

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re : Chapter 11
: :
AMERICAN COMMUNITY : Case No. 09-11446 (KJC)
NEWSPAPERS, LLC, *et al.*,¹ : :
: (Jointly Administered)
Debtors. : :

**Objection Deadline: August 14, 2009 at 4:00 p.m.
Hearing Date: August 21, 2009 at 11:30 a.m.**

**MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR AN ORDER DISMISSING THE DEBTORS' CHAPTER 11 CASES**

The Official Committee of Unsecured Creditors of American Community Newspapers, LLC, *et al.* (the "Committee"), by and through its counsel, hereby moves this Court (the "Motion") for entry of an order dismissing the Debtors' chapter 11 cases and for related relief. In support of this Motion, the Committee respectfully represents as follows:

PRELIMINARY STATEMENT

These chapter 11 cases were never commenced with the intention or purpose pursuing a chapter 11 plan process. This course of action was dictated by the Debtors' financial condition and the Debtors' prepetition lenders (the "Lenders") unwillingness to fund these cases beyond an expedited sale process such that the Lenders could wash their collateral through a Bankruptcy Code section 363 sale.

The expedited sale process has concluded and the Debtors' estates have no remaining assets other than potential avoidance actions against their trade creditors. The Lenders have a deficiency claim of approximately \$80 million. The trade debt is approximately \$2 million. To

¹ The Debtors are American Community Newspapers LLC, Amendment I, Inc., Leesburg Today, Inc., Loudon Magazine, Inc., Loudon Business, Inc., and American Community Newspapers, Inc. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

the extent the Debtors or a chapter 7 trustee were to prosecute avoidance actions, the Lenders would receive in excess of 97% of the net proceeds.

In a case where unsecured trade creditors are not assured anything beyond a 15% recovery, which recovery is subject to certain conditions, it would be inequitable to sue such creditors for the benefit of the Lenders. The Lenders have already reaped the benefits of the chapter 11 process in washing their assets at minimum expense and without providing any funding for a plan process. They should not be permitted to achieve further benefits in chapter 7 cases at the expense of the trade creditors. Dismissing the Debtors' chapter 11 cases, as opposed to converting them, will prevent such injustice.

BACKGROUND

1. On April 28, 2009 (the "Petition Date"), each of the Debtors (other than American Community Newspapers, Inc.) filed a voluntary petition for relief under chapter 11 of Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On May 6, 2009, the Office of the United States Trustee appointed the following members to the Committee: (i) Tembec Industries Inc., (ii) Vision Data Equipment Corp., and (iii) Roosevelt Paper Co.

3. On April 28, 2009, the Debtors filed a motion to sell substantially all of their assets free and clear of liens, claims, encumbrances and interests to an affiliate of the Lenders ("Newco") for a credit bid of \$32 million and other consideration (the "Sale Motion") [Docket No. 13]. By order entered June 3, 2009, the Court approved the Sale Motion [Docket No. 135]. The Debtors' sale to Newco closed on June 29, 2009.

4. On July 23, 2009, the Debtors filed a motion to convert their chapter 11 cases to cases under chapter 7 (the "Motion to Convert") [Docket No. 208].

RELIEF REQUESTED

5. By and through this Motion, the Committee moves to dismiss these chapter 11 cases effective approximately 60 days from the date of the entry of such dismissal order.

Basis for Relief Requested

6. In 2005, Bankruptcy Code section 1112(b) was amended through the Bankruptcy Abuse Prevention and Consumer Protection Act to *require* a court to dismiss or convert a case if a creditor established “cause,” absent “unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of the creditors and the estate.” *See* 11 U.S.C. § 1112(b)(1).

7. Notably, however, the “unusual circumstances” exception to the mandatory nature of dismissal or conversion does not apply where the “cause” for dismissal or conversion is continuing *or* substantial loss *and* the absence of any rehabilitation. *See* 11 U.S.C. § 1112(b)(2)(B).

8. Specifically, Bankruptcy Code § 1112(b) provides as follows:

(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent *unusual circumstances* specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, *the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate*, if the movant establishes cause.

(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that –

(A) there is a reasonable likelihood that a plan will be confirmed within the time frames established in sections 1121(e)

and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time: and

(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A) –

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(1) and (2) (emphasis added).

