TC Insolvency News

THOMPSON COBURN LLP

September 2010

Welcome to Thompson Coburn Insolvency News

Welcome to the first edition of the Thompson Coburn Insolvency News—a publication of the firm's Bankruptcy and Reorganization Practice Group. TC Insolvency News will feature updates on recent activity within the practice, introductions to our group's attorneys and other related topics. The publication will be produced twice a year in March and September and sent via e-mail. Our goal is to keep you informed of happenings within our practice and the bankruptcy field.

TC Represents Lender in Lightning Fast Sale of Food Distributor Assets

Affiliated Foods Southwest, Inc. ("Affiliated") was once one of the largest wholesale food distributors in the Southwest United States. Affiliated and its related companies had more than 1,500 employees, distributed food products on a wholesale basis to over 700 member-owned grocery stores and ran more than 22 company-owned grocery stores. Thompson Coburn client U.S. Bank was the agent of a four-member bank group that financed most of Affiliated's operations. The bank retained Thompson Coburn partner Mark Bossi after it discovered a check kiting scheme perpetrated by Affiliated's management and various accounting irregularities in Affiliated books and records. Bossi led the team that negotiated a rapid wind-down and sale of Affiliated's various operations, culminating in Affiliated's bankruptcy filing in Little Rock, and the sale just three days later of its food products inventory and related assets. U.S. Bank then obtained relief from the stay, and Thompson Coburn coordinated local counsel in six states to collect Affiliated's accounts receivable and over $16 million of notes payable to Affiliated by its members. The bankruptcy cases were ultimately converted to cases under Chapter 7. Pete Fanchi, Allison Graves and Brian Hockett have been assisting in the representation of U.S. Bank.

Mark Bossi

In This Issue

TC Has Interdisciplinary Team for Low-Income Housing Tax Credit Deals

Thompson Coburn has recently advised its banking clients in connection with a number of troubled low-income housing tax credit ("LIHTC") projects. These transactions are particularly complex because they involve public finance and tax issues as well creditors' rights and restructuring issues that are present in conventional real estate loans. We have established an interdisciplinary team consisting of Mark Bossi and Cheryl Kelly from our Bankruptcy & Reorganization Group, Steve Mitchell from our Public Finance Group, and Henry Bettendorf from our Taxation Group to assist clients in connection with troubled LIHTC credits.

Cheryl Kelly

Steve Mitchell

Henry Bettendorf

TC Represents Purchaser/DIP Lender in Franchisee's Bankruptcy

When its largest ProSource® franchisee filed bankruptcy in Houston, Texas, CCA Global had to act quickly to preserve the value of its entire ProSource® brand. CCA, with the assistance of Thompson Coburn's Bankruptcy & Reorganization Group, devised a strategy to prop up the struggling franchisee, stabilize its business operations, and market over 40 locations for sale in 12 states. By the time it filed bankruptcy, the franchisee had little cash and millions of dollars in unfunded consumer deposit liabilities. Within three days after the filing, CCA made a debtor in possession (DIP) loan that enabled the franchisee to continue in business and honor its existing consumer deposits. CCA then purchased the first lienholder's claim against the franchisee at a substantial discount and spearheaded the filing of a bankruptcy plan calling for the sale of most of the remaining locations to CCA in exchange for credit bidding the first lien position. The plan was confirmed, over the objection of unsecured creditors, and CCA acquired the assets. CCA has since sold many of the locations to third parties and recouped a large part of its investment. With its creative and strategic use of Chapter 11, CCA was able to preserve its ProSource® brand and save hundreds of jobs. David Warfield and David Lander led the representation of CCA in this matter.

David Warfield

David Lander

TC Represents Creditors' Committee in Bankruptcy of Largest Vehicle Service Contract Provider

