the hearing on the Motion to Dismiss for June 29, 2012 (See doc. 150).

On May 25, 2012 the Debtor filed the Applications and the Expedited Motion. The Motion to Expedite “requests that the Court enter an order (i) shortening notice of the Retention Motions by at least fifteen (15) days, and (ii) scheduling the Retention Motions for hearing on or before June 1, 2012.” The only reason provided in the Motion to Expedite for requesting shortened notice and expedited relief is “the Court’s upcoming Schedule.” The Debtor also stated in the Motion to Expedite: “The Debtor is seeking to shorten notice of the Retention Motions by at least fifteen (15) days. Such a reduction in the notice period will

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<sup>1</sup> See docs. 14, 16, 25, 26, 27, 28, 29, 30, 35, 51, 56, 72, 73, 76, 79, 83, 89, 97, 98-100, 102, 117, 118, 119, 121, 122-23, 124, 133-135, 137 and 157.

not result in prejudice to any party in interest as the parties mostly likely affected have received service of the Retention Motions by ECF transmission. The Debtor requests that the objection deadline be set at twenty-four (24) hours prior to the hearing.” Although it is not expressly stated in the Motion to Expedite, it appears that the Debtor wishes to obtain the court’s approval to employ the professionals in advance of the June 29th hearing on the Motion to Dismiss.

### **Discussion and Analysis of the Debtor’s Motion to Expedite**

Unless otherwise ordered, all motions and applications filed with this court are required to be filed and served with a notice providing 21 days to parties in interest to object to the relief requested in the motion or application. Local Bankruptcy Rule 9013-1. This requirement is based upon due process considerations.

Any time a party’s opportunity to receive, review and respond to relief requested in a motion or application is shortened, due process, a reasonable opportunity to respond to relief requested, may be affected. Accordingly, any time a party seeks to shorten the response time to a motion, the court must scrutinize such relief carefully.

Local Bankruptcy Rule 9013-1 contains an implicit assumption that 21 days is a reasonable amount of time with which to respond to relief requested by a party-in-interest. However, Local Bankruptcy Rule 9073-1 recognizes that there are special circumstances for which the normal 21 day response period<sup>2</sup> should be reduced to afford adequate and timely relief to the parties and provides a procedure through which the 21 day period for filing objections to the relief requested in a motion or application can be reduced and allows the court to hold an expedited hearing on the relief sought. Specifically, Local Bankruptcy Rule 9073-1(a) provides:

**(a) Request for Expedited Hearing or Disposition.** In the event that a party seeking or opposing relief in a proceeding or matter believes that an expedited hearing or expedited disposition is required, such party may request same. The motion for expedited hearing or disposition shall be by separate motion and not combined with the filing or other paper in which the underlying relief is sought. The motion for expedited hearing or disposition shall set forth:

- (1) a description of the relief requested;
- (2) the reasons for which an expedited hearing or disposition is requested;

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<sup>2</sup> In addition, three days are added to the notice period. Fed. R. Bankr. P. 9006(f).

(3) the identity of all parties who may be affected by the relief requested in the underlying filing or paper;

(4) the method of notification of all interested parties; and

(5) the proposed shortened notice or response period being sought and any proposed date or dates and time for any expedited hearing being sought.

The motion for expedited hearing or disposition shall be accompanied by a proposed form of notice and a proposed order which, if signed, will set an expedited hearing date and/or shortened response time on the underlying filing.

LBR 9073-1(a).

In considering a request for expedited relief, a court must balance the potential impact of granting a shortened time period for responding to the substantive relief sought by the moving party and preparing for a hearing against any harm that might result in not granting the expedited relief request. See *In re Freedlander, Inc.*, 86 B.R. 66, 68-69 (Bankr. E.D. Va. 1988). Problems with responding to relief requested on an expedited basis can include lack of availability of the parties and counsel to address the relief requested during the shortened period, insufficient time to research and prepare an adequate analysis of the relief requested, clearing schedules to respond to any such relief and to attend any hearing on such relief requested, and difficulties in making travel arrangements to attend a hearing on shortened notice. A potential problem with not granting expedited relief includes that if the relief is not granted on a shortened time schedule, the relief may not be effective due to the timing associated with the relief being sought. Due to all these considerations, any motion seeking shortened notice and expedited relief needs to precisely set forth the reasons why expedited relief is imperative. Thus, the court needs a sufficient basis justifying reduction of a party's time to respond to requested relief before it will reduce the 21 day notice period. That basis must be weighed against potential prejudice to parties that may result from reducing that period and the impact which that shortened time period may have on due process.

With those considerations in mind, the court will examine the expedited relief sought in this case. The Debtor seeks to employ two professionals on shortened notice to parties in interest. The Applications were filed approximately 5:00 p.m., May 25, 2012, a Friday commencing the Memorial Day weekend. The Debtor has requested, due to the court's schedule, that the court hold a hearing, one week later, on Friday, June 1, 2012, with responses to the Applications needing to be filed on Thursday, May 31st. Due to the filing and service of the Applications late Friday, May 25th; this time-frame essentially would provide parties-in-interest 3 business days to respond to the Applications.

The one professional sought to be employed on an expedited basis is an accountant who the Debtor apparently has used at least since the petition was filed almost two years ago and the Debtor seeks that the court's approval of that employment be made retroactive to the date of the filing of the petition, June 8, 2010. Since this accountant appears to have been used by the Debtor over the last two years and is sought to be employed for what appears to be rather routine accounting preparation and analysis, including preparation of balance sheets for the Debtor, the relief seeking to employ this accountant does not appear to be the urgent relief that should be the subject of a motion seeking expedited relief. Similarly, the employment of the forensic accountant, Mr. Duvall, does not appear to necessitate consideration on a shortened time-frame. The Debtor has known for a significant period of time that the Creditor has employed a forensic accountant to review the records of the Debtor and that the Creditor has been requesting those records and the pertinent information to provide to its forensic accountant. The Creditor's Motion to Dismiss appears to in large part be based upon asserted findings made by the Creditor's forensic accountant. The Motion to Dismiss was filed on November 10, 2011 and the hearing on that Motion has been rescheduled several times. While the court understands that it may be in the best interests of the Debtor to employ its own forensic accountant to counter the assertions made by the Creditor and its forensic accountant, the court does not find a basis to review the circumstances related to the employment of Mr. Duvall and his firm on shortened notice.

Finally, employment of professionals is a subject matter over which the United States Trustee has considerable responsibility. In addition to the Creditor and other parties in interest to this case, the United States Trustee must have sufficient time to consider the relief requested by the Debtor in the Applications. Three business days is not a sufficient time to afford the United States Trustee to do so under the circumstances of this case.

### Conclusion

Accordingly, the Motion to Expedite (doc. 166) is **denied**. Any objections or responses to the Applications and any reply to any such objections or responses shall be filed with the court and served in accordance with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 9013-1. In the event an objection is filed to the Applications, the court will schedule a hearing.

**IT IS SO ORDERED.**

Copies to:

#### **Default List, Plus**

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