9. Accordingly, where a movant establishes “cause” under Bankruptcy Code § 1112(b)(4)(A), a court *must* dismiss or convert the case *regardless* of the presence of “unusual circumstances” that might otherwise weigh against dismissal or conversion. *See* 11 U.S.C. § 1112(b)(1) and (2)(B). Whether a court dismisses or converts a debtor’s case depends upon “whichever is in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1). For the reasons stated herein, dismissal is in the best interests of creditors and the estate.

10. Bankruptcy Code § 1112(b)(4)(A) provides that “cause” exists for dismissal (or conversion) where a debtor incurs “substantial *or* continuing loss to or diminution of the estate” *and* there is an “absence of a reasonable likelihood of rehabilitation.” *See* 11 U.S.C. § 1112(b)(4)(A). In these cases, dismissal (or conversion) is mandated under the plain language of Bankruptcy Code section 1112(b)(1)-(2)(B) because the Committee can establish “cause” for dismissal under Bankruptcy Code section 1112(b)(4)(A) due to the Debtors’ substantial *or* continuing losses *and* the absence of any reasonable likelihood of rehabilitation. In the Motion to Convert, the Debtors state that they “are no longer operating their businesses nor do they have any funding sources to propose a plan of liquidation.” Motion to Convert, ¶ 13.

The Debtors' Substantial and Continuing Losses

11. The Debtors' need for DIP Financing in these cases demonstrates the Debtors' continuing losses. Unable to meet expenses as they become due absent DIP Financing, the Debtors have requested and obtained authority to borrow up to \$5 million from the Lenders to fund their operations in chapter 11. Accordingly, there can be no reasonable dispute that the Debtors are incurring both continued *and* substantial losses. *See, e.g., In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) ("Courts have held that a negative cash flow postpetition and an inability to pay current expenses satisfy the elements of § 1112(b)(1)" [now § 1112(b)(4)(A)]); *In re Route 202 Corp.*, 37 B.R. 367, 376 (Bankr. E.D. Pa. 1984) ("Obviously, if the debtor has negative cash flow after the entry of the order for relief in the chapter 11 case, the [elements of former § 1112(b)(1) are] satisfied").

No Reasonable Likelihood of "Rehabilitation"

12. The Committee can also establish that there is no reasonable likelihood of "rehabilitation" under Bankruptcy Code § 1112(b)(4)(A). It is well-settled that reference in § 1112 to "rehabilitation" means something different than "reorganization," which includes liquidation. Courts consistently hold that "rehabilitation," as distinguished from "reorganization," denotes a restoration of a viable business and does *not* include liquidation. *Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 516 (8th Cir. 2004) ("Courts have consistently understood 'rehabilitation' to refer to the debtor's ability to restore the viability of its business."); *In re Gonic Realty Trust*, 909 F.2d 624, 627 (1st Cir. 1990) ("[W]ith no business left to reorganize, Chapter 11 proceedings were not serving the purpose of rehabilitating the debtor's business."); *In re Family Snacks, Inc.*, 257 B.R. 884, 895 (8th Cir. BAP 2001) ("Congress has distinguished the narrower concept of rehabilitation from the broader concept of

reorganization”); *AdBrite*, 290 B.R. at 216 (“rehabilitation does not mean the same thing as reorganization for purposes of Chapter 11 because a reorganization may include an orderly or complete liquidation. In this context, rehabilitation means to put back in good condition and reestablish on a sound basis. It signifies that the debtor will be reestablished on a secured financial basis, which implies establishing a cash flow from which its current obligations can be met.”).

13. The Debtors have sold substantially all of their assets in chapter 11 and have no businesses or funding to attempt any reorganization and no intention of attempting any reorganization. As such, there is no reasonable likelihood of rehabilitation. This is essentially admitted in the Motion to Convert, where the Debtors state that they “are no longer operating their businesses nor do they have any funding sources to propose a plan of liquidation.” Motion to Convert, ¶ 13.

Conversion Is Not Appropriate

14. Because the Debtors by their own admissions have substantial and continuing losses and no reasonable likelihood (let alone intention) of rehabilitating, the Court *must* dismiss or convert these chapter 11 cases. Whether a court dismisses or converts a debtor’s case depends upon “whichever is in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1).

15. Conversion of the Debtors’ chapter 11 cases would be inequitable, and would place the Debtors’ trade creditors at risk of being sued for preference actions almost exclusively for the benefit of the Lenders. As the Lenders’ deficiency claim of approximately \$80 million dwarfs the approximately \$2 million of unsecured trade debt in these cases, the Lenders would stand to recover in excess of 97% of any net proceeds from preference action recoveries. Such a

result is not what the Bankruptcy Code was designed to accomplish. To avoid this absurd result, the Debtors' chapter 11 cases should be dismissed.

