

LEGAL IMPLICATIONS OF BANKRUPTCY

Presentation For:
**MFM/BCCA 2009 ANNUAL
CONFERENCE**

The Westin Peachtree Plaza Hotel
Atlanta, Georgia
May 12, 2009

Presented By:

WANDA BORGES, ESQ.
BORGES & ASSOCIATES, LLC.
575 Underhill Boulevard
Syosset, New York 11791
Telephone: (516) 677-8200, x 225
Facsimile: (516) 677-0806
E-mail: borgeslawfirm@aol.com

BRUCE S. NATHAN, ESQ.
LOWENSTEIN SANDLER PC
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 262-6700
Facsimile: (973) 422-6851
E-mail: bnathan@lowenstein.com
Firm Website: www.lowenstein.com

I. TRENDS IN CHAPTER 11 CASES

A. “Prepackaged” Chapter 11 Cases

1. Debtor files Chapter 11
2. Prior to filing, Debtor has agreement in place with creditors, usually holders of significant amount of bond debt.
3. Purpose:
 - (a) Restrictive Debtor’s balance sheet
 - (b) Reduce time/costs of Chapter 11 process
4. Proposed distributions to bondholders:
 - (c) Cash
 - (d) Notes
 - (e) Stock
5. What is proposed recovery to unsecured trade creditors?
 - (f) Payment in full, or something less?
 - (g) Payment in cash, notes, securities?
 - (h) Beware of the so-called prepackaged Chapter 11's that provide for less than full recovery of trade claims.
6. Often plan of reorganization filed on first day of case.
7. Creditors must act quickly to determine treatment under plan.
 - (i) Case on expedited timetable
 - (j) Creditors’ committee not always appointed in prepackaged case
 - (k) Should creditor continue extending credit to Debtor?
8. Is Debtor seeking authority to pay unsecured trade creditors in ordinary course of business during the Chapter 11?
 - (l) Do trade creditors have to agree to provide certain credit terms?

9. When will voting on plan commence?
 10. Did Debtor solicit votes prior to bankruptcy filing?
 11. What are the conditions to the effectiveness of plan?
 12. Will preference claims be pursued?
 13. Charter Communications?
- B. Traditional Debt Structure Of Chapter 11 Debtor Becoming Undone
1. Secured debt: bank or other lending institution
 2. Administrative/priority claims
 3. Unsecured bond debt
 4. Unsecured trade claims
 5. Other unsecured claims
 6. Shareholders/equity interests
- C. Distress Investors Have Modified the Traditional Structure: First, Second and Third Liens
1. Bondholders often secured by liens on Debtor's assets
 - (m) Distressed investors purchase debt at deep discount
 2. Few or no unencumbered assets available for distribution to unsecured creditors
 3. Section 503(b)(9) administrative priority for portion of pre-petition unsecured claims of trade creditors that supply goods gives this group a leg up in bankruptcy cases.
- D. "Creditor" Strategies In "Under Water" Chapter 11 Cases
1. Overleveraged Debtors filing liquidating Chapter 11's
 - (n) Goal: "Section 363" sale of Debtor
 - (o) Secured creditor(s) paid from proceeds
 - (p) "Credit Bidding" by secured creditors looking to acquire business at discount

- (q) Cases move quickly – unsecured creditors must act quickly to protect rights
2. Risks to unsecured creditors
 - (r) Expedited sale process not designed to maximize recovery
 - (s) Administrative insolvency - insufficient assets to pay all administrative claims, including post-petition trade credit
 - (t) No recovery to unsecured creditors
 - (u) Lenders attempt to receive security interest in preference claims
 3. Object to DIP financing and seek carveout
 - (v) Provision for Section 503(b)(9) “20 Day” priority claims?
 - (w) Collateral/superpriority should not include preference claims
 4. Object to Section 363 sale
 5. Set aside for pre-petition unsecured creditors?
 6. Motion to convert/dismiss case
 7. Litigation against deep pockets
 - (x) D&O litigation
 - (y) Litigation account lenders/insiders
 - (i) Preference
 - (ii) Fraudulent transfers
 - (iii) Equitable subordination
 - (iv) Recharacterization of secured debt to equity
 - (v) Recharacterization of interest/fee payments to principal
 8. Creditor trust to control estate claims
 9. Archway and Mother’s Cookies
 - (z) Committee objected to quick Section 363 sale to slow down process and encourage competitive bids

- (aa) Committee filed suit on estate's behalf against sole shareholder, management, D&O's, secured lender
 - (i) Lien avoidance
 - (ii) Recharacterization and equitable subordination of lender claims
 - (iii) Breach of fiduciary duty
 - (iv) Fraud and fraudulent concealment
 - (v) Preference

II. RECENT SIGNIFICANT RETAIL BANKRUPTCY FILINGS

| DEBTOR | DISTRICT | PETITION DATE | STATUS/RESULT |
|---|-------------------------------|----------------------|---|
| Boscov's, Inc. | District of Delaware | 8/4/08 | Sale of business during Chapter 11 |
| Circuit City | Eastern District of Virginia | 11/10/08 | Going out of business sales |
| Fortunoff Fine Jewelry and Silverware, LLC (2008) | Southern District of New York | 2/4/08 | Sale of business |
| Fortunoff Holdings, LLC (2009) - Chapter 22 | Southern District of New York | 2/5/09 | Going out of business sales |
| Fred Leighton Holdings, Inc. | Southern District of New York | 4/15/08 | Exclusivity period has been extended, no plan of reorganization filed to date; motion to reimburse third-party plan funder (to be selected on or about May 11, 2009) is pending |

| DEBTOR | DISTRICT | PETITION DATE | STATUS/RESULT |
|---|-------------------------------|----------------------|--|
| Friedmans Inc. (2008) | District of Delaware | 1/28/08 | Liquidating plan confirmed. Sold 78 stores to Whitehall Jewelers; going out of business sales for the remaining stores |
| Goody's Family Clothing, Inc. (2008) | District of Delaware | 6/9/08 | Confirmed Chapter 11 plan never consummated |
| Goody's, LLC (2009) - Chapter 22 | District of Delaware | 1/13/09 | Going out of business sales |
| Gottschalks Inc. | District of Delaware | 1/14/09 | Going out of business sales |
| Hartmarx Corp. | Northern District of Illinois | 1/23/09 | May reorganize or sell as going concern |
| Hoop Retail Stores, LLC | District of Delaware | 3/26/08 | Confirmed liquidating plan. Sale of business to Disney during Chapter 11 |
| KB Toys, Inc. | District of Delaware | 12/11/08 | Going out of business sales |
| Lenox Group Inc. | Southern District of New York | 11/23/08 | Sale of business |
| Lillian Vernon Corp. | District of Delaware | 2/20/08 | Going out of business sales |
| Linens 'n Things, Inc. | District of Delaware | 5/2/08 | Going out of business sales |
| Marty Shoes Holdings, Inc. | District of Delaware | 9/12/08 | Going out of business sales |
| Mervyn's, LLC | District of Delaware | 7/29/08 | Going out of business sales |
| Mrs. Fields Famous Brands, LLC | District of Delaware | 8/24/08 | Prepackaged Chapter 11; plan confirmed |
| National Wholesale Liquidators, Inc. (NWL Holdings, Inc.) | District of Delaware | 11/10/08 | Going out of business sales |

| DEBTOR | DISTRICT | PETITION DATE | STATUS/RESULT |
|--|-------------------------------|----------------------|--|
| Recycled Paper Greetings, Inc. | District of Delaware | 1/2/09 | Sale of business pursuant to pre-packaged plan |
| Retail Pro, Inc. | District of Delaware | 1/10/09 | Sale of business |
| Ritz Camera Centers, Inc. | District of Delaware | 2/22/09 | Going out of business sales |
| Sharper Image Corporation | District of Delaware | 2/19/08 | Going out of business sales |
| Sports Collectibles Acquisition Corp. | District of Delaware | 9/21/08 | Going out of business sales |
| Steve & Barry's LLC | Southern District of New York | 7/29/08 | Sale of business |
| BH S&B Holdings LLC - Steve & Barry's Chapter 22 | Southern District of New York | 11/19/08 | Going out of business sales |
| Theater Xtreme Entertainment Group, Inc. (Chapter 7) | District of Delaware | 12/15/08 | Chapter 7 liquidation |
| Value City Department Stores LLC | Southern District of New York | 10/26/08 | Going out of business sales |
| Whitehall Jewelers Holdings, Inc. | District of Delaware | 6/23/08 | Going out of business sales |
| Wickes Furniture Company, Inc. | District of Delaware | 2/3/08 | Going out of business sales |

A. Why are so many retailers filing bankruptcy and liquidating?

1. Severe recession. Recovery unlikely until mid-2010.
2. Drop in consumer purchases.
3. Recession worldwide; lack of any strong demand abroad.
4. Major erosion in margins as retailers reduce prices to bring more consumers into their stores.
5. Credit crunch.
6. Suppliers tightening credit terms.
7. First down cycle testing BAPCPA changes in favor of landlords, utilities and trade?

8. Chapter 11 exit strategy – sale of the business on compressed timelines from both lenders and new BAPCPA rules. This leads to a complete liquidation of retail debtor (going out of business sales), such as in the Circuit City and Linens ‘n Things cases.

III. AUTOMOBILE MANUFACTURERS WOES

- A. Chapter 11 filing by Chrysler and prospects of Chapter 11 filing by General Motors
- B. Continuing Business with Credit Extensions to Chapter 11 Debtor
 1. Problem: Claim Priority Structure
 - (bb) Equitable distribution of Debtor’s assets according to size of claim and priority
 - (cc) Hierarchical distribution system
 - (i) Higher priority claims must be paid in full before distributions to lower priority creditors
 - (ii) Parties could agree to different treatment
 2. Secured creditors on top of priority structure
 - (dd) Secured lender with security interest in Debtor’s existing and after-acquired accounts, inventory, equipment and general intangibles
 - (ee) Federal and state tax liens
 - (ff) Judgment liens
 - (gg) Trade creditors with state law lien rights
 - (i) Mechanics’ or materialmens’ liens
 - (ii) Artisans’/processors’/repairmans’/diemakers’/molders’ liens
 - (iii) Warehouse liens
 - (iv) Carrier liens
 3. Next In Line: Administrative Claims
 - (hh) Actual and necessary costs and expenses of bankruptcy
 - (ii) Examples:

- (i) Post-petition trade credit
 - (ii) Post-petition rent
 - (iii) Post-petition employee compensation
 - (iv) Post-petition professional fees
 - (v) Section 503(b)(9) claims for “20 Day” Goods
4. Chapter 7 administrative claims have priority over Chapter 11 administrative claims
- (jj) Interep National Radio Sales Inc.
5. Risk of administrative insolvency - non-payment/delayed payment of post-petition trade credit
6. Next in Line: lower level priority claims and then even lower priority pre-petition general unsecured claims
- C. Is the creditor party to an executory contract with the Debtor?
1. What is an executory contract?
- (kk) Not defined under Bankruptcy Code
 - (ll) Case Law:
 - (i) Performance remains due to some extent on both sides
 - (ii) Failure of either party to perform is material breach excusing other’s performance
 - (mm) Example:
 - (i) Advertising agreement
2. Bankruptcy Code Section 365 governs assumption, assignment or rejection of executory contract
- (nn) Assumption, assignment or rejection requires court approval
 - (i) Court order
 - (ii) Confirmed Chapter 11 Plan

- (oo) Rejection allows debtor to stop performing burdensome/unprofitable contracts
- 3. Timeframe for assumption/rejection
 - (pp) Any time prior to confirmation of plan
 - (qq) Non-debtor party can seek to shorten period by moving in bankruptcy court to compel debtor to assume/reject contract within specified time period
 - (i) Very difficult to obtain early in case
- 4. Prerequisites for Assumption:
 - (rr) Promptly cure, or provide adequate assurance of prompt cure, of all pre and post petition payment and other defaults
 - (i) Cure amount set forth in Debtor's court filing
 - (ii) Object if cure amount incorrect
 - (ss) Compensate or provide adequate assurance of prompt compensation for "actual pecuniary loss" to non-debtor party resulting from such default
 - (i) Includes interest and attorneys' fees if provided in contract
 - (tt) Adequate assurance of Debtor's future performance of contract
- 5. Assignment of Executory Contracts
 - (uu) Usually part of sale of Debtor's business/assets
 - (vv) Prerequisites
 - (i) Satisfying the first two requirements of assumption
 - Curing defaults
 - Compensating non-debtor party for pecuniary loss
 - (ii) Providing adequate assurance of future performance by assignee
- 6. Rejection of Executory Contracts
 - (ww) Debtor wants to stop doing business with other party

- (xx) Way for Debtor to exit from unprofitable contracts
- (yy) Constitutes breach of contract
- (zz) Non-Debtor party has administrative priority claim for goods and/or services provided post-petition
 - (i) Value of claim sometimes litigated
- (aaa) Non-Debtor party has unsecured damage claim for:
 - (i) Pre-petition amounts due
 - (ii) Rejection damages

7. Period between filing date and assumption/rejection of executory contracts

- (bbb) Bankruptcy Code is silent on rights and obligations of parties during period between Chapter 11 filing and assumption/rejection
- (ccc) Prior to assumption/rejection, contract is enforceable by, but not against, Debtor
 - (i) Non-debtor party must continue to perform prior to assumption/rejection
 - (ii) Debtor could reject and stop performing
- (ddd) Is non-debtor party obligated to continue extending credit post-petition?
 - (i) What does the contract provide? Amount of credit determined by creditor at sole discretion? Creditor can switch to cash terms upon payment or other default by Debtor? Fixed credit terms?
- (eee) Ipso Facto clause unenforceable in bankruptcy
 - (i) Modifies/terminates contract upon bankruptcy/insolvency/poor financial condition
- (fff) Necessary to seek relief from automatic stay or other court relief as prerequisite for switching terms?
- (ggg) Solution where no favorable contract provision: belt and suspenders - move in bankruptcy court to:
 - (i) Shorten period for debtor to decide to assume/reject contract

- (ii) Seek adequate protection in interim:
 - Authorizing switch to cash terms
 - Deposit?

IV. CASE STUDIES

- A. Charter Communications
- B. Chrysler
- C. Interep
- D. Source Interlink
- E. Sun-Times Media Group

A. CHARTER COMMUNICATIONS, INC. et al CASE STUDY

I. Overview

On March 27, 2009 Charter Communications, Inc. (“CCI”) and more than 100 affiliated companies (The “Debtors”) filed voluntary Chapter 11 petitions in the Southern District of New York Bankruptcy Court in order to effectuate restructuring which was contemplated in certain pre-petition agreements. Judge James M. Peck is the Bankruptcy Judge assigned to the cases.

