

Binder & Binder Says It Needs \$6M To Avoid Liquidation

By **Ben Conarck**

Law360, New York (February 11, 2015, 3:18 PM EST) -- Social security disability firm Binder & Binder LLP asked for approval of a new \$6 million loan on Tuesday as it navigates through the Chapter 11 process, claiming that its existing lenders would rather see the company liquidate than allow it to restructure.

Binder & Binder, perhaps best known for its eccentric commercials featuring Charles Binder in a cowboy hat, says that its existing loan has hamstrung its ability to intake new clients at a sufficient clip and keep the business afloat as federal disbursements have slowed under new government scrutiny. The firm asserts that new financing terms would be the only way for it to avoid liquidation, given the harshness of its current loan.

"The inability to access additional liquidity would bring the debtors' operations — and the tens of thousands of claimants' cases currently pending — to an immediate halt, to the severe detriment of the debtors' estates, claimants, creditors, employees and all other stakeholders, including the existing [debtor in possession] lenders," the firm's request said.

Binder & Binder, which filed for Chapter 11 in December, emphasized that its existing \$26 million loan contains a \$23 million roll-up, leaving only \$3 million available to the company. The firm proposes to cover that \$3 million with half of its new \$6 million loan.

But the \$6 million loan, which would be obtained from Stellus Capital Investment Corp., comes with the stipulation that Stellus gets the first lien position on all of Binder & Binder's assets. The disability firm said it has shopped around and there is no "middle ground" in that regard.

"No party, including Stellus, expressed a willingness to extend credit on a junior secured, administrative expense, or unsecured basis, due to, among other things, the \$23 million of rolled-up secured debt," the firm said in its request.

Binder & Binder said that the slowdown in social security disability and veterans' benefits has sapped its cash flow. It described the firm as being at a "critical juncture," lacking the funds to pay its next payroll on Feb. 17, 2015.

The firm, which bills itself as the country's largest social security disability and veterans' benefits advocates, handles 57,000 active cases, according to filings.

Despite a prohibition on new advertising, one of the terms of its current loan, Binder & Binder said it is still handling approximately 1,000 new social security cases each month, and needs to keep its staff levels up to maintain the business.

Binder & Binder anticipated arguments from its current lenders, Capital One NA and US Bank NA, who they said demanded payment of fees and expenses in excess of the terms budgeted in its current loan, then notified the firm that it had defaulted on the loan for making those payments.

"While this may be a technical default, it is symptomatic of the distrust and unworkable structure of the existing DIP facility and the overall relationship," the firm said.

Binder & Binder went on to claim that the banks are unwilling to negotiate or give permission to the firm to seek new financing.

"The debtors engaged the existing DIP lenders in numerous and extensive conversations, provided a complete list of problematic terms and provisions with suggested modifications, and then continued to attempt to revise such proposals to come to resolution," the firm said.

A request for comment to the lenders' law firm was not immediately returned on Wednesday.

Binder & Binder is represented by Kenneth A. Rosen, Mary E. Seymour, Andrew Behlmann and Nicholas B. Vislocky of Lowenstein Sandler LLP.

Capital One is represented by McCarter & English LLP. US Bank is represented by Katten Muchin Rosenman LLP.

The committee of unsecured creditors is represented by Joseph Corneau, Tracy L. Klestadt, and Maeghan J. McLoughlin of Klestadt & Winters LLP.

The case is Binder & Binder — The National Social Security Disability Advocates (NY) LLC, et al., case number 14-23728-rdd, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Emily Kokoll.