Brian Hockett

Allison Graves

St. Louis-based US Fidelis, Inc. was at one time the largest player in the burgeoning vehicle service contract (VSC) industry. The company's shareholders, two brothers, spent lavishly, frequently paying their own personal bills directly from the company's coffers. One of the brothers built the largest house in the entire St. Louis metropolitan area, covering 40,000 square feet and costing well in excess of $20 million. Earlier this year, US Fidelis collapsed into bankruptcy, amid dozens of investigations by various state and federal agencies. The Official Unsecured Creditors' Committee in US Fidelis' case retained Thompson Coburn's Bankruptcy & Reorganization Group. The Committee then successfully requested the Bankruptcy Court to enjoin all litigation against the two shareholders, who collectively received over $101 million in compensation and distributions from the company since 2005. This injunction stopped the race to the courthouse and enabled the bankruptcy estate to assert its claims against the brothers for the benefit of all US Fidelis creditors. The Committee has also recently gained access to all e-mails sent by the brothers to their personal counsel using the company's computers. The Committee is investigating dozens of other potential claims for the benefit of the bankruptcy estate and working with Attorneys General in 13 states to craft a liquidation plan that will treat all USF creditors fairly. David Warfield, Mark Bossi, Brian Hockett and Allison Graves are on the TC team in this case.

Our Bankruptcy Attorneys

Seth A. Albin	(314) 552-6283
Mark V. Bossi, Co-chair	(314) 552-6015
Robert H. Brownlee	(314) 552-6017
Francis X. Buckley Jr.	(312) 346-2210
David D. Farrell	(314) 552-6144
Allison E. Graves	(314) 552-6422
Brian Hockett	(314) 552-6461
Cheryl A. Kelly	(314) 552-6167
Kathleen E. Kraft	(202) 585-6922
David A. Lander, Co-chair	(314) 552-6067
Harvey A. Levin	(202) 585-6942
Lauren Newman	(312) 346-2328
Dennis E. Quaid	(312) 346-2215
Sarah A. Wade	(314) 552-6197
David A. Warfield	(314) 552-6079

CHICAGO
55 East Monroe Street
37th Floor
Chicago, IL 60603
312-346-7500

ST. LOUIS
One US Bank Plaza
St. Louis, MO 63101
314-552-6000

SOUTHERN ILLINOIS
525 West Main Street
Belleville, IL 62220
618-277-4700

WASHINGTON, D.C.
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006
202-585-6900

www.thompsoncoburn.com

TC Obtains Preference Ruling Beneficial to Trade Creditors

Lawsuits brought by trustees or debtors in possession seeking the return of allegedly "preferential payments" are a bane to trade creditors. Our Bankruptcy & Reorganization Practice Group routinely defends clients in these types of cases, and in one recent case, the court's ruling in our favor will greatly benefit creditors. We defended the preference lawsuit on the ground that our client had provided goods to the debtor in the 20 days prior to the bankruptcy that constituted "subsequent new value" which should reduce the client's preference liability on a dollar for dollar basis. Because the client was also claiming that these same goods qualified for "administrative expense" status under Section 503(b)(9), which requires payment for the goods in full upon confirmation of a plan of reorganization, the issue was whether the goods qualified as unpaid new value for purposes of the client's "subsequent new value" defense under Section 547(c)(4) of the Bankruptcy Code. The Bankruptcy Court for the Middle District of Tennessee agreed with our analysis and found that the goods did constitute "new value" for purposes of the subsequent new value defense. The court's opinion is *Commissary Operations, Inc. v. Dot Foods, Inc., et al. (In re Commissary Operations, Inc.)*, 421 B.R. 873, 2010 WL 99036 (Bankr. M.D. Tenn. Jan. 7, 2010) (Harrison, J.).

Introducing Our New Group Members

We are pleased to announce that **David A. Warfield** has joined the firm as a partner in the Business Bankruptcy, Restructuring and Creditors' Rights practice. David brings more than 25 years' experience across a full spectrum of complex restructuring, bankruptcy and creditors' rights matters.

David is a fellow of the American College of Bankruptcy and is well-recognized for his business bankruptcy work. With the addition of Mr. Warfield, the firm now has five fellows of the American College of Bankruptcy and is one of only a handful of firms in the country with such a distinction.

Formerly of Husch Blackwell Sanders LLP, David earned both his B.S. in Business Administration and his J.D. from Washington University in St. Louis, where he was the Senior Associate Editor of Washington University Law Quarterly. He will be based in TC's St. Louis office.

We are pleased to announce that **Sarah A. Wade** has joined the firm as an associate in the Business Bankruptcy, Restructuring and Creditors' Rights practice.

Sarah is a member of the Association of Certified Anti-Money Laundering Specialists. Prior to joining TC's St. Louis office, Sarah worked as an Examiner in the Safety & Soundness unit of the Federal Reserve Bank of St. Louis. Sarah earned her J.D. from Saint Louis University School of Law and her B.S. in Business Administration from the University of Missouri-Columbia.