II. Overview of the Debtors’ Businesses

The Debtors operate broadband communications businesses in the United States with approximately 5.5 million customers at December 31, 2008. The Debtors offer to residential and commercial customers traditional cable video programming (basic and digital video), high-speed Internet services, and telephone services, as well as advanced broadband services such as high definition television, Charter OnDemand™, and digital video recorder (“DVR”) service. The Debtors sell their cable video programming, high-speed Internet, telephone, and advanced broadband services primarily on a subscription basis. They also sell advertising to national and local clients on advertising supported cable networks. As of December 31, 2008, the Debtors served approximately 5.0 million video customers, of which approximately 3.1 million were also digital video customers. The Debtors also served approximately 2.9 million high-speed Internet customers and provided telephone service to approximately 1.3 million customers. The Debtors’ customers are served through a hybrid fiber and coaxial cable network with 95% of homes passed at 550 MHz or greater and 95% of plant miles two-way active. The Debtors provide scalable, tailored broadband communications solutions to business organizations, such as business-to-business Internet access, data networking, video and music entertainment services, and business telephone. The Debtors also provide advertising solutions to local, national, and regional businesses that target video customers.

The Debtors' corporate office, which includes employees of CCI, is responsible for coordinating and overseeing overall operations, including establishing company-wide policies and procedures. The corporate office performs certain financial and administrative functions on a centralized basis and performs these services on a cost reimbursement basis pursuant to a management services agreement between CCO and CCI, which entitles CCI to payment for its performance of various personnel, operational and financial functions. The Debtors' field operations are managed within two operating groups.

III. History of net losses, Capital Structure of the Debtors and Financing:

The Debtors have a history of net losses. The Debtors' state that their net losses are principally attributable to insufficient revenue to cover the combination of operating expenses and interest expenses they incur because of their high amounts of debt, and depreciation expenses resulting from the capital investments they have made and continue to make in their cable properties. As of the Petition Date, the Debtors had approximately 16,500 employees, of which approximately 100 employees were represented by collective bargaining agreements. For the year ended December 31, 2008, the Debtors' total revenues were approximately \$6.5 billion. The Debtors derive revenues largely from the monthly fees customers pay for the Debtors' services. The prices the Debtors charge for their products and services vary based on the level of service the customer chooses and the geographic market.

The Debtors' Pre-Petition Capital Structure and Available Financing

As of the Petition Date, the total consolidated debt obligations of the Debtors, not including CII, were approximately \$21.7 billion and consisted of, among other things, revolving credit, institutional term loans and secured and unsecured notes payable. The Debtors relied in great part on their credit facilities and ability to move money in order to continue their operations. The following are some of the highlights of the Debtors' financial positions on a prepetition basis.

The CCO Credit Facility

On March 6, 2007, CCO entered into the CCO Credit Facility. The CCO Credit Facility consists of a \$6.5 billion term loan with a final maturity of March 6, 2014 and a \$1.5 billion revolving credit facility that matures on March 6, 2013. In March 2008, CCO borrowed \$500 million in principal amount of an incremental term loan with a final maturity date of March 6, 2014. The CCO Credit Facility allows for CCO to enter into additional incremental term loans in the aggregate amount of up to an additional \$500 million. The CCO Credit Facility is secured by a lien on substantially all of the assets of CCO and its subsidiaries and a pledge by CCOH of its equity interests in CCO. As of February 28, 2009, approximately \$44.6 million remains available under the revolving portion of the CCO Credit Facility.

Letters of Credit

The Debtors also had approximately \$140 million in letters of credit as of February 28, 2009, issued primarily to their various worker's compensation, property and casualty, and general

liability carriers, as collateral for reimbursement of claims. These letters of credit reduce the amount the Debtors may borrow under the CCO Credit Facility.

Outstanding Notes

CCI and certain of its subsidiaries have issued 26 series of notes with approximately \$13 billion total aggregate principal amount outstanding as of February 28, 2009.

IV. Events that Led to Bankruptcy

According to the Debtors' filed Disclosure Statement, which has now been approved by the Bankruptcy Court, a number of factors have contributed to the Debtors' decision to file the Chapter 11 Cases. Key among these factors is the Debtors' significant indebtedness and the adverse changes in the capital markets, which have severely limited the Debtors' ability to recapitalize or otherwise enter into transactions to ease their debt burdens. Notably, the Debtors, not including CII, have \$21.7 billion in funded debt as of December 31, 2008. The Debtors have historically depended, in part, on their ability to borrow under their credit facilities and to issue debt and equity securities to fund the significant cash required for debt service costs, capital expenditures, and ongoing operations. Accordingly, such a debt level severely limits the Debtors' ability to develop and offer new products and to effectively implement their business plan.

From 2003 through 2008, Charter states that it took numerous steps to improve its financial positions. The following is an abbreviated excerpt from the Debtors' Disclosure Statement detailing those steps that were taken:

On September 23, 2003, CCI and CCH II exchanged \$609 million principal amount of convertible senior notes issued by CCI, \$1.3 billion principal amount of senior notes and senior discount notes issued by CCH, for an aggregate of \$1.6 billion principal amount of 10.250% notes due 2010 issued by CCH II, in addition to the sale of \$30 million principal amount of 10.250% notes due 2010 issued by CCH II for an equivalent amount of cash, in a private debt exchange offer with "qualified institutional buyers," as defined by Rule 144A of the Securities Act, exempt from registration under the Securities Act.

On September 28, 2005, CIH, CCH I, and CCH exchanged \$3.4 billion aggregate principal amount of senior notes and senior discount notes due 2009-2010 and \$3.5 billion aggregate principal amount of senior notes and senior discount notes due 2011-2012 issued by CCH, for \$3.5 billion principal amount of 11.000% senior secured notes due 2015 issued by CCH I and approximately \$2.5 billion in principal amount of various series of senior accreted notes due 2014 and 2015 of CCH I, in a private debt exchange offer with "qualified institutional buyers," as defined by Rule 144A of the Securities Act, exempt from registration under the Securities Act.

On September 14, 2006, CCHC and CCH II exchanged \$450 million principal amount of the aggregate \$862.5 million principal amount outstanding of CCI's 5.875% convertible senior notes due 2009 tendered for exchange by holders of such notes, for \$188 million in cash, 45 million shares of CCI's Class A common stock and \$146 million principal amount of 10.250% senior

notes due 2010 issued by CCH II and CCH II Capital Corp., plus accrued interest, pursuant to a registration statement on Form S-4 originally filed with the SEC on August 11, 2006.

On September 14, 2006, the Debtors exchanged \$797 million principal amount of senior notes due 2009-2010 and 2011-2012 of CCH, for \$250 million principal amount of 10.250% senior notes due 2013 issued by CCH II and CCH II Capital Corp. and \$462 million principal amount of 11.000% senior secured notes due 2015 issued by CCH I, in a private debt exchange offer with “qualified institutional buyers,” as defined by Rule 144A of the Securities Act, exempt from registration under the Securities Act.

On March 6, 2007, CCI’s subsidiary, CCO, entered into the CCO Credit Facility which provided a \$1.5 billion senior secured revolving line of credit that matures on March 6, 2013, a continuation of the existing \$5.0 billion term loan facility that matures on April 28, 2013, and a new \$1.5 billion term loan facility and additional incremental term loans of up to \$1 billion that mature on March 6, 2014. At the same time, CCI’s subsidiary, CCOH, entered into the CCOH Credit Facility consisting of a \$350 million term loan facility maturing September 2014.

In April 2007, CCH completed a cash tender offer and purchase of \$97 million of CCH’s outstanding notes and redeemed \$187 million of CCH’s 8.625% senior notes due April 1, 2009 and \$550 million of CCOH senior floating rate notes due December 15, 2010. On October 8, 2007, Holdco completed an exchange offer, in which \$364 million of CCI’s 5.875% convertible senior notes due 2009, plus accrued interest, were exchanged for \$479 million of CCI’s 6.500% convertible senior notes due 2027.

On March 19, 2008, CCO issued \$546 million principal amount of 10.875% senior second-lien notes due 2014, guaranteed by CCOH and certain subsidiaries of CCO, in a private transaction. The net proceeds from the notes were used to repay, but not permanently reduce, the outstanding debt balances under the existing revolving credit facility of CCO.

On March 20, 2008, CCO borrowed \$500 million principal amount of incremental term loans (the “Incremental Term Loans”) under the CCO Credit Facility, for net proceeds of approximately \$471 million. The net proceeds were used for general corporate purposes. The Incremental Term Loans have a final maturity of March 6, 2014 and amortize in quarterly principal installments totaling 1% annually beginning on June 30, 2008. The Incremental Term Loans bear interest at LIBOR plus 5%, with a LIBOR floor of 3.5%, and are otherwise governed by and subject to the existing terms of the CCO credit facilities.

On July 2, 2008, CCH II exchanged \$338 million aggregate principal amount of their 10.250% senior notes due 2010 for \$364 million additional CCH II 10.250% senior notes due 2013, plus accrued interest, in a private debt exchange offer with “qualified institutional buyers,” as defined by Rule 144A of the Securities Act, exempt from registration under the Act. On October 31, 2008, Holdco completed a tender offer in which a total of approximately \$102 million principal amount of various CCH notes due 2009 and 2010 were exchanged for approximately \$99 million of cash.

Recent Events

On December 10, 2008, CCI asked its long-standing financial advisor, Lazard LLC (“Lazard”), to initiate discussions with the Debtors’ bondholders about financial alternatives to improve the Company’s balance sheet. The Debtors and their advisors developed a comprehensive plan of reorganization and encouraged bondholders to engage in restructuring discussions. On or about December 15, 2008, an ad hoc committee of unaffiliated holders (the “Crossover Committee”) of the (i) 11.000% Senior Secured Notes due 2015 of CCH I and CCH I Capital Corp. and (ii) 10.250% Senior Notes due 2010 and 2013 of CCH II and CCH II Capital Corp. (the “10.25% Notes”) retained professional advisors. Beginning in late December 2008, the Debtors and their advisors engaged in significant discussions with the Crossover Committee and their advisors regarding the terms of a consensual restructuring

V. Pre-Packaged Plan

After engaging in extensive negotiations, on February 11, 2009, CCI entered into separate Plan Support Agreements with each of the Committed Parties (the “Plan Support Agreements”) pursuant to which, among other things, the Committed Parties agreed to support and vote in favor of a financial restructuring of the Debtors on terms consistent with the Plan of Reorganization which would be filed.

On March 12, 2009, CCI adopted a Value Creation Plan (the “VCP”), which is comprised of two components, the Restructuring Value Program (the “RVP”), which provides incentives to encourage and reward participants for a successful restructuring of CCI, and the Cash Incentive Program (the “CIP”), which provides annual incentives for participants to achieve specified individual performance goals during each of the three years following CCI’s emergence from bankruptcy.

VI. First Day Motions:

As is commonplace in chapter 11 proceedings, the Debtors filed several first day motions. The motions are intended generally to enable the Debtors’ to operate the business smoothly. In CCI’s case, these first day motions went beyond the norm and provided not just for smooth business operations but for some unusual relief due to the “pre-packaged” nature of the chapter 11 proceedings. With some contentiousness from a secured party which had not entered into pre-petition agreements with the debtor, the first day motions filed by CCI were all granted.

The orders granting the Debtors’ first day motions enabled the Debtors to: (a) honor customer obligations and continue customer programs; (b) maintain cash management systems; (c) use Pre-Petition bank accounts, checks, and other business forms; (d) make tax payments to federal, local and state taxing authorities; (e) prohibit utility companies from discontinuing services; (f) pay Pre-Petition Claims of shippers, warehousemen and other lien claimants; (g) maintain Pre-Petition insurance policies and enter into new insurance policies; (h) maintain Pre-Petition premium financing agreements and enter into new premium financing agreements; and (i) pay certain Pre-Petition employee wages and benefits and directors’ fees.

More importantly, one of the first day orders sought by the Debtors enabled the Debtors to pay certain fixed, liquidated, noncontingent and undisputed Pre-Petition trade Claims of the Debtors in the ordinary course of business. The Order signed on April 15, 2009 provided that “The Debtors are authorized, but not directed, to pay Trade Claims in the ordinary course of business as the Trade Claims become due and payable”.

VII. PLAN OF REORGANIZATION

The Debtors’ Disclosure Statement has been approved by the Bankruptcy Court. The deadline for the Debtors to receive sufficient ballots to enable it to confirm its Plan has been set for June 15, 2009.

The Plan provides for treatment of the Debtors’ numerous Classes of claims and interests. Only those more pertinent claims and interests will be detailed herein. The treatment of the remaining claims and interests can be found in the Debtors’ Plan of Reorganization and Disclosure Statement.

Administrative and Priority Claims Administrative Expense Claims

Except with respect to Administrative Expense Claims that are Professional Compensation and Reimbursement Claims and except to the extent that a Holder of an Allowed Administrative Expense Claim and the Debtors agree to less favorable treatment to such Holder, each Holder of an Allowed Administrative Expense Claim will be paid in full in cash on the later of the Distribution Date under the Plan and the date such Administrative Expense Claim is Allowed, and the date such Allowed Administrative Expense Claim becomes due and payable, or as soon thereafter as is practicable; provided, however, that Allowed Administrative Expense Claims that arise in the ordinary course of the Debtors’ business will be paid in full in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions.

Priority Tax Claims

Each Holder of an Allowed Priority Tax Claim will receive, on the Distribution Date or such later date as such Allowed Priority Tax Claim becomes due and payable, at the option of the Debtors, one of the following treatments on account of such Claim: (1) cash in an amount equal to the amount of such Allowed Priority Tax Claim; or (2) such other treatment as may be agreed to by such Holder and the Debtors or otherwise determined upon an order of the Bankruptcy Court.

Class A-1 Priority Non-Tax Claims are Unimpaired by the Plan. Each Holder of an Allowed Priority Non-Tax Claim will be paid in full in cash, plus Post-Petition Interest, on the later of the Distribution Date, the date such Priority Non-Tax Claim is Allowed and the date such Allowed Priority Non-Tax Claim becomes due and payable, or as soon thereafter as is practicable.

Class A-2 Secured Claims are Unimpaired by the Plan. Except to the extent that a Holder of an Allowed Secured Claim against CCI and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed Secured Claim against CCI

will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, (ii) each Holder of an Allowed Secured Claim against CCI will be paid in full in cash, plus Post-Petition Interest, on the later of the Distribution Date and the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable, or (iii) each Holder of an Allowed Secured Claim against CCI will receive the collateral securing its Allowed Secured Claim, plus Post-Petition Interest, on the later of the Distribution Date and the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable.

Class A-3 General Unsecured Claims consists of all General Unsecured Claims that may exist against CCI other than all General Unsecured Claims against CCI held by any CII Settlement Claim Party. Each Holder of an Allowed General Unsecured Claim against CCI is entitled to vote to accept or reject the Plan. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCI and the applicable Debtors agree to less favorable treatment to such Holder, **at the sole option of the Debtors**, (i) each Allowed General Unsecured Claim against CCI will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCI will **be paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class A-4 CCI Notes Claims are Impaired. Under the Plan the CCI Notes Claims shall be deemed Allowed in the aggregate amount of \$497,489,463. On the Distribution Date, each Holder of an Allowed CCI Notes Claim shall receive its Pro Rata share of (i) New Preferred Stock and (ii) Cash in an aggregate amount equal to \$24,549,331 and will thus receive approximately 19.4% of the aggregate claims.