16. While the Debtors would prefer to convert their cases to provide closure to their corporate existence, such closure should not be accomplished at the expense of the unsecured trade creditors. The Debtors had an opportunity to achieve closure in chapter 11 through a plan process. They failed to negotiate appropriate funding to achieve such closure with the Lenders and should not be afforded the opportunity to fund such closure at the expense of general unsecured trade creditors.

WHEREFORE, the Committee respectfully requests that the Court enter an order, substantially in the form attached hereto, (i) dismissing the Debtors' chapter 11 cases, and (ii) granting such other and further relief as is just and proper.

Dated: July 31, 2009

BLANK ROME LLP

/s/ David W. Carickhoff

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LLC, *et al.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re : Chapter 11
:
AMERICAN COMMUNITY : Case No. 09-11446 (KJC)
NEWSPAPERS, LLC, *et al.*,¹ :
: (Jointly Administered)
Debtors. :

Objection Deadline: August 14, 2009 at 4:00 p.m.
Hearing Date: August 21, 2009 at 11:30 a.m.

**NOTICE OF MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR AN ORDER DISMISSING THE DEBTORS' CHAPTER 11 CASES**

TO: Parties required to receive notice pursuant to Del. Bankr. L.R. 2002-1.

PLEASE TAKE NOTICE that on July 31, 2009, the Official Committee of Unsecured Creditors of American Community Newspapers, LLC, *et al.* (the "Committee") filed the **Motion of the Official Committee of Unsecured Creditors for an Order Dismissing the Debtors' Chapter 11 Cases** (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A copy of the Motion is attached hereto.

Any responses or objections to the Motion must be filed with the Bankruptcy Court in accordance with the local rules and served upon the undersigned counsel on or before **August 14, 2009 at 4:00 p.m. (EST)**.

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors are American Community Newspapers LLC, Amendment I, Inc., Leesburg Today, Inc., Loudon Magazine, Inc., Loudon Business, Inc., and American Community Newspapers, Inc. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED
IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD
BEFORE THE HONORABLE KEVIN J. CAREY AT THE BANKRUPTCY COURT ON
AUGUST 21, 2009 AT 11:30 A.M. (EST).

Dated: July 31, 2009

BLANK ROME LLP

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Newspapers LLC, *et al.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re : Chapter 11
:
AMERICAN COMMUNITY : Case No. 09-11446 (KJC)
NEWSPAPERS, LLC, *et al.*,¹ : (Jointly Administered)
:
Debtors. : Re: Docket No. ____

ORDER DISMISSING THE DEBTORS' CHAPTER 11 CASES FOR CAUSE

Upon the motion (the "Motion")² of the Official Committee of Unsecured Creditors of American Community Newspapers, LLC, *et al.* (the "Committee") for entry of an order dismissing the Debtors' chapter 11 cases; and after due deliberation, the Court finding that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) good and sufficient notice of the Motion has been provided under the circumstances and no other or further notice is necessary, and (d) sufficient cause exists to grant the relief requested in the Motion; accordingly,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Debtors' chapter 11 cases are hereby dismissed, with such dismissal to be effective on October __, 2009.
3. Any professionals seeking payment of final fees in these cases should file such final fee applications on or before September __, 2009.
4. A final hearing on professional fee requests is scheduled for October __, 2009.

¹ The Debtors are American Community Newspapers LLC, Amendment I, Inc., Leesburg Today, Inc., Loudon Magazine, Inc., Loudon Business, Inc., and American Community Newspapers, Inc. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

² Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

5. This Court shall retain jurisdiction regarding the interpretation or implementation of the terms of this Order.

Dated: August __, 2009

The Honorable Kevin J. Carey
Chief United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, *David W. Carickhoff*, hereby certify that on July 31, 2009, I caused a copy of the following document to be served upon the parties listed on the attached 2002 Service List via electronic mail or as otherwise indicated.

- *Motion of Official Committee of Unsecured Creditors for an Order Dismissing the Debtors' Chapter 11 Cases; and*
- *Motion to Limit Notice Concerning Motion of Official Committee of Unsecured Creditors for an Order Dismissing the Debtors' Chapter 11 Cases.*

/s/David W. Carickhoff
David W. Carickhoff (No. 3715)

2002 Service List

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American Community Newspapers LLC, et al.

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09-11446 (KJC)

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