

Tribune Noteholders Win Info To Sue Ex-Shareholders

By **Lance Duroni**

Law360, Wilmington (May 17, 2011) -- A Delaware bankruptcy judge granted Tribune Co. noteholders access Tuesday to critical information on shareholders that cashed out in the ill-fated 2007 leveraged buyout of the media giant, setting the stage for lawsuits seeking to claw back \$8 billion in state court.

The noteholders — which sponsor a competing plan of reorganization to the one supported by Tribune and its senior lenders — are seeking to pursue state law constructive fraudulent transfer claims against the shareholders, arguing that the buyout left the company insolvent, heaping \$10 billion in new debt on Tribune and ahead of the noteholders' claims.

The information — which includes the names and addresses of selling shareholders, along with the number of shares sold and amount of money received — was compiled by the official committee of unsecured creditors before they filed similar intentional fraudulent transfer claims in the bankruptcy court. But the committee executed confidentiality agreements with the institutional investors that provided the information, leading them to object to the committee sharing it with noteholders.

David Zensky of Akin Gump Strauss Hauer and Feld LLP, an attorney for the noteholders, said at the hearing that the statute of limitations for claims against shareholders that cashed out in the first step of the leveraged buyout could run as early as June 4.

"It's obvious why we need this information ... it's important as to the who, where and how those suits are commenced," he said.

According to court documents, the suits could be filed in Delaware, where Tribune is incorporated; Illinois, its principal place of business; or Massachusetts, where many shareholders tendered their stock.

Zensky added that the shareholders' opposition was only intended to "interfere with our timely and efficient commencement of those actions."

The objecting institutional investors include The Vanguard Group Inc., John Hancock Trust, Mass Mutual Select Funds and Schwab Investments.

Bruce Jameson of Prickett Jones & Elliott PA, an attorney for institutional investors, argued that the noteholders were attempting to manipulate the bankruptcy process to obtain pre-suit discovery and that the move was an improper use of bankruptcy Rule 2004.

Judge Kevin J. Carey flatly rejected this argument, along with any assertions that the information could be deemed confidential.

“It doesn’t seem to me to be a difficult issue. We’re not talking about trade secrets here; people get sued all the time and amounts are listed in complaints all the time,” the judge said. “Your purpose in resisting the relief here is exactly what others say it is.”

Judge Carey added that the lawsuits were obviously intertwined with the proposed confirmation of the noteholders’ reorganization plan.

Under the noteholders’ plan, once filed, the lawsuits will be placed in a creditors trust and pursued after the plan confirmation fight is resolved. Zensky said at the hearing that the lawsuits have the potential to benefit all creditors because, if the noteholders manage to claw back some of the \$8 billion and their claims are paid in full, more money would be freed up for distribution to other creditors.

Tribune’s marathon confirmation hearing is set to resume for closing arguments on June 14, after which Judge Carey will decide which of the two competing plans provides a better outcome for creditors.

Tribune’s plan — co-sponsored by its secured lenders and unsecured creditors committee — looks to settle a host of potential claims against secured lenders, led by JPMorgan Chase Bank NA, for their part in financing the LBO.

The LBO heaped \$10 billion in debt onto Tribune’s balance sheet ahead of \$2.5 billion owed to junior creditors, which the pre-LBO creditors contend left the company insolvent.

The noteholders’ rival plan would pursue an all-out litigation strategy against JPMorgan and the other lenders, which they said could lead to \$1.8 billion in recoveries — a far cry from the \$510 million offered to the noteholders in the settlement.

Tribune is represented by James F. Conlan and Bryan Krakauer of Sidley Austin LLP and Norman L. Pernick and J. Kate Stickles of Cole Schotz Meisel Forman & Leonard PA, among other firms.

Aurelius is represented by Daniel Golden and David Zensky of Akin Gump Strauss Hauer & Feld LLP.

The objecting institutional investors are represented by Bruce E. Jameson, Gary F. Traynor and Kevin H. Davenport of Prickett Jones & Elliott PA.

The official committee of unsecured creditors is represented by Landis Rath & Cobb LLP, Chadbourne & Parke LLP and Edwards Angell Palmer & Dodge LLP. Zuckerman Spaeder LLP is special litigation counsel for the committee.

The case is In re: Tribune Co. et al., case number 1:08-bk-13141, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Lisa Uhlman.