Class B-3: General Unsecured Claims that may exist against CII. Except to the extent that a Holder of an Allowed General Unsecured Claim against CII and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the applicable Debtors, (i) each Allowed General Unsecured Claim against CII shall be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code or (ii) each Holder of an Allowed General Unsecured Claim against CII shall be **paid in full in Cash** on the Distribution Date or as soon thereafter as is practicable.

Class C-3: General Unsecured Claims that may exist against Holdco, Enstar Communications Corporation, and Charter Gateway, LLC. Except to the extent that a Holder of an Allowed General Unsecured Claim against Holdco, Enstar Communications Corporation, and Charter Gateway, LLC and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against Holdco, Enstar Communications Corporation, and Charter Gateway, LLC will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against Holdco, Enstar Communications Corporation, and Charter Gateway, LLC will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class D-3: General Unsecured Claims that may exist against CCHC other than all General Unsecured Claims against CCHC held by any CII Settlement Claim Party. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCHC and the applicable

Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCHC will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCHC will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class E-3: General Unsecured Claims that may exist against CCH and Charter Communications Holdings Capital Corp. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCH and Charter Communications Holdings Capital Corp. and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCH and Charter Communications Holdings Capital Corp. will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCH and Charter Communications Holdings Capital Corp. will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class F-3: General Unsecured Claims that may exist against CIH and CCH I Holdings Capital Corp. Except to the extent that a Holder of an Allowed General Unsecured Claim against CIH and CCH I Holdings Capital Corp. and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CIH and CCH I Holdings Capital Corp. will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CIH and CCH I Holdings Capital Corp. will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class G-3: General Unsecured Claims that may exist against CCH I and CCH I Capital Corp. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCH I and CCH I Capital Corp. and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCH I and CCH I Capital Corp. will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCH I and CCH I Capital Corp. will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class H-3: General Unsecured Claims that may exist against CCH II and CCH II Capital Corp. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCH II and CCH II Capital Corp. and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCH II and CCH II Capital Corp. will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCH II and CCH II Capital Corp. will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class I-5: General Unsecured Claims that may exist against CCOH and CCO Holdings Capital Corp. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCOH and CCO Holdings Capital Corp. and the applicable Debtors agree to less

favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCOH and CCO Holdings Capital Corp. will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCOH and CCO Holdings Capital Corp. will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

Class J-6: General Unsecured Claims that may exist against CCO and its direct and indirect subsidiaries other than all General Unsecured Claims against CCO and its direct and indirect subsidiaries held by any CII Settlement Claim Party. Except to the extent that a Holder of an Allowed General Unsecured Claim against CCO and its direct and indirect subsidiaries and the applicable Debtors agree to less favorable treatment to such Holder, at the sole option of the Debtors, (i) each Allowed General Unsecured Claim against CCO and its direct and indirect subsidiaries will be reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed General Unsecured Claim against CCO and its direct and indirect subsidiaries will be **paid in full in cash** on the Distribution Date or as soon thereafter as is practicable.

The Date set for Confirmation of Charters' Prearranged Plan of Reorganization is July 20, 2009.

B. CHRYSLER LLC, et al CASE STUDY

I. Overview

On April 30, 2009, Chrysler LLC and 26 of its domestic direct and indirect subsidiaries (collectively with Chrysler LLC, "Chrysler" or the "Debtors") filed voluntary chapter 11 Chrysler's non-U.S. direct and indirect subsidiaries (collectively, the "Foreign Subsidiaries") have not sought relief under chapter 11 of the Bankruptcy Code or any other insolvency laws. Judge Arthur J. Gonzalez is the Bankruptcy Judge assigned to the case.

II. Overview of the Debtors' Businesses and Finances

The following is taken from the Debtors' declaration in support of its first day motions. "The economic and market conditions that led to the commencement of Chrysler's chapter 11 cases and the need for the proposed sale transaction, are well known but sobering nonetheless. The automotive market meltdown, the worst in at least 26 years, disrupted Chrysler's substantial progress in implementing a long-term plan to reduce costs and transform its businesses for the next generation of cars. With sales plummeting and credit markets frozen, Chrysler undertook an intense effort to address the challenges it faced. After months of hard work and dedication by Chrysler's management, employees and advisors, working with all key stakeholders and with the support of the U.S. government, Chrysler has commenced these cases to implement a prompt sale to preserve the going concern value of its business and return its business to viability under new ownership."

For the twelve months ended December 31, 2008, Chrysler recorded revenue of more than \$48.5 billion and had assets of approximately \$39.3 billion and liabilities totaling \$55.2 billion. During the same period, Chrysler had a net loss of approximately \$16.8 billion.

Chrysler's pre-petition debt is generally categorized into five components.

(1) Amended and Restated First Lien Credit Agreement. Chrysler is a party to an Amended and Restated First Lien Credit Agreement, dated as of August 3, 2007. The First Lien Credit Agreement sets forth the terms and conditions of a \$10 billion term loan that matures on August 3, 2013. As of the Petition Date, the principal amount outstanding under the First Lien Credit Agreement was approximately \$6.9 billion.

(2) Owners' Loan Agreement. In connection with the transactions comprising the Daimler Divestiture, Chrysler became a party to that certain Second Lien Credit Agreement, dated as of August 3, 2007. These Owner Loans are scheduled to mature on February 3, 2014 on which date the Owner Loans must be repaid in full. As of the Petition Date, the original principal amount of the Owner Loans, or approximately \$2 billion, remained outstanding under the Owners' Loan Agreement.

(3) TARP Loan Agreement. Chrysler Parent, as borrower, and the U.S. Treasury, as lender, entered into a Loan and Security Agreement (the "TARP Loan Agreement") dated as of December 31, 2008. The TARP Loan Agreement sets forth the terms and conditions of a \$4 billion loan for general corporate and working capital purposes that matures no later than January 2, 2012 (the "TARP Loan"). In addition, concurrently with entering into the TARP Loan Agreement, Chrysler Parent provided the U.S. Treasury with a separate promissory note in the amount of \$267 million that matures on January 2, 2012 (the "TARP Note" and, together with the TARP Loan, the "TARP Financing"). CarCo Intermediate HoldCo I LLC, CarCo Holding II, Chrysler and certain of Chrysler's domestic subsidiaries are guarantors of the TARP Financing. The TARP Loan was amended on April 30, 2009 to provide for a working capital line of up to \$500 million. As of the Petition Date, approximately \$100 million of working capital is outstanding.

(4) Corporate Credit Card. Chrysler funds many of its eligible employees' business and travel expenses through a corporate credit card issued by American Express (the "Amex Card"). As of the Petition Date, the outstanding amount for advances through the Amex Card was \$1,051,122.54.

(5) Trade Debt. As of the Petition Date, Chrysler estimates that it had approximately \$5.34 billion in trade debt outstanding with its trade creditors, including domestic and foreign suppliers, shippers, warehousemen and customs brokers.

III. Events that Led to Bankruptcy

In 1979, Chrysler obtained loans from the federal government to survive the economic recession and oil crisis of the late 70's. The loans were repaid seven years early.

Chrysler is responsible for substantial postretirement and health care benefits to its retirees. The total annual cost to Chrysler is \$9.87 billion.

In 1998 Chrysler was acquired by Daimler. Nine years later, as finances were declining, Chrysler sold a controlling interest to Cerberus. Concurrently, Daimler isolated the Chrysler-related financial assets and related financing business, creating Chrysler Financial as a separate sister company owned by Chrysler Parent rather than by Chrysler, with separate management and business goals.

In 2007, Chrysler initiated its "Recovery and Transformation Plan" (the "Transformation Plan"). The Transformation Plan was an aggressive, long-term restructuring effort, designed to (a) address declining economic and market conditions and competitive industry dynamics and (b) fundamentally transform Chrysler's businesses to better align them with consumers' changing needs and desires, including for more fuel-efficient cars. Following the Daimler Divestiture, Chrysler engaged new corporate leadership and redoubled existing efforts with respect to the Transformation Plan.

The Debtors state that the Transformation Plan soon began to have a positive impact on Chrysler's businesses, operations and finances. Among other things, Chrysler: • drastically reduced its operating costs and adjusted production schedules accordingly; • discontinued seven vehicle models; • reduced its vehicle production capacity by 1.2 million units, or more than 30% of its installed base; • reduced its fixed costs by approximately \$3 billion during the 2008 calendar year; • identified over \$1 billion in unprofitable assets for sale, with approximately 70% of those assets having been sold as of December 31, 2008; • reduced workforce costs by taking the difficult step of separating approximately 33,000 employees since year end 2006; • enhanced productivity to match market leaders;⁹ • implemented a "Genesis Program" that resulted in the reduction of the U.S. dealer network to approximately 3,200 as of the Petition Date from a peak of over 5,300 dealers; and, • made substantial expenditures in product improvements during the first 60 days after the Daimler Divestiture and focused on making substantial quality improvements. For example, during the 15 months prior to November 2008, warranty claims rate for Chrysler vehicles decreased by 30%.

On October 12, 2007, Chrysler reached an historic labor agreement with the UAW to address ongoing labor costs of the active workforce. On March 31, 2008, Chrysler finalized a settlement agreement (the "2008 Settlement Agreement") with the UAW and Chrysler's retirees to address Chrysler's legacy costs of approximately \$16 billion for retiree health and related benefits. The 2008 Settlement Agreement was approved by the United States District Court for the Eastern District of Michigan on July 31, 2008. In exchange for the contributions set forth in the 2008 Settlement Agreement, Chrysler no longer would provide health care benefits to retired UAW workers in the United States after January 2010.

During the years 2007 and 2008, Chrysler increased its manufacturing productivity, maintained favorable hourly labor rates and other labor cost changes in accordance with the 2007 UAW Labor Agreement, and other cost changes gave Chrysler a competitive cost structure. Through the first half of 2008, Chrysler was meeting and exceeding all of its performance targets,

generating over \$1 billion in EBITDA and ending the first two quarters of 2008 with over \$9.4 billion in unrestricted cash.

Chrysler's Transformation Plan was slowed dramatically by the global credit crisis that affected the liquidity markets in the fall of 2008. What had begun as the U.S. subprime mortgage crisis spread to the primary and secondary credit markets globally and to the banking system as a whole. By October 2008, the credit crisis had effectively "frozen" the secondary asset-backed securities ("ABS") credit market worldwide and caused several major financial institutions to fail.

As credit availability worsened, and consumer confidence waned, in the second half of 2008 and in the beginning of 2009, consumers and small businesses dramatically reduced their spending, leading to a collapse in demand for light-duty vehicles and the lowest U.S. auto sales in decades. The SAAR for auto sales in January 2009 was 9.8 million units compared to a January 2008 SAAR of 15.6 million units, representing a more than 37% decrease and the lowest level in 26 years. The March 2009 SAAR level was 9.86 million units, down 35% from 15.1 million units in March 2008.

Chrysler (like many other large corporate pillars of the economy) turned to the government for assistance in late 2008, with the hope of obtaining new financing to get it through this difficult period.

Government Assistance/loans/grants

On December 19, 2007, President Bush signed the Energy Independence and Security Act of 2007 ("EISA"). Vehicle manufacturers can apply for direct low-cost loans of up to \$25 billion under the Advanced Technology Vehicles Manufacturing Incentive Program to develop fuel-effective light-duty vehicles and retool plants.

On November 10, 2008, Chrysler submitted an application under the EISA making a request for \$8.4 billion funding for project costs for Advanced Technology Vehicles and Qualifying Components in the 2008-2011 period. The Section 136 Application is still pending, and no funds have been provided. The Section 136 Program funds, even if they became available, would not assist Chrysler in resolving its liquidity crisis, since these funds are directed solely to new investments in future technology.

On or about November 18, 2008 Chrysler and the other two U.S. OEMs made a collective request to the U.S. Congress for emergency bridge financing in the aggregate amount of \$25 billion to sustain operations through the credit crisis. In making this request, the three Detroit automakers indicated that this financing was urgently needed in addition to future funding. In particular, Chrysler requested an aggregate of \$7 billion in funding. Chrysler also emphasized the need for Chrysler Financial to receive immediate funding from TARP to assist in financing the purchases of Chrysler vehicles by dealers and end consumers.

On December 19, 2008, Chrysler placed its operations on an extended holiday idling until January 20, 2009 to reduce dealer incentives and to preserve its assets for the benefit of stakeholders as

they continued to explore available alternatives. The idling was continued in certain plants until January 26, 2009 or February 2, 2009.

TARP Funding for Chrysler Also on December 19, 2008, President Bush announced that bridge loans would be made available to Chrysler and GM and, more specifically, that Chrysler would receive a bridge loan under TARP in the reduced amount of up to approximately \$4 billion (as compared to the \$7 billion requested by Chrysler) for general corporate and working capital purposes. The funds were provided on January 2, 2009. The terms of the loan required Chrysler to submit a plan demonstrating Chrysler's ability to achieve and sustain long-term viability, energy efficiency, rationalization of costs and competitiveness in the U.S. marketplace (the "Viability Plan"), as well as its resulting ability to repay the TARP Financing. The Viability Plan was to extend through 2010 monthly, and through 2014 annually, and was required to include detailed historical and projected financial statements with supporting schedules and additional information as may be requested.

Further, the TARP Loan Agreement required Chrysler Parent to submit, on or before March 31, 2009, a written certification and report detailing the progress made in implementing the Viability Plan. Specifically, this report was required to include evidence that (a) the members of the UAW had tentatively agreed to certain compensation reductions, severance rationalization and work rule modifications required pursuant to the TARP Loan Agreement; and (b) the UAW agreed in concept to exchange 50% of their VEBA claim for equity.

Chrysler used the \$4 billion bridge TARP Loan to restart and operate their businesses, pay vendors and other payables in the ordinary course of business and to fund their efforts to pursue the Viability Plan. As vehicle sales stabilized, Chrysler anticipated that revenues and payables would again be "in sync" and liquidity would stabilize.

Chrysler Financial sought not less than \$2.5 billion in TARP funds for both wholesale (dealer) and retail (consumer) financing. On January 16, 2009, Chrysler Financial received \$1.5 billion in funds under TARP.

The Fiat Alliance At the same time Chrysler was pursuing government assistance, it continued its efforts to secure a strategic partner that could assist it in achieving its long-term viability goals. After GM suspended its negotiation of a potential merger with Chrysler, Chrysler intensified its ongoing efforts to secure a global strategic alliance with Fiat. Fiat made a particularly attractive alliance candidate to Chrysler because, among other reasons, the two companies' product offerings and international distribution networks overlapped little and complemented each other. In November 2008, the parties quickly developed plans that would generate operational synergies over \$3.7 billion in cash flow (on a net present value basis) over an eight-year period, primarily from product and platform sharing, international distribution of each other's products, enhanced purchasing power, plant rationalizations, and powertrain improvements.

