

NY City Opera Can't Pay Back Workers, Ticketholders

By **Maria Chutchian**

Law360, New York (December 18, 2013, 2:17 PM EST) -- New York City Opera Inc. will not be able to pay back customers who bought show tickets in advance or make severance payments to its last remaining employees after a bankruptcy judge said Wednesday that the company must follow bankruptcy procedure and establish a plan first.

U.S. Bankruptcy Judge Sean H. Lane expressed sympathy for the opera company's desire to pay the employees who remained until the bitter end and customers who provided its business, but agreed with the official committee of unsecured creditors, which argued that making such payments would be premature.

"I often have to hand out bad news and this is one of those times," he said. "Payments like these this early on in the case are things that judges are always very reluctant to make."

The opera had asked the court for permission to make approximately \$53,000 in severance payments to 25 employees and about \$323,000 in refunds to customers. But Judge Lane said the motions did not meet the standards of the Bankruptcy Code's necessity doctrine, which allows debtors to make payments early on in the case if they are crucial to keeping the company's value intact for a reorganization.

But there is still no definite indication that the opera will reorganize — though attorneys for the company said a couple of months ago that they were in talks for a potential merger, no announcements have been made since then and the opera appears to be headed for liquidation.

An attorney for the creditor committee said a bar date will likely be set for the end of January. Until then, he said, there's no way to tell how many claims will be filed against the opera and of what size they will be. Therefore, he said, it is too early to begin making payments.

The official unsecured creditors committee was appointed by the U.S. Trustee in October to the bankruptcy case and included New York City Ballet Inc. as a member.

The appointment came shortly after the opera said it has \$6.7 million in assets and is \$3.6 million in debt in an overview of its financial condition filed with the bankruptcy court. The ballet company has submitted a \$1.6 million claim against the estate.

At an Oct. 10 hearing, lawyers for City Opera indicated that they are exploring the possibility of a merger with a "potential suitor" to save the iconic institution, but that nothing is set in stone and there is still a strong chance that the opera will simply have to wind down.

The 70-year-old institution **filed for bankruptcy** in October. It racked up an accumulated deficit of approximately \$44 million for fiscal year 2012. Its endowment was at \$5 million in FY2012, down from \$9 million the previous fiscal year and \$55 million several years ago, according to a written declaration from General Manager George Steel.

City Opera had hoped to avoid bankruptcy by raising \$7 million for the 2013-2014 season from private donors and via the crowdfunding website Kickstarter, but it was unsuccessful. It was only able to bring in a little more than \$286,000 through Kickstarter, where it had aimed for \$1 million.

NYC Opera is represented by Kenneth A. Rosen and Nicole Stefanelli of Lowenstein Sandler LLP.

The committee is represented by Sean C. Southard, Fred Stevens and Maeghan J. McLoughlin of Klestadt & Winters LLP.

The case is In re: New York City Opera Inc., case number 1:13-bk-13240, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by John Quinn.