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BANKRUPTCY UPDATE

Expert Analysis

Two Paper and Print Companies Win Restructuring Plan Confirmation

By
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This issue of the Bankruptcy Update focuses on recent restructurings in the paper and printing industry. The column delves into the bankruptcy proceedings of Appvion and Cenveo who won confirmation of their respective plans this month.

'Appvion Inc.'

(Bankr. D. Del. Case No. 17-12082)

On Oct. 1, 2017, specialty paper maker Appvion Inc. and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The debtors sought relief in bankruptcy court following a long term decline in demand for paper products as the marketplace shifted to digital forms. The debtors' sales of carbonless copy paper used in government, retail, financial and manufacturing applications, which comprise 40 percent of the debtors' business, fell drastically from approximately $570 million in 2014 to $530 million in 2016. In addition to carbonless copy paper, the debtors produce a line of thermal paper used in retail receipts.

The debtors entered bankruptcy without a prenegotiated restructuring support agreement or fast track sale plan and hoped to reorganize as a going concern. To fund operations under Chapter 11, the debtors sought approval of a $325 million DIP financing facility to be extended by a group of their first-lien lenders including Franklin Advisers. The DIP facility would provide for a roll-up of prepetition first-lien debt and approximately $85 million in new money. On Oct. 29, 2017, the debtors secured final approval for the DIP financing package after negotiating a resolution of objections raised by the official committee of unsecured creditors. The negotiated changes included an increase in the committee's investigation budget, exclusion of avoidance actions from DIP liens and a reservation of the committee's right to seek standing to challenge prepetition liens.

On Jan. 15, 2018, the official committee of unsecured creditors sought standing to challenge prepetition liens arguing that certain estate assets, including intellectual property and leasehold interests, were unencumbered. Jefferies Finance LLC, as agent to first-lien lenders, objected arguing that the committee's standing motion was time barred under the provisions of the final DIP order.

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In the interim, the debtors pivoted to a sale process with the DIP lenders agreeing to act as stalking horse bidder with a $363 million stalking horse bid. To fund operations through the sale process, the debtors also sought approval of a new $100 million DIP facility to be provided by Franklin Advisers. The proposed new facility drew objections from the official committee

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of unsecured creditors who argued the additional financing was simply a way to lock down Franklin Advisers' bid to purchase the company and two minority lenders under the original DIP financing who argued the new facility fails to adequately protect their interests. On March 29, the debtors secured court approval for the new DIP financing facility after resolving the committee's objection through language carving out certain assets from new DIP liens. The court overruled the remaining objections noting that alternative funding was unavailable and the completion of the sale process was critical to achieving creditor recoveries.

On May 14, the court approved the sale to Franklin Advisers as well as a global settlement reached among the debtors, the purchaser and creditor groups and interested parties. Key settlement provisions included mutual releases with a carve-out of certain claims to be pursued by a liquidating trust and a $350,000 liquidating trust funding commitment by Franklin Advisers. In addition, Franklin Advisers agree to fund a wind-down budget through plan confirmation.

A plan incorporating the global settlement was confirmed on August 14, 2018. Under the confirmed plan, first-lien and DIP claims will be paid in full, holders of second-lien notes will receive warrants for up to 5 percent of equity in the purchaser of the debtors' assets together with a share of liquidation trust proceeds, and general unsecured creditors will receive remaining liquidation trust proceeds and their pro-rata share of a $600,000 cash pool.

'Cenveo, Inc.'

(Bankr. S.D.N.Y. Case No. 18-22178)

On Feb. 2, printing and envelope company Cenveo Inc. and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.

The debtors are among the largest printing and envelope companies in the U.S operating more than 100 facilities in the U.S., Asia, South America and Central America. They also produce custom labels and print magazines and comic books.

The debtors entered bankruptcy with a restructuring support agreement with holders of more than half of their first-lien debt who also agreed to provide approximately $290 million in DIP financing. Nevertheless, the debtors faced immediate opposition from Brigade Capital Management, their largest second-lien holder who also held equity and first-lien positions. Brigade Capital Management raised concerns about improper prepetition insider transactions, among other deficiencies.

On Feb. 12, Brigade Capital Management sought the appointment of an independent examiner to investigate the debtors' prepetition conduct and allegations for improper insider transactions. The hearing on the examiner motion was set for March 6, to coincide with the final hearing to approve the proposed DIP financing. At the hearing, the court approved a slightly modified DIP financing arrangement that addressed concerns raised by the official committee of unsecured creditors and appointed an examiner to act in a limited role and oversee the investigation of prepetition transactions already under way by the committee.

On April 2, 2018, the debtors filed their initial chapter 11 plan of reorganization and accompanying disclosure statement. Under the proposed plan first-lien noteholders would receive 100 percent of the debtors' equity subject to dilution by a management incentive plan and $200 million in new second-lien debt while second-lien notes would receive new three-year warrants in an exercisable amount to be determined and general unsecured claims would receive no more than a pro-rata share of $1.5 million. The plan drew the ire of the official committee of unsecured creditors who called it patently unconfirmable.

The debtors returned to the negotiating table and on June 5, announced a global restructuring settlement with several of its key stakeholders including the official committee of unsecured creditors. The settlement, memorialized in an amended plan of reorganization and disclosure statement, included an increased $7 million cash recovery pool to be shared by general unsecured creditors and second-lien noteholders. Shortly thereafter, Brigade Capital Management agreed to become part of the restructuring support agreement after the debtors agreed to pay its reasonable legal fees and expenses up to $1.25 million.

On Aug. 16, the court confirmed the debtors' plan of reorganization, which was further modified to reflect that the debtors will not enter into a second-lien exit facility thereby changing treatment of first-lien notes to receive distributions comprised entirely of equity in the reorganized debtors.