After extensive discussions, on January 16, 2009, Chrysler entered into a term sheet with Fiat for a strategic alliance pursuant to which Fiat would acquire 35% of the equity of Chrysler and would provide access to competitive fuel-efficient vehicle platforms, distribution capabilities in key growth markets and substantial cost saving opportunities.

The Fiat Alliance would strengthen Chrysler for the long-term, benefiting all constituents, including U.S. taxpayers, employees, creditors, dealers and suppliers. At the same time, the Fiat Alliance was conditioned on achieving other aspects of Chrysler's Viability Plan, including the completion of a debt restructuring with the First Lien Prepetition Lenders and the Second Lien Prepetition Lenders, agreements with the UAW on labor modifications and necessary approvals of VEBA modifications, obtaining not less than \$3 billion additional TARP funding, as well as modifying the MAFA in a manner favorable to Chrysler. As such, while undertaking substantial efforts to document and implement the strategic transaction with Fiat, Chrysler continued their efforts to pursue the Viability Plan (either on a stand-alone basis or with the additional benefits and synergies offered by the Fiat Alliance) and obtain concessions from all key stakeholders.

Chrysler's proposal to the U.S. Treasury

On February 17, 2009, in the midst of ongoing negotiations with all stakeholders and Fiat, Chrysler submitted its February 2009 Submission to the U.S. Treasury. Specifically, the February 2009 Submission incorporated the following proposed sacrifices from all key stakeholder groups:

- Equity holders. Chrysler's ultimate owners, Cerberus and Daimler, would forego any benefit from the upside created by the TARP Financing or other government assistance and accept a reduced share of ownership to provide equity in Chrysler to other constituents that contributed to the restructuring. Cerberus and Daimler both agreed to these provisions.
- Union Employees and Retirees. The UAW agreed to eliminate the job banks effective January 26, 2009. The UAW also agreed to (a) permit Chrysler to satisfy 50% of its VEBA funding obligations in equity and reduce and reamortize the remaining 50% cash funding and (b) make wages competitive with the Transplant OEMs and (c) eliminate retiree healthcare benefits effective January 1, 2010. The aggregate UAW VEBA concessions amounted to \$5.3 billion.
- Non-Represented Employees and Retirees. The headcount in 2008 of non-represented employees had been substantially reduced by over 8,000 positions in 2008; there had been an increase of employee cost-sharing for health care plans; the salary merit programs for 2008 and 2009 and the tuition assistance program had been suspended, as had the employer match of the defined contribution plan; and the retiree health care defined benefit program had been replaced with a defined-contribution health care reimbursement account.
- Retirees. Life insurance and health benefits provided to certain retirees were to be reduced.
- First Lien Prepetition Lenders. Chrysler's creditor groups, including the First Lien Prepetition Lenders, were to convert \$5 billion of their \$7 billion in debt to equity in Chrysler. The First Lien Lenders have not agreed to this concession.
- Second Lien Prepetition Lenders. The Second Lien Prepetition Lenders were to convert their debt to equity in Chrysler.
- Chrysler Financial. A new MAFA was to be negotiated to enhance dealer and consumer access to financing either through Chrysler Financial or other parties.

- **Suppliers.** Further price reductions effective April 1, 2009 were to be obtained from all production and non-production suppliers that collaborated with Chrysler to implement shared cost savings. Material cost increases were to be frozen for the remainder of 2009. Chrysler would realize shared savings on supplier generated cost-savings ideas. A pre-existing reduction of 5% on non-production material was to be continued. Agreements already had been reached with some suppliers to implement these changes.
- **Dealers.** Dealers were to share a greater portion of certain costs as a result of vehicle price increases, new vehicle auction fees, reductions in the rates paid for service center work and other charges or the elimination of certain benefits. Many of these initiatives, reducing costs by approximately \$350 million annually, were implemented on February 2, 2009. In addition, Chrysler were to continue the rationalization of their dealer network, including by pursuing buy-outs and dealer consolidations that strengthen the dealer network, increase sales and promote dealer and manufacturer profitability.

In addition to these sacrifices, Chrysler's February 2009 Submission requested additional TARP funding in the increased amount of \$5 billion for Chrysler by March 15, 2009 for working capital and other operating expenses. The plan also provided for approval of Chrysler's Section 136 Application in the reduced amount of \$6 billion out of the \$8.4 billion requested, with \$2.5 billion received in 2010, \$2 billion in 2011 and \$1.5 billion in 2012.

Final Days before the chapter 11 filing

Chrysler was facing an April 30th deadline to submit an appropriate plan to the U.S. Treasury. As April drew to a close, the parties undertook intently to put together a deal. The UAW and New Chrysler agreed to a new collective bargaining relationship. Chrysler and Fiat established New Chrysler to serve as the alliance entity and successfully negotiated the Master Transaction Agreement and related agreements. The parties also negotiated with the U.S. Treasury for several layers of new financing relating to the transaction: (a) up to \$500 million working capital infusion from the U.S. Treasury to assist Chrysler in advance of a bankruptcy filing; (b) a \$4.5 billion, 60-day debtor in possession financing facility from the U.S. Treasury to fund Chrysler's bankruptcy process, including the expedited Sale Process; (c) a \$6 billion senior secured financing facility to support the operations of New Chrysler after the sale; and (d) a four-year agreement for wholesale and retail financing with GMAC LLC.

The Master Transaction Agreement After an intense period of effort to meet the government's 30-day timeline, Chrysler, Fiat and New Chrysler tentatively entered into the MTA, supported by the U.S. government. Pursuant to that agreement, among other things: (a) Chrysler will transfer substantially all of its operation assets to New Chrysler; and (b) in exchange for those assets, New Chrysler will assume certain liabilities of Chrysler and pay Chrysler \$2 billion in cash. Prior to the Closing Date, (a) Fiat will contribute to New Chrysler access to competitive fuel-efficient vehicle platforms, certain technology, distribution capabilities in key growth markets and substantial cost saving opportunities; and (b) New Chrysler will issue approximately 55%, 8% and 2% of the Membership Interests in New Chrysler to a new VEBA, the U.S. Treasury and the Canadian government, respectively. After the "Fiat Transaction", a subsidiary of Fiat will own

20% of the equity of New Chrysler, with the right to acquire additional 31% of New Chrysler's Membership Interests under certain circumstances.

With these steps in place Chrysler filed its chapter 11 petitions

IV. First Day Motions

With the unusual circumstances surrounding the Chrysler chapter 11 proceedings, numerous first day motions were filed seeking various relief. Several of the motions were typical of today's chapter 11 proceedings. Certain of the motions were unique to the Chrysler cases. The more unique motions will be described below.

Motion to Confirm Administrative Expense Priority for Postpetition Goods and Services

In the ordinary course of their businesses, the Debtors purchased a variety of goods used in their automobile manufacturing and assembly operations. Goods were received by the Debtors on a regular basis, and substantial amounts of goods were received within the Twenty-Day Period. The Debtors estimate that within the Twenty-Day Period, the Debtors received goods from suppliers worth approximately \$800 million. This motion sought to set up a procedure to review and fix these twenty day claims for suppliers of goods

Reclamation Procedures Motion. To avoid piecemeal litigation that would interfere with the Debtors' efforts to focus on the consummation of a Sale Transaction, the Debtors sought authority, pursuant to sections 105(a), 362 and 546(c) of the Bankruptcy Code, to establish exclusive procedures for the reconciliation and allowance of all asserted reclamation claims.

Motion to Confirm Administrative Priority for suppliers. The Debtors sought seek entry of an order confirming that the Debtors' undisputed and liquidated obligations to the Suppliers (including under Outstanding Orders) for (a) shipments of goods requested by, delivered to and accepted by the Debtors on and after the Petition Date and (b) the provision of services to the Debtors on and after the Petition Date at the Debtors' request, each will be entitled to administrative expense priority status.

V. Objections by Non-TARP Lenders

Certain of Chrysler's lenders refuse to go along with the plans which Chrysler has been proposing and refuse to yield to the persuasion of the U.S. Government to support Chrysler's plans. Those lenders had filed a motion with the court to have their names filed only with the court "under seal". Judge Gonzalez denied that motion. Those lenders have now been identified. Some of the objecting lenders already have withdrawn their objections.

Effectively, the lenders are objecting to substantially all of the Debtors' first day motions. The Non-Tarp Lenders claim that the debtors' court papers reveal that:

- Substantially all of the Debtors' prepetition trade claims (approximately \$5.3 billion) will be paid in cash in full during the pendency of the cases;

- Other claims and obligations related to the prepetition operation of the Debtors' business, such as warranty obligations, taxes, employee wages (totaling approximately \$4.5 billion) will be paid in cash in full during the pendency of the cases and thereafter;
- Health care and related benefits owed to Chrysler's retirees and employees of approximately \$9.8 billion will be paid in cash over time after the sale is effected;
- Chrysler's underfunded pensions will receive approximately \$5 billion in cash payments over time after the sale is effected; and
- Chrysler's \$6.9 billion of first lien senior secured debt will be satisfied with a cash payment from the proceeds of the sale of \$2 billion—or 29% of face.

All of these payments, they claim are outside of the context of a chapter 11 plan and “constitute an impermissible sub rosa plan that improperly overrides the contractual rights of the Chrysler Non-TARP Lenders and reverses the priority scheme set forth in the Bankruptcy Code.”

The Non-TARP Lenders have objected to the DIP Financing motion for similar reasons. As a result of three separate objections filed by the Non-TARP Lenders, the court has already held several all day hearings and many of the first day motions have not yet been granted.

The Debtors' request for DIP financing, however, has been granted on an interim basis. Several other first day motions have also been granted.

The Sale Bidding Procedures Order has been signed. The intention, of course, is that the sale to Fiat will be approved. Nevertheless, in accordance with the Bankruptcy Rules, the Fiat agreement must be submitted to the court for approval and others must have an opportunity to outbid Fiat. Bids are due by May 20th and a hearing on the sale is scheduled for May 27th.

Chrysler stills stands firm to its initial statement that it will emerge from bankruptcy within 90 days of its initial filing.

C. INTEREP NATIONAL RADIO SALES, ET AL

I. Overview

On March 30, 2008 (the "Commencement Date"), Interep National Radio Sales, Inc. and its wholly-owned direct and indirect debtor subsidiaries (hereinafter, with the exclusion of Interactive Video Network, Inc., Interep Interactive, Inc. and Streaming Audio, Inc., the "Subsidiaries") commenced reorganization cases under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), jointly administered as Case No. 08-11079 (RDD) (the "Chapter 11 Cases").

For more than six months, Interep and its Subsidiaries (collectively, the "Debtors" or the "Interep") continued to operate their business under the supervision of the Bankruptcy Court, as "debtors in possession".

Prior to filing the chapter 11 proceedings, Interep had already reached consensus with its key creditors. Therefore, although Interep was not a pre-packaged plan in the truest sense of the word, it was for all practical purposes considered a pre-packaged chapter 11.

II. Overview of the Debtors' Businesses

Interep was the nation's largest independent sales and marketing company specializing in radio, the Internet, television, and complementary media. Its 16 offices across the country enabled it to serve its radio station clients and advertisers in all 50 states and beyond. As of March 2008, the Company had approximately 365 employees, substantially all of whom were sales-related personnel.

Interep served its clients by promoting them to advertising agencies and media buying services, and demonstrating the benefits of buying advertising time on the Interep's clients' radio stations. These clients effectively outsource their national spot advertising sales to the Company, as their agent, to benefit from the Company's professional sales staff, multiple sales offices, national coverage presence, proprietary research, and established relationships with advertisers and other media buyers.

Interep operated in an unusual industry – it had only one meaningful competitor, Katz Radio Group, Inc. ("Katz Radio Group"), a subsidiary of Clear Channel Communications, Inc., a major broadcasting company and owner of numerous radio stations and other media outlets. Interep always claimed to enjoy a valuable competitive advantage for the reason it was not owned by a broadcast group, and therefore asserted that it could act independently and in the best interests of its clients. Interep would assure its clients that there was no conflicting motivation to direct advertising business away from them and towards a competitor radio station that is affiliated with their agent.

Interep, historically, claimed to have been a pioneer in many innovations in its industry, and had a sales force strategically located across the country whereby it provided effective coverage of all major media buying centers. Interep maintained strong historic relationships with advertisers, advertising agencies and media buying services nationwide which enabled it to work with these buyers of radio air time to develop and refine advertising strategies that supported the purchase of advertising time from Interep's clients.

III. Capital Structure of Interep

As of the petition date, Interep had three basic tiers of debt.

Senior Subordinated Unsecured Notes

Interrep owed \$99,000,000 in principal amount on account of the Notes. The Notes were general unsecured obligations of Interrep, bearing interest at 10.0% per annum, payable semiannually on January 1 and July 1. At the Commencement Date, the unpaid principal balance plus accrued but unpaid interest was approximately \$101.475 million.

Stock of Interrep

Interrep had two classes of stock: 1) Series A Convertible Preferred Stock with an authorization to issue up to 400,000 shares; 2) Class B Common Stock which shares were held by current or former employees of Interrep.

IV. Events that Led to Bankruptcy

In 1999 and 2000, two of the radio industry's strongest years, Interrep acquired several large radio rep contracts and was required to make significant customary contract buyout payments. These buyouts were priced according to historical billing levels. Shortly thereafter, industry billings declined significantly from earlier highs, reflecting, in part, the downturn in the US economy at the outset of this decade.

Since that time, total industry billings and revenue declined significantly, resulting in a reduction in Interrep's revenue, and adversely effecting the Company's bottom line. Furthermore, since 2005, Interrep experienced a significant decline in revenue and margin traceable primarily to the loss of key client contracts. Commission revenue for 2006 decreased \$6.2 million, or 7.7%, to \$73.9 million from \$80.1 million in 2005, reflecting the loss of revenues from the termination of contracts with Cumulus Broadcasting, Inc. and Radio One, Inc. during 2005. Commission revenue for 2007 decreased an additional \$10.9 million, or 15%, to \$63.0 million, reflecting the loss of revenues from the termination of contracts with the former Susquehanna Broadcasting stations when they were sold to Comcast and Cumulus Media Partners during 2006.

A significant factor in client losses that were not driven by station acquisitions was concern about Interrep's long term viability in light of the approaching maturity of the Notes, which clearly could not be paid from internally-generated cash. In response to these decreases, Interrep attempted to implement various cost efficiency measures that lowered Interrep's administrative costs.

These cost reductions, however, were insufficient to stem the losses. Rather, the path back to profitability required that Interrep de-lever its balance sheet and address the maturity of the Notes, to enable Interrep to focus on bringing in new clients and expand into areas of emerging opportunities. Unfortunately, Interrep had few such opportunities.

