NewsRoom

2/23/15 The Deal (Pg. Unavail. Online)
2015 WLNR 6175578

Deal, The

February 23, 2015

U.S. Bank pushes for Binder & Binder's liquidation

Andrew Hedlund

One of the postpetition financiers of a large advocacy firm for Social Security disability claimants argues it is time for its borrower to liquidate.In a Thursday, Feb. 19, objection to the Feb. 10 motion of Binder & Binder-The National Social Security Disability Advocates (NY) LLC for use of an alternative $6 million debtor-in-possession loan, U.S. Bank NA asserted two key metrics for the debtor's business falling success rates in litigation over disability benefits and average award per case do not paint an optimistic future for the Hauppauge, N.Y., debtor.U.S. Bank asserted Binder & Binder looks to follow the same business model that "wholly failed prior to the petition date and landed [the] debtors in the position they are in today," court papers show. The alternative DIP financing, a facility from prepetition mezzanine lender Stellus Capital Investment Corp., would help the advocacy firm avoid liquidation by funding working capital."No amount of additional funds can resuscitate [Binder & Binder's] failed business model," U.S. Bank asserted, because the drivers of its business allegedly cannot prop it up.U.S. Bank, also a prepetition lender, noted the success rate and average award statistics are beyond the debtor's control. The success rate fell from 73% as of June 2013 to 65% as of Dec. 31, while the average award amount increased from $3,940 in 2010 to a current $4,100. Nevertheless, the increase is insufficient to cover Binder & Binder's business costs and sustain it as a going concern, U.S. Bank said.The DIP lender said the debtor's "self-serving aggrandizement" stat asserting it had received 1,000 new cases a month since it filed for bankruptcy on Dec. 18 is a "classic bait and switch." U.S. Bank asserted 35% of those cases will bring in no revenue.Judge Robert D. Drain of the U.S. Bankruptcy Court for the Southern District of New York in White Plains is scheduled to consider the motion on Tuesday. U.S. Bank along with Capital One NA provided the current $26 million postpetition financing.In its motion seeking use of the new DIP, the debtor said it would use the proceeds of the loan, which would accrue interest at 10%, to pay off the $3 million in new money provided under the existing DIP. The other $23 million of the Dec. 18 loan was rolled-up prepetition debt. The original DIP accrues interest at an unspecified base rate plus 4.25%.The remainder of the new DIP would fund working capital and other corporate needs of Binder & Binder, among other uses. An interim order would allow for use of up to $4.5 million.Court papers show that slow disbursements from the U.S. Social Security Administration and the U.S. Department of Veterans Affairs have caused Binder & Binder's cash flow to dwindle. The debtor said it needed the new money to ride out the temporary slowdown and allow for a potential reorganization or another restructuring alternative. Failure to obtain the funds, Binder & Binder asserted, would result in a "'controlled liquidation' solely for the benefit of the existing DIP lenders."The smaller payments from the federal government led Binder & Binder to default on its original financing on Jan. 26 by breaching some of the loan's covenants. Without access to the new DIP provided by Stellus, Binder & Binder said it would not be able to service new cases.Mary Seymour of debtor counsel Lowenstein Sandler LLP worked on securing the new DIP loan. Nicholas Vislocky, Cassandra Porter and Kenneth Rosen of Lowenstein are also debtor counsel. Seymour, Vislocky and Porter were not available for comment.U.S. Bank counsel John J. Ramirez of Katten Muchin Rosenman LLP could not be reached for comment.Joseph Corneau, Tracy Klestadt and Maeghan J. McLoughlin of Klestadt Winters Jureller

Southard Stevens LLP represent the official committee of unsecured creditors, which comprises T&G Industries Inc.; Teaktronics Inc.; the United Service Workers Union, Local 455 IUJAT and related funds; and W.B. Mason Co.

http://pipeline.thedeal.com/tdd/ViewArticle.dl?id=13055086

---- Index References ----

Company: BINDER AND BINDER INC; KATTEN MUCHIN ROSENMAN LLP; Lowenstein; STELLUS CAPITAL INVESTMENT CORP; TG INDUSTRIES INC; US BANK NATIONAL ASSOCIATION ND; US BANCORP; WB MASON CO INC

News Subject: (Bankruptcies (1BA08); Business Management (1BU42); Corporate Events (1CR05); Major Corporations (1MA93))

Industry: (Banking (1BA20); Financial Services (1FI37); Loans (1LO12); Retail Banking Services (1RE38))

Language: EN

Other Indexing: (Klestadt Winters Jureller Southard Stevens LLP) (Robert Drain; Cassandra Porter; Nicholas Vislocky; Kenneth Rosen; John Ramirez; Mary Seymour; Joseph Corneau) (New York metro; New York state; North America; Northeast; United States; United States - East)

Word Count: 664

End of Document