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Transmar Lender Gets OK To Subpoena Over Lost Collateral

By **Alex Wolf**

Law360, New York (April 7, 2017, 7:03 PM EDT) -- ABN Amro got clearance Friday to issue subpoenas on two former Transmar Group senior staff accountants that the bankrupt commodity trader has refused to make available for depositions, advancing the lender's effort to investigate the apparent disappearance of hundreds of millions of dollars of its collateral.

U.S. Bankruptcy Judge James L. Garrity Jr. approved a request filed in his New York court last week by ABN Amro Capital USA LLC, which has sought to find out the facts and circumstances surrounding the disappearance of its collateral in Transmar's Chapter 11 estate.

ABN Amro, the administrative agent and collateral agent for itself and other secured Transmar lenders, said the investors it represents are the most significant creditors in the Transmar bankruptcy, with claims totaling approximately $360 million in principal and $4.7 million in interest against the insolvent cocoa trader.

The lender said it sought to glean more from Transmar's accountants after learning that they had important information concerning the debtor's record-keeping processes and the loss of collateral value at the core of its investigation. Though it has asked Transmar to voluntarily produce the accountants both for informal interviews and formal oral examinations under oath, ABN Amro's requests were refused by the debtor, the bank said.

Given Transmar's position and ABN Amro's desire to pursue an investigation as expeditiously as possible, the bank requested Judge Garrity's authorization to issue subpoenas.

Friday's order instructs accountants Richard Gary O'Connor and Nancy Pizzi to appear for a deposition on at least five days' prior written notice made to them or their counsel as well as Transmar's lawyers.

Attorneys for Transmar and ABN Amro did not immediately respond to requests for comment Friday.

Transmar, which filed for bankruptcy on New Year's Eve, said in court papers that it has more than $400 million in debt. Much of the problem involves its indirect European subsidiary Euromar Commodities GmbH, which suffered when unhedged forward contracts resulted in huge losses. Euromar is in insolvency and while Transmar owes it some money, Euromar owes Transmar a lot more, Transmar attorney Joseph L. Schwartz of Riker Danzig Scherer Hyland & Perretti LLP has said.

The falling price of cocoa and unpredictably in currency also caused problems for Transmar, he said.

A privately held business based in Morristown, New Jersey, Transmar was founded more than 35 years ago by cocoa trader Peter Johnson, who is still its CEO.

ABN Amro is represented by Curtis C. Mechling, Kenneth Pasquale and Francis C. Healy of Stroock & Stroock & Lavan LLP.

Transmar is represented by Tracy Klestadt, Joseph Corneau and Christopher Reilly of Klestadt Winters Jureller Southard & Stevens LLP and Joseph Schwartz, Tara Schellhorn and Rachel Gillen of

Riker Danzig Scherer Hyland & Perretti LLP.

The case is In re: Transmar Commodity Group Ltd., case number 1:16-bk-13625, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by William Gorta. Editing by Bruce Goldman.