By late 2007, a Plan and Plan Support Agreement with the Supporting Noteholders provided for a comprehensive restructuring of Interrep's balance sheet. Accordingly, the Plan of Reorganization was negotiated, the DIP financing was arranged, the Supporting Noteholders executed the Plan Support Agreement and the Chapter 11 Cases were commenced.

V. Debtor in Possession Financing

Interep entered into the Postpetition Revolving Credit And Guaranty Agreement, dated as of March 31, among Interep, as Borrower, certain subsidiaries of Interep, as Guarantors, Silver Point Finance, L.L.C. as a Lender, Administrative Agent, and Collateral Agent, OCM Principal Opportunities Fund III, L.P. as a Lender and OCM Principal Opportunities Fund IIIA L.P., as a Lender (as amended, supplemented, modified, or restated from time to time the "DIP Credit Agreement"). Pursuant to the DIP Credit Agreement, the Lender parties thereto committed to provide, subject to the terms and conditions thereof, up to \$25 million in postpetition financing for the Company's business, which the Company believed will meet its financing needs during the Chapter 11 Cases.

Unfortunately, as the chapter 11 cases progressed, Interep was compelled to seek more than one extension from its DIP Lender to prevent the Lender from calling a default on the post-petition financing.

Although Interep had every expectation that it would confirm its Plan of Reorganization before October 24, 2008, that did not happen.

An event of default was due to occur on October 24, 2008 and Interep was unable to find replacement financing to forestall that default. In addition, the DIP Lender was unwilling to continue to work with Interep and advised Interep that upon the event of default on October 24, 2008, there would be no further funding.

VI. Executory Contract Issues – unique to this case

Interep's clients generally retained them on an exclusive basis through written agreements. These "rep contracts" generally provided for an initial term followed by an "evergreen" period, meaning that the contract term continued until canceled following 12 months' prior notice. If, however, a client terminated its contract without cause, the contract generally provided for a termination payment equal to the estimated commissions that would have been payable to its representation or "rep" firm during the remaining portion of the term and the evergreen period, plus two months. That estimate is based on historical commission levels. It is customary in the industry for the successor rep firm to make this payment as a condition to being awarded the new client. Thus, when Interep was successful in soliciting a new client, it was obligated to that new client to pay the "buyout" amount to the client's former representative.

Interep's ability to compete successfully is based on: the number of stations it represents and the inventory of commercials and marketing opportunities they provide; Interep's relationships with advertisers; the experience of Interep's management and the training and motivation of its sales personnel; Interep's track record; the ability to offer unwired networks; the use of technology; and Interep's research and marketing services for clients and advertisers.

In addition to each of these "rep contracts", Interep leased approximately 162,000 square feet of office space in 16 cities throughout the United States. Its principal executive offices were located at 100 Park Avenue, New York, New York, where it occupied 58,000 square feet under a lease.

As of the Commencement Date, Interep was committed under operating leases, principally for office space, which expired at various dates through 2020. Certain leases were subject to rent reviews and required payment of expenses under escalation clauses. Rent expense was \$ 4,943,000, \$5,375,000 and \$5,454, 000 in 2007, 2006 and 2005, respectively. The non-cash portion of rent expense that related to the effect of free rent and abatements was \$946,000, \$336,000 and \$157,000 for 2007, 2006 and 2005, respectively.

The automatic extension of the deadline to assume or reject unexpired leases of nonresidential real property was due to expire on Monday October 27, 2008.

VII. Conversion to Chapter 7 & Sale of Assets

The key event which resulted in Interep's conversion to chapter 7 was its default to the DIP Lender.

Secondarily, it was believed that there may be value for their estates in retaining the leases of nonresidential real property. To permit October 27, 2008 to pass without a conversion to chapter 7 would have resulted in a loss of valuable assets to the estate.

The fear that numerous radio and television stations had was that the Chapter 7 Trustee would be able to sell the "rep contracts" with little or no input from the holders of those contracts. Many stations wanted to immediately terminate their contracts. However, Section 365 of the Bankruptcy Code prohibits such unilateral action.

In an uncommon motion, the chapter 7 trustee sought permission of the Bankruptcy Court to operate the business of Interep for a short period of time to enable the trustee to (a) to pursue a transaction which would likely provide a substantial benefit of the estates, (b) conduct in depth conversations and analysis with the DIP Lenders and the Debtors' management regarding the disposition of the remaining business operations and (c) continue to collect the funds that are due to the estates for Interep's performance under the contracts.

With respect to this last component, as the Court was aware, there is often a time delay from when the Debtors performed services and receive payment from their customers for those services. In addition, the Debtors' were required to remit some of the funds collected to the radio stations that the Debtors' represent and thus it was essential that the Trustee be permitted to operate for a limited period of time in order to effectuate the recovery of those funds and the remittance of a portion of those funds to the parties to the contracts on whose behalf Interep acted.

The end result was that a sale of assets of Interep did take place. Katz successfully purchased a substantial amount of the assets of Interep. Most importantly however, to the great pleasure of the holders of executory contracts, Katz purchased the right to have virtually all executory contracts rejected. That rejection enabled the holders of those contracts to renegotiate terms of new "rep contracts" or decide not to negotiate new "rep contracts"

Over several months the sale of all remaining assets of Interep took place. The Trustee was engaged for a large part in negotiating outstanding claims for the nonresidential leases. The

Trustee chapter 7 liquidation is proceeding. Return to unsecured creditors is unknown at this time.

D. Source Interlink Companies, Inc. et al. - Case Study

I. Overview

On April 27, 2009 (the “Petition Date”), Source Interlink Companies, Inc. and 17 of its affiliates (collectively, “SI”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

SI, founded in 1995, is one of the leading publishers and wholesalers of magazines and home entertainment products in North America with annual revenues of approximately \$2.4 billion for the fiscal year ended January 31, 2009. In 2007, SI acquired Primedia Enthusiast Media, Inc. (“Primedia”) thereby enhancing its market presence and expanding into content ownership. The acquisition of Primedia also significantly increased SI’s debt load, incurring over \$1.3 million in debt, repayment of which was projected to originate primarily from revenues from the Primedia business. Thereafter, as a result of the recent economic downturn and decrease in advertising purchases, SI’s cash flows failed to meet expectations by a significant margin and SI’s liquidity position was strained.

Specifically, the following factors precipitated SI’s chapter 11 filing: (a) decline in revenues as result of deteriorating market for advertising and car sale leads; (b) increase in costs of raw materials, such as, paper, ink and fuel; and (c) difficulty complying with tightened financial ratios mandated by SI’s credit agreements.

SI recognized that, despite implementation of cost reductions in excess of \$50 million, it would not be able to service funded debt over the long term and worked with its secured bank lenders to negotiate and implement a balance sheet restructuring. SI filed their chapter 11 cases to effectuate a consensual balance sheet restructuring proposed under the prepackaged chapter 11 plan (the “Plan”), to enhance liquidity, reduce interest expense and improve their long-term growth prospects.

II. Capital Structure

As of the Petition Date, SI’s total consolidated funded debt was approximately \$1.5 billion, consisting of a secured term loan of approximately \$866.8 million, a secured revolver drawn in the amount of approximately \$159.6 million, subordinated trade debt of approximately \$70.4 million, approximately \$19 million of other secured debt and \$465 million in principal amount of unsecured notes.

SI’s prepetition revolver credit agreement, dated as of August 1, 2007 (the “Prepetition Revolver Agreement”), provides for \$300,000 million revolving credit facility (\$159.6 million of which was drawn as of the Petition Date) (the “Prepetition Revolver Loan”). The Prepetition Revolver Loan matures on August 1, 2013 and is secured by substantially all of SI’ assets. On April 1, 2009, the Prepetition Revolver Agreement was amended to extend the time for the SI to

submit a financial plan until May 1, 2009. In addition, under the amendment, SI incurred certain financial reporting obligations and was required to maintain certain reserves with respect to their accounts receivable and inventory.

SI's prepetition term credit agreement, dated as of August 1, 2007 (the "Prepetition Term Credit Agreement"), provides for an \$880 million term loan (\$866.8 million of which is currently outstanding) (the "Prepetition Loan," and together with the Prepetition Revolver Loan, the "Prepetition Loans"). The Prepetition Term Loan matures on August 1, 2014 and is secured by substantially all of SI's assets. The Prepetition Term Credit Agreement was also amended to extend the time for SI to submit a financial plan until May 1, 2009.

SI also entered into loan security agreements (the "Loan Security Agreements") and an intercreditor agreement (the "Intercreditor Agreement") which divided the collateral set forth in the Loan Security Agreements into two pools consisting generally of: (a) SI's (i) stock; (ii) equipment; (iii) real estate assets and fixtures (subordinated to any mortgages thereon); and (iv) general intangibles (collectively, the "Fixed Asset Collateral"); and (b) all of SI's other assets or property, whether real, personal or mixed (collectively, the "Current Asset Collateral"). The Intercreditor Agreement grants (a) the Prepetition Revolver Lenders a first lien on Current Asset Collateral and second lien on the Fixed Asset Collateral and (b) the Prepetition Term Lenders a first lien on the Fixed Asset Collateral and a second lien on the Revolver Collateral.

SI also entered into security agreements with certain of their CD/DVD trade vendors (collectively, the "Secured Trade Vendors") granting each Secured Trade Vendor a security interest in the inventory distributed or sold to SI and the proceeds thereof (collectively, the "Shared Collateral"). The Shared Collateral is part of the Current Asset Collateral and is subordinated to the claims of the Prepetition Revolver and Term Lenders. As of the Petition Date, SI had \$70.4 million of secured trade debt outstanding.

SI also maintains \$3 million in loans secured by certain of the SI' equipment and a \$16 million mortgage loan with respect to their Coral Springs, Florida facility.

SI is also party to a senior notes indenture, dated as of June 23, 2008 (the "Senior Notes Indenture"), pursuant to which the SI issued \$465 million in 11.25% senior unsecured notes (the "Senior Notes") to the lenders under the \$465 million senior subordinated bridge facility that the SI entered into to finance the acquisition of Primedia in 2007. The SI paid approximately \$26.2 million in interest on the Senior Notes on January 15, 2009. The Senior Notes mature on July 15, 2015.

SI is a publicly traded closely held company with five shareholders holding 70% of common stock.

III. Chapter 11 First Day Relief

SI obtained court approval of debtor in possession financing that included a secured revolving credit facility in the aggregate principal amount of \$300 million, subject to a borrowing base, and a term loan in the aggregate principal amount of \$75 million. Additionally, SI obtained court approval of an order (the "Vendor Payment Order") authorizing SI, in the reasonable

exercise of their business judgment, to pay unimpaired claims as they become due and payable in the ordinary course of business. Payments to vendors on account of unimpaired claims would be limited to ordinary course payments to vendors who have agreed to provide commercial and credit terms no worse for SI than the pre-existing ordinary course terms in effect prior to the Petition Date.

IV. Proposed Prepackaged Chapter 11 Plan Treatment of Claims

Simultaneous with its chapter 11 filing, SI filed a prepackaged chapter 11 plan, with the support of its secured lenders and bond debt. The Plan contemplates a significant de-leveraging, by eliminating approximately \$1 billion of debt, and full recovery for the allowed claims of SI's unsecured creditors, other than the SI's senior noteholders who have agreed not to receive any distribution on account of their claims. Under the proposed Plan, upon emergence from chapter 11, SI's debt structure will consist of the following:

- \$300 million senior secured revolving credit facility;
- \$85 million senior secured Term A Loan; and
- \$400 million in senior secured Term B Loan.

Additionally, apart from SI's post-emergence debt, a \$200 million senior unsecured term loan will be maintained with an SI holding company ("HoldCo") that will be created on or about the effective date of the Plan and that will hold 100% of the stock of the reorganized Source Interlink Companies, Inc.

A. Revolving Credit Facility Claims

Claims of the SI's Prepetition Revolver Lenders that are not rolled up as part of the SI's proposed debtor in possession revolving loan facility, will be unimpaired, and repaid in cash through the proposed exit facility.

B. Term Loan Claims

Each Prepetition Term Lender will receive (a) its pro rata share of 100% HoldCo equity, (b) its pro rata share of HoldCo's obligations under the \$200 million HoldCo loan, (c) its pro rata share of \$315 million of the SI's obligations under the post-emergence Term B Loan and (d) for those Prepetition Term Lenders who fund the debtor in possession term loan, a dollar-for-dollar basis in the new Term B debt for each dollar committed by such lender under the debtor in possession term loan.

C. DIP Financing Claims

The revolver portion of the DIP financing will be paid in full; the term loan portion would be converted to a Term A Loan post-confirmation. Administrative claims, other secured claims and priority (non-tax) claims will be paid in full on confirmation.

D. General Unsecured Claims

General unsecured creditors will receive full payment on their claims on the Effective Date of the Plan. To the extent that payment on a general unsecured claim does not become due and payable on or before the Effective Date without regard to any acceleration

caused by the filing of the Chapter 11 cases, such claim shall be paid in the ordinary course of business and in accordance with applicable law and agreement terms.

E. Senior Notes Claims

Senior notes claims will not receive any distribution on account of such claims and such claims shall be discharged, cancelled, released, and extinguished as of the Effective Date. They have agreed to this. Bondholders, Citigroup and JP Morgan Chase, are also leaders of the bank group that hold the revolving credit facility and term loan claims.

F. Equity Interests

Holders of equity interests will not receive any distribution on account of same and equity interests shall be discharged, cancelled, released, and extinguished as of the Effective Date.

A hearing on the prepackaged plan and disclosure statement has been scheduled for May 28, 2009. No creditors' committee has been formed in this case since trade creditors are being paid in the ordinary course pursuant to the Vendor Payment Order and the unsecured bondholders are agreeing to cancellation of their claims.

E. SUN TIMES MEDIA GROUP - CASE STUDY

On March 31, 2009 Sun-Times Media Group, Inc. (the “Debtor”) (formerly known as Hollinger International, Inc. (“Hollinger”)) along with 31 other debtors (collectively, the “Debtors”) filed for relief under chapter 11 of the Bankruptcy Code. Debtors’ reasons for filing its cases are two-fold:

1. the Debtors were severely impacted by the significant downturn in print advertising revenue; and
2. pending Internal Revenue Service tax liability (“IRS Claim”).

However, the third and underlying reason (and something more in the realm of a television mini-series than corporate policy) lies with the Debtors’ former management as lead by Lord Conrad Black and his management team.

Conrad Black Legacy¹

By the end of 1997, the Debtors (then Hollinger) owned or had an interest in 167 paid daily newspapers. Its major newspapers were the *Chicago Sun-Times*, the *Daily Telegraph*, and the *Ottawa Citizen*.²

In January 1997, Hollinger Inc. (Black’s Canadian company) announced it would sell almost all of its Canadian publishing assets to the Debtors (then Hollinger) for \$342 million, excluding

¹ Unless otherwise noted, the source of this information is the revised Hollinger 2003 10-K.

