

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

In re:)	Chapter 11
)	
REGENT COMMUNICATIONS, INC., et al)	Case No. 10-10632
)	(Jointly Administered)
Debtor.)	
)	Re: Docket No. 129

**MEMORANDUM ORDER DENYING MOTION
FOR APPOINTMENT OF EQUITY COMMITTEE**

The Court conducted an evidentiary hearing on April 9, 2010, on the Motion of Resilient Capital Management, LLC (“Resilient”) for an Order Appointing an Equity Committee (the “Motion”) (D.I.129). The Court heard the testimony of two witnesses: Anthony A. Vasconcellos, the Debtors’ Executive Vice President and Chief Financial Officer; and William Lisecky of Oppenheimer and Co., Inc. (“Oppenheimer”), which prepared a Valuation Report (Debtors’ Exhibit 11). On the basis of the evidence, the Court will deny the Motion, finding that Resilient did not meet its burden.¹ The Court heard the Motion at the same hearing that it was considering confirmation of Debtors’ First Amended Plan of Reorganization (the “Plan”). Resilient was the lone objector to the Plan and its objection related solely to valuation. Accordingly, the testimony on valuation was pertinent to both the Motion and confirmation.

¹ The urgent circumstances facing the Debtors which compelled the Court to schedule the confirmation hearing only forty days from the filing of the cases also require an immediate and brief written ruling. Should Resilient exercise its right to appeal, the Court reserves the right under our Local Rules to issue a detailed Opinion.



The Plan, which Debtors negotiated with its Secured Lender prior to the bankruptcy, provides that the Secured Lenders will accept a reduced recovery of 78.1% of their claims. Unsecured creditors will be paid in full and equity will receive a gifted amount of \$5.5 million from the Secured Lenders. In return, the Secured Lenders will receive 92% of equity in the reorganized Debtors and 8% of equity will be available to management.

The Court first observes that Resilient did not first request that the Office of the United States Trustee (“OUST”) appoint an equity committee. The OUST did not object to the Motion and the Court accepts Resilient’s explanation that it did not have the necessary time because of Debtors’ timetable.

The Court’s ruling turns primarily on the finding that Resilient did not establish “a substantial likelihood” of a meaningful distribution from Debtors’ estates.² Despite its excellent challenge at the hearing, and in particular its cross-examination of Oppenheimer and suggestions of problems with the valuation, Resilient did not meet its burden.

The valuation places Debtors’ reorganized enterprise value at between \$150 million and \$170 million. Secured debt is approximately \$204.7 million (excluding post-petition interest), and there is unsecured trade debt of approximately \$7 million. Therefore, before equity can recover, the value of Debtors would have to exceed \$211.7 million. Since the plan

² The factors courts consider in deciding whether to appoint an Equity Committee pursuant to 11 U.S.C. § 1102(a)(2) are: (1) whether there is a substantial likelihood that shareholder will receive a meaningful distribution, (2) whether the shareholders are adequately represented, (3) the case is large and complex, (4) the stock is widely held, (5) the request is timely and (6) the costs outweigh the benefits. *In re Exide Tech.*, 2002 WL32332000, *1 (Bankr. D. Del 2002). Resilient established none of these factors.

of confirmation provides that the Secured Lenders are gifting \$5.5 million, there is a significant risk that equity would lose any benefit.

The testimony also revealed the following important facts:

1. Debtors marketed the businesses actively and the highest bid they received was \$140 million.

2. Liquidation analysis was up to \$110.8 million.

3. Oppenheimer's valuation includes the accepted considerations, i.e., comparables, discounted cash flow and precedent transactions which Oppenheimer utilized in determining valuation. The Court can find no fault with Oppenheimer's valuation.

4. Debtors are nearing the total absence of cash with which to operate.

5. Debtors negotiated to obtain the best deal for shareholders.

Resilient did not present its own valuation but, rather, cross-examined Oppenheimer. Although it was an effective and skilled cross-examination, Resilient did not establish a substantial likelihood that equity would obtain a significant recovery. Resilient also argued that the bankruptcy and Plan are taking place at a low trough with the Secured Lenders and management poised to gain the advantage of potentially increased business. The testimony of Oppenheimer does confirm that the radio industry suffered a "melt down" in 2008 from which it has not recovered. There was no evidence, however, if or when the industry will turn around. The Court can not find, therefore, that the Plan is timed to take advantage of a depressed market.

The only evidence which relates to timing which the Court can find significant is that Debtors are on the verge of running out of cash without any viable prospect of obtaining funding. To the extent the Secured Lenders are willing to allow the use of cash collateral or to advance funds, they will reduce the \$5.5 million gift to equity dollar-for-dollar.

The appointment of an Equity Committee will, by necessity, delay the hearing on confirmation of the Plan by one month. During that time, the Debtors would be in financial distress and, based on the evidence, there would be no benefit to equity because there is not a substantial likelihood of a substantial recovery for equity. The greater likelihood is that the \$5.5 million available to equity under the Plan will no longer be available.

Accordingly, the Motion is denied.

Dated: April 12, 2010



KEVIN GROSS, U.S.B.J.