Increased Bankruptcy Risk for Newspapers

Economic Woes Could Force Publishers Into Chapter 11

NEW YORK – The economic slump that began in the housing sector continues to spread to other sectors of the U.S. economy. Several national retailers, including Sharper Image, Lillian Vernon, and Linens 'n Things recently filed for protection under Chapter 11 of the Bankruptcy Code. A number of airlines are in bankruptcy, and others may soon seek to reorganize or liquidate as well. Next in line might be the news publishing industry, and it could be headed for one of the most difficult periods in its history.

The trend in the newspaper industry for more than a decade has been declining circulation and consolidation. Seeking economies of scale and other synergies, many newspaper consortiums bought out smaller or rival papers to cut costs without losing revenue. However the debt incurred to finance these transactions may be unsustainable as advertisers cut marketing dollars and more readers get their news on the Internet rather than from the newsstand. As a result, cost-cutting measures, debt restructuring, and even bankruptcy filings by large newspapers and newspaper groups are expected over the next six to 18 months.

The Chicago Tribune recently reported that the Sun-Times Media Group, publisher of *The Chicago Sun-Times* and over 400 other publications worldwide, had engaged Lazard to explore a sale.[1] Just a few weeks later, by the middle of May, the company's Class A common stock was de-listed by the New York Stock Exchange for non-compliance with listing standards.

> "[T]he news publishing industry . . . could be headed for one of the most difficult periods in its history."

The Journal Register Company, publisher of *The New Haven Register* and more than 20 other daily papers, was de-listed from the NYSE in April. Conditions continued to deteriorate over the next few weeks, and the company warned in an SEC filing that it could default on a debt covenant in its credit facility as early as July 23, 2008 "[u]nless there is significant improvement in the Company's operating results during the second fiscal quarter," or the company is able to negotiate an amendment to the covenant.

At least one investor has expressed an interest in purchasing the Journal Register and providing a much-needed cash infusion. But given the company's debt load and its need to shed assets, it is reasonable to speculate that any such sale might occur in the context of a Chapter 11 case.

Even some large newspapers are underperforming, and while they may not be likely candidates for bankruptcy cases, their struggles are emblematic of industry-wide distress. Gannett Co., Inc., publisher of *USA Today* and the largest newspaper chain in the country, had a disappointing April. On May 19, Gannett announced that "total operating revenues for the fourth period ended May 4, 2008 declined 7.7 percent compared with the same period in 2007. Publishing advertising revenues in April were down 10.4 percent compared with April a year ago, retail advertising revenues were 6.1 percent lower in the fourth period, and classified revenues were 15.8 percent lower in the fourth period."[2]

Some struggling newspaper publishers may be able to avoid a bankruptcy filing by selling assets, restructuring debt obligations, or obtaining new sources of funding. Others may be large or diverse enough to weather the storm without significant impact on investors. Yet it appears likely that there will be one or more bankruptcy filings in this industry in the coming months. And unlike the seemingly perennial bankruptcy filings in the retail, automotive parts, and airline sectors, a wave of bankruptcy filings in the newspaper industry would be the first of its kind. These debtors will confront many of the normal challenges of a corporate reorganization: managing vendors and customers, stabilizing operations, reducing debt or converting debt to equity, and finding a buyer, lender or investor to fund emergence from bankruptcy. But some new questions might arise, too: what will be the effect on intellectual property that the debtor owns and licenses? What will be the impact of profitable Internet ventures on lagging print media sales – and of the bankruptcy on such ventures? Might a news publisher's rights under the First Amendment come into conflict with any provisions of the Bankruptcy Code?

These and other questions will surely come into sharper focus – and under enhanced scrutiny – if conditions in the industry continue to worsen and force publishers into bankruptcy.

Endnotes

1 "Sun-Times: Investment of a lifetime," *The Chicago Tribune*, April 15, 2008.

2 Press Release, Gannett Co., Inc. Releases April Statistical Report (available at: http://www.gannett.com/)

If you would like to discuss how financial distress and bankruptcy in the newspaper industry could affect your business, please contact any of the attorneys in our Business Reorganization and Creditors' Rights Group listed below.

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We are monitoring this industry closely, particularly those companies experiencing financial distress that has been reported in press releases and other publicly-available documents. The companies discussed herein are included for illustrative purposes only; we express no opinion as to whether any of the companies discussed in this alert will continue to experience financial distress or will reorganize, liquidate or enter bankruptcy.