² Funding Universe, <http://www.fundinguniverse.com/company-histories/Hollinger-International-Inc-Company-History.html>

working capital of about \$181 million. Those assets included Hollinger Inc.'s interest in Southam and the Sterling Newspapers Company, which owned 26 daily and 49 non-daily newspapers in Canada.³

In November 1997, the Debtors (then Hollinger) announced it was selling about 40 percent of its U.S. community newspaper group. These included 160 weekly, small daily, and free circulation newspapers in 11 states with a combined circulation of approximately 900,000.

From 1999 through 2001 Hollinger Inc. sold a number of local and regional newspapers to third-parties.⁴ Allegedly the papers were sold to pay down debt⁵ and to enable the Debtors (then Hollinger) to focus on its “core” metropolitan daily newspapers. However, as it was later determined, the Debtors failed to inform its shareholders that a portion of the sales were paid directly to F. David Radler (“Radler”), the Debtors' President and Chief Operating Officer (and Black’s long time friend and partner), J.A. Boulton (“Boulton”) the Debtors' Chief Financial Officer, Peter Y. Atkinson (“Atkinson”), the Debtors' Executive Vice-President and member of the Board of Directors and Black himself in the form of undisclosed “non-compete agreements.”⁶ Moreover, it appears management fees paid to Ravelston Management Inc. (“RMI”), a firm owed by Black and Radler, had gone from \$8.5 million in 1996 to about \$40 million in 1999. (RMI’s fees totaled over \$30 million a year despite a downturn in the industry in the early 2000s.⁷) In addition, monies were paid for management services agreements between the Company and Moffat Management Inc. (“Moffat”) and Black-Amiel Management Inc. (“Black-Amiel”). RMI, Moffat and Black-Amiel were all owned (directly or indirectly) by Black and Radler.

On June 17, 2003, the Debtors' (then Hollinger's) Board of Directors established a special committee of independent directors (the “Special Committee”) to investigate allegations filed by the stockholder Tweedy, Browne & Co. (“Tweedy Browne”) with the Securities and Exchange Commission in May 2003. Tweedy Browne alleged Black, Radler, Boulton and Atkinson received payments from the sale of the Debtors' companies.

On November 15, 2003, the Special Committee and Audit Committee disclosed to the Debtors' Board of Directors the preliminary results of their investigations. The committees determined that a total of \$32.2 million in payments characterized as “non-competition” payments were made by the Debtors without appropriate authorization by either the Audit Committee or the full Board of Directors. Of the total unauthorized payments, approximately \$16.6 million was paid to Hollinger Inc. in 1999 and 2000, approximately \$7.2 million was paid to each of Black and Radler in 2000 and 2001, and \$602,500 was paid to each of Boulton and Atkinson in 2000 and 2001.

³ *Id.*

⁴ See *Hollinger Int'l, Inc. v. Hollinger Inc.*, 2006 WL 3827326 at *1 (N.D.IL Dec. 27, 2006).

⁵ *Id.*

⁶ See *In re Hollinger Int'l, Inc. Securities Litigation*, 2006 WL 1806382 at *4 (N.D.IL June 28, 2006).

⁷ “Not so Fast, Lord Black” *Business Week*, Sept. 27, 2004,

http://www.businessweek.com/magazine/content/04_39/b3901104_mz020.htm (last accessed April 14, 2009).

As a consequence of these findings, the Special Committee entered into discussions with Black that culminated in the Debtor and Black signing an agreement on November 15, 2003 (the “Restructuring Agreement”). The Restructuring Agreement provided for, among other things:

- restitution by Black, Radler, Boulton and Atkinson to the Debtors of the full amount of the unauthorized payments, plus interest;
- the hiring by the Board of Directors of Lazard Frères & Co. LLC and Lazard & Co., Limited (collectively, “Lazard”) as financial advisors to explore alternative strategic transactions, including the sale of the Debtors as a whole or the sale of its specific businesses (the “Strategic Process”);
- and certain management changes, including the retirement of Black as CEO and the resignations of Radler, Boulton and Atkinson.

In addition, Black agreed, as the majority stockholder of Hollinger Inc., that during the pendency of the Strategic Process he would not support a transaction involving ownership interests in Hollinger Inc. if such transaction would negatively affect the Debtors' ability to consummate a transaction resulting from the Strategic Process unless the transaction were necessary to enable Hollinger Inc. to avoid a material default or insolvency.

On November 19, 2003, Black retired as CEO of the Debtors. On January 17, 2004, Black was removed as non-executive Chairman of the Board of Directors.

On January 28, 2004, the Debtors (then Hollinger) filed a civil complaint in the United States District Court for the Northern District of Illinois asserting breach of fiduciary duty and other claims against Hollinger Inc. (the Canadian entity), Ravelston, RMI, Black, Radler and Boulton, and sought approximately \$484.5 million in damages, including approximately \$103.9 million in pre-judgment interest, and also included claims under the Racketeer Influenced and Corrupt Organizations Act. On October 8, 2004, the court granted the defendants’ motion to dismiss the RICO claims and also dismissed the remaining claims without prejudice on jurisdictional grounds. On October 29, 2004, the Debtors filed a second amended complaint seeking to recover approximately \$542.0 million in damages, including prejudgment interest of approximately \$117.0 million, and punitive damages. The action is still pending because of a stay instituted pending the final resolution of the criminal action filed against the same defendants by the United States.

On August 30, 2004, the Special Committee published the results of its investigation with the SEC.

On November 15, 2004, the SEC filed an action in the United States District Court for the Northern District of Illinois against Black, Radler and Hollinger Inc. seeking injunctive, monetary and other equitable relief. In the action, the SEC alleges that the three defendants violated federal securities laws by engaging in a fraudulent and deceptive scheme to divert cash and assets from the Debtors and to conceal their self-dealing from the Debtors' public stockholders from at least 1999 through at least 2003. The SEC also alleges that Black, Radler and Hollinger Inc. were liable for the Debtors' violations of certain federal securities laws at least during this period.

In March 2005, United States Federal Prosecutors revealed that they were conducting a criminal investigation of Black and Radler. (Radler later became a witness for the prosecution and was sentenced to 28 months in jail and a fine of \$250,000.)

In November 2005 federal prosecutors charged Black with eight counts of mail and wire fraud and accused of diverting \$51.8 million of Hollinger shareholders money to himself and associates. Black was found guilty in December 2007 and was sentenced to serve 78 months in jail.

CanWest

In January 2009 the Debtors settled a dispute with CanWest Global Communications (“CanWest”) that dated back to the sale of various publications to CanWest by Black. Prosecutors have cited this particular transaction as an example of Black’s egregious conduct.

In 2000 the Debtors (then Hollinger) sold a group of Canadian newspapers to CanWest for \$3.2 billion. Approximately, \$52.9 million of the proceeds which should have gone to Hollinger were instead paid to Black, Ravelston, Boulton, Atkinson and Radler. Furthermore, the payments were not disclosed in Hollinger’s 2001 10K.

In May 2001, Black and Radler obtained an “after-the-fact” ratification of the non-compete agreements associated with the CanWest transaction, although neither Black nor Radler disclosed to either the Audit Committee or the Board the amount of the payments or how it was determined who would receive the payments. The Audit Committee met on or about September 11, 2000, to review the transaction. The Committee failed to conduct any review of the terms of the transaction or its fairness to Hollinger. At that meeting, the Committee purportedly approved of \$32.4 million in non-compete payments and a \$19.4 million “management agreement break-up fee” for Ravelston. In actuality, a total of \$52.9 million was wired from the Debtors to Black, Ravelston, Boulton, Atkinson and Radler as a result of the CanWest transaction.

It was later revealed that CanWest did not require that a non-competition agreement be included in the “deal” and that Black and Radler inserted the provision dealing with non-competition payments three days before the sale closed. It was also determined that Ravelston had not consented to early termination of any management agreement such that a break-up fee was justified, that Black and Radler increased the amount of the noncompete payment from \$37.7 million to \$51.8 million solely for their own benefit and that Black, Radler, Boulton, and Atkinson would receive an additional \$1.1 million as a percentage of the interest allocation that the company was supposed to receive.

When the CanWest sale agreement was first disclosed in Debtors' (then Hollinger) May 2001 10-Q, the information failed to disclose that the fee received by Black and other officers for agreeing to non-compete agreements with CanWest led to a reduction of the purchase price by \$51.8 million. It was also not disclosed that the non-compete agreements were conceived of by Hollinger executives who then determined exactly how much they were to be paid. In its 2001 10-K, the Debtors alleged that CanWest required the non-compete payments as a condition of the

transaction and that the independent directors had approved of this arrangement. In addition, a disclosure was made about the terms of the Ravelston management agreement. It was stated that the independent directors had approved of the terms of the payments to Ravelston and identified Ravelston as a “holding company controlled by Lord Black... .”

During the May 2002 shareholders meeting, Black was questioned about the non-compete agreements with CanWest. Black stated that non-compete agreements in the community newspaper sales were not unusual, he emphasized that the CanWest payments were standard industry payments that were demanded by the buyers and approved by the independent directors. Black also stated that the non-competition payments did not reduce the Debtors' sale proceeds from the CanWest transaction.

It is not entirely clear how the CanWest arbitration was instituted. However, according to news sources, CanWest claimed it was entitled to a \$65 million adjustment to the purchase price. The Debtors contested the claim and the case went to arbitration. In late January 2009, the arbitrator issued a ruling wherein CanWest was awarded \$39.5 million plus fees. The Debtors allegedly paid the arbitration award in full in early March, about two weeks prior to filing for chapter 11.⁸

Black's Legal Fees

Throughout the entire process, legal fees of Black and the other executive defendants were paid by the Debtors pursuant to their corporate bylaws. (The legal fees paid to date by the Debtors for Black and the former Hollinger executives are reported to be over \$70 million.⁹)

In 2006 the Debtors moved to end their obligation to continue paying these fees in Delaware's Chancery Court. Their request was denied by the court in July, 2006. Furthermore, the Debtors were directed to continue to pay the legal fees of Black's and other Debtor executives until the executives' appeals process was completed.

IRS Claim

In January 2008, the Company received an examination report from the IRS for the tax years of 1996-2003. As a consequence, the Debtors allegedly owed \$510M in additional taxes (“Additional Taxes”).

It appears the Debtors had been aware of its potential liability to the IRS for some time. Notations such as the one below appear in Hollinger's 2003 revised 10-K, 2004 10-K and 2005 10-K. The following notation appeared in the Company's 2006 10-K:

The Company's Consolidated Balance Sheet as of December 31, 2006 included \$990.8 million of accruals intended to cover contingent liabilities related to

⁸ “Sun-Times Media makes final payment to CanWest,” *The Associated Press*, Mar. 12, 2009.

⁹ Feeley, Jeff. “Sun-Times seeks to end Black's legal fee payments.” *Bloomberg.com*, May 23, 2008. http://www.bloomberg.com/apps/news?pid=20601082&sid=awLi_gDCpDko&refer=Canada (last accessed April 14, 2009).

additional taxes and interest it may be required to pay in various tax jurisdictions. A substantial portion of these accruals relate to the tax treatment of gains on the sale of a portion of the Company's non-U.S. operations in prior years. The accruals to cover contingent tax liabilities also relate to management fees, "noncompetition" payments and other items that have been deducted in arriving at taxable income, which deductions may be disallowed by taxing authorities. If the tax treatment of the gains was to be revised or if those deductions were to be disallowed, the Company would be required to pay those accrued contingent taxes and interest and it may be subject to penalties. The Company will continue to record accruals for interest that it may be required to pay with respect to its contingent tax liabilities.

Based on our review of the Hollinger SEC filings, and court opinions of the Northern District of Illinois, it appears that the origin of the management fees and "non-competition" payments discussed above stems from the sale of various Hollinger companies between 1999 and 2003 while Conrad Black was still the Chief Executive Officer of Hollinger.

IRS Claim and these Proceedings

The Wall Street Journal quoted Jeremy Halbreich, the Debtors' current chairman and interim chief executive as stating: "[W]ith Sun-Times in Chapter 11, the tax claim won't carry over to potential new owners, a factor that was a primary motivation for the bankruptcy filing."¹⁰

We note that the Debtors scheduled an auction of the company's publications in 2007. However, the auction was cancelled as there were too few interested parties willing to bid on the assets. Mr. Halbreich is quoted as stating: "suitors were wary of investing in Sun-Times while the [IRS] claim hung over its head."¹¹

Reduced Advertising Revenue for Company¹²

The Debtors' operating revenue is primarily derived from the sale of advertising space within the Company's newspapers and websites. Advertising revenue for the year ending December 31, 2008 was \$243 million which accounts for 75 percent of the Company's revenue for 2008. During the fourth quarter of 2008, the Debtors experienced an 18.2 percent decline in advertising revenue (the industry average is between 18 and 20 percent for the same period). The Debtor anticipates a decline of 30 percent through 2009.

10 Ovide, Shira. "Sun-Times Media Files Chapter 11 --- Joining Growing list, Second Chicago Daily Seeks Shelter, Will Auction Assets," *Wall Street Journal*, Apr. 1, 2009.

11 *Id.*

12 Declaration of James McDonough in Support of First Day Motions, (Bankr. D. Del. Case No. 09-11092, Docket No. 4)

Downturn in Print Circulation for Industry¹³

The rate of decline in print circulation at the nation's newspapers has accelerated since last fall, as industry figures recently released show a more than 7 percent drop compared with the previous year, while another recent analysis showed that newspaper Web site audiences had increased 10.5 percent in the first quarter.

Of the top 25 newspapers in the United States, all posted declines in circulation except for The Wall Street Journal, which eked out a 0.6 percent gain, according to figures released by the Audit Bureau of Circulations in late April 2009. For the others, the declines ranged from 20.6 percent for The New York Post, to a slight 0.4 percent drop for The Chicago Sun-Times.

Both The Post and The Journal are owned by the News Corporation, the media conglomerate controlled by Rupert Murdoch. The new circulation numbers are "not very good, and probably a little worse than expected," said Rick Edmonds, media business analyst at the Poynter Institute, a nonprofit organization that owns The St. Petersburg Times in Florida. Mr. Edmonds said he had expected an overall drop of roughly 5.5 percent. The figures, which are based on reports filed by the individual papers, illustrated the continued migration of readers to the Internet and, in some cases, the effort by papers to shed unprofitable circulation.

"One shouldn't be in denial that this represents people quitting newspapers to get news from the Web," Mr. Edmonds said. "But there are many other factors." Among those factors, he said, are newspapers making reductions in what is known in the industry as "junk circulation" — things like free newspapers distributed at trade shows or in schools. At the same time, he said, some papers have increased prices in an effort to wring more revenue from their core readers while doing away with cheap introductory offers to attract new readers. "To that extent, it's voluntary," Mr. Edmonds said. That was one explanation offered by Alan Fisco, the vice president of circulation and marketing for The Seattle Times, in a memorandum on Monday to his staff about a decline of roughly 8 percent in circulation. "Most of these losses are due to budget decisions we made throughout 2008 and earlier this year in response to the economic recession," he wrote. "We made these decisions as strategically as possible, with the goal of minimizing the impact to our readership and audience while preserving our core home delivery and single copy strength."

At 395 daily newspapers, weekday circulation declined 7.1 percent for the six months that ended March 31, compared with the previous year. Sunday circulation for 557 daily newspapers was down 5.37 percent. The New York Times reported a smaller decline than the industry average, as weekday circulation fell 3.6 percent to 1,039,031, compared with the previous year. The Times, which last week reported a quarterly loss of \$74 million, said that circulation revenue was up slightly, reflecting increased prices.

While newspaper circulation has long been in decline, the latest figures show the drop is accelerating. In the two previous six-month periods, weekday circulation fell 4.6 percent and 3.6 percent, respectively. USA Today, which has long bucked industry circulation trends, reported a

13 Arango, Tim. "Fall in Newspaper Sales Accelerates to Pass 7%," *New York Times*, Apr. 28, 2009.

7.5 percent drop, partly because some hotels cut back on free newspapers delivered to rooms. USA Today is still the nation's largest newspaper by circulation, at slightly more than two million. The Wall Street Journal and The New York Times are the next largest papers.

Chapter 11 Filing

The Debtor filed Chapter 11 on March 31, 2009. A creditors' committee has been formed. The Debtors have no secured debt and have not sought approval of Chapter 11 financing.

MOTION TO AUTHORIZE BUT NOT DIRECT DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND APPROVING PROCEDURES RELATED THERETO ("CRITICAL VENDOR MOTION")

Debtors moved pursuant to Bankruptcy Code Sections 105(a) and 363(b) for permission to pay or honor prepetition claims of certain critical vendors and approving procedures related thereto. Debtors estimated having 5,512 critical vendors ("Critical Vendors") with outstanding prepetition claims of \$13.7 million. The Debtors requested permission to pay up to \$1.95 million ("Payment Cap") to their Critical Vendors ("Critical Vendor Payments"). The Debtors further requested permission to make the Critical Vendor Payments in their business judgment and if the need arises to ask for an increase in the amount of the Payment Cap. Debtors assert the current Payment Cap is an estimate and may not be sufficient.

To identify Critical Vendors, the Debtors reviewed their books and records and consulted with their employees. When determining the list of its Critical Vendors, the Debtors considered whether the party was a "single source" supplier, or if another party could provide the products, whether the debtors have sufficient inventory, whether failure to make a Critical Vendor Payment will negatively impact the Debtors' business, whether the vendor will refuse to provide services/products without receipt of a Critical Vendor Payment and whether certain vendors may be entitled to an administrative priority claim under Bankruptcy Code Section 503(b)(9). (The Debtors intend to satisfy the claims of all Critical Vendors who also have 503(b)(9) claims.)

The Debtors proposed sending a letter to each of its Critical Vendors ("Letter"). The Letter will identify the conditions to which the Critical Vendor must agree in order for it to receive a Critical Vendor Payment. A copy of the Letter is attached to the Motion as an exhibit. The Debtors' conditions include:

- the Critical Vendor will follow Customary Trade Terms;
- the Critical Vendor will provide goods for no less than one (1) year;
- Critical Vendor may not file a lien against the Debtors' assets;
- Critical Vendor may not separately seek payment for reclamation;
- if the Critical Vendor terminates the agreement or refuses to provide goods and services on Customary Trade Terms, any payments received by the Critical Vendor on account of its Trade Claim will be deemed to have been payment of then outstanding

post petition obligations owe to the Critical Vendor and the Critical Vendor shall immediately repay to the Debtors any Critical Vendor Payments made to date on account of the Trade Claim to the extent that the aggregate amount of such payments exceeds the post petition obligations then outstanding without right of setoff;

- the Critical Vendor must return property of the Debtors that exceeds the Critical Vendor's prepetition claim after taking into account the receipt of a Critical Vendor Payment.

The court approved the Motion after the committee vetted the proposed critical vendor payments.

**MOTION FOR AN ENTRY OF ORDER ESTABLISHING PROCEDURES
FOR RECONCILING VALID RECLAMATION CLAIMS AND
PROHIBITING THIRD PARTIES FROM INTERFERING WITH THE
DELIVERY OF THE DEBTORS' GOODS ("RECLAMATION MOTION")**

Prior to the Petition Date, the Debtors purchased a wide variety of goods on credit, e.g. paper, ink and similar supplies, which are used in the Debtors' daily operations (collectively, "Goods"). As of the Petition Date, the Debtors were in possession of Goods, which have been comingled with its current property and for which it could receive demands from vendors seeking to have the Goods returned pursuant to Bankruptcy Code Section 546(c) ("Reclamation"). The Debtors were also concerned some vendors and creditors may attempt to interfere with the delivery of Goods to the Debtors or repossess the Goods while the Goods are in transit.

The Debtors requested the following procedures for processing and reconciling Reclamations claims by the Debtors' creditors be approved by the Court:

- (a) Any seller asserting a Reclamation claim ("Reclamation Claim") must (i) satisfy all requirements under Bankruptcy Code Section 546(c) and must (ii) provide the Debtors with notice that includes information as to when the Goods were delivered, a copy of applicable invoice showing the value of the Goods or a declaration that the goods were delivered ("Reclamation Notice").
- (b) Any seller asserting a Reclamation demand must deliver to the Debtors and their counsel a demand that outlines their Reclamation claim ("Reclamation Demand").
- (c) The Debtors will review the Reclamation Demands within 120 days of the entry of an order granting the Reclamation Motion. The Debtors will file a notice which lists the parties that have made Reclamation Demands ("Notice"). The Notice will also identify those Reclamation Claims and amounts, if any, which the Debtors have determined to be valid. The Notice will also identify the Debtors defenses, if any.

(d) A party who objects to the information in the Notice, must file and serve, within twenty (20) days of the filing of the Notice (“Objection Deadline”), an objection that includes the following: (i) copy of the of the Reclamation Demand with evidence of date mailed; (ii) the name of the Debtor-entity that ordered the Goods that are the subject of the Reclamation Demand; (iii) copies of the purchase orders and invoices relating to the Goods that are the subject of the Reclamation Demand; (iv) any evidence demonstrating the date the Goods were shipped; (v) a statement explaining why the Notice is incorrect.

(e) Any Reclamation Demand that is included in the Notice and is not the subject of a Reclamation Notice Objection by the Objection Deadline shall be deemed a valid Reclamation Claim allowed by the Court at the amount set forth in the Notice.

(f) The Debtors shall be authorized to negotiate with the parties who have filed an Objection. In the event a settlement is reached, the Debtors shall file a notice with the Court (“Settlement Notice”). The United States Trustee, the Official Committee of Unsecured Creditors and the parties who received a copy of the Reclamation Notice will have ten (10) days to object to the Settlement Notice. If no objection is filed, the claim will be deemed a valid Reclamation Claim in the amount set forth in the Settlement Notice.

(g) Within ninety (90) days of the Objection Deadline the Debtor shall file a motion for the Court to determine any reclamation claims that are subject to the pending Objection. The hearing will be set at the next regularly scheduled Omnibus Hearing established by the Court.

The motion also sought to prohibit sellers from seeking any means other than the procedures described above for resolving Reclamation Demands made upon the Debtors. For example, sellers are prohibited from commencing an adversary proceeding against the Debtors in connection with any Reclamation Claim. Sellers may not seek to obtain possession of Goods except as permitted by the Reclamation Procedures. Sellers also may not interfere with the delivery of Goods to the Debtors.

The court ultimately approved the reclamation procedures after accepting modifications requested by the committee.

Chapter 11 Marketing Efforts

The Debtors are marketing their business. The challenge for the creditors' committee is to assure a robust marketing process that will maximize value/recoveries for unsecured creditors. In that regard, James Tyree, a Chicago investment banker is reported to be assembling a group to bid on the Debtors' business.

Legal Issues:

1. Sale of the business - assuring a robust solicitation and bidding process to maximize value.
2. Tax issues in response to:
 - (a) Validity of IRS tax claim of approximately \$510 million; and
 - (b) Extent of priority of IRS tax claim.
3. Disposition of litigation against former owner and affiliated companies.
4. Potential \$39.5 million preference claim against CanWest.
5. Union issues - rejection of collective bargaining agreements.

WANDA BORGES

WANDA BORGES, the principal member of Borges & Associates, LLC., has been specializing in commercial insolvency practice and commercial litigation representing corporate clients throughout the United States for an excess of twenty-nine years.

She is admitted to practice before the courts of the State of New York and the United States District Court for the Southern, Eastern, Northern and Western Districts of New York, the United States District Court for the District of Connecticut, the Second Circuit Court of Appeals and the Supreme Court of the United States. She is a member of the American Bar Association, American Bankruptcy Institute, The Hispanic National Bar Association, The International Association of Commercial Collectors and the Turnaround Management Association. As a member of the Commercial Law League of America, she is its Immediate Past President, is a Past Chair of its Bankruptcy Section, and served for six years on the Executive Council of the Eastern Region of the CLLA.

She is a regular lecturer for the National Association of Credit Management (NACM) and its various affiliates. She has prepared and continues to update courses on "Advanced Issues in Bankruptcy", "Basics in Bankruptcy", "Current Cases in Bankruptcy", "Creditor's Committees", "Credit and Collection Issues" and "Antitrust Issues" which have been presented at past NACM Annual Credit Congresses and are scheduled for future Congresses. Upon the passage of the Sarbanes-Oxley Act of 2002 Ms. Borges prepared a course entitled "The Sarbanes-Oxley Act of 2002 – What Does the Credit Executive Need to Know?", which is updated annually and presented for various organizations.. Ms. Borges is a faculty member for the NACM's Graduate School of Credit and Financial Management at Dartmouth College. Ms. Borges has been a faculty member for the National Institute on Credit Management, a program jointly sponsored by the Commercial Law League of America and the National Association of Credit Management.

She has been a regular lecturer for the American Management Association on the Uniform Commercial Code and Fundamentals of Business Law for the Non-Lawyer, and for both the American Management Association, the Broadcast Cable Financial Management Association and the Broadcast Cable Credit Association on Creditor's Rights in Commercial Litigation and Insolvency Matters. Additionally, she has presented seminars for the National Conference of Bankruptcy Judges, the American Bankruptcy Institute, The Commercial Law League of America, The International Association of Commercial Collectors, various local and national Bar Associations, the American Automotive Leasing Association, Thomson West Publishing Company, the National Chemical Credit Association, the Publishers Credit Association, the Health Industry Manufacturers Association, the Beauty and Barber Manufacturers Credit Association, the New Hampshire Association of Broadcasters, the Credit Association for Satellite History, and the New York State Food Service Distributors Association. She is a frequent lecturer for Riemer Reporting Service.

WANDA BORGES

She has served as the Managing Editor and still is one of the contributing authors of Manual of Credit and Collection Laws published by the National Association of Credit Management and is a contributing author to its Principles of Business Credit. She is a member of NACM's Editorial Advisory Committee. She has served as a Contributing Editor for the Commercial Law League of America's Bulletin and Journal and has contributed to the Bankruptcy Section Newsletter. Her treatise Hidden Liens: Who is Entitled to What? was published in the Fall, 1998 Edition of the Commercial Law Journal. She has authored Antitrust, Restraint of Trade and Unfair Competition: Myth Versus Reality, published by the NACM. Ms. Borges is the lead author and Editor-in-Chief of Enforcing Judgments and Collecting Debts in New York published by Thomson West Publishing Company and updated annually. She routinely publishes articles for the National Association of Credit Management "Fraud Prevention News" and "Business Credit" magazine. With the passage of new bankruptcy law, Ms. Borges has prepared and presents educational programs on this new legislation and has co-authored The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – An Overhaul of U.S. Bankruptcy Law, published by the NACM.

She has published articles for the Broadcast Cable Credit Association "Creditopic\$" and the "Broadcast Cable Financial Management Journal" on Commercial Creditors' Rights in Bankruptcy, the ECOA and Regulation B, Electronic Invoicing, "Dot Com" Businesses, and on Advertiser/Agency Liability; and has prepared the "white paper" on the discontinuance of notarization of broadcast invoices. She is a co-author of the National Association of Broadcasters' book Out of the Red and into the Black, as well as the Broadcast Cable Credit Association's Credit & Collection Handbook. Ms. Borges has appeared as a guest on the Fox News Channel program, "Fox on Consumers", speaking on consumer bankruptcy exemptions.

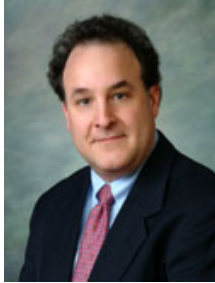
She has conducted "in-house" seminars on credit, collection, secured transactions and insolvency for corporate clients such as Agrium, Inc., Bristol-Myers Squibb, Burlington Industries, Inc., Cosmair, Inc., Ferguson Enterprises, Inc., Mars Incorporated, McKesson Corporation, Mobil Chemical Company, Multi-Arc Corp., Pfizer Inc., R.J. Reynolds Tobacco Company, Sandvik, Inc., Sharp Electronics Corporation, Simon & Schuster Corp., SONY Corporation, Stanley Works and SunTrust Bank.

She is a past Chair of the Board of Trustees of Mercy College and served as a member of that board for nine years. She has served on the board of Regents College, and has taught Business Law at Seton College in Westchester County, New York. She is a past Chair of the Broadcast Cable Financial Management Association.

WANDA BORGES

Ms. Borges actively participates in community events. She is the Director of the Youth Music Ministry and Leader of Song at her parish, Our Lady Star of the Sea. She remains a member of the Fairfield County Chorale of which she is a past-president and past-director.

She received the "Human Valor" Award by Noticias del Mundo, a New York based spanish-language newspaper in 1985, the Mercy College Alumni Association's "Professional Achievement" Award in 1991, honorary membership in Delta Mu Delta - The National Honor Society in Business Administration - in May, 1995 and in October, 1996, was awarded the Mercy College Trustee's Medal for outstanding dedication to her profession and alma mater. She is listed in Who's Who of American Women. In September, 2000 she was named one of the "50 Outstanding Alumni" of Mercy College. In February, 2001 she received the "Career Achievement Award" from the Broadcast Cable Credit Association. In May, 2004, she received the "Strength in Numbers Recognition Certificate" from the National Association of Credit Management. In December 2006, she was named one of "2006 Top25 Most Influential Collection Professionals" by Collection Advisor Magazine.



Bruce S. Nathan

Member of the Firm

Tel 212.204.8686 Fax 973.422.6851

E-mail:bnathan@lowenstein.com

Practice

Bruce S. Nathan is a member of the firm's Bankruptcy, Financial Reorganization & Creditors' Rights Group. Mr. Nathan concentrates on all aspects of creditors' rights and workouts in bankruptcy, out-of-court matters and other types of insolvency cases for secured creditors, creditors' committees, unsecured creditors, trustees and other creditors. Mr. Nathan serves as counsel to the unsecured creditors' committee in Interstate Bakeries Corporation and Advanced Marketing Services Inc. and has represented substantial creditor interests in the Enron, WorldCom, Solutia, Metromedia Fiber Network, Adelphia, Calpine, Heilig-Meyers, and Linens 'n Things chapter 11 cases. Mr. Nathan also negotiates and prepares letters of credit, guarantees, security, consignment, bailment, tolling, and other agreements for credit departments of institutional clients. Mr. Nathan is also involved in the negotiation and preparation of loan, letter of credit, and factoring documentation and other matters for banks, asset-based lenders and factors.

Education

- **University of Pennsylvania School of Law (J.D., 1980)**
- **Wharton School of Finance and Business (M.B.A., 1980)**
- **University of Rochester (B.A., 1976), Phi Beta Kappa,**

Affiliations

- New York State Bar Association
- American Bar Association
 - Commercial Financial Services Committee
 - Business Bankruptcy Committee
- American Bankruptcy Institute
 - Member, Board of Directors
 - Contributing Editor, *American Bankruptcy Institute Journal* - "Last in Line" Column
 - Lead Editor, "Second Circuit Cases Update"
 - Former Co-Chair, Unsecured Trade Creditors' Committee
 - Speaker at 2007 Annual Spring Meeting: "Fifty Ways to Leave Your Debtor: Lesser Known Remedies For Jilted Creditors"
 - Task Force on Preferences
 - Chair, Task Force on Reclamations
 - Uniform Commercial Code Committee and Task Force - Revised Article 9 Primer
- Commercial Law League of America
- Association of Commercial Finance Attorneys
- National Association of Credit Management
 - Contributor to *Business Credit* - National Association of Credit Management Magazine
 - Member, Editorial Advisory Board
 - National Bankruptcy and Insolvency Group
 - Lecturer, National Association of Credit Management and Affiliates and Credit Groups on Bankruptcy, UCC Article 9, Consignments, Letter of Credit law and other credit-related issues

- Member of FCIB, an Association of Executives in Finance, Credit and International Business. Presented at **The 4th China International Credit and Risk Management Conference**, Shenzhen, China, September 21, 2007, and **FCIB Teleconference**, December 13, 2007, on key provisions of People's Republic of China's 2006 Law on Enterprise Bankruptcy, similarities to and differences with the U.S. Bankruptcy Code, and upcoming implementation challenges
- Lecturer, Executive Enterprises Inc. the Bank Lending Institute and the Banking Law Institute on Commercial Loan Workouts & UCC Issues
- Contributor
 - *Credit Today*
 - *National Credit News*

Articles/Interviews Featuring Bruce S. Nathan

- "Bruce S. Nathan discusses litigation surrounding creditors committee selection in light of recent changes to the U.S. Bankruptcy Code.", *Dow Jones*, August 9, 2006

Publications

- "Preference Dynamic Duo II: Whatever Happened to the Small Preference Venue Limitation? And Yes, There is an Ordinary Course of Business Defense?" Bruce Nathan, *Business Credit*, May 2009
- "Triangular Setoff: A Viable Remedy or a Thing of the Past?" Bruce Nathan, *Business Credit*, April 2009
- "Is Debtor's Credit Card Payment a Preference" Bruce Nathan, *Business Credit*, March 2009
- "Effective Seller Remedies When Confronting a Financially Distressed Buyer Prior to Bankruptcy" Bruce Nathan, *Business Credit*, February 2009
- "Recent Court Decisions on Consignments and Other Security Arrangements: The Benefits of Aggressive Creditor Action and the Pitfalls of Failing to Document Properly" Bruce Nathan, *Business Credit*, January 2009
- "Builders Trust Fund Payments: A Defense to Preference Exposure" Bruce Nathan, *Business Credit*, November/December 2008
- "Impact of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act on Retail Bankruptcies" Bruce Nathan, Eric Horn, *Journal of Trading Partner Practices*, November 11, 2008
- "Courts Remain Split over Whether a Debtor's Credit Card Payment is an Avoidable Preference" Bruce Nathan, Scott Cargill, *ABI Journal*, October 2008
- "Release of State Mechanic's and Other Lien Law Rights As a Defense to Preference Claims? Yes and No!" Bruce Nathan, *Business Credit*, October 2008
- "Overseas Bear Stearns Hedge Funds Denied Chapter 15 Relief" Bruce Nathan, *Business Credit*, July/August 2008
- "Mechanic's Liens and the Bankruptcy Code" Bruce Nathan, *Business Credit*, June 2008
- "Is a Debtor's Credit Card Payment a Preference?" Bruce Nathan, *Business Credit*, May 2008
- "PACA Trust Destroyed by Written Agreement Extending Payment Terms" Bruce Nathan, *Business Credit*, April 2008
- "State Law Artisans' Lien Rights Defeat Preference Exposure - The Saga Continues" Bruce Nathan, *Business Credit*, March 2008
- "The Critical Vendor Roller Coaster" Bruce Nathan, *Business Credit*, February 2008
- "Section 503(b)(9) Goods Supplier Priority — More Recent Developments" Bruce Nathan, *Business Credit*, January 2008
- "Beware of Claims Bar Dates for Section 503(b)(9) Administrative Priority Claims in Favor of Goods Suppliers" Bruce Nathan, *Business Credit*, November/December 2007
- "Are State Preference Laws Preempted by the United States Bankruptcy Code? Not Necessarily!" Bruce Nathan, Scott Cargill, *The Credit and Financial Management Review*, Volume 13, Number 4, Fourth Quarter 2007
- "The Risks of a Single Creditor Involuntary Bankruptcy Petition; Tread Extra Carefully!" Bruce Nathan, *Business Credit*, October 2007
- "A Preference Dynamic Duo: State Law Lien Rights Defeat Preference Claim While Payment by Credit Card Does Not!" Bruce Nathan, *Business Credit*, September 2007

- **"Credit Transactions May Be Eligible for the Section 547 (c)(1) Contemporaneous Exchange for New Value Defense to Preference Exposure: The Third Circuit Court of Appeals Speaks"** Bruce Nathan, *Business Credit*, July/August 2007
- **"Preference Checklist"** Bruce Nathan, *Business Credit*, June 2007
- **"Recent Favorable Preference Rulings for Construction Material and Service Suppliers"** Bruce Nathan, *Business Credit*, June 2007
- **"Paid for New Value Really Does Count: An Update on the New Value Defense and Other Preference Issues"** Bruce Nathan, *Business Credit*, May 2007
- **"Recent Case Law Development Under the 2005 Amendments to the Bankruptcy Code—Part II"** Bruce Nathan, Scott Cargill, *Business Credit Journal of NACM Oregon*, May 2007
- **"Recent Case Law Development Under the 2005 Amendments to the Bankruptcy Code—Part 1"** Bruce Nathan, Scott Cargill, *Business Credit Journal of NACM Oregon*, April 2007
- **"Reclamation Rights Under BAPCPA: The Same Old Story"** Bruce Nathan, *Business Credit*, April 2007
- **"The New 20-Day Administrative Claim in Favor of Goods Suppliers: Yes to Priority; No to Immediate Payment"** Bruce Nathan, *Business Credit*, March 2007
- **"The ABCs of Legal Issues Encountered by Credit Professionals"** Bruce Nathan, *Business Credit*, February 2007
- **"Joint Check Arrangement Does Not Protect Against Preference Exposure"** Bruce Nathan, *Business Credit*, January 2007
- **"Bailment Or Consignment: It Makes A Difference!"** Bruce Nathan, *Business Credit*, November/December 2006
- **"The BAPCPA Ordinary Course Of Business Defense To Preference Claims: At Last, A Court Speaks"** Bruce Nathan, *Business Credit*, October 2006
- **"A Trade Creditor's Post-Petition Obligations Under An Unexpired Executory Contract Prior To Assumption Or Rejection: The Muddled State Of The Law"** Bruce Nathan, *Business Credit*, September 2006
- **"Being Fully Secured Defeats Preference Exposure"** Bruce Nathan, *Business Credit*, July/August 2006
- **"Reclamation Manual/Sellers' Rights of Reclamation, Stoppage of Delivery and New Administrative Claim"** Bruce Nathan, *American Bankruptcy Institute*, 2006
- **"Manual of Credit And Commercial Laws"** Bruce Nathan, *National Association of Credit Management (97th Edition)*, 2006
- **"Involuntary Bankruptcy Petition Upheld: Media Providers' Claims Against Advertising Agency NOT Subject To Bona Fide Dispute"** Bruce Nathan, *Business Credit*, June 2006
- **"Sales of Trade Claims: The Rewards and The Risks"** Bruce Nathan, *Business Credit*, May 2006
- **"The New Creditors' Committee Disclosure And Solicitation Obligations: The Refco Blueprint!"** Bruce Nathan, *Business Credit*, April 2006
- **"Getting The Biggest Bang For Your New Value Preference Defense Buck"** Bruce Nathan, *Business Credit*, March 2006
- **"Purchase Money Security Interest Suppliers Beware: Tracing Collateral Proceeds Is No Sure Thing"** Bruce Nathan, *Business Credit*, February 2006
- **"The Impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on Real Property Lessors and Owners and Other Bankruptcy Law Developments"** Bruce Nathan, *New York State Bar Association Leasing Committee Program*, January 18, 2006
- **"A Trade Creditor's Setoff Rights In Bankruptcy: No Slam Dunk"** Bruce Nathan, *Business Credit*, January 2006
- **"Critical Vendor' Status Is No Escape From PREFERENCE Risk"** Bruce Nathan, *Business Credit*, November/December 2005
- **"Section 506(c) Waiver Enforceable; Good News for DIPs and Other Secured Lenders"** Bruce Nathan, *American Bankruptcy Institute Journal*, October 2005
- **"Real Estate Material and Services Suppliers, Rejoice!"** Bruce Nathan, *Business Credit*, October 2005
- **"A Preference Defense Quartet: Four Recent Court Decisions To Mull Over"** Bruce Nathan, *Business Credit*, September 2005
- **"A Standby Letter of Credit Payment Within the Preference Period is Not a Preference"** Bruce Nathan, *Business Credit*, June 2005
- **"Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: A Summary of the Provisions Affecting Derivative Agreements"** Bruce Nathan, Scott Cargill, *Lowenstein Sandler Bankruptcy Alert*, May 6, 2005

- **"Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Significant Business Bankruptcy Changes in Store for Trade Creditors"** Bruce Nathan, Wanda Borges, Esq., *Business Credit*, May 2005
- **"Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Landmark Business and Other Bankruptcy Changes"** Bruce Nathan, Scott Cargill, Joseph M. Yar, Esq., *Lowenstein Sandler Bankruptcy Alert*, May 5, 2005
- **"Sherwood Partners Threatens Viability of State Law Preference"** Bruce Nathan, *American Bankruptcy Institute Journal*, May 2005
- **"Critical Vendor Orders After Kmart: A New Lease on Life"** Bruce Nathan, *Business Credit*, May 2005
- **"Reclamation Rights vs. Floating Inventory Lien: A Victory At Last!"** Bruce Nathan, *Business Credit*, April 2005
- **"Be Careful When Taking Regular Checks For Lien Release Or Cash Transactions: A Commentary On The JWJ Contracting Co., Case"** Bruce Nathan, *Business Credit*, March 2005
- **"State Law Preference Actions: A Thing Of The Past?"** Bruce Nathan, Scott Cargill, *Business Credit*, March 2005
- **"The Dirty Little Secret Of Critical Vendor Orders: The Hidden Preference Risk That Lurks!"** Bruce Nathan, *Business Credit*, February 2005
- **"Battered And Coated French Fries As A Fresh Vegetable Eligible For PACA Protection: Are You Kidding?"** Bruce Nathan, *Business Credit*, November/December 2004
- **"Reclamation Rights Trumped by UCC's Floating Inventory Security Interest"** Bruce Nathan, *American Bankruptcy Institute Journal*, November 2004
- **"Standby Letters of Credit and the Strict Compliance Standard: The Case of the Overstated Sight Draft"** Bruce Nathan, *Business Credit*, October 2004
- **"A New Defense Against Preference Claims?"** Bruce Nathan, Scott Cargill, *Credit Today*, October 2004
- **"Are Reclamation Claims Heading for Oblivion Where the Debtor Has a Secured Inventory Lender?"** Bruce Nathan, *Business Credit*, September 2004
- **"Critical Vendor" Payments Denied by Kmart Ruling - Part 2"** Bruce Nathan, Scott Cargill, *National Credit News*, July-August 2004
- **"Critical Vendor Payments Denied by Kmart Ruling - Part 1"** Bruce Nathan, Scott Cargill, *National Credit News*, June 2004
- **"PACA Rights Destroyed by Oral Agreement Extending Payment Terms"** Bruce Nathan, *Business Credit*, June 2004
- **"Can Sanctions Be Imposed For Improperly Prosecuted Preference Actions?"** Bruce Nathan, *Business Credit*, May 2004
- **"Section 502(d) Preclusion of Preference Claims: A New Defense or a Dry Hole?"** Bruce Nathan, *American Bankruptcy Institute Journal*, May 2004
- **"Critical Vendor Payments Denied by Kmart Ruling"** Bruce Nathan, Scott Cargill, *Lowenstein Sandler*, April 2004
- **"Consignment the Right Way: File a UCC Financing Statement"** Bruce Nathan, *Business Credit*, April 2004
- **"Extra, From the Appellate Corner - Hot Off the Presses: Delaware Appellate Court Affirms Priority of Trade Creditor's Stoppage of Delivery Rights Over Buyer's Inventory Secured Lender"** Bruce Nathan, *Business Credit*, March 2004
- **"Are Reclamation Rights Preserved Where Debtor's Secured Dip Lender Pays Off Pre-Petition Secured Inventory Lender? Yes and No!"** Bruce Nathan, *Business Credit*, March 2004
- **"Preferences, Reclamation and PACA in One Case: A Three-Ring Circus"** Bruce Nathan, *Business Credit*, February 2004
- **"PACA Trust Survives E-Mail Exchange Extending Payment Terms"** Bruce Nathan, *Business Credit*, January 2004
- **"A New Limit on Reclamation Claims: The Latest on the Goods on Hand Requirement"** Bruce Nathan, *Business Credit*, November/December 2003
- **"The Ordinary-course-of-business Defense to Preference Claims: First-time Transactions Count Too!"** Bruce Nathan, *American Bankruptcy Institute Journal*, November 2003
- **"A New Limit on the New Value Preference Defense"** Bruce Nathan, *Business Credit*, October 2003

- **"Trade Creditors Beware: Providing Post-Petition Goods and Services to a Chapter 11 Debtor Under a Pre-Petition Contract Without Protection Can Be Toxic to Collectibility"** Bruce Nathan, *Business Credit*, September 2003
- **"Letter of Credit Beneficiary Beats Issuing Bank Based on Conforming Documents and Untimely and Improper Dishonor"** Bruce Nathan, *Business Credit*, July/August 2003

Bar Admissions

- 1981, New York